***Reserved***

**In the High Court of Judicature at Allahabad,**

**Lucknow Bench, Lucknow**

**O.O.S.No.1/1989**

**(R.S.No.2-50)**

Sri Gopal Singh Visharad, aged about 42 years, son of Thakur Girdhari Singh, resident of Mohalla Sargdwar Ayodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad -(dead )

Rajendra Singh aged about 46 years son of Sri Gopal Singh Visharad, at present resident of State Bank of India Branch Gonda—Amended vide court order dated 22.02.86.

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…..... Plaintiff.

**Versus**

1. Zahoor Ahmad, aged about 68 years, son of not known, resident of Mohalla Bara Bazar-dead, City Ayodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
2. Haji Feku, aged about 65 years, son of not known, resident of Mohalla Terhi Bazar-dead, CityAyodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
3. Mohammad Faiq, aged about 45 years, son of not known, resident of Mohalla Terhi Bazar-dead, CityAyodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.

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4. Mohd.Shami Churiwala, aged about 45 years, son of not known, resident of Mohalla Ramganj-dead, City Ayodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
5. Mohammad Achchan Miyan, aged about 45 years, son of not known, resident of Mohalla katra-dead, CityAyodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
6. ~~United Provinces,~~ Uttar Pradesh, State, Lucknow –Amended under court order dated 21.02.50.
7. ~~K.K.Nayyer,~~ Deputy Commissioner, Faizabad –Amended vide court order dated 07.01.87.
8. ~~Sri Markandey Singh,~~ Additional City Magistrate, Faizabad—Amended under court order dated 07.01.87.
9. ~~Sri Ram Kripal Singh~~, Superintendent of Police Faizabad—Amended under court's order dated 23.08.90.
10. Sunni Central Waqf Board Uttar Pradesh Lucknow, Moti Lal Bose Road, Police Station Kaiserbagh through Secretary.
11. Nirmohi Akhara Ayodhya, Haveli Avadh, Ayodhya, district Faizabad through Sarpanch Ram Swaroop Das, Upsarpanch Mahanth Bhaskerdas and Panch Rajaram Chandracharya.

**-------** **…. Defendants**

***Judgment delivered by***
***Hon'ble Dharam Veer Sharma, J.***

The suit was initially filed by Sri Gopal Singh Visharad. After his death, his son Sri Rajendra Singh was substituted at his place. The

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plaintiff has sought following reliefs;

**Annexure-II**
**Pages 30-59**

It be declared that plaintiff is entitled for worship and offering prayers without any interruption of the deity of Lord Rama installed at Ram Janam Bhumi for which particulars are available at the foot of the plaint and further defendant nos.1 to 6 or their heirs and defendant nos. 7 to 9 and defendant no.10 be restrained not to interfere in the aforesaid right of the plaintiff. The defendants be restrained from removing the idols from the disputed place and be further restrained not to cause any hindrance in the entry of the plaintiff and also be prohibited not to close the entry door causing hindrance in the worship and Darshan of the plaintiff. The plaintiff be granted any other relief deemed fit by court along with costs.

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The details of the disputed property are as under:--
East – Bhandar and platform of Janam Bhoomi.
West—Parti land
North—Sita Rasoi
South—Parti land

Plaintiff claims that he is the follower of Sanatan Dharm and used to worship and Darshan of God and Goddesses like his father. The plaintiff in the birth spot of Lord Rama was worshipping the deity of Lord Ram Chandra at foot steps etc. and was continuing visiting the spot for offering prayers and for Darshan without any interruption and hindrance and he is also entitled to perform his religious duties in future also. On 14.1.1950, late Gopal Singh Visharad, the original plaintiff, visited Ram Janam Bhumi site but the

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employees of defendant no.6 restrained him from entering into the place where the deity of Lord Ram Chandra Ji was installed and the same was done under the influence of defendant nos. 1 to 5 and persons of their community. Thus they have restrained Hindus from worshipping the above deity without any justification. They have also declared that they would interfere in the prayers and worship of Hindus which amounts to interference in religious rights illegally. Employees of defendant no.6 are defendants no. 7 to 9 and they are illegally pressurizing the Hindus to remove the idols installed at the birth place of Lord Ram. It is further averred that in view of the declaration of Queen Victoria which she made and under the Government of India Act, 1935 the act on the part of the defendants no.1 to 5 and further of defendant nos. 6 to 9 is contrary to the declaration and also against the law which has compelled the plaintiff to file the suit. The cause of action arose on 14.1.1950 within the jurisdiction of the court when the defendants interfered with the rights of the plaintiff and restrained him from discharging his various religious obligations. After the death of the plaintiff, his son is entitled to maintain the present suit. Defendant nos. 1 to 5 are also no more and it is not necessary to implead his successors. Defendant no.10 has been arrayed in accordance with the directions of this Court dated 17.10.88 and the relief has also been sought against him.

Defendants no. 1 to 5 have died. Plaintiff has not substituted any person on their place. Prior to their death the defendants no. 1 to 5 had filed their written statement on 21.2.50 wherein they stated that

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the land in suit is not Ram Janam Bhumi but it is a mosque constructed by emperor Babar. This mosque was constructed by Emperor Babar through his minister Mir Baqi in the year 1528 and dedicated it as waqf for use of Muslim community. Every Muslim has a right to worship in this Mosque. The grant of Rs. 60 was allowed by Emperor Babar from Royal Treasury which continued during Mughal period and during the reign of Nawabs of Oudh. This amount was enhanced to the tune of Rs. 302, 3 ana and 6 pai. This continued even during the British Government. During the period of settlement, the British Government granted rent free land in the villages Solapuri and Bahoranpur. In the year 1885, Mahant Raghubar Das had filed a suit against Secretary of State for India in Council and Mohd. Asgar Mutwalli of Babri Mosque in the Court of Sub-Judge, Faizabad for the declaration of his title.A map was appended with the plaint wherein the mosque was clearly shown and was not denied and only relief was sought regarding a platform, therefore, the plaintiff is estopped from saying that entire land in suit belongs to Ram Janam Bhumi temple. This fact is completely false and groundless. The Sub-Judge, Faizabad had dismissed the suit on 24.12.1885.

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This verdict was upheld by appellate court and the remark of Sub-Judge in favour of the plaintiff regarding title over the platform in suit was also struck off and so many Mahants of Ayodhya on behalf of the Hindu public had contested the suit and all the Hindus had full knowledge of this litigation. As per provision of Act No.13

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of 1936, the Chief Commissioner of Waqf was appointed who after inspection of the site of Babri Mosque declared that this mosque was built by Emperor Babar and is a Sunni Waqf. Accordingly requisite notification was issued. The Muslim community is in continuous possession over Babri Mosque since 1528 and therefore if plaintiff or any other Hindus succeed in proving that at any point of time there was a temple over the land in suit, in that event also having been in possession for more than 400 years over the land in suit as public mosque no right or title remained with the plaintiff and the same has been extinguished by the lapse of time and plaintiff had no right of possession over the property in suit. Therefore, the suit is barred by Section 42 Specific Relief Act and is also time barred of which no application has been moved by the plaintiff under Order 1 Rule 8 C.P.C. and no right has been claimed through the Hindu community. Therefore, the suit is not maintainable. The suit is barred for want of notice under Section 80 C.P.C. Namaz was offered in the Babri Mosque on 16.12.1949 and there was no idol in it. If any, idol has been installed surreptitiously and stealthily in that event also no Hindu has right to enter into the mosque for having Darshan of the said idol or worship over there. Accordingly civil court has no jurisdiction to grant any relief in favour of the plaintiff. There is mis-joinder by defendants no.6 to 9 in the present suit. The proceeding initiated under Section 145 Cr.P.C. has been commenced with ulterior motive with the aid and knowledge of the then City Magistrate. There is a temple known as Janam Sthan Sri Ram Chandra Ji where idols of

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Ram Chandra Ji and other Gods are installed. The suit is liable to be dismissed. The plaintiff has filed replication reiterating the facts given in the plaint.

Deputy Commissioner, Faizabad, defendant no.6 has also filed written statement wherein it is stated that notice as contemplated under Section 80 C.P.C. has not been served on defendant no.6, therefore this suit is liable to be dismissed on this ground alone. The plaint allegations are fake. There is no cause of action for the suit. In the intervening night of 22nd December, 1949, the idols of Sri Ram Chandra Ji surreptitiously and wrongly put inside the disputed property resulting threat to public peace and tranquility. The public authorities had to be intervened in order to prevent breach of peace. The City Magistrate, Guru Dut Singh passed an order on 23.12.49 under Section 144 Cr.P.C. prohibiting the carrying of fire arms etc. and assemblage of more than 5 persons within the limits of Faizabad and Ayodhya Municipalities. On the same date, the Additional City Magistrate, Sri Markendey Singh on police report and other information, passed orders under Section 145 Cr.P.C. calling upon the claimants to the premises to appear and file their written statements by 17.1.1950. The said Magistrate being of opinion that the case was one of emergency, attached the said suit property and appointed Sri Priya Datt Ram, Chairman, Municipal Board, Faizabad-cum-Ayodhya as a Receiver of the said property and authorised him to manage the same and further directed him to submit a scheme for the management thereof.

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The City Magistrate, defendant no.8 filed written statement on 25.4.50 wherein he has stated all the facts which have already been mentioned in the WS of defendant no.6.

Defendant no.9 S.P., Faizabad has also filed written statement reiterating all the facts mentioned in the written statement of Deputy Commissioner, Faizabad and the City Magistrate mentioned hereinbefore.

Defendant no.10, U.P. Sunni Central Board of Waqf has also filed written statement on 24.2.89 through its Secretary Zamir Ahmad Khan who has stated that the building referred to in the plaint is not the Janam Bhumi of Sri Ram Chandra Ji and no idols of Sri Ram Chandra Ji were installed in the said building and as such there arises no question of any right or claim of the plaintiff to perform Pooja and Darshan over there. Property in suit is a mosque known as Babri Mosque and the same was constructed during the regime of Emperor Babar. On 22/23.12.49, idol was surreptitiously and stealthily kept in the mosque by some mischievous elements. This mosque was never used for performing Pooja and Darshan. The property in suit is an old mosque constructed around the year 1528 during the regime of Emperor Babar under the supervision of Mir Baqi and the same has already been used as a mosque and it was never used as a temple or as a place of worship for any other community except Muslims. The Emperor Babar had given a grant of Rs. 60 per annum for the maintenance and annual repairs and other expenses relating to the said mosque which was paid during the Mughal period and during the

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regimes of Nawab of Oudh the said grant was enhanced and the British Government had also continued the said grant and at the time of the first settlement as a Mafi expenses of the said mosque.

In 1885 Mahant Raghubar Das(Mahant of Janam Sthan of Ayodhya) had filed a suit against the Secretary of State for India in Council and Mohd. Asgar, Mutwalli of the mosque, in the Court of Sub-Judge, Faizabad in which the site plan was annexed alongwith the plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the suit was filed for permission to erect temple over the said Chabutra. In respect of the said Chabutra the said Mahant Raghubar Das had stated that the temple of Janam Bhumi was desired to be constructed over there, but the said Mahant could not succeed even in that suit which was ultimately dismissed on 24.12.1885 by the Sub Judge, Faizabad and the appeal filed against the said judgment and decree dated 24.12.85 was also dismissed by the District Judge, Faizabad and the second appeal filed against the same had also been dismissed by the Judicial Commissioner of Oudh.

The aforesaid suit was filed by the Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad. That after the proclamation of U.P. Muslims Waqf Act 1936, the Chief Commissioner of Waqfs had got a survey made in respect of properties and in that connection survey of the mosque in question was also conducted and the same was registered as a waqf and a gazette notification had also been issued in respect thereto under the

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provisions of the said Act. Muslims had all along remained in possession of the said mosque right from 1528 upto the date of the attachment of the said mosque under Section 145 Cr.P.C. in December, 1949. The said mosque stands registered as a mosque in the office of the U.P. Sunni Central Board of Waqf as Waqf No. 26 Faizabad even in the register of Waqfs maintained under Section 30 of the U.P. Mislim Waqf Act,1960.

Plaintiff had never been in possession or occupation of the building in suit. He has no right, title or claim over the said property and as such the suit is even barred by the provisions of Section 41 of the Specific Relief Act. Muslims remained in possession over the property in suit from 1528, therefore, the suit is barred by time. The plaintiff has not been able to set up any right or title on the basis of customary or easementary right. The suit is bad for want of permission under Order 1 Rule 8 C.P.C. and notice under Section 80 C.P.C. and is liable to be rejected under Order VII Rule 11 C.P.C. Keeping of the idol in the mosque in the night of 22/23rd December, 1949 will not confer any right or any title upon the plaintiff as it was done stealthily and in the mischievous manner. It has further been stated by the U.P. Central Board of Waqf that the attachment of mosque was unjust, improper and illegal. The ownership of the mosque in question vests in the God Almighty and the said mosque is a waqf property and its character cannot be challenged. The suit is barred by the provisions of U.P. Muslims Waqf Act 1936. The substituted plaintiff cannot even claim those alleged rights which

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were set up by his father. The judgment in original suit no. 61/280 of 1885 will operate as res judicata. The plaintiff is estopped from claiming the mosque in question as the Janam Bhumi as the plaintiff's predecessors Mahant Raghubar Das had confined his claim to the Chabutra of 17' X 21' outside the said mosque. Thus, the suit is liable to be dismissed with special costs.

**Annexure-II**
**Pages 30 to 59**

## Issues

**Issues framed by the Civil Judge Faizabad on 9.3.1962 in the suits noted above:-**

1. Is the property in suit the site of Janam Bhumi of Shri Ram Chandra Ji?

2. Are there any idols of Bhagwan Ram Chandra Ji and are His Charan Paduka' situated in the site in suit.?

3. Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the place in suit.?

4. Has the plaintiff the right to have Darshan of the place in suit.?

5(a) Was the property in suit involved in original suit no.61/280 of 1885 in the court of sub-judge, Faizabad Raghubar Das Mahant Vs. Secretary of State for India & others.?

(b) Was it decided against the plaintiff.?

(c) Was that suit within the knowledge of Hindus in general and were all Hindus interest in the same.?

(d) Does the decision in same bar the present suit by principles of Resjudicata and in any other way?

6. Is the property in suit a mosque constructed by Shansha Babar commonly known as Babri mosque, in 1528A.D.?

7. Have the Muslims been in possession of the property in suit

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from 1528A.D.?

8. Is the suit barred by proviso to section 42 Specific Relief Act.?

9. Is the suit barred by provision of section (5) (3) of the Muslim Waqfs Act (U.P. Act 13 of 1936);?

(a) Has the said act no application to the right of Hindus in general and plaintiff of the present suit, in particular to his right of worship.?

(b) Were the proceedings under the said act referred to in written statement para 15 collusive? If so, its effect?

(c) Are the said provisions of the U.P. Act 13 of 1936 ulta-vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper No.454-A-?

10. Is the present suit barred by time ?

11(a) Are the provisions of section 91 C.P.C. applicable to present suit ? If so is the suit bad for want of consent in writing by the advocate general ?

(b) Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 C.P.C. ? if not its effect. ?

12. Is the suit bad for want of steps and notices under order 1 Rule 8 C.P.C. ? If so its effect. ?

13. Is the suit No.2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under section 80 C.P.C. ?

14. Is the suit no.25 of 50 Param Hans Ram Chandra Vs. Zahoor Ahmad bad for want of valid notice under section 80 C.P.C. ?

15. Is the suit bad for non-joinder of defendants. ?

16. Are the defendants or any of them entitled to special costs under section 35-A C.P.C.?

17. To what reliefs, if any, is the plaintiff entitled. ?

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**Statement under Order 10 Rule 2 C.P.C. in O.O.S. No.1 of1989**

**Reg. Suit No. 2 of 50**

Q. In what capacity does the plaintiff seek to exercise the relief which he seeks in the plaint?

Ans. In my individual capacity.

Q. What is your individual capacity?

Ans. My individual capacity is distinct from public capacity and in this matter an idol worshiper . This shows that the plaintiff's counsel is not in a position to answer the court question. The plaintiff must present in court personally on the date fixed.

Q. Has your client any religion?

Ans. The plaintiff is a Sanatan Dharmi.

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**13.01.60**

Parties as before
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**Sri Goswami States** ABCDEF is the land and building in suit as indicated in the map of the Commissioner Sri Shiva Shanker Lal dated 25.5.50. It is the temple since 1934. Deities installed are Sri Sri Ram. The building existed prior to 1934. The plaintiff can't say for how long it have been existing. The plaintiff can't say who built it and what it was prior to 1934. Sri Gopal Singh Visharad came in on about 1934 to Ajudhya. He saw the (murti) there, and began to worship them. Sri Paramhans instructs that the (murti) were there from before 1934. Whenever he saw it was a temple. It has always been a temple. He can't say who got it constructed and dedicated.

The plaintiff do not admit that at any time the building was used for prayer or as a Mosque by the Mohammaden community. Babar never built it. He was never emperor of India. I deny that it was ever used as a mosque.

The plaintiffs confine their case to the construction shown by letters ABCDLKJPOHNGA as shown in the map of the Commissioner dated 25.5.50. The Chabutra and Mandir shown in the map of the Commissioner as “Ram Chabutra” and “Bhandar” are the same as those described in the eastern boundary of the temple in question in the plaint.

The replication para 31 filed in suit no. 25 of 1950 by

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Paramhans does not refer to the litigation mentioned in para 14 of the map filed by Zahur Ahmad and others. The proceedings mentioned in the last part of para 31 of the replication relate to those cases and proceedings which were between Mohammedans-sunnies & shias & others i.e. relating to suit no. 29 of 1945 of the Court of Civil Judge, Faizabad.

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13.1.60

In the Court of Civil Judge, FD.
Reg. Suit No. 02/50
Gopal Vs. Zahoor
Regular Suit No. 25/50
Paramhans Vs. Zahoor

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07.03.62

Defendant Gopal Singh Visharad and Sri Param Hans Ram Chandra plaintiffs of both the suits no. 2/50 and 25 of 1950 accompanied by their counsel state that they do not want any relief with regard to constructions or structures indicated in the map of the Commissioner Shiv Shankar Lal dated 25.05.50. by the terms 'Sita Rasoi', 'Bhandar' and 'Ram Chabutra'. They say that the reliefs are asked for only with regard to property included in the said map by letters A, B, C, D, L, K, J, P, O, H, N, G, A.

They further add that the term ' Janam Bhumi used in the plaint refers to Janam Bhumi of Sri Ram Chandra Ji and according the plaintiff's belief the property in the suit is the site of the same.

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They add that there is no foot prints carved out on any stone or any stone image of any Charan Paduka referred to in para 2 of the plaint.

According to them at the place in suit near the idol of Bhagwan Ram Chandra Ji are kept wooden sandals or Charan Paduka and also a small pair of silver Charan Paduka . They are not fixed to any stone, structure or floor but are placed loose near the idol.

They are that the idol of Bhagwan Ram Chandra Ji at the place in suit is an Achal idol.

They add that in plaintiffs claim right of worship with regard to the said Idol and also with regard to the 'Charan Paduka'.

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The plaintiffs also claim a right to worship all the deities and idols situated in the property in suit besides that of Bhagwan Ram Chandra Ji as for example Laxman Ji, Hanuman Ji, Sita Ji, Saliqram Ji, etc. They also claim a right to worship and have Darshan of these as well as they have a right to a Darshan of the site in question, as according to their belief it is the birth place of Sri Ram Chandra Ji.

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| Param Hans Ram Chandra Das<br>Gopal Singh Visharat | Civil Judge, Faizabad |
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**In the court of Civil Judge, FD**
**Reg. Suit No. 2 of 1950**
**Reg. Suit No. 25 of 1950**

07.03.60

Sri Mohd. Ayub, Advocate for the defendants states that the decision referred to in para 11 to 14 of the WS was in original Suit No. 61/280 of 1885 in the Court of Sub-Judge, Faizabad, Raghubar Das Mahanth versus Secretary State for India and Others. He adds that this decision bars the present suit by principle of resjudicata and estoppel.

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Sri Mohd. Ayub

Sd/- illegible
Civil Judge

07.03.62

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**In the court of Civil Judge, FD**
**Reg. Suit No. 2 of 1950**
**Gopal Vs. Zahoor**
**Reg. Suit No. 25 of 1950**
**Param Hans Vs. Zahoor**

**08.03.62**

Sri P.D. Goswami, Advocate for defendants states that the reports of the Commissioner spoken in Para 15 of WS has not effect on the rights of plaintiff, nor do the provisions of Section 5 (3) of U.P. Act, 13 of 1936 apply to the present suit as they are based on a right of worship of plaintiff who is a Hindu. According to him the provisions of the Act are applicable to the property and the right of the Muslims only.

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He does not give up the plea taken by him in the replication in that connection.

According to him the said Act has been repelled by U.P. Act 16 of 1960. He further adds that in case the said Act be considered applicable in the present suits it is ultra vires the provisions of the Government of India Act 1935 and is in conflict with the Ancient Monuments Preservation Act. (Act No. VII of 1904.

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P. D. Goswami

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Civil Judge, FD
09.03.62

**In the court of Civil Judge, FD**
**Reg. Suit No. 2 of 1950**
**Gopal Vs. Zahoor**
**Reg. Suit No. 25 of 1950**
**Param Hans Vs. Zahoor**

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**09.03.62**

Sri Mohd. Ayub Advocate for the defendants states that under para 15 of the WS in Suit No. 2 of 1950, the defendants plead that the suit is barred by provision of Section 5 (3) of Muslim Waqf Act, 1936 (U.P. Act No. 13 of 1936).

He adds that by the plea set up in para 19 of the WS, it is meant that the suit is bad for want of consent in writing of the Advocate in general and other provisions of Section 91 of the C.P.C.

He adds that from para 9 of WS the plea arises that Almighty God in whom the property in suit vests duly represented by some authorised persons should have been made a party to the suit and the suit is bad for non-joinder of parties. He adds that the Muslim in

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general or the Mutwalli

of the said Waqf or Sunni Central Board or Waqf should also have been made defendants in the suit.

He adds that the present suit being a suit for injunction is barred by time under Article 120 of the Indian Limitation Act.

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Sri Mohd. Ayub

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Civil Judge, FD
09.03.62

# F I N D I N G S

## ISSUES NO. 1, 2 & 6

**1. Is the property in suit the site of Janam Bhumi of Shri Ram Chandra Ji?**

**2. Are there any idols of Bhagwan Ram Chandra Ji and are His charan Paduka' situated in the site in suit.?**

**6. Is the property in suit a mosque constructed by Shansha Babar commonly known as Babri mosque, in 1528A.D.?**

## FINDINGS

Original Suit No. 4 of 1989 is a leading case. The above issues are identical to issues No. 1(a) (b), 1-B (b), 19-d, 19-e and 19-f of the Original Suit No. 4 of 1989. I have already recorded the findings in Original Suit No. 4 of 1989. Let the copy of the judgment be placed in this record. The issues are decided accordingly.

## ISSUES NO. 3, 4 & 7

**3. Has the plaintiff any right to worship the 'Charan Paduka'**

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**and the idols situated in the place in suit.?**

**4. Has the plaintiff the right to have Darshan of the place in suit.?**

**7. Have the Muslims been in possession of the property in suit from 1528A.D.**

## FINDINGS

These issues are identical to issues No. 1-B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19-a, 19-b, 19-c, 27 and 28 of Original Suit No. 4 of 1989. Accordingly, I crave to refer the finding of Original Suit No. 4 of 1989. These issues are decided in terms of findings of the above leading case.

## ISSUES NO. 9, 9(a), 9(b), 9(c)

**9. Is the suit barred by provision of section (5) (3) of the Muslim Waqfs Act (U.P. Act 13 of 1936);?**

**a. Has the said act no application to the right of Hindus in general and plaintiff of the present suit, in particular to his right of worship.?**

**b. Were the proceedings under the said act referred to in written statement para 15 collusive? If so, its effect?**

**c. Are the said provisions of the U.P. Act 13 of 1936 ulta-vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper No.454-A-?**

## FINDINGS

These issues are identical to issues No. 5-a, 5-b, 5-c, 5-d, 5-e, 5-f, 7-b, 17 (**issue no.17 of O.O.S. No.4 of 1989 has already been decided by the Civil Judge, Faizabad**) 18, 20-a, 20-b, 23, 24, 25 and 26 of Original Suit No. 4 of 1989. I have recorded the findings in the above leading case. I crave to rely over the same. These issues

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are decided in terms of the aforesaid findings.

## ISSUES NO. 5-a and 5-b

**a. Was the property in suit involved in original suit no.61/280 of 1885 in the court of sub-judge, Faizabad Raghubar Das Mahant Vs. Secretary of State for India & others.?**

**b. Was it decided against the plaintiff.?**

## FINDINGS

These issues are identical to issue No. 1-B (a) of Original Suit No. 4 of 1989. The above issues are decided in terms of my finding recorded in the leading case.

## ISSUES NO. 5(c) and 5(d)

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**c. Was that suit within the knowledge of Hindus in general and were all Hindus interest in the same.?**

**d. Does the decision in same bar the present suit by principles of Resjudicata and in any other way.**

## FINDINGS

These issues are inter related and identical to the issues No. 7-a, 7-c, 7-d and issue no. 8 in Original Suit No. 4 of 1989, on which the finding has already been recorded and the copy of the judgment is placed on record. The above issues are decided in terms of above findings in the leading case.

## ISSUE NO. 13.

**Is the Suit No.2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under section 80 C.P.C. ?**

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**FINDINGS**

It is contended on behalf of the defendants that the suit is bad for want of notice under Section 80 C.P.C. and is liable to be dismissed on this count. In this regard it would be pertinent to refer Section 80 C.P.C., which used to exist at the time of filing the suit, which reads as under:-

> ***"80.*** *No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of-*
>
> *(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;*
>
> *(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of the railway;*
>
> *(c) in the case of a suit against a State Government, a Secretary to that Government or the Collector of the district:*
>
> *and, in the case of public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered."*

Section 80 C.P.C. is first step in litigation when the cause

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of action is complete. It provides that service of advance copy of plaint on defendant or defendants and no suit shall be instituted until expiry of two months after such service. It does not define right of parties or confer any rights on the parties. It only provides mode of procedure for getting the relief in respect of cause of action. It lays down rule of procedure and does not define substantial right. The first part dealing with that the service of notice is mandatory. Second part of which relates to the contents of the plaint is not mandatory. In case of failure to give notice, Section imposes statutory and unqualified obligation of Court and the suit not complied with Section 80 C.P.C. cannot be entertained and if instituted, the plaint must be rejected under Order 7 Rule 11 C.P.C. It further transpires that defendants, District Magistrate, City Magistrate and Superintendent of Police acted in discharge of their official capacity, accordingly failure to give notice is fatal in this case. It is a settled proposition of law that a suit against the Government or Public Officer to which the requirement of a public notice under Section 80 of Code of Civil Procedure is attracted, cannot be validly instituted even after giving the notice until the expiry of the period of two months, next after the notice in writing has been delivered to the authority concerned in the manner prescribed in the Section. It further transpires that the whole object of serving a notice under Section 80 is to give Government sufficient warning in the case proposed to be instituted so that Government can settle the claim without litigation.

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The Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the government or a public officer, the government or the officer concerned is afforded an opportunity to scrutinize the claim and if it be found a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person who has issued the notice to re-institute the suit involving considerable expenditure and delay. Thus if for want of statutory notice, the suit must fail. The public purpose underlying the provisions of Section 80, is for the advancement of justice and securing of public goods by avoidance of unnecessary litigation. The language of the section is express, explicit and mandatory and it admits no exception. Therefore, it is the plaintiff's duty of the court to give effect to it and considerations of hardship will not be a legitimate ground for not faithfully implementing the mandate of the legislature. Plaintiff has not referred anything in the plaint as to why he has failed to make a substantial compliance of Section 80 C.P.C. Further in view of the fact that parties have advanced the arguments and the matter is tied up, accordingly I think this is not a fit case in which the plaint has to be rejected by invoking power under Order 7 Rule-11 C.P.C.

Since this is a suit for declaration, accordingly in view of the decision of Hon'ble Privy Council in the case of ***Bhagchand Dagdusa Gujrathi and Ors. v. Secretary of State for India, AIR 1927 Privy Council 176,*** notice under Section 80 C.P.C. is required to be

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given before filing the suit for declaration. It further transpires that the plaintiff has also sought relief for injunction. The Privy Council in the case referred (supra) approved the decision of Allahabad High Court in ***Bachchu Vs Secretary of State (1902) 25 All. 187*** and took a view that Section 80 should be strictly complied with to all form of actions and all kind of relief including the suit for injunction. Their Lordships took a view that Section 80 imposes a statutory and unqualified obligation upon the Court to ensure the compliance of Section 80 C.P.C. This Court in ***Union of India Vs. Brignath Rai, AIR 1971 All. 209*** held that Section 80 applies for all suits for injunction perpetual, prohibitory and mandatory. Thus in view of the fore going decision, I am of the view that Shri Gopal Singh Visharad ought to have filed the suit after giving notice under Section 80 C.P.C. and the instant suit is bad for want of notice under Section 80 C.P.C. Issue no. 13 is decided against the plaintiff and in favour of the defendant.

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## ISSUE NO. 8

**Is the suit barred by proviso to section 42 Specific Relief Act.?**

**FINDINGS**

On behalf of the defendants it is urged that the instant suit is barred by the proviso to section 42 of the Specific Relief Act, 1877 which reads as under :-

> *"42. Any person entitled to any legal character (b), or to any right as to any property, may institute a suit against any*

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*person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled (c ) and the plaintiff need not in such suit ask for any further relief (d):*

*Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so (e).*

*Explanation.- A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."*

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It has been urged on behalf of the plaintiff that the plaintiff is not entitled for any declaration in view of the express bar of the proviso. The scope of the Section is that (1) plaintiff must be a person entitled to a legal character or to any right as to any property. (2) The defendant must be a person denying or interested to deny must have title to such character and the declaration must be of a legal character or to a right to the property and the plaintiff is able to seek mere declaration of title, he must seeks such relief. If any of the three conditions are not fulfilled, the suit must be dismissed. In this context, new Section 34 of Specific Relief Act, 1963 also deals with the legal character. Thus, according to Section 42, presently of Section 34 of Specific Relief Act any person entitled to a legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or

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right and the court may in its discretion make a declaration that he is/was entitled. In this suit the plaintiff has not come out with a case that he had any right to institute the suit denying the title of the defendants. Moreover, it is further clear that plaintiff's right must subsist on the date of the suit as well as on the date of decree vide ***Bhagauti Prasad Khetan and others Vs. Laxminathji Maharaj and others, AIR 1985 All. 228.*** It is now clear that the so called temple or place of worship in the year 1950 had already been demolished on 6th December, 1992. Consequently with the changed situation at present the plaintiff's right does not subsist. The plaintiff has not come out with a case that after the death of his father, anybody forbade him to worship the deity. In this case plaintiff has failed to establish his legal character for the reasons that it has nowhere been stated by him that he was forbidden not to offer prayers before the deity.

The only grievance of the plaintiff is that his father was not allowed to touch the deity for which there is an explanation from the side of the State Government that there was tense law and order situation, accordingly the proceedings under Section 145 Cr.P.C. were instituted and arrangements were made for the betterment of the property in suit by the receiver Shri Priya Dut Ram. It is further urged that to avoid any imperiling public peace and tranquility, authorities throughout acted in a manner warranted by law for maintenance of public peace on the festival. It is nobody's case that the plaintiff's father was deprived of Darshan. The only grievance of the plaintiff is that his father was not allowed to touch the deity. The

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case of the defendant no.6 is that in view of the crowd on the festival day it was necessary to regulate the same and it was not possible that people may worship with touching the idol. Consequently, the restriction was reasonable. The plaintiff was not denied to worship deity. Darshan is also a kind of worship. The crowd cannot be allowed to touch the deity specially under a circumstance when the property was already attached and prohibitory order was issued under Section 145 Cr.P.C. earlier. Thus, the suit for declaration appears to be not maintainable in view of proviso to Section 42 of Specific Relief Act as the plaintiff has failed to establish his legal character. It is further clear that the plaintiff's right does not subsist on the date of the decree for the reason that the property has already been demolished and it has nowhere been mentioned in the plaint that after the demolition of the property, the plaintiff was deprived of having any Darshan. It has to be left to the discretion of the authority to decide about arrangement to be made in public interest and to secure a public peace. This cannot be a cause of grievance. Darshan comes within the category of worship. Darshan of the deity was not denied to the plaintiff's father. Consequently to my mind there was no cause of action to file the instant suit and specially in the circumstance that plaintiff has no legal character and this is not a case where the Court should exercise any discretion and pass any decree as prayed for, for the reasons that the present plaintiff had neither visited the place of worship before its demolition and was not deprived of worship. It is not the case that uniform standard was not applied to other

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worshippers in allowing prayers and worship of deity. Thus, the procedure so adopted was uniform. The administration rightly maintained peace and public tranquility by regulating the crowd. This is not a case in which a discretion has to be exercised in favour of the plaintiff by allowing the suit of declaration to obstruct the discharge of administrative functioning of the State. The State authority acted bonafidely without causing any interference or hindrance in the worship of Hindus and only controlled the crowd and allowed privileges of Darshan to everybody including the plaintiff. The plaintiff's case does not fall within the special category through which he could ask for more rights than other worshippers. Thus on this count also, the suit for declaration and injunction fails.

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**ISSUES NO. 11(a) & 11(b)**

**a. Are the provisions of section 91 C.P.C. applicable to present suit ? If so is the suit bad for want of consent in writing by the advocate general ?**

**b. Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 C.P.C. ? if not its effect. ?**

**FINDINGS**

According to the plaint averments, it is clear that suit was filed in individual capacity. There is nothing on record to suggest that the suit was in the nature of representative capacity or it was a case of public nuisance. Consequently, the plaintiff has not rightly approached Advocate General by not treating the case as public nuisance under Section 91 of C.P.C. Section 91 C.P.C. then in force

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reads as under :-

> *"**91.** (1) In the case of a public nuisance the Advocate General or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.*
>
> *(2) Nothing in this Section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions."*

It further transpires that for alleged civil wrong, the suit was filed. Accordingly the question of complying Section 91 C.P.C. does not arise. I further feel that from the bundle of facts, it does not transpire that the plaintiff has said that there was any public nuisance. Consequently, this Court is unable to presume that the case falls within the ambit of public nuisance and thus, provisions of Section 91 C.P.C., then in force, are not attracted at the time of filing the suit. Issues No. 11-(a) and 11(b) are decided accordingly in favour of plaintiff and against the defendants.

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## ISSUE NO. 12

**Is the suit bad for want of steps and notices under order 1 Rule 8 C.P.C. ? If so its effect. ?**

## FINDINGS

It is urged on behalf of the defendants that the suit is bad for

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want of steps under Order 1 Rule-8 C.P.C. The plaintiff has come out with a case that suit does not fall within the ambit of Section 92 C.P.C. as it was not a case having representative character. Consequently, the procedure so adopted under Order 1 Rule 8 C.P.C. was not required to be adhered to. After going through the contents of the plaint, it transpires that the plaintiff has filed the suit with the allegations that he was not allowed to touch the deity on 14th January, 1950. There is no other grievance to him and he has sought the relief that he should be allowed to have prayers as per his choice for which the defendants have denied that they have regulated the crowd and it was essential to control the crowd. Thus, it is not the case of the plaintiff that everybody should be allowed to touch the deity on every day. Even the permission was not sought by him to institute the suit under Section 92 C.P.C. Thus, looking to the contents of the plaint from all or any angle, it transpires that the suit was filed for declaration and injunction in individual capacity. Accordingly, the plaintiff has not set up the right for others and under no event this Court has to ask him to adhere to the procedure under Order 1 Rule 8 C.P.C.

I have also mentioned that the plaintiff has failed to establish his legal character to institute the suit. Issue no. 12 is decided in favour of the plaintiff and against the defendants.

## ISSUE NO. 14.

**Is the suit no.25 of 50 Param Hans Ram Chandra Vs.**

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**Zahoor Ahmad bad for want of valid notice under section 80 C.P.C. ?**

**FINDINGS**

This issue relates to consolidated suit no. 25 of 1950, Param Hans Ram Chandra Vs. Zahoor Ahmad. This suit has already been withdrawn, accordingly no finding is required.

**ISSUE NO. 15.**

**Is the suit bad for non-joinder of defendants. ?**

**FINDINGS**

It has been contended on behalf of the defendants that the suit is bad for non-joinder of defendants. There is nothing on record to suggest as to which of the defendants is required to be joined in this case. Even during the course of argument from the side of the defendants it has not been brought to the notice of the Court that non-joinder of any of the defendants is bad. On behalf of the plaintiff it is submitted that necessary parties have already been arrayed and he does not want to press the relief against any other defendants. Consequently, this Court is of the view that in view of plaint averments it can conclusively be said that since the suit was filed in individual capacity against certain persons, accordingly it was not necessary for the plaintiff to implead any other person beyond the cause of action. Thus for want of any evidence, it is not possible to hold that the suit is bad for non-joinder of defendants. Issue no. 15 is decided accordingly.

**ISSUE NO. 10**

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**Is the present suit barred by time ?**

## FINDINGS

On behalf of the defendants, it has not been pointed out as to how suit is barred by time specially under the circumstances when the plaintiff has urged that on 14.1.1950 he was deprived to touch the deity and thereafter he filed the suit on 16.1.1950 for declaration and injunction. Thus for a suit of declaration and injunction, three days time cannot be said to be more than prescribed time. Thus with no stretch of imagination, the suit can be said to be barred by time. The issue No. 10 is decided accordingly.

## ISSUES NO. 16 & 17

**16. Are the defendants or any of them entitled to special costs under section 35-A C.P.C.?**

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**17. To what reliefs, if any, is the plaintiff entitled. ?**

## FINDINGS

These issues are interrelated and can conveniently be decided at one place. In view of my findings referred to above, the plaintiff is not entitled for the relief claimed and defendants are also not entitled for special costs as initially the plaintiff, who filed the suit is no more.

## O R D E R

The suit is dismissed with easy costs.

***(Dharam Veer Sharma)***

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***Reserved***

**In the High Court of Judicature at Allahabad,**
**Lucknow Bench, Lucknow**
**O.O.S.3 of 1989**

1. Nirmohi Akhara situate in Mohalla Ramghat City, Ayodhya through Mahant Jagan Nath Das, aged about 54 years Chela of Mahant and Sarbarahkar, Resident of Nirmohi Akhara, Mohalla Ramghat, Ayodhya District Faizabad—Substituted vide order dated 23.07.66.

2. Vaishnab Das R/o Nirmohi Bazar, Ramghat Haveli, Oudh City, Ayodhya, District-Faizabad—**Amended vide court's order dated 8.7.67 and Amended vide court's order dated 1.9.95**

….... Plaintiffs

Versus

1. Shri Jamuna Prasad Singh, Receiver, R/o Deo Kali Road, City Faizabad—**Amended vide the order dated 23.10.89 44(0) by this Hon'ble Court dated 28.10.89**

2. State of Uttar Pradesh.

3. Deputy Commissioner, Faizabad.

4. City Magistrate, Faizabad.

5. Superintendent of Police, Faizabad.

6/1. Haji Mehboob (Adult), R/o Mohalla Terhi Bazar, City Ayodhya Teh. and Distt. Faizabad.

6. Haji Phekku aged 70 years son of unknown, R/o Mohalla Terhi Bazar (died), Ayodhya, District Faizabad.

6/2. Haji Abdul Ahed, R/o Mohalla Terhi Bazar, City Ayodhya Teh. and Distt. Faizabad.

7. Mohd. Faiq aged 50 years son of Haji Ramzan resident of Terhi Bazar—**Amended under the court's order dated 20.9.61**

8. Mohd. Achhan Mian aged about 55 years son of unknown resident of Mohalla Katra.

9. U.P. Sunni Central Board of Waqfs through its Secretary, Lucknow—**Amended vide order dated 23.8.89 of this Hon'ble Court.**

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(6 to 8) City Ayodhya Pargana Haveli Oudh Tahsil and district Faizabad on behalf of themselves and all other members of the Muslim Community.

10. Umesh Chandra Pandey aged 34 years S/o Shri Ram Shanker Pandey S/o Rampali Ayodhya City Distt. Faizabad (Haveli Oudh)--**Amended vide court's order 28.1.89.**

11. Mohd. Farook S/o Zahoor Ahmad r/o Singarhat, Ayodhya Distt. Faizabad—**Amended by the order of this Hon'ble Court dated 3.12.91.**

…..Defendants

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***Judgement delivered by***
***Hon'ble Dharam Veer Sharma, J.***

This suit has been filed by Nirmohi Akhara situate in Mohalla Ram Kot, City Ayodhya through its Mahant with a prayer that a decree be passed in favour of the plaintiffs against defendants for removal of defendant no.1, namely, Sri Jamuna Prasad Singh, Receiver, resident of Deo Kali Road, City Faizabad, from the management and charge of the temple Ram Janam Bhoomi and for that delivering the same to the plaintiff through its Mahant and Sarbarahkar Mahant Jagan Nath Das.

According to the plaint averment there exists in Ayodhya, since the days of Yore an ancient Math or Akhara of Ramanandi Varagis called Nirmohi with its seat at Ramghat known as Nirmohi Akhara, plaintiff no. 1 which is the religious establishment of a public character. The Janam Sthan now commonly known as Janam Bhumi, the birth place of Lord Ram Chandra, situate in Ayodhya belongs and has always belonged to the plaintiff no.1 who through its reigning Mahant and Sarbrahkar has ever since been managing it and receiving offerings made there at in form of money, sweets, flowers

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and fruits and other article and things.

The said Asthan of Janam Bhumi is of an ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown by letters A B C D in the sketch map appended with the plaint. The temple building of Janam Bhumi has been marked by letters E F G K P N M L E is the building denoted by letters E F G H I J K L E of the main temple of Janam Bhumi wherein is installed the idol of Ram Chandra Ji with Lakshman Ji, Hanuman Ji and Saligramji. It has further been averred that the said temple has ever since been in the possession of the plaintiffs and none others but Hindus have ever since been allowed to enter or worship therein and offerings made therein are in the form of money sweets, flowers, fruits other articles and things have always been received by the plaintiffs through their pujaries. Before the judgment of the writ petition of 11.12.92 on 6th December, 1992 the temple of Nirmohi Akhara were also demolished by some miscreants who had no religion caste or creed. The main temple was demolished on 6.12.1992 and further cause of action against defendants no. 1 to 5 arose during pendency of the suit when the property and temples of plaintiff were demolished on 6th December, 1992.

Nirmohi Akhara is the Panchyati Math of Ram Nandi sect of Bairagies and as such is a religious denomination following its own religious faith and pursuit according to its own custom prevalent in Vairagies sect of Sadhus. The customs of Akhara Nirmohi have

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reduced in writing on 19.03.1949 by registered deed.

The plaintiff Nirmohi Akhara owns several temples in it and all of such temples through Panches and Mahant's of Akhara. The whole temples and properties vest in Akhara i.e. plaintiff. The plaintiff being a Panchyati Math acts on democratic pattern. The management and right to manage all temples of Akhara vest absolutely with Panches of Akhara and Mahant being a formal head of Institution is to act on majority opinion of Panches.

The plaintiff went on to state that no Mohammadan could or ever did enter in the said temple building. But even if it is attempted to be proved that any Mohammadan ever entered it, it would be totally wrong and is denied by the plaintiffs. No Mohammadan has ever been allowed to enter into it or has ever attempted to enter into it at least ever since the year 1934. It has further been averred in the plaint that in the year 1950, the City Magistrate, Faizabad, the defendant no. 4 without any lawful cause and with the active connivance of defendants no. 2, 3 and 5 and under the wrong persuasion of defendants nos. 6 to 8 who claim to represent the Muslim Community, attached the main temple, shown by letter E F G H I J K L I in the said sketch map with all the articles mentioned in list 'A' appended with the plaint in a proceedings under Section 145 Cr.P.C., and placed the said temple and the articles under the charge of defendant no.1 as a Receiver on 5.1.1950.

Plaintiffs have been wrongfully deprived of their management and charge of the said temple due to illegal under Section 145 Cr.P.C.

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Proceedings are unduly prolonged and lingered with the connivance of all the defendants and since no immediate termination of the same seems to be in sight and since the defendant no.4 refuses in connivance with other defendants to hand over charge and management of the temple to the plaintiffs from the hands of the receiver, the institution of the present suit has become inevitable.

The plaintiffs are entitled for the management and charge of the said temple and it should be delivered to him through the former's Mahant and Sarbarhkar.

The defendants no. 6 to 8 claimed to be the representatives of the Muslim community who have got themselves interested in the subject-matter of the suit and are not getting the charge and management of the temple delivered to the plaintiffs and are exercising undue influence on the defendants no. 1 to 5. They are sued in their representative capacity on behalf of the entire Muslim community with the permission of the court.

The cause of action for the suit arose on 5.1.1950 on the defendant no. 4 illegally taking over the management and charge of the temple of said articles and entrusting it to the said receiver i.e. defendant no.1.

The notice as required by Section 80 C.P.C. has been given to the defendants 1 to 5 which was delivered to them between 6.10.59 and 12.10.59 and which has been replied by them through the defendant no.3 intimating their decision to defend the present suit.

The permission of the court to file the suit against the

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defendants 6 to 8 on behalf of themselves and all other members of the Muslim community has been obtained under Order 1 Rule 8 C.P.C. A list of 20 Articles has been given in the appendix dated 17.12.59 which was taken into possession by the Receiver.

Defendants no. 6 to 8 have filed their written statement and denied all the averments made by the plaintiff in para 1 to 14 of the plaint. In their additional pleas they have stated that the property in suit has been constructed by the Emperor Babar which is called Babri Masjid and was constructed through Mir Baqi, the minister of Emperor Babar in 1528. This property was given in Waqf for common Muslim since then every Muslim has right of prayer in the mosque. A sum of Rs. 60/- per year was granted by Emperor Babar for the maintenance of the mosque which continued during Mughal period and Nawab of Oudh. This amount was enhanced and a sum of Rs. 302, 3 ana and 6 pai was fixed as an annual grant for the maintenance of the aforesaid mosque. This continued during the regime of British Government and in lieu of cash grant, grant free land were given in villages Solapuri, Ghuranpur and Bahoranpur.

It has further been stated that in 1885 Raghubar Das Mahant, Janam Sthan Ayodhya filed a suit against the Secretary of State for India in Council and Mohd. Asgar Mutwalli and Khatib Masjid Babri Majakur filed a suit in the court of Sub-Judge, Faizabad. A site plan was also appended with the plaint by the plaintiffs in which mosque was clearly shown and no objection was made by the plaintiffs in this regard. The plaintiff of this suit had sought relief only with regard to

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a platform (chabutra), therefore, the averments made by the plaintiffs in the present suit that all the disputed property belongs to the temple Ram Janam Bhumi is completely false and groundless and has been framed with bad intention for the purpose of this very suit. The Sub-Judge, Faizabad on 24.12.85 dismissed the plaintiff's suit. This verdict was upheld by the appellate court and the remark relating to the title of the plaintiffs regarding platform (Chabutra) was struck off and appeal was accordingly dismissed. So many Mahants of Ayodhya on behalf of the Hindus had filed the suit and they had full knowledge of this litigation as per the provisions of Muslim Waqf Act No.13 of 1936. The Chief Commissioner of the Waqf was appointed who after inspection of mosque Babri decided that Emperor Babar had constructed this mosque and acknowledged this property as Sunni Waqf. Accordingly legal notification was issued which has become final and the possession of the Muslim community as Waqf on Babri Mosque has continuously in existence. Therefore, if plaintiffs or any other Hindu succeed in proving that prior to the construction of Babri mosque there existed any temple on the site in dispute to which defendants vehemently deny, in that situation also on the ground of being in possession for more than 400 years all the rights of plaintiffs have extinguished. Plaintiffs were never in possession over property in suit, therefore, being time barred this suit is liable to be dismissed. The suit is defective for want of notice against defendants no. 1 to 5. Defendants have no knowledge as to whether any idol has been installed in the property in suit or not as

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till 16.12.49 Namaz has continuously been offered in the property in suit and there was no idol by that time. If any idol has been installed surreptitiously even then the nature of mosque will not alter and if any person wants to visit the disputed place for offering prayer and enters into it for this purpose, it will be an offence. In these circumstances, civil court has no jurisdiction to grant the relief as sought by the plaintiff of above suit. As far as defendants, they know that proceedings of Section 145 Cr.P.C. have been initiated by the defendant no.5 which is false against justice and has been done with the aid and help of Sri K.K.Nayar, Deputy Commissioner, Faizabad and Sri Guru Dut Singh, the then City Magistrate, Faizabad. There is another temple at Ayodhya which is known as temple Janam Sthan Ram Chandra Ji and is in existence for a very long time where the idols of Ram Chandra Ji and other Gods are installed. There lie graveyard towards east-southern and south of the mosque wherein graves of Muslims are present. There is no place known Shankar Chabutra, Sita Kop, Lomas Chaura, Hanumat Dwar and Barah Bhagwan or Samadhi of Markandey as shown in the plaint map are not there in the disputed land and has been shown by the plaintiffs with the mala fide intention. The plaintiffs have not shown since when and how they became the owner of the property in suit, for want of this fact it is not possible for the defendants to file complete written statement. Two suits are already pending which has been filed by Gopal Singh Visharad and Param Hans Ram Chandra Das. Since property in suit has been attached under Section 146 Cr.P.C., no

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regular suit could be filed by the plaintiff in this regard.

The suit is not maintainable as the defendants have no knowledge about the proceedings under Order 1 Rule 8 C.P.C. The defendants are entitled for special cost and suit is liable to be dismissed. The plaintiffs have filed their replication dated 13.5.63 in which all averments made in the plaint have been reiterated.

Defendants have also filed additional written statement in which it is stated that on 6.12.1992 the so called Ram Chabutra was demolished by the miscreants collected at the instance of Vishwa Hindu Parishad. On 6.12.1992 the building of the mosque was demolished and the same could not be called or alleged to be the Main Temple.

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Sri Umesh Chandra Pandey, has also filed his written statement wherein he has stated that Mahant Raghu Nath Das died and there has been no proper substitution in his place. It has further been stated that Janam Sthan is a holy place of worship and belongs to the deity of Bhagwan SHRI RAM LALA VIRAJMAN there. It never belonged to and could not have belonged to the plaintiff no.1. The holy JANAM STHAN OR JANAM BHUMI is actually very old temple, whereas the plaintiff AKHADA on the other hand is an institution and owes its existence for no longer than two hundred years. The main presiding deity is BHAGWAN SHRI RAM, although there are several idols of other deities, termed as RAM DARBAR and are worshiped. Besides, there are other symbols, such as, 'CHARAN', SITA RASOI,' etc. to whom the deity of BHAGWAN SHRI RAM

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therein is worshiped at SHRIM RAM JANAM BHUMI. In1857 A.D. the Britishers in order to divide the Hindus and Muslims divided Sthan by creating an inner enclosure and describing the boundary within the inner enclosure as a mosque but no Muslim who was a true Muslim, could appear to have frequented it for offering his prayer as the same is prohibited by the SHARIYAT. Moreover, even ALAMGIR (EMPEROR AURANGZEB) issued a mandate, known as FATWA-E-ALAMGIRI which clearly prohibits the offering of prayer by Muslim at such places. More so the KASAUTI pillars and the carvings of Gods and Goddesses thereon will clearly show that this place could not be used by a true Muslim for offering his prayers therein. The suit is barred by the provisions of Indian Evidence Act. The plaintiffs had adequate remedies under Cr.P.C. against the order of Additional City Magistrate, Faizabad. It has further been stated that the suit is liable to be tried separately and is liable to be dismissed with costs.

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The plaintiffs have filed replication to the written statement of defendant no.10 reiterating the earlier facts given in the plaint.

**Issues framed in the court of Civil Judges Faizabad on 17.5.1963**

**1.** Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint ?

**2.** Does the property in suit belong to the plaintiff No.1 ?

**3.** Have plaintiffs acquired title by adverse possession for over 12 years ?

**4.** Are plaintiffs entitled to get management and charge of the said temple ?

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**5.** Is the property in suit a mosque made by Emperor Babar Known as Babari masjid ?

**6.** Was the alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property?

**7(a)** Has there been a notification under Muslim Waqf Act (Act no.13 of 1936) declaring this property in suit as a Sunni Waqf ?

**7(b)** Is the said notification final and binding ? Its effect.

**8.** Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit ?

**9.** Is the suit within time ?

**10(a)** Is the suit bad for want of notice u/s 80 C.

**10(b)** Is the above plea available to contesting defendants ?

**11.** Is the suit bad for non-joinder of necessary defendants ?

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**12.** Are defendants entitled to special costs u/s 35 C.P.C. ?

**13.** To what relief, if any, is the plaintiff entitled ?

**14.** Is the suit not maintainable as framed ?

**15.** Is the suit properly valued and Court-Fee paid sufficient ? (Already decided)

**16.** Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936 ?

**17.** (Added by this Hon'ble Court order dated 23.2.96) "Whether Nirmohi Akhara, Plaintiff, is Panchayati Math of Rama Nandi sect of Bairagies and as such is a religious denomination following its religious faith and per suit according to its owner custom."

**Annexure-II**
**Pages 1-29**

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**Statement under Order 10 Rule 2 C.P.C. in O.O.S. No. 3 of 1989**

17.5.63

Present:- Sri Sarav Jeet Lal, advocate for plaintiff.
And Sri Mohd. Ayub, advocate for defendants 7 & 8.

Shri Sarab Jeet Lal, advocate states as follows:-

The plaintiff claims that this property in suit is believed to be the birth place of Lord Ram Chandra Ji. So there is a temple of Lord Ram Chandra on it. The plaintiff claims that this temple is in the management and of control of the plaintiff. It is further clarified that this property is not dedicated to the Idol although the temple is made in the land which is the birth place of Lord Ram. It is owned by the plaintiff and the temple was made by the plaintiff. It is added that the present suit is confined to property shown by letters E, F, G, I, J, K, L. although in directions were shown by letters E, F, G, H, P, N, M, L, E belongs to the plaint.

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Sd/-illegible
Sarab Jeet Lal & Mohd.Ayub

Sd/-illegible
Civil Judge,
17.5

**FINDINGS**

**ISSUES NO. 1, 5 AND 6**

1. **Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint ?**

5. **Is the property in suit a mosque made by Emperor Babar Known as Babari masjid ?**

6. **Was the alleged mosque dedicated by Emperor Babar for**

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**worship by Muslims in general and made a public waqf property ?**

## FINDINGS

These issue are interrelated. I have already recorded finding in leading case O.O.S No.4 of 1989. The copy of the judgment be placed on record. In view of the finding of issues no. 1, 1(a),(b), 1-B(b),19(d), 19(e) and 19(f) no separate finding is required as the issues are identical issues in this case. These issues are decided in terms of the decision of issues no. 1, 1(a), 1(b), 1B(b), 12, 19(d), 19(e) and 19(f) of O.O.S. No. 4 of 1989. The disputed structure has already been demolished on 06.12.1992 and there is no evidence to establish that at the disputed structure there was any temple inside the structure belonging to plaintiff no.1, in which he installed the idol of Lord Ram Chandra Ji, Laxman Ji and Saligram Ji from times immemorial.

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## ISSUES NO. 2, 3,4 AND 8

**2. Does the property in suit belong to the plaintiff No.1 ?**

**3. Have plaintiffs acquired title by adverse possession for over 12 years ?**

**4. Are plaintiffs entitled to get management and charge of the said temple ?**

**8. Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit ?**

## FINDINGS

These issues are interrelated and can be taken up together. These issues are identical to the issues already decided in O.O.S.

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No.4 of 1989. Thus, in view of the findings of issue no.1B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 no separate finding is required. Accordingly, the above issues are decided in terms of issues already decided in O.O.S. No.4 referred to above.

## ISSUES NO. 7(a), 7(b) & 16

**a. Has there been a notification under Muslim Waqf Act (Act no.13 of 1936) declaring this property in suit as a Sunni Waqf ?**

**b. Is the said notification final and binding ? Its effect.**

**16. Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936 ?**

## FINDINGS

These issues are interrelated can conveniently be decided at one place. In the leading case issues no. 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 7(b), 17, 18, 20(a), 20(b), 23, 24, 25 and 26 in O.O.S No. 4 of 1989 relate to the above issues. Accordingly, in view of the findings in the leading case, issues no. 7(a), 7(b) and 16 are decided.

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## ISSUE NO.9

**9. Is the suit within time ?**

## FINDINGS

The instant suit was filed on 17.12.59, admitting that the property was attached on 29.12.49. The suit is covered by Article 120 of the Limitation Act, 1908. It should have been filed within six years of the institution of the suit.

This issue is identical to the issue no. 3 decided in O.O.S. No. 4 of 1989. Accordingly, the issue is decided in terms of the finding of issue no.3 of O.O.S. No. 4 of 1989.

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## ISSUE NO.10(a) & 10(b)

**a. Is the suit bad for want of notice u/s 80 C.**

**b. Is the above plea available to contesting defendants ?**

## FINDINGS

Issues No. 10(a) and 10(b) are interrelated and they can be decided at one place. It has been contended on behalf of plaintiff that the suit was instituted after giving a valid notice under Section 80 of C.P.C. On behalf of defendants it has been denied but they have failed to substantiate as to how they were not served with the notice before institution of the suit. It further provides that it is not the case of the plaintiffs that they were not served with the notice nor it has been alleged from their side that the notice was defective. Consequently, there is no material before this Court to substantiate the plea raised before this Court by the defendants. Issue No.10(a) and 10(b) are decided, accordingly, in favour of the plaintiff and against the defendants.

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## ISSUE NO.11

**Is the suit bad for non-joinder of necessary defendants ?**

## FINDINGS

This issue is identical to issue no.21 of O.O.S. No. 4 of 1989. In view of the finding on the leading case, the issue is decided accordingly.

## ISSUE NO.14

**Is the suit not maintainable as framed ?**

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**FINDINGS**

On behalf of defendants it has nowhere been argued as to how the suit has wrongly been framed. The suit was properly registered. No material has been placed before this Court to show as to how the suit is not maintainable. Consequently, issue no.14 is decided in favour of the plaintiffs and against the defendants.

**ISSUE NO.17.**

**(Added by this Hon'ble Court order dated 23.2.96) "Whether Nirmohi Akhara, Plaintiff, is Panchayati Math of Rama Nandi sect of Bairagies and as such is a religious denomination following its religious faith and per suit according to its owner custom."**

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**FINDINGS**

Plaintiff claims at para 1 and 4(a) of O.O.S. No.3/89 as under:-

Thus, according to the plaintiffs, Nirmohi Akhara is a religious denomination and prior to the filing of the suit on 19.3.49 a deed was also registered regarding the customs of the Akhara. The Deed has also been filed. Defendants have simply denied the aforesaid facts. But on behalf of the plaintiffs, Mahant Bhaskar Das, DW3/1 has been produced. He has proved the averments made in the plaint referred to above. It has also been submitted that it is a religious denomination. The witnesses were examined but there is no material on record to discredit the aforesaid version. It has further been urged that this Akhara which is a religious denomination was founded by Ramanandi in the 14th century and thereafter various Mahant looked

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after the Akhara whose names are referred at paras 42 and 43 of the statement of the witnesses. There is nothing in the cross-examination to discredit the testimony of the aforesaid witnesses.

The aforesaid version has been corroborated by the statement of Raja Ramachandracharya, DW3/20. He has corroborated the assertion of Mahant Bhaskar Das. Thus, on the basis of the testimony of these two witnesses and when there is no proper challenge on the part of the defendants, I hold that Nirmohi Akhara is a Panchayati of Ramanandi sect of Baragies and as such is religious denomination. The custom has already been registered in the year 1949. Issue no. 17 is decided in favour of the plaintiff and against the defendants.

**ISSUE NO.15**

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**Is the suit properly valued and Court Fee paid sufficient?**

**FINDINGS.**

This issue has already been decided which shall form part of the judgement.

**ISSUES NO.12 & 13**

12. Are defendants entitled to special costs u/s 35 C.P.C. ?

**13. To what relief, if any, is the plaintiff entitled ?**

**FINDINGS**

The plaintiffs are not entitled for the relief claimed but on

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behalf of the defendants no case for special costs is made out. The suit is liable to be dismissed with easy cost.

**Order**

The suit is dismissed with easy costs.

***(Dharam Veer Sharma)***

*Tanveer/Akhilesh/*
*Padam P. Srivastava/Raghvendra*

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***Reserved***

**In the High Court of Judicature at Allahabad,**

**Lucknow Bench, Lucknow**

**O.O.S.No.4 of 1989 (Reg. Suit No.12-61)**

1. The Sunni Central Board of Waqfs U.P.

Lucknow, Moti Lal Bose Road, Police Station Kaiserbagh, City Lucknow through Shah Ghyas Alam, Secretary.

2. Molvi Mohammad Qasim, aged about 53 years, son of Sheikh Abdul Razzaq, General Secretary, Jamiatul Ulami Hind, U.P. Bagh Gunge Nawab, Police station Kaserbag, Lucknow

(Deleted vide order dated 9.12.91)

Sd./- 9.12.91

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2/1. Mohd. Siddiq alias Hafiz Mohd. Siddiq, aged about 46 years, s/o late Haji Mohd. Ibrahim, resident of Lal Bagh, Moradabad, General Secretary, Jamiatul Ulemai Hind, Uttar Pradesh, Jamiat Building, B.N. Verma Road (Katchehry Road), Lucknow

3. Haji Mohammad Ehtram Ali, aged about 70 years son of Munshi Mohammad Ehtisham Ali deceased, resident of Khayaliganj, police station Kaiserbagh, City Lucknow (Struck off under Court's order D/ 14.3.70. Sd/-)

4. Molvi Mohammad Faiq aged about 55 years, son of Haji Ramzan R/o Mohalla Tehri Bazar, Ajodhiya, pergana Haveli Avadh, Ditt. Faizabad.

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(Deleted vide court's order dated 9.12.91)

Sd./- 9.12.91

5. Molvi Mohammad Naseer aged about 58 years, son of Ashiq Ali, resident of village : Ponthar, Pergana Tanda Tahsil Tanda, District Faizabad.

(Deleted vide court's order dated 16.11.92

Sd./- 16.11.92

6. Shahabuddin aged about 42 years, son of Haji Munney Sahib, resident of Angoori Bagh, City Faizabad.

(Deleted vide Court's order dated 9.12.91)

Sd./- 9.12.91

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6/1 Ziauddin aged about 46 years, son of Haji Shahabuddin (deceased) resident of Mohalla Angoori Bagh, pergana Haveli Oudh,City and District Faizabad.

(Amended as per court's order dated 23.8.90)

Sd./- 31.8.90

7. Mohammad Hashim aged about 40 years, son of Karim Bux, resident of Mohalla Kutya, Paji Tola, Ajodhiya Pergana Haveli Avadh, Distt. Faizabad.

8. Vakiluddin aged about 55 years son of Ismail, resident of Madarpur, pegana and Tahsil Tanda, District Faizabad.

"8/1. Maulana Mahfoozurahman, aged about 52 years son of late Maulana Vakiluddin, Resident of Village Madarpur, Pergana and Tahsil Tanda, District Faizabad."

(Amended & Added as per Court's

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order dated 9.5.95)

Sd./- 9.5.95

9. Mahmud/Ahmad aged about 30 years son of Ghulam Hasan, resident of Mohalla Rakabganj, City Faizabad

(Added under Court's order dated 4.2.63

Sd./- 5.2.63

10. Zahoor Ahmad, S/o Noor Mohd. Aged about 80 years r/o Mohalla Nau Ghazi Qabar, Ayodhya District Faizabad.

(Deleted vide court's order dated 9.12.91)

Sd./-9.12.91

10/1 Farooq Ahmad, son of Sri Zahoor Ahmad, R/o Mohalla Naugazi Qabar, Ayodhya City, Ayodhya, Distt. Faizabad.

(Added vide court's order dated 9.12.91)

Sd./- 9.12.91 **.....Plaintiffs**

**Versus**

1. Gopal Singh Visharad, aged about 53 years, son of Thakur Girdhari Singh, resident of Sargaddwar, Ajodhiya, District Faizabad.

(Deleted vide court's order dated 9.12.91)

Sd./-9.12.91

2. Sri Param Hans Ram Chander Das, resident of Ajodhia, Faizabad. (Dead)

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2/1. Mahanth SureshDas Chela Sri Param Hans Ram Chander Das resident of Ajodia, city Faizabad.

3. Nkirmohi Akhara situate in Mohalla Ram Ghat City Ajodhiya, District Faizabad, through Mahant Raghunath Dass Chela Mahant Dharm Dass Mahant Raghunath Dass Chela Mahant Dharam Mahant Raghunath Das Chela Mohant Dharam Das Mahant Rameshwar Das Mahnat Sarbarkar, resident of Nirmohi Akhara Mohalla Ramghat, City Ajodhiya Distrit Faizabad.

(Substituted dated 23.7.66) Sd./- 30.7.66

Mahant Pram Dass Chela Mahant Gobardhan Dass

4. Mahant Raghunath Dass Chela Mahant Dharam Dass Mahant and Sarbarakhar Nirmohi Akhaara Mohalla Ram Ghat, city Ajodhiya, District Faizabad.

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(Substituted under Court's order dated 23.7.66)

Sd./- 30.7.66

5. The State of Uttar Pradesh through Chief Secretary to the State Government, U.P.

(Amended under court's order dated 8.7.67)
Sd./- 20.7.67
Corrected under court's order
dated 30.1.62 Sd./-

6. The Collector, Faizabad.

7. The City Magistrate, Faizabad.

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8. The Superintendent of Police, Faizabad.

9. B. Priya Dutt Son of R.B. Babu Kamlapat Ram, resident of Rakabganj, Faizabad.

10. President, all India Hindu Maha Sabha, Read Road, New Delhi.

Maha Pradeshik Sabha,

11. President All India Arya/ Samaj, Delhi (Dewan Hall)

Baldan Bhawan, Shradhanand Bazar, Delhi.

(Added under court's order dated 20.3.63)

Corrected as per court's order

dated 17.9.92 Sd./- 17.9.92

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12. President, All India Sanatan Dharm Sabha, Delhi.

(Added under Court's order dated 20.3.1963)

13. Abhiram Das age 54 years, Sadhak Shesh Sri Baba Sarin Das, R/o Hanuman Garhi, Ayodhya.

(Added under court's order dated 26.4.48 Sd./-

(Deleted vide court's order dated 9.12.91

Sd./- 9.12.91)

13/1 Dharam Das alleged Chela Baba Abhiram Das, R/o Hanuman Garhi, Ayodhya, Faizabad. (Sd./- 27.1.92)

14. Pundrik Misra, age 33 years, s/o Raj Narain Misra, R/o Balrampur Sarai, Rakabganj, Faizabad.

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15. Sri Ram Dayal Saran, Chela of late Ram Lakhan Saran, resident of town Ayodhya, District Faizabad.

16. Shab Narain Das Chaila Baba Badri Das Ji Sankatwali, r/o Sri Hanuman Garhi, Ayodhya, Faizabad.

(Deleted vide court's order dated 9.12.91)

Sd./-9.12.91

17. Ramesh Chandra Tripathi aged about 29 years, son of Sri Parsh Rama Tripathi, Resident of village Bhagwan Patti, Pargana Minjhaura, Tahsil Akbarpur, District Faizabad.

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(Added under court's order dated 30.4.69)

Sd./- 14.5.69

18. Mahant Ganga Das aged about 45 years, (Chela of Mahant Sarju Dass R/o Mandir Ladle Prasad, City Ayodhya, Faizabad.

Do-

19. Shri Swami Govindacharya, manas martand putra Balbhadar Urf Jhallu, R/o Makan No.735, 736, 737, Katra Ayodhya, Pergana Haveli Audh Tahsil and Zila Faizabad.

20. Madan Mohan Gupta, convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samti, E-7/45 Bangla T.T. Nagar, Bhopal.

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(Amended vide order dated 27.1.92) Sd./-27.1.92

(Added by order of court's dated 23.10.89) Sd./-

21. Prince Anjum Qadar, President All India Shia conference, Registered, Qaumi Ghar, Nadan Mohal Road, F.S. Chowk, Lucknow

(Amended vide order dated 27.1.92) Sd./-27.1.92

(Added by court's order dated 8.12.89)

22. Umesh Chandra Pandey, son of Sri R.S. Pandey, R/o Ranupalli, Ayodhya, Distt. Faizabad.

(Added in court's dated 20.1.92) Sd./-23.1.92

**……Defendants**

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**J U D G E M E N T**

***(Delivered by Hon. D.V. Sharma,J.)***

It would be expedient to refer the background of the dispute before dealing with the rival submissions of the parties.

O.O.S. No. 1 of 1989, Shri Gopal Singh Visharad Vs. Zahur Ahmad and 8 others, O.O.S. No. 3 of 1989, Nirmohi Aakhada etc. Vs. Baboo Priya Dutt Ram & others, O.O.S. No. 4 of 1989, The Sunni Central Board of Waqfs U.P., Lucknow and others Vs. Gopal Singh Visharad and others and O.O.S. No. 5 of 1989, Bhagwan Sri Ram Virajman at Ayodhya and others vs. Rajendra Singh and Others were filed before the court of Civil Judge, Faizabad. Thereafter, State of

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U.P. filed an application (Misc. case No. 29 of 1987) on 10/15 December, 1987 under Section 24 of Code of Civil Procedure read with Section 151 C.P.C. before the High Court on the ground that due to importance of the matter these suits may be withdrawn from the Civil Court, Faizabad to this Court and gave undertaking to meet out expenses of the witnesses etc.

Thereafter, the Division Bench of this Court allowed the above application and directed that these cases may be disposed of by the Full Bench of this Court and place before Hon'ble the Chief Justice for constituting the Full Bench, which is hearing these matters.

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These suits were renumbered in High Court as O.O.S. No. 1 of 1989, O.O.S. No. 2 of 1989, O.O.S. No. 3 of 1989, O.O.S. No. 4 of 1989 and O.O.S. No. 5 of 1989. The Original Suit no. 2 of 1989 was subsequently withdrawn, accordingly only four cases are pending for adjudication before this Bench. Original Suit No. 4 of 1989 is the leading case.

The Government of India decided to acquire all area in dispute in the suits pending and issued an ordinance named the Acquisition of Certain Area at Ayodhya Ordinance, 1993 on 7.1.1993 for acquisition of 67.703 acres of land in the Ram Janambhumi-Babri Masjid complex. The said ordinance was later replaced by Act No. 33 of 1993. In view of Sub-Section 3 of Section 4 of the aforesaid Act, all pending suits and legal proceedings abated. Thereafter, Special Reference No. 1 of 1993 was made by President of India under Article

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143 of the Constitution of India. The same was challenged by one Dr. Ismail Faruqui in Transferred Case (C ) Nos. 41, 43 and 45 of 1993, Jamiat-Ulama-E-Hind and another Vs. Union of India and others in Writ Petition (Civil) No. 208 of 1993, Mohd. Aslam Vs. Union of India and others and in transfer case No. 42 of 1993 Thakur Vijay Ragho Bhagwan Birajman Mandir and another Vs. Union of India and others and in Special Reference No. 1 of 1993, Hargyan Singh Vs. State of U.P. And others.

The Hon'ble Apex Court decided aforesaid matters and referred back these cases for adjudication with certain directions. The case is reported in **(1994) 6 SCC 360**, **Dr. M. Ismail Faruqui and Ors. vs. Union of India and Ors (Annexure-I).**

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Looking to the importance, sensitivity and vividness of the matter, it would be appropriate that relevant papers may be kept in different annexures for ready reference along with judgment.

Plaintiffs have filed aforesaid O.O.S. No. 4 of 1989 with following reliefs:-

**Annexure-I**
**Page 51-63**

(a) A declaration to the effect that the property indicated by letters A B C D in the sketch map attached to the plaint is public mosque commonly known as ‘Babari Masjid’ and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim grave yard as specified in para 2 of the

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plaint may be decreed.

(b) That in case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of possession of the mosque and grave yard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship be passed in plaintiffs' favour, against the defendants.

Amendment/Addition
made as per Court's
order dt.25.5.95 Sd./-

(bb) That the statutory Receiver be commanded to hand over the property in dispute described in the Schedule 'A' of the Plaint by removing the unauthorized structures erected thereon."

(c) Costs of the suit be decreed in favour of the plaintiffs.

(d) Any other or further relief which the Hon'ble Court considers proper may be granted.

The plaint case, in brief, is that in the town of Ayodhya one ancient historic mosque, commonly known as Babri Masjid was built by Emperor Babar more than 433 years ago, after his conquest of India for the use of the Muslims in general, as a place of worship and performance of religious ceremonies. The main construction of the mosque is shown by letters A B C D and the land adjoining the mosque is also shown in the sketch map.

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It is further averred that there is ancient grave yard of Muslims, covered by the graves of the Muslims, who lost their lives in the battle between emperor Babar and the previous ruler of Ayodhya. The mosque and the graveyard are vested in the Almighty. The mosque and the graveyard is situated in Mohalla Kot Rama Chander also known as Rama Kot Town, Ayodhya. The Khasra number of the mosque and the graveyard are shown in the suit in schedule attached with the plaint.

For the upkeep and maintenance of the mosque, a cash grant used to be paid from the Royal Treasury. After the annexation of Oudh, the British Government also continued the cash Nankar till 1864 and thereafter instead of cash Nankar revenue free land in village Sholapur and Bahoranpur was granted. In the mosque, but outside the main building of the mosque, there was a Chabutra 17' X 21', on which there is a wooden structure in the form of a tent which is still there. In 1885 Mahant Rghbuar Dass filed a Original Suit No. 61/280 of 1885, Mahant Rghbuar Dass Vs. Secretary of State for India in Council and Mohammad Asghar, Mutawalli of the Babri Mosque, for permission to build a temple on the Chabutra 17' X 21' . The suit was dismissed and appeal (Civil Appeal No. 27 of 1885) from the said decree was also dismissed by the learned District Judge, Faizabad.

It is further contended that in 1934 during the communal riot in Ayodhya, some portions of the Babri Mosque was damaged and they were rebuilt and reconditioned at the cost of Government. In 1936 the

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U.P. Muslim Wakfs Act XIII of 1936 was passed and after making an enquiry the Wakfs Commissioner, who was a Sunni Mohammadan held that Babri Mssjid was built by emperor Babar and the Babri Mosque was a public wakf and no suit was filed by the Hindus denying the correctness of the report of the Commissioner. Muslims remained in the peaceful possession of the aforesaid mosque till 23.12.1949 when a large crowd of Hindus, damaged the said mosque and desecrated the mosque by placing idols inside the mosque. Even if a Hindu temple as alleged by the defendants existed on the site of which emperor Babar built the mosque 433 years ago, the Muslims, by virtue of their long and continuous possession perfected their title by adverse possessions and the right, title or interest of the Hindu public is extinguished.

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The incident of desecrating the mosque was reported by police constable, Mata Prasad to the police station, Ayodhya and a case was registered. The City Magistrate, Faizabad started proceedings under Section 145 Cr.P.C. and attached the property on 29.12.1949 and handed over possession to Receiver, Sri Priya Dutt Ram. It is further averred that City Magistrate, Faizabad illegally with injustice to the plaintiffs, deprived a large section of Muslim community from exercising their legal rights guaranteed by the Constitution of India.

On 16.1.1950 defendant No. 1 filed Regular Suit No. 2 of 1950 in the court of Civil Judge, Faizabad. Suit No. 25 of 1950 and Suit No. 26 of 1960 were also filed. The instant suit was filed by the

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plaintiffs under Order 1 Rule 8 C.P.C. and two months notice was also given to the State of U.P. The plaintiffs are entitled for restoration of the building as it existed on 5.12.1992, which was demolished on 6th December, 1992.

The Mosque is a place where prayers are offered publicly as a matter of right, even the open space where prayers are offered may be a mosque and as such even after the demolition of the mosque the land over which the building stood, is still a mosque and Muslims are entitled to offer prayer thereon.

After the proclamation of Ordinance No. 8 of 1993 on 7th January, 1993, which was substituted by an Act of Parliament, namely, Act No. 33 of 1993, the Commissioner of Faizabad Division is working as Authorized person on behalf of the Government of India. The cause of action arose on 23.12.1949 at Ayodhya District Faizabad within the jurisdiction of this Court when the Hindus illegally desecrated the mosque by placing idols in the mosque and the cause of action arose to the plaintiffs on 29.12.1949, the date on which the City Magistrate, Faizabad attached the mosque.

**Annexure-I written statements in O.O.S.No./89 Pages-64-185**

On behalf of defendants No. 1 and 2 a joint written statement was filed on 12.3.1962, denying the plaint averments and only

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admitted this fact to the extent that Shri Priya Dutt Ram was appointed Receiver by the City Magistrate, Faizabad. It is further submitted that the suit is hopelessly time barred and Muslims have not been in the possession over the property in dispute since 1934 and Hindus are holding the temple in their possession, even prior to 1934 and continuous Hindu puja is being done in the temple and Muslims have never offered prayer since 1934, falsely described as Babri Mosque. It is further averred that the disputed place is a Hindu public charitable institution and is open for worship to all Hindus. The suit is also barred by time as no action was taken in time. On equitable grounds also, the suit deserves to be rejected because Hindu puja is going on in the said temple since 1934 and admittedly from January, 1950 when the City Magistrate directed the defendant No. 9 to carry on Puja as usual in the said temple. **The suit under Order 1 Rule, 8 C.P.C. is bad as no one representing the Hindu community has been made a defendant in the suit** and defendants No. 1, 2, 3, 4 and 9 do not represent the Hindu community.

In the additional written statement, it is further urged that the U.P. Muslim Wakf Act No. XIII of 1936, is ultra vires to the Government of India Act, 1935. The building and land in suit lying in the province of Oudh became subject of Lord Canning proclamations and all previous rights became non existent. No fresh grant in respect of the property in suit having been made after the proclamation, to the plaintiffs or to the Muslim community have no

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right to sue. The Commissioner of Wakf is intended to give effect to the scheme of administration under the Muslim Waqfs Act and does not and cannot confer jurisdiction to decide question of title as against non-Muslims under Wakf Act, 1936. The objections were also not invited and no illegal publication was made.

In replication plaintiffs have urged that Hindu public never held the mosque in their possession since 1934 nor holding possession of it as temple since then and they have not completed title by adverse possession. The Muslim community has been in continuous possession and offered prayer at the mosque for the last 450 years since the time the mosque was constructed and Muslim public representing the wakf perfected their title to the property in suit and thus the title or interest if any, of Hindu Public has extinguished.

On 25.1.1963 a separate written statement was filed by Gopal Singh Visharad. He has denied the averments of the plaint and admitted that Receiver was appointed by the City Magistrate, Faizabad of Janamasthan temple. It is further submitted that plaintiffs have no right to make the defendant contest the suit in a representative capacity. Plaint averments have been denied and it is urged that suit was barred by time. It is without any cause of action and Hindus are in possession over the property in suit from 1934. A temple is a public charitable institution and is a place of worship open to all the Hindus and no individual can represent the entire Hindu community about this ancient temple. The plaintiffs cannot claim any right through the

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proceeding of U.P. Muslims Waqf Act and the ex parte report is not binding on them. The building in suit is covered by the proclamation of Lord Canning. No fresh grant of property was ever made after the proclamation. Accordingly, the Muslims have no right to sue. The report of Wakf Commissioner was not in accordance with the wakf Act and cannot confer jurisdiction on him to decide the question of title as against Non-Muslims.

The replication was also filed to the statements of defendants No. 1 and 2 by the plaintiffs and it has been urged that Hindu public is not in possession over the property in suit since 1934 and Muslims are in possession of the property of the suit for the last 450 years.

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On behalf of defendants no. 3 and 4 separate written statement was filed. It has been urged on behalf of them that plaint averments about battle and construction of mosque by Babar have been coined as a story to give colour to the case. Answering defendants are not aware of the any suit filed by Mahant Raghubar Dass, Mahant of Janmasthan. Mosque was not damaged in 1934. It has further been urged that alleged mosque never existed nor does it exists even now. It is always the temple of Janma-Bhumi with idols of Hindu Gods. Accordingly the entire case as setup in the plaint is false and fabricated. The Muslims have no right to offer prayer in the said temple. On 22.3.1992 local administration demolished Sumitra Bhawan temple. According to the customs of Akhara Rama Janam Bhumi, temple is a holy place of worship and the said temple Ram

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Chabutra has an history of judicial scanning since 1885 and Hindus worshiped there. The building in question in suit is the temple of Janam Bhumi is under attachment and accordingly the suit as contemplated under Order 1 Rule 8 C.P.C. is misconceived. The individual plaintiffs are Sunnis and they cannot represent Shia community. Plaintiffs have no cause of action to file a suit. Defendant No. 4 is the Mahant and Sarbarahkar of Nirmohi Akhara has averred that temple Janam Bhumi is the antiquity of Nirmohi Akhara and no Muslim was ever allowed to enter into the said temple. The answering defendants have wrongly been deprived of the said charge and management of the said temple and accordingly the suit no. 25/1958 was filed. In alternative it is urged that even after 1934, 12 years have already been passed and the property remained in continuous possession of Hindus. Accordingly, the plaintiffs are not entitled for reliefs claimed.

Additional written statements of defendants No. 3 and 4 were filed stating that the property in suit is a temple.

On behalf of the plaintiffs, replication was filed reiterating the plaint averments. It has been further averred that Muslims are in continuous possession for the last 450 years and Muslim public as representative of Wakf has perfected the title of the property in suit by their long and undisturbed possession against the interest of Hindu public to their knowledge.

On behalf of defendant no. 3 on 21.8.1995 additional written

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statement was filed. It has been urged that prior to this suit a suit no. 256/1922 was filed between Mahanth Narottam Das and Mahant Ram Swaroop Das. Real facts regarding Ram Chabutra are available in that suit. In another suit No. 95 of 1941 between Mahant Nirmohi Akhara namely Ram Charan Das and Raghunath Das a Commission report was prepared, in which complete details were given. The temple of Shri Ram Chabutara and Gufa temple are shown in the map. Defendant no. 3 is the Panchayati Math of Vairagies. Accordingly directions may be issued for handing over all the properties to defendant no. 3.

On behalf of Defendant No. 9, separate written statement was filed only admitting the fact that City Magistrate attached the property in suit under the proceedings of Section 145 Cr.P.C. It is averred that the plaintiffs are not entitled for relief.

On behalf of defendant no. 10 separate written statement was filed stating that the contents of the plaint are false and fabricated. The proceedings of Waqf are not binding on them. Under the Hindu Jurisprudence, the property in question cannot pass in the hands of Muslims. The land and the property in dispute has been throughout in uninterrupted possession of the Hindu community and in ownership of Lord Shri Rama. In additional statement it has been urged that national community of Hindu is being harassed by the plaintiffs. It is further averred that ordinance has been issued against the provisions of the constitution and second ordinance was also issued in the like

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manner. **However, it has not been mentioned whether any petition was ever filed challenging the authorization of the aforesaid ordinance by the defendant No. 10.**

The suit is barred by Section 92 of C.P.C. and Section 14 of the Religious Endowment Act. The suit was not properly filed by the Waqf in compliance of the provisions of Section 64 of the Waqf Act and the suit is not maintainable and liable to be dismissed.

**Annexure-I**
**Replication**
**Pages 185-194**

The replication has been filed to the amended written statement of defendant no. 10. The contents have been denied by U.P. Sunni Central Board of Waqf. It has been further averred that version of the plaint is correct and the averments made in the written statement are imaginary and baseless. It has further been averred that plot number in second settlement and first settlement coincide with each other.

Supplementary replication was also filed by the plaintiffs stating that ordinance no. 9 of 1989 is not applicable on the facts of the case. Ordinance no. 9 of 1989 gives unguided and uncontrolled powers to transfer the so acquired property to anybody.

Thereafter on behalf of defendant no. 10, additional written statements were also filed stating that no masjid or Babri Masjid was ever existed on the land in question. Babur was an invader and he had no legal authority to construct any Masjid on the sacred place of

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Hindus and Hindus are in possession of the entire area of Ram Janam Bhumi. The entire area covered under Act No. 33 of 1993 belongs to Hindus and the devotees of Shri Ram Lala Virajman. Certain other points have been raised which are connected with the fact in issue relating to the religion and about creation of Pakistan. However, it has been urged that the suit is liable to be dismissed.

Defendant No. 13, Baba Abhiram Dass and Defendant no. 14, Pundarik Mishra filed joint written statement. They have denied the plaint averments and urged that the property belongs to Hindus. The Hindu community is worshiping on the site of Janam Bhumi from time immemorial. Even prior to 1934 daily Hindu puja is being done in the temple and Muslims never offered the prayer since 1934. The suit is bad under order 1 Rule 8 of C.P.C. The plaintiffs have no claim or right under Act no. 13 of 1936 to file instant suit which too is bad for want of any sanction under Section 80A of Government of India Act, 1935. The report of Waqf Commissioner is not binding on the answering defendants. The building in suit does not possess the requirement of a mosque.

Thereafter vide order dated 3rd May, 1989 written statement was filed by Dharam Das, Chela Baba Abhiram Das. He has denied plaint averments and admitted that originally there was a temple and no mosque was ever constructed. Such a building could not be a Masjid according to the tenets of Islam. The deity of Bhagwan Shri Ram Virajman is being worshiped since time immemorial. It has further

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been urged that suit no. 2 of 1950 was filed in personal capacity. Suit no. 25/1950 was also filed.

It has further been averred that the building in suit was no mosque and its surrounding is not a graveyard. According to the Islamic laws, mosque built in place of Hindu temple after forcibly demolishing it cannot be a mosque. ALLAH does not accept a dedication of property for purposes recognized as pious and charitable. Accordingly, the property could not be considered as Waqf property and Muslims could never claim a right of worship at a place as a mosque by adverse possession. The Sunni Waqf Board has no jurisdiction to file a suit. The suit as framed under Order 1 Rule 8 C.P.C. is not maintainable and relief for possession and removal of the idols is not maintainable. Accordingly, the suit is liable to be dismissed.

The additional written statement was also filed on behalf of Mahant Dharam Dass and it has been urged on his behalf that the structure of Ram Janam Bhumi, which was demolished on 6th December, 1992 was not a mosque and it has always been a place of worship for Hindus and the suit is liable to be dismissed.

On behalf of defendant no. 17, Ramesh Chandra Tripathi, it is submitted that the contents of paragraph no. 21 is not admitted. The entire area including the plot in question belongs to deity of Bhagwan Shri Ram. Debris of demolished structure show that demolished structure was a temple.

Mahant Ganga Das also filed written statement denying the

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plaint averments and stated that the suit is not maintainable and property in question belongs to Lord Rama.

The written statement on behalf of Madan Mohan Gupta revealed that the contents of the plaint are false. The property belongs to Lord Rama and the place in question is being worshiped from time immemorial. He has referred certain gazetteers and books as a piece of evidence to show that the property in suit was never a mosque. It is further submitted that according to Quranic injunctions, no mosque can be constructed at the site of the temple after demolishing it. It is further submitted that the temple or Sthan is always been considered as a place of worship. There was no ouster of Hindus from the Ram Janam Bhumi and birth spot of Ram cannot be shifted. The plaintiffs are not entitled for any relief.

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On behalf of defendant no. 20, separate written statement has been filed denying the plaint averments. It has been urged that the Ram Janam Bhumi is a very sacred for the Hindus from the time immemorial. Plaintiffs cannot claim the place of Hindus like Sita Rasoi, Ram Chabutra etc. They are not in possession of the property and the suit is liable to be dismissed.

On the pleadings of the parties, following issues arose for decision:-

**Annexure-I**
**Pages-195-214**
**Issues and statement under Order X Rule-2**

1. Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the

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building) was a mosque as claimed by the plaintiffs? If the answer is in the affirmative?

(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant No. 13?

(b) Whether the building had been constructed on the site of

an alleged Hindu temple after demolishing the same as alleged by defendant No. 13? If so, its effect?

1(a). Whether the land adjoining the building on the east, north and south sides, denoted by letters EFGH on the sketch map, was an ancient graveyard and mosque as alleged in para 2 of the plaint? If so, its effect?

Deleted vide courts order dated 23.2.96.

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1-B (a). Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, city Ahodhya (Nazul estate of Ayodhya ? If so its effect thereon)"

1-B(b). Whether the building stood dedicated to almighty God as alleged by the plaintiffs?

1-B (c ). Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial ? If so, its effect?

1-B(d). Whether the alleged graveyard has been used by the members of Muslim community for burying the dead bodies of the members of the Muslim community? If so, its effect?

Issue 1 B (d) deleted vide court order dated 23.2.96.

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2. Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?

3. Is the suit within time?

4. Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants?

5(a) Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff No. 1 in view of the provision of 5(3) of U.P. Act 13 of 1936? (This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge).

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5(b). Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?

5(c). Were the proceedings under the said Act conclusive? (This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge.)

5(d). Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?

(This issue was not pressed by counsel for the defendants, hence not answered by the learned Civil Judge, vide his order dated 21.4.1966).

5(e). Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no. 17 to the effect that, “No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute”, the plaintiff Sunni Central Board of Waqf has no right to maintain the

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present suit?

5(f). Whether in view of the aforesaid finding, the suit is barred on accunt of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

6. Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

7(a). Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of 1885 had sued on behalf of Janma-Sthan and whole body of persons interested in Janma-Sthan?

7(b). Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?

7(c). Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?

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7(d). Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit? If so, its effect?

8. Does the judgment of Case No. 6/281 of 1881, Mahant Raghubar Dass Vs. Secretary of State and others, operate as res judicate against the defendants in suit?

9. Whether the plaintiffs served valid notices under Sec. 80 C.P.C. (Deleted vide order dated May 22/25, 1990).

10. Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?

11. Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

12. Whether idols and objects of worship were placed inside the

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building in the night intervening 22nd and 23rd December, 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?

**13.** Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?

14. Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

15. Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?

16. To what relief, if any, are the plaintiffs or any of them, entitled?

17. Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?

(This issue has already been decided by the learned Civil Judge by order dated 21.4.1966).

18. What is the effect of the judgdment of their lordships of the Supreme Court in Gulam Abbas and others Vs. State of U.P. and others, A.I.R. 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21st April, 1966 on issue no. 17?

19(a). Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to be visisted by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said deities?

19(b). Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?

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19(c). Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets, at the place in dispute?

19(d). Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did not have minarets?

19(e). Whether the building in question could not legaly be a mosque as on plaintiffs own showing it was surrounded by a graveyard on three sides.

19(f). Whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses? If the finding is in the affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?

20(a). Whether the Waqf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutwalis were allegedly Shia Mohammedans? If so, its effect?

20(b). Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?

**21.** Whether the suit is bad for non-joinder of alleged deities?

22. Whether the suit is liable to be dismissed with special costs?

23. If the wakf Board is an instrumentality of state? If so, whether the said Board can file a suit against the state itself?

24. If the wakf Board is state under under Article 12 of the constitution? If so, the said Board being the state can file any suit in representative capacity sponsering the case of particular community and against the interest of another community)".

25. "Whether demolition of the disputed structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of

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the plaintiffs is liable to be dismissed as no longer maintainable?"

26. "Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished?"

27. "Whether the outer court yard contained Ram Chabutra, Bhandar and Sita Rasoi? If so whether they were also demolished on 6.12.1992 along with the main temple?"

28. "Whether the defendant No. 3 has ever been in possession of the disputed site and the plaintiffs were never in its possession?"

## F I N D I N G S

## ISSUE NO.1(b)

**Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant No. 13? If so, its effect?**

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## F I N D I N G S

One of the most important issue in the suit is whether there was any temple/structure which was demolished and Mosque was constructed on the disputed site. Thus to adjudicate the basic issue whether there was any Hindu temple or an Hindu religious structure existed and the alleged Babri Mosque was constructed after demolishing the said temple at the site in question was to be resolved by this Court. Accordingly, the Full Bench of this Court on 1.8.2002 decided to take the assistance of Archaeological Science. It is not a matter of dispute now that in the modern age Archaeological Science has achieved the great accuracy. Thus with the assistance of Archaeological Science, one can answer up to the considerable degree of certainty about various past activities of people for which material evidence is available. It was believed that sufficient Archaeological

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material is available regarding the temple/mosque issue. Accordingly further excavation was intended. Thus Archaeological Survey of India was directed on 1.8.2002 to survey the disputed site by Ground Penetrating Survey (GPR)/Geo Radiology Survey . On 5.3.2003, the Full Bench of this Court considered the objections of the parties for excavation through Archaeological Survey of India and directed to get the disputed site excavated. This Court further directed that excavation shall be done by excavation branch, specialized in excavation work by providing representation of both the communities in respect of functioning of ASI team and engagement of labourers. The Court further directed certain safeguard to ensure transparency in the task of ASI by permitting the parties or their counsel to remain present on the spot during the course of excavation proceedings. Archaeological Survey of India was directed to photograph and video-graph the process of excavation and to maintain the record pertaining thereto. The Court has also appointed two experienced judicial officers of Faizabad Judgeship as observers and to act whenever needed.

**Annexure-III**
**ASI matter**
**Pages 1 to 163**

In compliance of this Court direction, Director General, Archaeological Survey of India formed 14 member team of both the communities headed by Dr. B.R. Mani and subsequently by Sri Hari Majhi, Director (Antiquity) to supervise the excavation work on the

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disputed site. Excavation on the disputed site was carried out by the team from 12th March, 2003 to 7th August, 2003. Eighty two trenches were excavated to verify anomalies mentioned in the report of Ground Penetrating Radar Survey. Eighty two trenches were checked, the anomalies were confirmed in the trenches in the form of Pillar bases, structures, floors and foundation. Besides eighty two trenches a few more making a total of 90 finally were also excavated keeping in view the objective fixed by the Hon'ble High Court to confirm the structures. The result of excavation has been summarized and full report has also been furnished for the perusal of this Court. Thereafter the objections against the report dated 22.8.2003 filed by ASI were invited by the parties concerned. On behalf of the plaintiff's of O.O.S. No. 4 of 1989 and others objections were filed.

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Thereafter on 4.12.2006, the Full Bench of this Court disposed of the objection/additional objection against the ASI report, which was filed under sub-rule (1) of Rule 10, of Order XXVI of the Code of Civil Procedure. This Court was concious of this fact that in all these four pending suits, the core issue is whether the disputed structure namely Babri Masjid was built after demolishing a Hindu temple. Relevant extract of the order is as under :-

> *"So we order that this ASI report shall be subject to the objections and evidence of the parties in the suit and all these shall be dealt with when the matter is finally decided".*

During the course of hearing parties were also allowed to adduce evidence for and against ASI report.

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**Annexure-III**
**Pages 164-350**

Plaintiff's in support of the objections filed against the ASI report, produced Professor Dhaneshwar Mandal, PW-24, Professor Suraj Bhan, PW-16, Dr. Jaya Menon, PW-29, Dr. R.C. Thakran, PW-30, Dr. Ashok Datta, PW-31, Dr. Supriya Varma, PW-32, Haji Mahboob, DW 6/1-1, Mohd. Abid, DW 6/1-2.

Defendants have produced four witnesses in support of the ASI report, they are- Dr. R. Nagaswamy, OPW-17, Arun Kumar Sharma, OPW-18, R.D. Trivedi, OPW-19 and Jayanti Prasad Shivastava, DW-20/5.

Section 75 CPC empowers the court to issue commissions which reads as under;

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"Section-75: Subject to such conditions and limitations as may be prescribed, the Court may issue a commission--

(a) to examine any person;

(b) to make a local investigation;

(c) To examine or adjust accounts; or

(d) to make a partition;

[(e) to hold a scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

(g) to perform any ministerial act.]"

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The detailed provisions for issuing commands are set forth in Order 26 Rule-10A which are as under;

"Rule 10A- Commission for scientific investigation-(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice as to do, issue a Commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9."

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Thus Sec 75 , Order 26 Rule-10A provide for the issue of Commission for scientific investigation. A perusal of the rule shows that a discretion has been vested in the Civil Court to get any scientific investigation conducted only if it needs necessary or expedient in the ends of justice. The basic rationale of this provision is that the Commission is going to held in extracting the truth. There is established procedure known to law that the Commissioner's report form part of the record and the same becomes evidence as a whole in the suit.

Sri P.N.Mishra, Advocate has submitted that ASI report may be accepted as a piece of evidence. He has relied over ***AIR 1940 PC 3, Chandan Mull Indra Kumar and others Versus Chimanlal Girdhar***

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***Das Parekh and another*** in which the Hon'ble Privy Council held that interference with the result of a long and careful local investigation except upon clearly defined and sufficient grounds is to be deprecated. It is not safe for a Court to act as an expert and to overrule the elaborate report of a Commissioner whose integrity and carefulness is unquestionable whose careful and laborious execution of task was proved by his report and who had not blankly adopted the assertions of either party. Since ASI was working directly under the control and direction of this Court and their integrity is unquestionable as such the said report is entitled to be accepted in its entirety as an expert scientific report under Order 26 Rule 9 & 10 and 10A as also under Section 75(e) of the Code of Civil Procedure, 1908 as well as under Section 45 of the Evidence Act.

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Another ruling cited by Sri P.N.Mishra is ***Vareed Jacob Versus Sosamma Geevarghese, 2004(6) SCC 378*** in which Hon'ble apex court held that incidental or ancillary proceedings are taken recourse to in aid of the ultimate decision of the suit and any order passed therein would have a bearing on the merit of the matter. Sri P.N.Misra has also cited G.L.Vijan Versus K.Shanker, (2006) 13 SCC 136 in which Hon'ble Supreme Court held that incidental power is to be exercised in aid to the final proceedings. In other words an order passed in the incidental proceedings will have a direct bearing on the result of the suit. In AIR ***1924 Cal.620, Amrita Sundari Versus Munshi,*** the Calcutta High Court held that the Commissioner whose integrity is unquestionable his elaborate report cannot be overruled by the Court.

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As the ASI is a reputed institution and integrity of its team cannot be questioned the report submitted by the ASI is to be accepted. In ***AIR 1979 Cal.50, M/s Roy and Co. and another Versus Nanibala Dey and others***, Calcutta High Court held that the Court should not act as an expert and overrule the Commissioner's report whose integrity and carefulness are not questioned and who did not blindly accept the assertion of either party. In AIR 1940 PC 3 (supra) it was decided that Commissioner's report should not be rejected except on clearly defined and sufficient grounds; the court should not act as an expert and overrule the Commissioner's report whose integrity and carefulness are not questioned and who did not blindly accept the assertion of either party. In AIR 1997 Cal.59, Amena Bibi Versus Sk.Abdul Haque, Calcutta High Court held that the Commissioner's report even if accepted by itself does not however, mean that the parties are precluded from challenging the evidence of the Commissioner or assailing the report by examining any other witness to counter the effect of the report.

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In support of ASI report learned counsel Sri M.M.Pandey has placed reliance on the following case laws.

The Hon'ble Apex Court in (2010) 3 SCC 732, Victoria Memorial Hall Versus Howrah Ganatantrik Nagrik Samity, took a view that it is normally be wise and safe for the courts to leave the decision to experts. Para-37 reads as under;

"Para-37- The Constitution Bench of this Court in ***University of***

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***Mysore V. C.D.Govinda*** Rao held that “normally the courts should be slow to interfere with the opinions expressed by the experts.” It would normally be wise and safe for the courts to leave the decision to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court as is evident from the judgments in State of Bihar V. Dr.Asis Kumar Mukherjee, Dalpat Abasaheb Solunke V. Dr.B.S.Mahajan, Central Areca Nut & Cocoa Mktg.& Processing Coop.Ltd. V. State of Karnataka and Dental Council of India V. Subharti K.K.B Charitable Trust.”

Hon'ble Apex Court in ***1988 (2) SCC 292, Southern Command Military Engineering Services Employees Coop.Credit Society Versus V.K.K.Nambia***r, at para-1 held as under;

> “After hearing learned Counsel for the parties, we are satisfied that interference by the High Court with the findings of fact recorded by the lower appellate Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution was wholly unwarranted and in excess of its jurisdiction. The High Court was obviously in error in its view that the Commissioner's report could not be acted upon or be treated as legal evidence. The Commissioner's report tends to show that the demised premises are no longer in occupation of the respondent but in occupation of strangers which fact does se

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an inference of subletting as held by the lower appellate Court."

Hon'ble Apex Court in ***1995 Supp (4) SCC 600, Misrilal Ramratan and others Mansukhlal and others***, at para-1 held as under;

"Shri Sundaravaradan, learned Senior Counsel appearing for the appellants has contended that the approach of the High Court is manifestly illegal. We find no force in the contention. It is now settled law that the report of the Commissioner is part of the record and that therefore the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since it is part of the record of the case."

In A***IR 1976 Allahabad 121, State of U.P. Versus Smt.Ram Sri and another***, para-33 the Court held as under;

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" 33. Order XXVI Rule 10 (2) of Civil P. C. lays down that the report of the commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record. It is, therefore, clear from the aforesaid provision that it is not necessary in order that the report becomes evidence that the statement of the commissioner should also be made in the court for the purpose of proving it. It is up to the choice of the party to examine a commissioner in respect of the matters referred to him or mentioned in his report. But the examination of the commissioner is not at all required by the aforesaid provision for the purpose of proving the report."

Sri Ravi Shanker, Senior Advocate has submitted that

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excavation report of the Archaeological Survey of India being a scientific report of the experts against whom bias or malafide have not been proved, is liable to be admitted and relied on as a piece of evidence:

In ***AIR 1940 PC 3 (Chandan Mull Indra Kumar & Ors. V. Chimanlal Girdhar Das Parekh & Anr.)*** the Hon'ble Privy Council held that interference with the result of a long and careful local investigation except upon clearly defined and sufficient grounds is to be deprecated. It is not safe for a Court to act as an expert and to overrule the elaborate report of a Commissioner whose integrity and carefulness is unquestionable whose careful and laborious execution of task was proved by his report and who had not blankly adopted the assertions of either party. Relying on the said judgment, it is respectfully submitted that the report of the Archaeological Survey of India is an elaborate report and the persons comprising excavation team of the ASI were working directly under the control and direction of this Hon'ble Court. And their integrity is unquestioned as such the said report is entitled to be accepted in its entirety as an expert scientific report under Order 26 Rule 9 & 10 & 10A as also under Section 75(e) of the Code of Civil Procedure, 1908 as well as under Section 45 of the Evidence Act, 1872. Relevant paragraph from page 6 of the said judgement reads as follows:

> "It has been laid down that interference with the result of a long and careful local investigation except upon clearly defined land sufficient grounds is to be deprecated. It is not safe for a Court to act as an expert and to overrule the

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> elaborate report of a Commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of his task was proved by his report, and who had not blindly adopted the assertions of either party.
> This in their Lordships' judgment is a correct statement of the principle to be adopted in dealing with the commissioner's report."

In ***2004(6) SCC 378 (Vareed Jacob v. Sosamma Geevarghese)*** the Hon'ble Supreme Court held that "incidental" or "ancillary" proceedings are taken recourse to in aid of the ultimate decision of the suit and any order passed therein would have a bearing on the merit of the matter. "Supplemental proceedings", however, mean a separate proceeding in an original action in which the court where the action is pending is called upon to exercise its jurisdiction in the interest of justice. Supplemental proceedings may not affect the ultimate result of suit and a supplemental order can be passed even at the instance of the defendants. Relying on the said judgment it is submitted that as Section 75(e) is being part and parcel of Part-III titled as incidental proceedings of the Code of Civil Procedure, 1908 whereunder the order was passed by this Hon'ble Court to carry out the excavation work and submit the report before this Hon'ble court and the report submitted in compliance of said order of the Hon'ble Court is a scientific report under Section 45 of the Evidence Act, 1872. The said report is reliable and admissible valuable piece of evidence. Relevant paragraph Nos.29 to 33 and 54 of the said judgment read as follows:

> "**29.** The Code of Civil Procedure uses different expressions in relation to incidental proceedings and supplemental proceedings. Incidental proceedings are

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> referred to in Part III of the Code of Civil Procedure whereas supplemental proceedings are referred to in Part VI thereof.
>
> **30.** Is there any difference between the two types of proceedings?
>
> **31.** A distinction is to be borne in mind keeping in view the fact that the incidental proceedings are in aid to the final proceedings. In other words, an order passed in the incidental proceedings will have a direct bearing on the result of the suit. Such proceedings which are in aid of the final proceedings cannot, thus, be held to be at par with supplemental proceedings which may not have anything to do with the ultimate result of the suit.
>
> **32.** Such a supplemental proceeding is initiated with a view to prevent the ends of justice from being defeated. The supplemental proceedings may not be taken recourse to as a routine matter but only when an exigency arises therefor. The orders passed in the supplemental proceedings may sometimes cause hardships to the other side and, thus, are required to be taken recourse to when a situation arises therefor and not otherwise. There are well-defined parameters laid down by the court from time to time as regards the applicability of the supplemental proceedings.
>
> **33.** Incidental proceedings are, however, taken recourse to in aid of the ultimate decision of the suit which would mean that any order passed in terms thereof, subject to the rules prescribed therefor, would have a bearing on the merit of the matter. Any orders passed in aid of the suit are ancillary powers. Whenever an order is passed by the court in exercise of its ancillary power or in the incidental proceedings, the same may revive on revival of the suit. But so far as supplemental proceedings are concerned, the court may have to pass a fresh order.
>
> **54.** Parliament consciously used two different expressions "incidental proceedings" and "supplemental proceedings" which obviously would carry two different meanings."

In ***(2006) 13 SCC 136 (G.L. Vijan v. K. Shankar)*** the Hon'ble Supreme Court held that incidental power is to be exercised in aid to the final proceedings. In other words an order passed in the incidental proceedings will have a direct bearing on the result of the suit. Such proceedings which are in aid of the final proceedings, cannot, thus, be

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held to be on par with supplemental proceedings which may not have anything to do with the ultimate result of the suit. Relying on the said judgment it is submitted that since the ASI report is result of an incidental proceeding which is in aid of the final proceeding the said report is reliable to do the ultimate justice. Relevant paragraph no.11, 13 & 14 of the aforesaid judgment read as follows:

> **"11.** Such a supplemental proceeding is initiated with a view to prevent the ends of justice from being defeated. Supplemental proceedings may not be taken recourse to in a routine manner but only when an exigency of situation arises therefor. The orders passed in the supplemental proceedings may sometimes cause hardships to the other side and, thus, are required to be taken recourse to when it is necessary in the interest of justice and not otherwise. There are well-defined parameters laid down by the Court from time to time as regards the applicability of the supplemental proceedings.
>
> **13.** The expression "ancillary" means aiding; auxiliary; subordinate; attendant upon; that which aids or promotes a proceeding regarded as the principal.
>
> **14.** The expression "incidental" may mean differently in different contexts. While dealing with a procedural law, it may mean proceedings which are procedural in nature but when it is used in relation to an agreement or the delegated legislation, it may mean something more; but the distinction between an incidental proceeding and a supplemental proceeding is evident.

In ***AIR 1924 Cal 620 (Amrita Sundari v. Munshi)*** the Hon'ble Calcutta High court held that the Commissioner whose integrity is unquestioned his elaborate report cannot be overruled by the Court. Relying on the said judgment it is submitted that as the ASI is a reputed institution and integrity of its team cannot be questioned, the report submitted by the ASI is to be accepted.

In ***AIR 1979 Cal 50 (M/s. Roy & Co. & Anr. v. Nanibala Dey &***

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***Ors.)*** the Hon'ble Calcutta High Court held that the Court should not act as an expert and overrule the Commissioner's report whose integrity and carefulness are not questioned and who did not blindly accept the assertion of either party. Relying on the said judgment it is humbly submitted that here there are only wild allegations that the ASI people acted under the influence of the then BJP Government and the then Hon'ble Human Resources Development Minister Mr. Murali Manohar Joshi which has not been substantiated by giving cogent evidence and the plaintiffs had several opportunities to make applications before this Hon'ble court impeaching the integrity of the ASI archaeologists but in spite of that opportunity they did not do anything and when after submission of the report of the ASI they found that there is finding of the ASI team that on the disputed site there was temple. They filed the objection which cannot be accepted and is liable to be rejected. Relevant paragraph no.7 of the aforesaid judgment reads as follows:

> "7. Then about the report of the Pleader Commissioner. Reference may be made to the famous decision of the Judicial Committee in Chandan Mull's case reported in 44 Cal WN 205 at p. 212 : (AIR 1940 PC 3, at pp. 5, 6) to show that the Commissioner's report should not be rejected except on clearly defined and sufficient grounds. The Court should not act as an expert and overrule the Commissioner's report whose integrity and carefulness are not questioned and who did not blindly accept the assertion of either party. Here the Pleader Commissioner's honesty has not been challenged. He did not blindly adopt the assertion of the plaintiff. As stated before, several chances were given to the defendant-appellants to assail the Commissioner's report, but no objection was filed. Hence at this stage this objection against the Commissioner's report cannot be accepted."

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In ***2006 (4) Bom LR 336 (Bapu Dhopndi Devkar v. S. Najaokar)*** the Hon'ble Bombay High Court held that a document can be sent to the experts for examination and opinion about the date of printing and the period when it was circulated. Relying on the said judgment it is submitted that as the report of Forensic Science Laboratory, which has stated that there is interpolation in the relevant documents and Babri Masjid is later insertion by the different person in different handwriting in different inks the said report is reliable and the revenue records submitted by the plaintiffs are liable to be discarded and they should be read in the light of the report of Foreignsic laboratory. Relevant extract of the said judgment as quoted in Sarkar's Code of Civil Procedure, Vol-2 10th Edn. reads as follows:

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> "Under Rule 10A, a document, in the instant case a revenue stamp, can be sent to the General Manager Indian Security Press for examination and opinion about the date of printing and the period when it was circulated."
>
> (*Ibid.* p.1789)

In ***AIR 1997 Cal 59 (Amena Bibi v. Sk. Abdul Haque)*** the Hon'ble Calcutta High Court held that the Commissioner's report even if accepted by itself does not however, mean that the parties are precluded from challenging the evidence of the Commissioner or assailing the report by examining any other witness to counter the effect of the report. The said Hon'ble Court has also held that the parties having participated in the enquiry made by the Commissioner should not be allowed to turn around and say that the entry was biased and prejudicial. Relying on the said judgment it is submitted that as

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the plaintiffs, their experts, nominees, advocates have participated in excavation proceedings and the excavation proceedings was done in presence and under observation of the observers appointed by this Hon'ble Court now the ASI report which reveals that there was a temple, the plaintiffs cannot be allowed to raise objection and their objection is liable to be rejected. Moreover, as the parties have already examined several experts to countermand the effect of the ASI report the ASI report is liable to be admitted and taken as a valuable piece of evidence. Relevant paragraph no.6 & 7 of the aforesaid judgment read as follows:

> "6. On a careful reading of the above decision it indicates that the valuation of the property for which the prayer under S. 4 of the Partition Act is made, has to be fixed on the prevalent market value at the time of filing an application under S. 4 of the Partition Act. On reading the impugned order, it is implicit that the learned Court below has meticulously examined the merits of the contention of petitioners and rejected those objections inasmuch as the Commissioner had met those points raised by the revision petitioner. It appears that the Commissioner fixed the valuation after taking the evidence from the parties. The petitioners having participated in the enquiry should not be allowed to turn round and say that the enquiry was biased and prejudicial.
>
> 7. Mr. Mukherjee, the learned counsel appearing for the opposite party No. 1, has seriously challenged about the maintainability of the revisional application. It is highlighted that the Commissioner's report should not be rejected except on clearly defined and sufficient grounds. The court should not act as an expert and overrule the Commissioner's report whose integrity and carefulness are not questioned. In support of his contention Mr. Mukherjee relied on a decision reported in AIR 1979 Cal 50 (M/s. Roy and Co. v. Smt. Nani Bala Dey). The Court held :--
> "The Commissioner's report should not be rejected except on clearly defined and sufficient grounds. The

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Court should not act as an expert and overrule the Commissioner's report whose integrity and carefulness are not questioned and who did not blindly accept the assertions of either party. "

Admittedly the petitioners have not challenged either the integrity of the Commissioner or his carefulness. In another decision reported in AIR 1940 PC 3 in the case of Chandan Mull Indra Kumar v. Chinman Lal Girdhar Das Parekh. It was held :-

"Interference with the result of a long and careful local investigation except upon clearly defined and sufficient grounds is to be deprecated. It is not safe for a Court to act as an expert and to overrule the elaborate report of a Commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of his task was proved by his report, and who had not blindly adopted the assertions of either party."

From the ratio of the above decision, it is (sic) that the revisional court would be slow and war while entertaining the objection regarding the acceptance of the Commissioner's report in a revisional application. The Commissioner's report even if accepted by itself does not, however, mean that the parties are precluded from challenging the evidence of the Commissioner or assailing the report by examining any, other witnesses to countermand the effect of the report. It has been held in a decision reported in AIR 1966 Orissa 121 in the case of Harihor Misra v. Narhari Setti Sitaramiah (para 4) :---

"Rule 10 of O. 26 does not make the report of the Commissioner as concluding the question of valuation. On the contrary, the rule gives clear indication that the report of the Commissioner is only one of the pieces of evidence amongst other evidence to be led by the parties for determination of the issue on valuation of the suit. When the parties file no objection to the Commissioner's report, the court rightly accepts the report. Its acceptance by itself does not, however, mean that parties are precluded from challenging the evidence of the Commissioner and the witnesses examined by him or by giving any other evidence to countermand the effect of the Commissioner's report. "

Thus, from the underlying principle emerging from the above cases, it is manifest that the party objecting to the Commissioner's report can lead best possible evidence at the time of hearing to countermand the report even if the same was accepted earlier. The Court on taking the comprehensive view decide the point at issue and arrive at right conclusion I do not find at this stage any justification to interfere with the findings of the learned

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trial court order accepting the Commissioner's report."

In ***AIR 1976 Alld. 121 (State of U.P. v. Smt. Ram Sree & Anr.)*** the Hon'ble Allahabad High Court held that it is not necessary in order that the report becomes evidence the statement of the commissioner should also be made in the court for the purpose of proving it. It is up to the choice of the party to examine the commissioner in respect of the matters, referred to him or mentioned in his report. But the examination of the Commissioner is not at all required by the provisions of Order XXVI Rule 10(2) of Civil Procedure Code for the purpose of proving the report. Relying on the said judgment, it is respectfully submitted that as none of the parties made application for examination of the ASI's archaeologists/experts who took part in excavation proceeding and prepared the report thereon, for the purpose of proving the said report there is no need of examination of the ASI's team of archaeologist and the said report is liable piece of evidence. Relevant paragraph no.33 of the aforesaid judgment reads as follows:

> "33. Order XXVI Rule 10 (2) of Civil P. C. lays down that the report of the commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record. It is, therefore, clear from the aforesaid provision that it is not necessary in order that the report becomes evidence that the statement of the commissioner should also be made in the court for the purpose of proving it. It is up to the choice of the party to examine a commissioner in respect of the matters referred to him or mentioned in his report. But the examination of the commissioner is not at all required by the aforesaid provision for the purpose of proving the report. The case relied upon by the learned counsel for the respondent in Haji Kutubuddin v. Allah Banda (AIR 1973, All. 235) is not at all relevant on the above controversy. In this case,

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> the High Court did not hold that the statement of the commissioner was necessary in order to prove it or that without such a statement the same could not be read in evidence. We, therefore, do not accept the submission of the learned counsel for the respondent that the report of the first commissioner was not admissible as he had not been produced as a witness."

In ***AIR 1976 Del 175 (Harbhajan Singh v. Smt. Sakuntala Devi Sharma & Anr)*** the Hon'ble Delhi High Court held that the Commissioner's report is admissible as evidence even as substantive evidence without examination of commissioner. In the said judgment it has also been held that before relying on report the authority is bound to consider and decide objections. Relying on the said judgment, it is humbly submitted that before relying on the said ASI report, this Hon'ble Court is to reject the objections of the plaintiffs and as none of the parties have made application for examination ASI archaeologists' report is a substantive evidence and is fit for being admitted without examination of the archaeologists of the ASI. Relevant paragraph no.5 & 7 of the aforesaid judgment read as follows:

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> "5. The first contention urged on behalf of the tenant is that the report of the Commissioner and the evidence recorded by him and enclosed with the report did not constitute legal evidence and could not, therefore, be considered by the Authority unless the Commissioner had proved the report as a witness and had been subjected to cross-examination. This contention, to my mind, is untenable because on the principle incorporated in Rule 10 (2) of Order 26 of the Code of Civil Procedure, the report and the evidence would be evidence in the proceedings in which the Commissioner is appointed. Sub-rule (2) of Rule 10 is in the following terms:-
> "The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be

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> evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation."
>
> It is obvious from the aforesaid sub-rule that the report of the Commissioner and the evidence, although not the evidence without the report, would be evidence in the proceedings in which the Commissioner is appointed although the Court has the power, as indeed, the parties a right to examine the Commissioner personally in the Court touching any of the matters referred to by him in the report or as to the manner in which he has made the investigation. In the present case, the Commissioner had been appointed in the presence of both the parties. The parties were, therefore, aware that the Commissioner had been deputed to make a local investigation. The report of the Commissioner along with the evidence had been duly submitted in the Court. Although the tenant submitted his objections to the report but made no attempt either to summon the Commissioner or to seek an opportunity to cross-examine the Commissioner.
>
> 7. It is next contended that, in any event, the report and the material enclosed by the Commissioner with it could not be substantive evidence and at best could be utilised to corroborate other evidence on the question in controversy. This contention seems to be untenable because if the report of the Commissioner and the material enclosed with it constituted legal evidence, and I have held above that it did, I do not see how it could not be used as a substantive piece of evidence to base the finding. The Authority had appointed the Commissioner to inspect the spot, to make an investigation and to submit a report and the Authority was entitled to accept the same and base its finding on such material."

In ***AIR 1973 AP 168 (Vemusetti Appayyamma v. Lakshman Sahu)*** the Hon'ble Andhra Pradesh High Court held that report of Commissioner is a part of record and can be considered as evidence irrespective of the fact that the commissioner is examined as witness or not. Relying on the said judgment, it is submitted that the report of

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the ASI is fit for being considered as evidence in spite of the fact that the persons who have taken part in excavation process and in preparation of the report have not been examined as none of the parties had made application for their examination. Relevant paragraph no.6 of the aforesaid judgment reads as follows:

> "6. The learned counsel for the appellant however, objects to the Commissioner's report being accepted and acted upon without its being marked and without the Commissioner being examined. But when the Court appoints a Commissioner under O. 26, R. 9, C.P.C. for making a local inspection and to submit a report, the Commissioner is given the discretion to make a local inspection and record evidence if necessary and submit a report together with such evidence as he thinks fit. Under sub-rule (2) of Rule 10 of Order 26, C.P.C., the report of the Commissioner and the evidence taken by him form part of the record. When the Rule lays down that it forms part of the record irrespective of whether it is marked or not, the Court is bound to take that evidence into consideration. The failure to mark it as a document on behalf of the parties does not exclude it from the record. Sub-rule (2), however, lays down that either the Court or any of the parties may examine the Commissioner but if the Commissioner is not examined, the report submitted by him does not cease to form part of the record. It is nowhere laid down that unless the Commissioner is examined and through him his report is marked as an exhibit, the report of the Commissioner cannot be acted upon. That being so, the lower Appellate Court was right in considering the Commissioner's report and in, accepting the defendant's evidence and rejecting that of the plaintiff's witnesses in the light of that. The finding whether the plaintiff is in possession of the plaint schedule site or not is a finding of fact which is supported by the evidence on record and is binding on this Court in Second Appeal."

In ***AIR 1985 Guj 34 (Jagat Bhai Punja Bhai Palkhiwala & Ors. v. Vikram Bhai Punja Bhai Palkhiwala & Ors.)*** the the Hon'ble Gujrat High Court held that where the Commissioner was appointed to make inventory only and he was not appointed to take possession of

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the documents even if he was appointed to take possession of the documents, it would not have made any difference under Order 26 Rule 10B. The appointment is to perform merely a ministerial act and only those acts which are covered by sub-r.(1) i.e. ministerial acts, to which only sub-r.(2) would apply so as to attract the application of sub-r.10(2). Therefore, the report of the Commissioner for the performance of that ministerial act and the evidence if he had recorded himself would be evidence under Rule 10(2) but not whatever documents that may be incidentally or in course of the ministerial duty come to his notice and he may take possession there. Such collection of document is not recording of evidence and he was not appointed for that purpose. Relying on the said judgment it is submitted that the ASI excavation team was not appointed to collect the bones from the different strata and get those bones chemically examined. As such though the ASI excavation team has collected bones and made inventory thereof which was not necessary for drawing the conclusion that whether there was any existing structure prior to 16th century or not. As such challenge to the ASI report on this superficial ground is liable to be rejected. Relevant paragraph no.11, & 17 of the aforesaid judgment read as follows:

> "11. Since sub-r.(2) applies the provisions of R.10(2) that also may be reproduced here for easy reference.
> Rule-10(2) "The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form the part of record, the Court or with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or

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> as to his report, or as to the manner in which he has made the investigation"
>
> 17. Moreover, the Commissioner was appointed to make inventory only and he was not appointed to take possession of the documents. Even if he was appointed to take possession of the documents, it would not have made any difference. Under O.26 R.10B the appointment is to perform merely a ministerial act and only those acts which are covered by sub-r.(1) i.e. ministerial acts, to which only that sub-r.(2) will apply so as to attract the application of sub-r.10(2). Therefore, the report of the Commissioner for the performance of that ministerial act and the evidence if he has recorded himself would become the part of the record in the suit under R.10(2), but not whatever documents that may be incidentally or in course of the ministerial duty come to his notice and he may take possession thereof. Such collection of documents is not recording of evidence and he was not appointed for that purpose and if the appointment is construed to such an extent as contended by the petitioners, such appointment would be ultra vires the scope of R.10 B. R.10 B read with R.10 does not make any radical departure suggested by the learned Counsel for the petitioners. In fact their contention is against the common sense and ordinary rules of convenience and proper conduct of a litigation. Neither the language nor the spirit nor the purpose of R 10B justifies such radical departure from the ordinary rules of procedure and evidence which are meant to facilitate convenient trial and fair opportunity to the other side."

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In ***AIR 1994 KERALA 179 "C.K. Rajan v. State"*** the Hon'ble High Court Kerala held that The provisions of O. XXVI, R. 10 of the Civil P.C. is inapplicable to proceedings under Art. 226 of the Constitution of India. However, the Court, in exercising the powers under Art. 226, can appoint a Commissioner. The Commissioner so appointed by the Court must be responsible persons who enjoy the confidence of the Court and who are expected to carry out the assignment objectively and impartially without any predilection or

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prejudice. The report of the Commissioner should be served on all the parties or made known to the public. If any person wants to dispute any of the fact or data stated in the report, he may take steps in that regard by filing an affidavit or by leading evidence. If the Commissioner so appointed by the Court to hold enquiry, considered facts and circumstances and made local inspection and discussed the matter with the parties and submitted a report containing reasoned findings, prima facie it constitutes evidence which can be acted by a Court of law. Interference with the result of a detailed and careful report so submitted should be made only for cogent and compelling reasons. In a case where an elaborate report is filed by the Commissioner, whose integrity, credibility and carefulness are not questioned, whose careful and laborious execution of his task is proved by the report itself, interference will be made only in exceptional circumstances, in cases where convincing evidence contra is available before Court. Relying on said judgment it is submitted that as no compelling reasons and convincing evidences contra are available before this Hon'ble Court the said report constitutes evidence which can be acted by a Court of law. Relevant paragraph nos. 18 and 19 of the said judgment read as follows:

> "18. We shall now inform ourselves as to the value and weight to be placed on the report submitted by the Commissioner appointed by this Court, Shri Krishnan Unni, District Judge. Shri Krishnan Unni is a senior Selection Grade District Judge with considerable experience and background. He is a judicial officer of repute and credibility. None of the parties, who appeared before us, at any point of time, questioned the capacity, credibility and

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integrity of Shri Krishnan Unni. The Commissioner has submitted fifteen interim reports and the final report in two volumes. He has taken enormous pains to meet various persons, gather details and discuss all aspects that arose for consideration. He took the trouble for personally inspecting very many places on many occasions. A bare perusal of the fifteen interim reports and the final reports, which contain more than 500 pages, will go to show that the Commissioner has done the job entrusted to him with remarkable ability and skill. The Commissioner has posed the question that arose for consideration in a straight forward manner and in the real perspective. The details of all aspects that arose for consideration were adverted to and the pros and cons were considered with remarkable ability. After a discussion of various aspects and perusal of various materials that were available, the Commissioner has entered specific findings and has made specific recommendations. It is true that the provisions of O. XXVI, R. 10 of the Code of Civil Procedure is inapplicable to proceedings under Art. 226 of the Constitution of India. Even before the Code of Civil Procedure came into force, the Judicial Committee of the Privy Council had occasion to remind the Courts in India about the approach to be made regarding a Commissioner's report made on local enquiry. In Ranee Surut Soondree Debea v. Baboo Prosanna Coomar Tagore, (1869-70) 13 Moo Ind App 607 at page 617, the Judicial Committee of the Privy Council after stating that interference with the result of a local enquiry should be only upon clearly defined and sufficient grounds, stated the law thus :

"The integrity of the Ameen (Commissioner) is unquestioned; this careful and laborious execution of his task is proved by his report; he has not blindly adopted the assertions of either party; and without going minutely into details, Their Lordships think it sufficient to say that they see no ground for impugning the accuracy of his conclusion upon what they conceive to be the broad and cardinal issue upon which the determination of this case depends."

In Chandan Mull v. Chiman Lal, AIR 1940 PC 3 at page 6, the Judicial Committee again laid down the correct statement of the principle to be adopted in

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dealing with the Commissioner's report. It was observed :

"It has been laid down that interference with the result of a long and careful local investigation except upon clearly defined and sufficient ground is to be deprecated. It is not safe for a Court to act as an expert and to overrule the elaborate report of a Commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of his task was proved by his report, and who had not blindly adopted the assertions of either party."

The above is the position in law uninfluenced in any manner by the provisions of the Code of Civil Procedure.

19. The Supreme Court of India had occasion to consider the jurisdiction of the Courts in exercising the powers under Articles 32 and 226 of the Constitution of India in appointing Commissioners and the evidential value of such reports in such proceedings. The matter arose in a public interest litigation. In Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802, Bhagwati, J. at page 816 (paragraph 14) of the judgment stated thus :

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"The report of the Commissioner would furnish prima facie evidence of the facts and data gathered by the Commissioner and that is why the Supreme Court is careful to appoint a responsible person as Commissioner to make an enquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a district Magistrate, sometimes a district Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the Court and sometimes an advocate practising in the Court, for the purpose of carrying out an inquiry or investigation and making report to the Court because the Commissioner appointed by the Court must be a responsible person who enjoys the confidence of the Court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the Commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to dispute any of the facts or data stated in the Report, may do so by filing an affidavit and the Court then consider the report of the Commissioner and the affidavits which may have been filed and

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proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the Commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the Commissioner has no evidentiary value at all, since the statements made in it are not tested by cross-examination."

At page 817 of the judgment, in paragraph 15, the learned Judge said thus :

"We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Art. 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights."

Pathak, J. in concurring the judgment, observed at page 845 (paragraph 70) thus :

"It is true that the reports of the said Commissioners have not been tested by cross-examination, but then the record does not show whether any attempt was made by the respondents to call them for cross-examination. The further question whether the appointment of the Commissioners falls within the terms of Order XLVI of the Supreme Court Rules, 1966 is of technical significance only, because there was inherent power in the Court, in the particular circumstances of this case to take that action."

Amarendra Nath Sen, J. in a concurring judgment, at page 849 (paragraph 81) stated the law thus :

"The power to appoint a commission or an investigating body for making enquiries in terms of directions given by the Court must be considered to be implied and inherent in the power that the Court

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has under Article 32 for enforcement of the fundamental rights guaranteed under the Constitution. This is a power which is indeed incidental, or ancillary to the power which the Court is called upon to exercise in a proceeding under Art. 32 of the Constitution. It is entirely in the discretion of the Court, depending on the facts and circumstances of any case, to consider whether any such power regarding investigation has to be exercised or not. The Commission that the Court appoints or the investigation that the Court directs while dealing with a proceeding under Art. 32 of the Constitution is not a Commission or enquiry under the Code of Civil Procedure. Such power must necessarily be held to be implied within the very wide powers conferred on this Court under Art. 32 for enforcement of fundamental rights. I am, further of the opinion that for proper exercise of its powers under Art. 32 of the Constitution and for due discharge of the obligation and duty cast upon this Court in the matter of protection and enforcement of fundamental rights which the Constitution guarantees, it must be held that this Court has an inherent power to act in such a manner as will enable this Court to discharge its duties and obligations under Art. 32 of the Constitution properly and effectively in the larger interest of administration of justice, and for proper protection of constitutional safeguards. I am, therefore, of the opinion that this objection is devoid of any merit."

The latest decision on this subject is Delhi Judicial Service Association Tis Hazari Court v. State of Gujarat, 1991 AIR SCW 2419 : (1991) 4 SCC 406. We are of the view that the above decisions establish that the Court, in exercising the powers under Article 226 of the Constitution of India, can appoint a Commission. The Commission so appointed by the Court must be responsible persons who enjoy the confidence of the Court and who are expected to carry out the assignment objectively and impartially without any predilection or prejudice. The report of the Commission should be served on all the parties or made known to the public. If any person wants to dispute any of the fact or data stated in the report, he may take steps in that regard by filing an affidavit or by leading evidence. If the Commission so appointed by the Court to hold enquiry,

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> considered facts and circumstances and made local inspection and discussed the matter with the parties and submitted a report containing reasoned findings, prima facie it constitutes evidence which can be acted by a Court of law. Interference with the result of a detailed and careful report so submitted should be made only for cogent and compelling reasons. In a case where an elaborate report is filed by the Commissioner, whose integrity, credibility and carefulness are not questioned, whose careful and laborious execution of his task is proved by the report itself, interference will be made only in exceptional circumstances, in cases where convincing evidence contra is available before Court."

In ***(2003) 4 SCC 493 (Sharda v. Dharmpal)*** the Hon'ble Supreme Court has held that the primary duty of a Court is to see that truth is arrived at. Under Section 75(e) of the Code of Civil Procedure and Order XXVI Rule 10A of the Code of Civil Procedure, the civil court has the requisite power to issue a direction to hold a scientific, technical or expert investigation. In certain cases scientific examination by the experts in the field may not only be found to be leading to the truth of the matter, but may also lead to removal of misunderstanding between the parties. Relying on said judgment, it is respectfully submitted that the ASI report is a scientific report of experts which has removed misunderstanding between the parties by giving scientific record that beneath the then existing disputed structure there was remains of temples of Northern Indian Hindu temples of 12$^{th}$ century over which the disputed structure was erected by utilizing material of the said temple. As such the said report is liable to be considered in the true letter and spirit of the aforesaid

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judgment of the Hon'ble Supreme Court. Relevant paragraph no.32-37 of the aforesaid judgment read as follows:

> **"32.** Yet again the primary duty of a court is to see that truth is arrived at. A party to a civil litigation, it is axiomatic, is not entitled to constitutional protections under Article 20 of the Constitution of India. Thus, the civil court although may not have any specific provisions in the Code of Civil Procedure and the Evidence Act, has an inherent power in terms of Section 151 of the Code of Civil Procedure to pass all orders for doing complete justice to the parties to the suit.
>
> **33.** Discretionary power under Section 151 of the Code of Civil Procedure, it is trite, can be exercised also on an application filed by the party.
>
> **34.** In certain cases medical examination by the experts in the field may not only be found to be leading to the truth of the matter but may also lead to removal of misunderstanding between the parties. It may bring the parties to terms.
>
> **35.** Having regard to development in medicinal technology, it is possible to find out that what was presumed to be a mental disorder of a spouse is not really so.
>
> **36.** In matrimonial disputes, the court has also a conciliatory role to play — even for the said purpose it may require expert advice.
>
> **37.** Under Section 75(*e*) of the Code of Civil Procedure and Order 26 Rule 10-A the civil court has the requisite power to issue a direction to hold a scientific, technical or expert investigation."

In ***1995 Supp (4) SCC 600 (Misrilal Ramratan v. A.S. Sheik Fathimal )*** the Hon'ble Supreme Court held that it is settled law that the report of the Commissioner is part of the record and that therefore, the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as witness since it is part of the record. Relying on the said judgment, it is respectfully submitted that on the ground of non-examination of the archaeologists of the ASI team the said report cannot be overlooked and rejected and as in view of settled law, the said scientific report is part of the record. The report is liable to be considered for drawing of the inferences.

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Relevant paragraph no.3 of the aforesaid judgment reads as follows:

> **"3.** Shri Sundaravaradan, learned Senior Counsel appearing for the appellants has contended that the approach of the High Court is manifestly illegal. We find no force in the contention. It is now settled law that the report of the Commissioner is part of the record and that therefore the report cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since it is part of the record of the case. We have gone through the report submitted by Shri Sundaravaradan and the High Court is clearly right in its conclusion that the age of the building as per the sanctioned plan of 1928 is 70 years and the building requires demolition. In fact, it is undisputed that the landlord obtained sanction from the Municipal Corporation for demolition of the building. What was lacking thereafter was that he did not obtain sanction for reconstruction. This is one of the grounds for rejecting the application for eviction. Undertaking was given that within six months from the date of the construction, he would obtain necessary sanction. Under these circumstances, we find that the High Court is right in reaching the conclusion that the landlord has established the need for demolition of the building for reconstruction as envisaged under Section 14(1)(*b*) of the Act. The appeals are dismissed. However three months' time is granted to the appellants for vacating the premises with usual undertaking. The undertaking shall be filed within one month from today."

In ***(1988) 2 SCC 292 (Southern Command M.E.S. Employees' Cooperative Credit Society v. V.K.K. Nambiar)*** the Hon'ble Supreme Court held that the High Court was obviously in error in its view that the Commissioner's report could not be acted upon and be treated evidence. Relying on said judgment, it is submitted that as the Commissioner's report is a legal evidence, it is liable to be considered by this Hon'ble Court as a piece of evidence. Relevant paragraph no.1 of the aforesaid judgment reads as follows:

> **"1.** After hearing Learned Counsel for the parties, we are

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> satisfied that interference by the High Court with the findings of fact recorded by the lower appellate court in exercise of its supervisory jurisdiction under Article 227 of the Constitution was wholly unwarranted and in excess of its jurisdiction. The High Court was obviously in error in its view that the Commissioner's report could not be acted upon or be treated as legal evidence. The Commissioner's report tends to show that the demised premises are no longer in occupation of the respondent but in occupation of strangers which fact does raise an inference of subletting as held by the lower appellate court."

The main ground of the objection of the plaintiffs specifically the plaintiff no.1's objection dated 8th October, 2003 as contained in its paragraph no.1 that the ASI report has been prepared with a prejudice mind and with one-sided presentation of evidence. In other words it can be said that the ground is of biased and mala fide as it has been elucidated in supplementary objection of the defendant no.6/1 & 6/2 of the OOS no.3 of 1989 dated 03/11/2003 wherein in paragraph nos.1 and 6 it has been stated that the said report is meant to strengthen the design of the communal combine RSS, BJP, VHP. The ASI department is under the control of Central Government. At that time the then Prime Minister Shri Atal Behari Bajpayee, Deputy Prima Minister Sri L.K. Advani and HRD Minister Sri M.M. Joshi all were of the BJP as such the ASI excavation team acted under their instruction and behest. As such said report being biased and mala fide is liable to be rejected.

In 1992 Supp (1) 222 (*State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.)* the Hon'ble Supreme Court held that mala fides means want of good faith, personal bias, grudge, oblique or improper motive or

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ulterior purpose. The administrative action must be said to be done in good faith, if it is in face done honestly, whether it is done negligently or not. The determination of a plea of mala fide involves two questions namely, whether there is a personal bias or an oblique motive and whether the administrative action is contrary to the objects, requirements and conditions of valid exercise of power. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrative either by admitted or proved facts and circumstances obtainable in given case. Relying on said judgment it is submitted that the objectors failed to prove the mala fide either by admitted or proved facts and circumstances as such their objection is liable to be rejected. Relevant paragraph 50-52 of the said judgment read as follows:

> **"50.** Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (*i*) whether there is a personal bias or an oblique motive, and (*ii*) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.
>
> **51.** The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is

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> established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.
>
> **52.** Public administration cannot be carried on in a spirit of judicial detachment. There is a very wide range of discretionary administrative acts not importing an implied duty to act judicially though the act must be done in good faith to which legal protection will be accorded. But the administrative act de hors judicial flavour does not entail compliance with the rule against interest and likelihood of bias. It is implicit that a complainant when he lodges a report to the Station House Officer accusing a person of commission of an offence, often may be a person aggrieved, but rarely a pro bono publico. Therefore, inherent animosity is licit and by itself is not tended to cloud the veracity of the accusation suspected to have been committed, provided it is based on factual foundation."

In (2008) 7 SCC 639 (*H.V. Nirmala v. Karnataka State Financial Corporation)* the Hon'ble Supreme Court held that where a party did not raise any objection in regard to the appointment of the enquiry officer and participated in the enquiry proceeding without any demur whatsoever and failed to establish that any prejudice has been caused by reason of appointment of a legal adviser as an enquiry officer such party cannot be permitted to raise the said contention. Relying on said judgment it is submitted that the ASI was appointed to carry out the excavation work by this Hon'ble High Court and no objection was raised with regard to such appointment of ASI rather the objectors, their observers, their nominees and other parties duly participated in the excavation proceeding and they have also failed to establish that appointment of ASI caused any prejudice to them their such contention is liable to be rejected. Relevant paragraph 10 of the said judgment reads as follows:

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> **"10.** The appellant did not raise any objection in regard to the appointment of the enquiry officer. She participated in the enquiry proceeding without any demur whatsoever. A large number of witnesses were examined before the 644 enquiry officer. They were cross-examined. The appellant examined witnesses on her own behalf. The learned Single Judge as also the Division Bench of the High Court opined that the appellant has failed to establish that any prejudice has been caused to her by reason of appointment of a legal advisor as an enquiry officer and as the appellant has participated in the enquiry proceeding, she could not be permitted to raise the said contention."

In ***(2006) 3 SCC 56 (Ceat Ltd. v. Anand Abasaheb Hawaldar & Ors.)*** the Hon'ble Supreme Court held that in order to establish favouritism or partiality mental element of bias must be established by cogent evidence. Relying on said judgment it is submitted that the objectors have failed to establish mental element of bias of the members of the ASI excavation team as such their objection is liable to be rejected. Relevant paragraph 11 to 16 of the said judgment read as follows:

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> **"11.** In Item 5 of Schedule IV to the Act, the legislature has consciously used the words "favouritism or partiality to one set of workers" and not differential treatment. Thus, the mental element of bias was necessary to be established by cogent evidence. No evidence in that regard was led. On the contrary the approach of the Industrial Court and the High Court was different. One proceeded on the basis of breach of assurance and the other on the ground of discrimination. There was no evidence brought on as regards the prerequisite i.e. favouritism or partiality. Favouritism means showing favour in the matter of selection on circumstances other than merit. (Per *Advanced Law Lexicon* by P. Ramanatha Aiyar, 3rd Edn., 2005.) The expression "favouritism" means partiality, bias. Partiality means inclination 61 to favour a particular person or thing. Similarly, it has been sometimes equated with capricious, not guided by steady judgment, intent or purpose. Favouritism as per *Webster's' Encyclopaedic Unabridged Dictionary of the*

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*English Language* means the favouring of one person or group over others having equal claims. Partiality is the state or character of being partial, favourable, biased or prejudiced.

**12.** According to *Oxford English Dictionary*, "favouritism" means—a deposition to show, or the practice of showing favour or partiality to an individual or class, to the neglect of others having equal or superior claims; under preference. Similarly, "partiality" means the quality or character of being partial, unequal state of judgment and favour of one above the other, without just reason. Prejudicial or undue favouring of one person or party: or one side of a question; prejudice, unfairness, bias.

**13.** Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially:

"If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices." (Per Frank, J. in *Linahan,* F 2d at p.652.)

**14.** It is not every kind of differential treatment which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest — whether pecuniary or personal.

**15.** Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.

**16.** As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. The above position was highlighted in *G.N. Nayak* v. *Goa University*."

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In (2005) 5 SCC 363 (*People's Union for Civil Liberties v. Union of India)* the Hon'ble Supreme Court held that public displeasure is not confined to the police force only but this displeasure is reflected against many a department of the government including constitutional bodies and if public displeasure or perception were to be the yardstick to exclude people from holding constitutional or statutory offices then many such posts in the country may have to be kept vacant. Relying on said judgment it is submitted that as at that time there was BJP government, it cannot be said that all the branches and department of the government were working dishonestly at the behest of the BJP government. As such the objection which is based on such hypothetical wild allegations is liable to be rejected. Relevant paragraph nos.10 to 12 of the said judgment read as follows:

> **"10.** While we cannot take exception in regard to the remarks made against the police in each one of the above cases relied on by the learned counsel for the petitioner, we certainly feel that these remarks cannot be so generalised as to make every personnel of the force, consisting of nearly 2.2 million people, violators of human rights solely on the ground that out of thousands of cases investigated and handled by them, in some cases the personnel involved have indulged in violation of human rights. Learned counsel for the petitioner, however, contended that the judgments apart, the public perception of the Indian police force as a whole is so poor that it considers the police as an organisation to be a violator of human rights. Therefore, selecting a retired police officer as a member of the Commission would lead to erosion of confidence of the people in the Commission. We are sincerely unable to gauge this public perception or its magnitude so as to import this concept of institutional bias. There are no statistics placed before this Court to show that there has been any census or poll conducted which would indicate that a substantial majority of the population in the country considers the police force as an

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> institution which violates human rights nor do we think that by such generalisations we could disqualify a person who is otherwise eligible from becoming a member of the Commission.
>
> **11.** Public displeasure as presently perceived is not confined to the police force only. The views expressed in the media very often show that this displeasure is reflected against many a department of the Government including constitutional bodies and if public displeasure or perception were to be the yardstick to exclude people from holding constitutional or statutory offices then many such posts in the country may have to be kept vacant.
>
> **12.** Then again what is the yardstick to measure public perception. Admittedly, there is no barometer to gauge the perception of the people. In a democracy there are many people who get elected by a thumping majority to high legislative offices. Many a times public perception of a class of society in regard to such people may be that they are not desirable to hold such post but can such a public opinion deprive such people from occupying constitutional or statutory offices without there being a law to the contrary? There is vast qualitative difference between public prejudice and judicial condemnation of an institution based on public perception. At any rate, as stated above, public perception or public opinion has no role to play in selection of an otherwise eligible person from becoming a member of the Commission under the Act."

In (2001) 1 SCC 182 *(Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant)* the Hon'ble Supreme Court held that the word 'bias' include the attributes and broader purview of the word 'malice' which means and implies 'spite' or 'ill-will' and it is now well-settled that mere general statement will not be sufficient for the purposes of indication of ill-will, there must be cogent evidence available on record to come to the conclusion as to whether in face there was existing a bias which resulted in miscarriage of justice. Relying on said judgment it is submitted that the objectors have failed to establish ill-will by cogent evidence as such their objection is liable to be

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rejected. Relevant paragraph no.10, 26 & 32-35 read as follow:

> "10**.** The word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in common acceptation means and implies "spite" or "ill-will" (*Stroud's Judicial Dictionary,* 5th Edn., Vol. 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.
>
> 26**.** "Bias" in common English parlance means and implies — predisposition or prejudice. The Managing Director admittedly, was not well disposed of towards the respondent herein by reason wherefor, the respondent was denuded of the financial power as also the administrative management of the department. It is the selfsame Managing Director who levels thirteen charges against the respondent and is the person who appoints the enquiry officer, but affords a pretended hearing himself late in the afternoon on 26-11-1993 and communicates the order of termination consisting of eighteen pages by early evening, the chain is complete: prejudice apparent: bias as stated stands proved.
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> 32**.** Lord Hutton also in *Pinochet case*16 observed:
>
> "There could be cases where the interest of the Judge in the subject-matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation."
>
> 33**.** Incidentally in *Locabail [Locabail (U.K.) Ltd.* v. *Bayfield Properties Ltd.]* the Court of Appeal upon a detail analysis of the oft-cited decision in *R.* v. *Gough* together with the *Dimes case*, *Pinochet case*, Australian High Court's decision in the case of *J.R.L., ex p C.J.L.,* as also the Federal Court in *Ebner,* and on the decision of the Constitutional Court of South Africa in *President of the Republic of South Africa* v. *South African Rugby Football Union* stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything

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will depend upon facts which may include the nature of the issue to be decided. It further observed:

"By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the Judge and any member of the public involved in the case; or if the Judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the Judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the Judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakuta* v. *Kelly*; or if, for any other reason, there were real ground for doubting the ability of the Judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a Judge, earlier in the same case or in a previous case, had commented adversely on a party-witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be."

34**.** The Court of Appeal judgment in *Locabail* though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case — a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

35**.** The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances

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> must and ought to be collated and necessary conclusion drawn therefrom — in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in *Locabail case*."

In ***(2001) 2 SCC 330 (State of Punjab v. V.K.Khanna)*** the Hon'ble Supreme Court held that the test is as to whether there is a mere apprehension or there is a real danger of bias and it is on this score that on the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. If allegations pertain rather fanciful apprehension in administrative action question of declaring them to be unsustainable on the basis therefore would not arise. Action not bona fide by themselves would not amount to be mala fide unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act. Relying on said judgment, it is submitted that the objectors have failed to prove and establish the aforesaid ingredients of prejudice and mala fide as such their objections are liable to be rejected. Relevant paragraph no.8 and 25 of the said judgment read as follows:

> "5**.** Whereas fairness is synonymous with reasonableness — bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general

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statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice (see in this context *Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant*). In almost all legal inquiries, "intention as distinguished from motive is the all-important factor" and in common parlance a malicious act stands equated with an intentional act without just cause or excuse. In the case of *Jones Bros. (Hunstanton) Ltd.* v. *Stevens* the Court of Appeal has stated upon reliance on the decision of *Lumley* v. *Gye* as below:

"For this purpose maliciously means no more than knowingly. This was distinctly laid down in *Lumley* v. *Gye* where Crompton, J. said that it was clear law that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service, commits a wrongful act for which he is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse: *Bromage* v. *Prosser*. 'Intentionally' refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as for instance to rebut a plea of privilege in defamation, malice in fact has to be proved."

6**.** In *Girja Shankar Pant case* this Court having regard to the changing structure of the society stated that the modernisation of the society with the passage of time, has its due impact on the concept of bias as well. Tracing the test of real likelihood and reasonable suspicion, reliance was placed in the decision in the case of *Parthasarathi* (*S. Parthasarathi* v. *State of A.P.*) wherein Mathew, J. observed: (SCC pp. 465-66, para 16)

"*16*. The tests of 'real likelihood' and 'reasonable suspicion' are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must

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exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, M.R. in *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon* (WLR at p. 707)]. We should not, however, be understood to deny that the court might with greater propriety apply the 'reasonable suspicion' test in criminal or in proceedings analogous to criminal proceedings."

7**.** Incidentally, Lord Thankerton in *Franklin* v. *Minister of Town and Country Planning* opined that the word "bias" is to denote a departure from the standing of even-handed justice. *Girja Shankar case* further noted the different note sounded by the English Courts in the manner following: (SCC pp.199-201, paras 30-34)

"*30*. Recently however, the English courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the case of *R.* v. *Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2)* observed:

'... In civil litigation the matters in issue will normally have an economic impact; therefore a Judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a Judge applies just as much if the Judge's decision will lead to the promotion of a cause in which the Judge is involved together with one of the parties.'

*31*. Lord Brown-Wilkinson at p. 136 of the report stated:

'It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25-11-1998 would lead to a position where Judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a Judge would be disqualified. That is not correct. The facts of this present case are exceptional. The critical elements are (*1*) that A.I. was a party to the appeal; (*2*) that A.I. was joined in

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order to argue for a particular result; (*3*) the Judge was a director of a charity closely allied to A.I. and sharing, in this respect, A.I.'s objects. Only in cases where a Judge is taking an active role as trustee or director of a charity which is closely allied to and acting with a party to the litigation should a Judge normally be concerned either to recuse himself or disclose the position to the parties. However, there may well be other exceptional cases in which the Judge would be well advised to disclose a possible interest.'

*32*. Lord Hutton also in *Pinochet case* observed:

'There could be cases where the interest of the Judge in the subject-matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation.'

*33*. Incidentally in *Locabail* [*Locabail (U.K.) Ltd.* v. *Bayfield Properties Ltd.*] the Court of Appeal upon a detail analysis of the oft-cited decision in *R.* v. *Gough* together with the *Dimes case*, *Pinochet case*, Australian High Court's decision in the case of *J.R.L., ex p C.J.L.,* as also the Federal Court in *Ebner,* and on the decision of the Constitutional Court of South Africa in *President of the Republic of South Africa* v. *South African Rugby Football Union* stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed:

'By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the Judge and any member of the public involved in the case; or if the Judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the Judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the Judge had expressed views, particularly in the course of

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the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakuta* v. *Kelly*); or if, for any other reason, there were real ground for doubting the ability of the Judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a Judge, earlier in the same case or in a previous case, had commented adversely on a party-witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.'

*34*. The Court of Appeal judgment in *Locabail* though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case — a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient."

8**.** The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise.

9**.** It is in the same vein this Court termed it as reasonable likelihood of bias in *Rattan Lal Sharma case (Rattan Lal Sharma* v. *Managing Committee Dr Hari Ram (Co-Education) Higher Secondary School* wherein this Court was pleased to observe that the test is real likelihood of bias even if such bias was, in fact, the direct cause. In *Rattan Lal Sharma case* real likelihood of bias has been attributed a meaning to the effect that there must be at

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> least a substantial possibility of bias in order to render an administrative action invalid. *Rattan Lal Sharma case* thus, in fact, has not expressed any opinion which runs counter to that in *Girja Shankar case* and the decision in the last-noted case thus follows the earlier judgment in *Rattan Lal case* even though not specifically noticed therein.
>
> 10**.** Before adverting to the rival contentions as raised in the matter, it would also be convenient to note the other perspective of the issue of bias to wit: mala fides. It is trite knowledge that bias is included within the attributes and broader purview of the word "malice"."

The conclusion of the ASI report submitted before this Hon'ble Court is that there was a temple. In Chapter VI of the said report Sri L.S. Rao, Sri A.R. Siddiqui and Sri Sujeet Narayan, the archaeologists record their inferences as follows:

> "A noteworthy aspect of some of these architectural members is the presence of mortises/open grooves of varying dimensions on the body of slabs which serve the purpose of providing dowels/clamps as binding factor. In many a cases iron dowels have been found *in situ.* Besides, there are also symptomatic features to the effect of reusing the earlier architectural members with decorative motifs or mouldings by re-chiseling the slab (Pls.79-80, Fig.59). A few intact architectural members like Amlaka (Pl.81, Fig.59) pillar with *Ghata-pallava* base with dwarf beings as weight-bearers and *Kirtimukhas* (Pls.82-83, Fig.59) to mention a few, have also been recovered. Besides, there are a member of architectural members which have been decorated with deeply carved foliage motifs. This pattern is a distinct one resembling like that of "stencil" work (Pls.86-87). It may be pointed out that the various architectural members with similar decorative designs have been found used in the foundation of one of the major brick structures (wall 16) (see Chapter-IV-Structure) exposed in these excavations.
>
> The aforesaid pillars and other decorative architectural members of this site like fragment of broken jamb with semi circular pilaster (Pl.85), fragment of lotus medallion motif (Pls.89-90) emphatically speak about their association with the temple architecture. Stylistically, these architectural members in general and pillars in particular may be placed in a time bracket of

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tenth-twelfth Century A.D. It is also pertinent to note that there are a few architectural members (Pls.92-94), which can clearly be associated with the Islamic architecture on stylistic ground, which might belong to sixteenth century A.D. onwards."

(ASI report vol.I p.121 - 122)

The ASI report submitted before this Hon'ble Court in its Chapter-IV Sri B.R. Mani, Sri D.K. Singh, Sri Bhuvan Vikrama, Sri Gajanan L. Katade, Sm. Prabash Sahu and Sri Zulfeqar Ali the archaeologists record their inferences as follows:

a) "Two decorated sand stone blocks from an earlier structure, one having the damaged figure of a possible foliated *makara-pra□ala* were found re-used in the foundation of wal 5 on its outer face (Pls.22-23)"

(ASI report, Ch.IV Vol.I p.52)

b) "The decorated octagonal sand stone block on pillar base 32 having floral motif on four corners in trench F7 in the southern area is the unique example at the site (Pl.39) which definitely belongs to the 12th century AD. as it is similar to those found in the *Dharmachakrajijna Vihara* of Kumaradevi at Sarnath (Pl.40) which belongs to the early 12th century AD."

(ASI report, Ch.IV, Vol.I p.56)

c) "A partly damaged east facing brick shrine, structure 5 (Pls.59-60, Fig.17, 24 & 24A) was noticed after removal of baulk between trenches E8 and F8. It is a circular structure with a rectangular projection in the east ...

Thus on stylistic grounds, the present circular shrine can be dated to c. tench century A.D. when the Kalachuris moved in this area and settled across river Sarayu. They possibly brought the tradition of stone circular temples transformed into brick in Ganga-Yamuna valley."

(ASI Report, Ch. IV Vol. I, p.70 & 71)

"***The Ram Chabutra***

The excavation revealed that the *Ram Chabutra* or structure 1 (Fig.3) has got no less than five different structural phases of its construction (Pl.15). Its original use is not certain and there is possibility of its being a water tank in its original shape. The chabutra which looked a small platform in its final form at the time of its last use, was found to be a fairly large structure when its

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core was exposed besides outer phases wherever where possible for excavation. In its enlarged form it was a structure nearly 22 m in east-west and about 14m in north-south orientation.

The base of the structure has been found to be no less than 2.67 m deep, constructed of 7 levels, each having calcrete blocks in one course with joints filled up with lime-surkhi mortar. These courses of the foundation levels were found still continuing downwards. Above this base was constructed a tank like structure of eight levels (Pl.16) having in its each level one course of calcrete blocks topped by two courses of bricks set in lime mortar. Above each level the walls were plastered with lime mortar. In its original form it had perhaps four projections in the middle of its four walls, but later it was raised upon the height of 2.41 m having eight levels in all and a projection of 76 m with the length of 1.67 m on its eastern and western sides in the middle of the wall. The inner measurements of this structure are 4.08 m in north-south and 4.30 m in east-west directions without their projection on either sides of east and west.

In the third stage of its use the structure was filled up with debris consisting of calcrete blocks and brick-bats upto its surface level. Afterwards throughout on the surface a course of calcrete blocks was spread with brick-bats mixed with lime-surkhi mortar above which was placed a squarish masonry platform at the spot where the western projection of the structure was located (Pl./17).

The quarish masonry platform was a solid structure 40 cm in height and 1.50 m in east-west and 1.55 m in north-south direction with its 7 cm top plastered cleanly with fine lime mortar. The top part was found projected over the surface (Pl,18) below which one more course of calcrete blocks and brick-bats etc., as in the lower course below it, were found laid and set in lime-surkhi mortar. Thus the total height raised over the tank like structure was 75 cm. This seems to have been the earliest form of the *Ram Chabutra* seems to match with the description of a square box elevated 5 inches above the ground level covered with lime stone or vedi (bedi) which was circumambulated thrice and saluted by people by prostrating on ground as given by the Austrian traveller Joseph Tieffenthaler who visited the site around 1766-71 and whose account was published in Latin and translated in French in 1786 under the title *Description historique et geographique de l` Inde.*

It is quite apparent that in due course of time the height of the *Ram chabutra* was further raised in two phases first having three levels of calcrete blocks mixed

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with brick-bats, terracotta objects and potsherds of earlier period set in like-surkhi mortar, each level divided by well plastered surface. Finally, on the top, four courses of lakhauri bricks, brick-bats of earlier bricks set in like-surkhi mortar, were laid, probably during the late Mughal period over which cement plaster was done at a later date in which were fixed memorial or decorative slabs as evident fro the impressions available over the plaster (Pl.19). thus the minimum height of the structure was found to be no less than 7.40 m. In the extended part of the *Ram Chabutra* in the west its retaining wall has damaged the pillar bases 30, 33, 36, 39 and 42 of the Period VII. (Fig.3B)"

(ASI report, vol.I, p.49 – 51)

d) During the excavation 62 human and 131 animal figurines were found. In the consonance with the prevailing practice in the Gangetic valley, these figurines are the products of both handmade as well as moulding techniques. These terracottas are assignable from the pre-Mauryan to the previous century. They are both religious as well as secular, the former being represented as cult objects viz. mother-goddess.

(ASI report, vol.I,Ch. VII p.174)

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The said ASI report records its findings of temple as follows:

"The Hon'ble High Court, in order to get sufficient archaeological evidence on the issue involved "whether there was any temple/structure which was demolished and mosque was constructed on the disputed site" as stated on page 1 and further on p.5 of their order dated 5 march, 2003 had given directions to the Archaeological Survey of India to excavate at the disputed site where the GPR Survey has suggested evidence of anomalies which could be structure, pillars, foundation walls, slab flooring etc. which could be confirmed by excavation. Now, viewing in totality and taking into account the archaeological evidence of massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure along with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, *amalaka, kapotapali* doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having *pranala* (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of

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> remains which are distinctive features found associated with the temples of north India."

The Gazetteer of India, Vol.-II, 3rd Edn. 1990, published by Director Publications Division, Govt. of India, Delhi also records that *amalaka* is characteristic feature of north Indian i.e. Nagara style temples. Relevant extracts from the said gazetteer reads as follows:

> "The three lower ones are square in cross section while the mastaka, of which the topmost part is the amalaka, is circular. Each of these sections has further subdivisions of which those of the *bada* may be useful for a study of the evolutionary sequence."
>
> (*Ibid.* P.224)

> "...In the Brahmesvara the *jagamohana* roof is surmounted by a domical member with the *amalaka* as its crown."
>
> (*Ibid.* P.225)
>
> "...Another typical feature is supplied by *amalakas* forming the crowning member of the principal *sikhara* and of the *anga-sikharas."*
>
> (*Ibid.* P.227)
>
> "...in a few instances, of such Central Indian features as extensions of pagas double *amalaka."*
>
> (*Ibid.* P.229)
>
> "...Such temples bear the characteristic features of the early *Nagara* temple, though the attenuated and globular shape of the *amalaka* provides a significant divergence."
>
> (*Ibid.* P.231)

Mohammad Abid, as an expert witness deposed in Hindi as DW 6/1-2 relevant portions of his deposition reads as follows:

> "a). I am well acquainted with the standard, technique as well as scientific and practical system and procedure of the archaeological excavation (ibid P. 2 – 3 para 3 specially line 5 and 6 of p. 3).
> b). Pillar base as it is seen in Plate 48 exactly same pillar base was found and no addition or alteration was made to it. (ibid p.25 L.10-12)
> c). In Ayodhya at the time of excavation scientific method was adopted. (ibid p.57 L. 8-9)
> d). It is correct that amongst the artefacts found in excavation, a divine couple was also found. (ibid p.65

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L. 1-2)
e). It is correct that Toran – Ganapati, Prakar Mandir and yantra are found in a temple but not in a mosque. (ibid p.65 L.11-16)

Professor Dhaneshwar Mandal, as an expert witness deposed in Hindi as PW -24 relevant portions of his deposition read as follows:

"a). I don't think that during my stay archaeologists had constructed any pillar etc. In my presence there was no such happening that said archaeologist manufactured anything in concealed manner or by force. During excavation I had seen that the artefacts found in course of excavation were segregated. This is also correct to say that during the excavation human deposits were being found from the trenches. (ibid p. 161 L.5-9)

b). If at any place there is a kitchen then naturally at that place food would have been prepared but if really food would have been prepared, then according to archaeology finding of furnace / oven from that place is essential. In the collection of ASI's report Volume II (Plates) in Plate No. 3 oven and furnace have been shown and I myself has also seen the oven and furnace on excavation-site. (ibid p. 191 L. 9-15)

c). In the Plate no.39 it looks as a stylistic elephant's trunk (*Ibid* p.250 L.6 & 7)

d). In Plate no.37 of the aforesaid report one pillar base of a definite form is appearing, There are stones on both side to support it. There is no such construction in Plate no.42. In this Plate the visible upper portion on which is marked F2 construction thereof is like the construction which is seen in aforesaid Plate no.37 & 38. The pillar-base which is visible in Plate no.47 construction thereof is different from the pillar-base of the aforesaid Plates. The pillar-base which is visible in Plate no.44 construction whereof is also different from the aforesaid pillar-bases. The pillar-base which is visible in Plate no.45, construction thereof is different from the construction of the pillar-bases which are visible in Plate no.37 & 38. The pillar-base which is in Plate no.46, construction thereof is different from the aforesaid pillar-bases. The construction of the pillar-base visible in Plate no.46 is similar to the construction in Plate no.42. The construction of the pillar-base visible in Plate no.47 is similar to the construction of

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the pillar-bases visible in Plate no.42 & 46. In Plate no.48 pillar-base of circular type is visible. (*Ibid* p.262 L.2-17)

e)It is correct to say that floral motif is mostly used in Hindu temples. In Plate no.62 brick wall is visible beneath which in foundation some decorated stone pieces are connected. These stone which are visible in Plate no.37 & 38. The pillar-base which is in Plate no.46, construction thereof is different from the aforesaid pillar-bases. The construction of the pillar-base visible in Plate no.46 is similar to the construction in Plate no.42. The constructio pieces are also re-used. Floral motifs are also carved thereon. Mostly the floral motif are made in Hindu temples. The pillar-base which is visible in Plate no.30 is similar to the pillar-bases which are visible in Plate no.42 & 46. In the Plate no.22 a figure made on a stone-slab is *Maker Pranal.* In the Plate no.23 its close up has been given. *Makar* are abundantly made in Hindu tem which are visible in Plate no.37 & 38. The pillar-base which is in Plate no.46, construction thereof is different from the aforesaid pillar-bases. The construction of the pillar-base visible in Plate no.46 is similar to the construction in Plate no.42. The constructioples. The stones whereon flower, leaf, animal figurines, *Kalash* are engraved those are used in Hindu temples but it can be brought from somewhere else also and they might be of that place were they are entangled. Thus there are both possibilities. (*Ibid* p.263 L.5 – 16)

f). Such pillar-bases has also been found wherein orthostate has been used. Mainly these are situated in the Northern direction of the make-shift-structure. Such orthostatic pillar-base has not been found in the South. The orthostatic pillar-bases which have been found in the North wards of the make-shift-structure, I recognize them pillar-bases. I cannot say how many pillar-bases are on the North wards and how many pillar-bases are on South wards but the number of orthostate pillar-bases is 11. (I) recognize orthostatic pillar-bases as load bearing pillar-base but possibly their date is of post Mughal period. If in any pillar-base its foundation is of brick-bats and above which is orthostat, then I will recognize such pillar-base as load bearing pillar-base. In the Northern direction few pillar-base have been found. Such pillar-base have been found in the North the foundation whereof or brick bats and above that orthostate have been found. (*Ibid* p.288 L.16 – 24 and p.289 L.1 – 4)

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> g). During the excavation at disputed site in Ajodhya small idols have been found. (*Ibid* p.310 L.11 – 12)
>
> h).In this Plate (Plate no.129 of ASI's report volume 2) Cobra-hood is visible. (*Ibid* p.310 L.16 & 17).
>
> i) I have earlier also seen the Plat which are visible in Plate no.37 & 38. The pillar-base which is in Plate no.46, construction thereof is different from the aforesaid pillar-bases. The construction of the pillar-base visible in Plate no.46 is similar to the construction in Plate no.42. The constructioe no.235 (of volume no.2 of ASI report). In a figure of this Plate which is on left-side portion of waist is visible wherein some article like ornament is visible but looking it, it cannot be said that whether this figure is of male or female. (*Ibid* p.320 Last line and p.321 L.1 – 4).

In the ASI's report Vol. II Plate 67 is photograph of "Garud-dhwaj" Plate No. 88 is photograph of "Srivatsa". These religious symbols of the Hindu Temple have been found during excavation at disputed site in Ayodhya. In Sri Bhagawat-Puran. 1.18.16; Sri Mahabharat Anushasan Parva.149. 51 & Shanti-parva Garud-dhwaj have been mentioned as one of the thousand names of the Lord of Universe Sri Vishnu which means in the Flag of Lord Vishnu emblem of Garud finds place. In Sri Valmiki Ramayana Yuddh-Kanda.111.13 & 132; Sri Mahabharat| Anushasan Parva.149.77; Sri Ramcharitamanas Balkanda.146.6 Sri Vatsa has been mentioned as a holy mark on the chest of the Lord of Universe Sri Vishnu. Finding of these holy religious symbols related to the Lord of Universe Sri Vishnu leaves no doubt that the structure in question was a Vaishnav Temple.

In the ASI's report Vol.1 a chart of the Architectural Members

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have been given on pages 122-152 wherein on Sl which are visible in Plate no.37 & 38. The pillar-base which is in Plate no.46, construction thereof is different from the aforesaid pillar-bases. The construction of the pillar-base visible in Plate no.46 is similar to the construction in Plate no.42. The constructio. No.130 at page 129 Ghata Pallava & Srivatsa; on Sl. No.148 at page 130 Divine Couple in alingana mudra; on Sl. No.123 at page 140 Couching Ganas(human beings) & Kirtimukhas; on Sl. No.125 at page 141 Amalaka; on Sl. No.225 at page 148 ghata-pallav, kirtimukhas, human miniature details have been given. ... In the said ASI's report Vol.1 a chart of the Miscellaneous Objects have been given wherein on pages 219-267 on Sl. No.58 at page 252 *Swastika* have been described.

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In the book 'A Dictionary of Hindu Architecture' by Prasanna Kumar Acharya published by Low Price Publication first published in 1934 and reprint in 2008 on page nos.17 to 43 *Adhishthana* have been described in detail. On its page no.109 and 110 *Kapota* and *Kapota-Pallika* have been defined. On its page nos.121 to 124 *kalas* has been defined, on its page no.246 *Torana,* has been defined. On its page no.361 *Pranal* has been defined, *Prasad* has been described on page no.396. On its page no.598 *Sri-vatsa* have been described and defined. On its page nos.644 to 704 *Stambha* i.e. pillars/orthostate has been described and defined. On page nos.732 and 738 *Svastika* has been described and defined. From the aforesaid objects found during the excavation and their association with the temples as it is proved by the authentic dictionary and books of the Hindu architecture as well as

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Gazetteer of India makes it beyond doubt that the disputed structure was a temple.

The Commissioner in his report filed in Suit No. 1 of 1989 in the year 1950 has reported the presence of *Samadhis* of the Sages namely Sri Angira, Sri Markendey, Sri Sanak, Sri Sanandan and Sri Sanat attached to the disputed Structure of Sri Ramajanamasthan. As all four types of disposal of bodies i.e. cremating, drowning, burying and setting up (on hills etc.) have been described in the Divine Holy Sri Atharv-ved (18.2.34; 18.2.50-52 and 18.4.66). According to The Hindus' tradition and law the bodies of the Saints are either buried in earth which is known as *Khanans / Samadhi* or scattered in water which is known as *Jal-samadhi*. the Divine Holy Sri Atharv-ved (18.2.34) and its translation in Hindi and English read s as follows:

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ये निखा॑ता॒ ये परो॑प्ता॒ ये द॒ग्धा ये चोद्धि॑ताः ।
सर्वा॒स्तान॑ग्न॒ आ व॑ह पि॒तॄन् ह॒विषे॒ अत्त॑वे ॥ ३४ ॥

[ अग्ने ] हे अग्नि ! [ ये निखाताः ] जो पितर जमीनमें गाडे गए हैं और [ ये परोप्ताः ] जो पितर दूर वहा दिए गए हैं तथा ( ये दग्धाः ) जो जला दिए गए हैं ( च ) और ( ये उद्धिताः ) जो पितर जमीनके ऊपर हवामें रखे गए हैं, ( तान् सर्वान् ) उन सब पितरों को तू ( हविषे अत्तवे ) हवि भक्षणार्थ ( आ वह ) ले आ ॥ ३४ ॥

34. They that are buried, and they that are scattered (*vap*) away, they that are burned and they that are set up (*úddhita*) — all those Fathers, O Agni, bring thou to eat the oblation.

Be it mentioned herein that offering flesh to manes and to the gods and goddesses in altar and taking flesh sanctified by Vedic hymns was religious practices of Hindus which is evident from Sri Manusmrity Discourse III.266-275 and Discourse V.26-44. Manes are worshiped in the form of the Lord of Universe Sri Vishnu and the Scriptures prescribe offering of various meat to "*Pitri roop*

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*Janardanah"*. Even nowadays sacrifices are done in certain temples. The Lords of Ram Himself used to hunt in course whereof he was deceived by Marich who was in disguise of golden deer. Saints, cows, parrots etc. attached to a temple are buried in temple compound. As such bone can be found only at Hindu Shrine not at Mosque because building mosque over bones is strictly prohibited.

In temple cooking is must to feed the deity while it is prohibited in mosque. As during excavation oven and furnace have been found which are self evident of its being a temple.

AIR 1958 SUPREME COURT 731 "Mohd. Hanif Quareshi v. State of Bihar" held that the animals were used for the purpose of Sacrifices by the Hindus. In the ASI Excavation at disputed sites the bones have been found in and from the layer of the Gupta's period when the Islam had not come into existence from which fact it is crystal clear that the user of the flesh of those creatures if any were not the Muslims. Non-application of chemical examination of the bones will not vitiate report as this Hon'ble Court's direction was to excavate the site attesting the statement of GPR Survey the exact nature of anomalies/objects by systematic truthing such as provided by archaeological trench and to ascertain that fact chemical examination of the bones was not essential. Relevant paragraph 22 of the said judgment reads as follows:

> "22. The avowed object of each of the impugned Acts is to ensure the preservation, protection, and improvement of the cow and her progeny. This solicitude arises out of the appreciation of the usefulness of cattle in a predominantly agricultural

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society, Early Aryans recognised its importance as one of the most indispensable adjuncts of agriculture. It would appear that in Vedic times animal flesh formed the staple food of the people. This is attributable to the fact that the climate in that distant past was extremely cold and the Vedic Aryans had been a pastoral people before they settled down as agriculturists. In Rg. Vedic times goats, sheep, cows, buffaloes and even horses were slaughtered for food and for religious sacrifice and their flesh used to be offered to the Gods. Agni is called the "eater of ox or cow" in Rg. Veda (VIII. 43, 11). The slaying of a great ox (Mahoksa) or a "grate goat" (Maharaja) for the entertainment of a distinguished guest has been enjoined in the Satapatha Brahmana (III. 4. 1-2). Yagnavalkya also expresses a similar view (Vaj. 1. 109). An interesting account of those early days will be found in Rg. Vedic Culture by Dr. A. C. Dass, Chapter 5, pages 203-5 and in the History of Dharamasastras (Vol. II, Part II) by P. V. Kane at pages 772-773. Though the custom of slaughtering of cows and bulls prevailed during the Vedic period, nevertheless, even in the Rg,. Vedic times there seems to have grown up a revulsion of feeling against the custom. The cow gradually came to acquire a special sanctity and was called "Aghnya" (not to be slain). There was a school of thinkers amongst the Risis, who set their face against the custom of killing much useful animals as the cow and the bull. High praise was bestowed on the cow as will appear from the following verses from Rg. Veda, Book VI, Hymn XXVIII (Cows) attributed to the authorship of Sage Bhardvaja:

"1. The kine have come and brought good fortune; let them rest in the cow-pen and be happy near us.

Here let them stay prolific, many coloured, and yield through many morns their milk for Indira.

6. O Cows, ye fattene'ene the worn and wasted, and make the unlovely beautiful to look on.

Prosper my house, ye with auspicious voices, your power is glorified in our assemblies.

7. Crop goodly pasturages and be prolific; drink pure sweet water at good drinking places.

Never be thief or sinful man your master, and may the dart of Rudra still avoid you."

(Translation by Ralph Griffith). Verse 29 of hymn 1 in Book X of Atharva Veda forbids cow slaughter in the following words:

"29. The slaughter of an innocent, O Kritya, is an awful deed, Slay not cow, horse, or man of ours."

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Hymn 10 in the same Book is a rapturous glorification of the cow:

"30. The cow is Heaven, the cow is Earth, the cow is Vishnu, Lord of life.

The Sadhyas and the Vasus have drunk the outpourings of the cow.

34. Both Gods and mortal men depend for life and being on the cow.

She hath become this universe; all that the sum surveys is she."

P. V. Kane argues that in the times of the Rg. Veda only barren cows, if at all, were killed for sacrifice or meat and cows yielding milk were held to be not fit for being killed,. It is only in this way, according to him that one can explain and reconcile the apparent conflict between the custom of killing cows for food and the high praised bestowed on the cow in Rg. Vedic times. It would appear that the protest raised against the slaughter of cows greatly increased in volume till the custom was totally abolished in a later age. The change of climate perhaps also make the use of beef as food unnecessary and even injurious to health. Gradually cows became indicative of the wealth of the owner. The Neolithic Aryans not having been acquainted with metals, there were no coins in current use in the earlier stages of their civilisation, but as they were eminently a pastoral people almost every family possessed a sufficient number of cattle and some of them exchanged them for the necessaries of their life. The value of cattle (Pasu) was, therefore, very great with the early Rg. Vedic Aryans. The ancient Romans also used the word pecus or pecy (Pasu) in the sense of wealth or money. The English words, "pecuniary" and "impecunious", are derived from the Latin root pecus or pecu, originally meaning cattle. The possession of cattle in those days denoted wealth and a man was considered rich or poor according to the large or small number of cattle that he owned. In the Ramayana King Janaka's wealth was described by reference to the large number of herds that he owned. It appears that the cow was gradually raised to the status of divinity. Kautilya's Arthasastra has a special chapter (Ch. XXIX) dealing with the: "superintendent of cows" and the duties of the owner of cows are also referred to in Ch. XI of Hindu Law in its sources by Ganga Nath Jha. There can be no gainsaying the fact that the Hindus in general hold the cow in great reverence and the idea of the slaughter of cows for food is repugnant to their notions and this sentiment has in the past even led to communal riots .It

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> is also a fact that after the recent partition of the country this agitation against the slaughter of cows has been further intensified. While we agree that the constitutional question before us cannot be decided on grounds of mere sentiment, however passionate it may be, we, nevertheless, think that it has to be taken into consideration, though only as one of many elements, in arriving at a judicial verdict as to the reasonableness of the restrictions."

ASI submitted report for the perusal of the Court. This report is data based. It is a piece of evidence which comes within the piece of substantive evidence. High Court has appointed ASI to inspect the spot and to make investigation and submit a report. Thus the High Court is entitled to accept the same and base its finding on such material for want of any other evidence to contradict the same even without examination of the Commissioner.

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At this out set, it may be clarified that in view of Section 45 of Evidence Act, only opinion of expert witnesses in such type of matters are relevant. As regard the opinion of expert, Section 45 of Indian Evidence Act is relevant, which reads as under :-

***Section 45 Indian Evidence Act*** *is an exception to the rule as regards the exclusion of opinion evidence. Opinions of experts are relevant upon a point of (a) foreign law, (b) science, (c) art, (d) identity of handwriting, and (e) finger impression.*

*It is "a general rule that the opinion of witnesses possessing peculiar skill is admissible, whenever the subject-matter of enquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without such assistance. In other words, this is so when it so far partakes of the character of a science or*

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*art as to require a course of previous habit or study to obtain a competent knowledge of its nature (vide Taylor, 12th Edn., s.1418, p.902)*

*Both under this section and S. 47 A the evidence is of an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience.*

*In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon (vide Fakhruddin v. State of M.P., AIR 1967 SC 1326).*

*PHIPSON ON EVIDENCE (15th Edn. (2000), P.921 Para 37-09) states as follows:*

> *"Even at common law the opinions of skilled witnesses are admissible wherever the subject is one upon which competency to form an opinion can only be acquired by a course of special study or experience. The terms on which expert evidence is admissible is governed in civil cases by the Civil Evidence Act, 1972 and the CPR (Civil Procedure Rules)".*

*At [Page 962, para 37-46, 15th Edn. (2001)] PHIPSON states : "Though the expert must be "skilled", by special study or experience, the fact that he has not acquired his knowledge professionally goes merely to weight and not to admissibility ..... Equally, one can acquire experts knowledge in a particular sphere through repeated contact with it in the course of one's work, notwithstanding that the expertise is derived from experience and not form formal training."*

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*HALSBURY observation (vide 4th Ed, Vol. 17, page 61 (para 83) Courts frequently have to decide upon matters requiring specialised knowledge and, in appropriate cases, a party will need to call an expert or experts in support of his case. When such a person is called as a witness in civil proceedings, his opinion is admissible on any relevant matter, including an issue in the proceedings, on which he is qualified to give expert evidence.*

*It was laid down in Dolgobinda v. Nimai Charan Misra, AIR 1959 SC 914 that what is relevant is the opinion expressed by conduct and opinion means something more than mere relating of gossip or or hearsay; it means judgment or belief, that is, a belief or conviction resulting from what one thinks on a particular question. The section does not make the evidence of mere general reputation admissible as proof of relationship. It is the conduct or outward behaviour which must be proved in the manner laid down in Section 60.*

*The Court cannot substitute its own opinion for that of an expert (vide T. Veerabhadrappa v. Ministry of Mines &Steel, New Delhi, AIR 1998 Kant 412 (para 9)*

*An 'Expert' witness is one who has devoted time and study to a special branch of learning, and thus is specially skilled on those points on which he is asked to state his opinion. His evidence on such points is admissible, to enable the tribunal to come to a satisfactory conclusion (vide POWELL, 10th Edn., p. 39). The opinion of the expert is only opinion evidence . It does not help the Court in interpretation (vide Forest Range Officer v. P. Mohammed Ali, AIR 1994 SC 120 (para*

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*8). The Court is not bound to follow it blindly. The expert cannot act as a judge or jury and the final decision is to be made by the judge.*

*All persons who practise a business or profession which requires them to possess a certain knowledge of the matter in hand are experts, so far as expertness is required. It is the duty of the judge to decide whether the skill of any person in the matter on which evidence of his opinion is offered, is sufficient to entitle him to be considered as an expert.*

*As a general rule, the opinion of a witness on a question whether of fact or of law, is irrelevant. A witness has to state the facts which he has seen, heard or perceived, and not the conclusions which he has formed on observing or perceiving them. The function of drawing inferences from facts is judicial function and must be performed by the court. If a witness is permitted to state not only the facts which he has perceived but also the opinion which he has formed on perceiving them, it would amount to delegation of judicial functions to him and investing him with the attributes of a judge.*

*To this general rule, however, there are some important exceptions, which are enacted in this set of sections. When "the subject-matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it", or when "it so far partakes of the character of a science or art as to require a course of previous habit or study", the opinions of persons having special knowledge of the subject-matter of inquiry become relevant; for it is very difficult for the Court to form a correct opinion on a matter of this*

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*kind, without the assistance of such persons.*

***Matters for expert testimony; competency to depose as an expert***

*Opinions of experts become relevant only when the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions. This section is, therefore, exhaustive of the matters on which expert testimony can be given, though the expression "science or art" would include almost all branches of human knowledge requiring special study, experience or training. So that a witness may be competent to depose as an expert, he must be shown to have made a special study of the subject or acquired a special experience therein. In such cases, the question is: "Is he peritus? Is he skilled? Has he adequate knowledge?" An expert is a person who has special knowledge and skill in the particular calling to which the inquiry relates. In law, and as applied to a witness, the term "expert" has a special significance, and no witness is permitted to express his opinion, unless he is an expert within the terms of section 45. The fact that the evidence of an expert was accepted in one case is no ground for accepting his evidence in every other case.*

*The term "expert" has a special significance and no witness is permitted to express his opinion unless he is an expert within the meaning of the term under section 45 Evidence Act. In each case, the Court has to decide whether a person said to be an expert, is really an expert taking into account his skill, study and experience. In many cases, persons having no educational qualification but having knowledge of high order have been treated to be experts. In Baldev Raj*

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*v. Urmila Kumari, AIR 1979 SC 879, opinion of a doctor who had not specialised in gynecology but had knowledge of high order of midwifery as an obstetrician, was accepted as an expert. Clearly, therefore, what is admissible is the opinion of such an expert in the field in which he or she has acquired special knowledge. Outside specialised field, the opinion of the expert would cease to be expert opinion and fall outside the purview of section 45 of the Evidence Act. In Deeks v. Wells, AIR 1933 PC 26, it was held that depositions of expert witnesses as to result of their opinions, and as to the effect of them, do not come within the domain of expert evidence at all. In State v. Gaspar,AIR 1971 Goa 3, opinion of Medical Officer as to mental condition of accused on a particular date on the basis of testimony of witnesses to acts of accused on that date, was not held as the expert opinion but his presumption. There can, however, be no dispute that an expert's evidence is a good evidence and cannot be rejected simply because it may not be decisive. In spite of it, the Court is not bound by the expert opinion though it is bound to consider the same along with other evidence and circumstances appearing in a particular case. In Haji Mohd. v. State of West Bengal, AIR 1959 SC 488, the Court held that in the circumstances of a case, the Court can refuse to place any reliance on the opinion of an expert which is unsupported by any reasons. As far as medical evidence is concerned, it has never been considered to be substantive evidence of the charge, but has been accepted as corroborative of the charge. It has been accepted since long that knowledge of medicine and human body is a matter of science and,*

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*hence, Courts have treated expert medical opinion with respect. In spite of it, a medical man cannot be allowed to give his opinion on matters, which are within the province of the Courts to decide.*

*In order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.*

*An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.*

***Opinions of authors in text books***

*Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a court of law to come to an appropriate conclusion of its own on the peculiar*

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*facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or place on higher pedestal than the opinion of an expert examined in court and the weight ordinarily to which it may be entitled to or deserves to be given.*

***Opinion of the expert***.

*The Madras High Court observed that even though there is no bar for the court to compare the admitted signatures with the disputed signatures to come to its conclusion it would be prudent to require assistance of the expert witness. In fact all the judgments cited by both the parties related to signatures and not thumb impressions. It cannot be disputed that thumb impressions would stand on a different footing, when compared to signatures and the variations, in thumb impression cannot be easily judged by naked eyes. The Court remanded the appeal back to the lower court for sending the documents for the opinion of the expert and thereupon take evidence if necessary only in the context of the opinion of the expert and record his findings thereon.*

***Court acting as an expert***

*The opinion of the Court, itself untrained in medicine and without trained assistance, on questions of medicine is valueless. On questions of handwriting also, the practice of the Court itself acting as an expert has been disapproved. But there is nothing in the so-called science of finger prints which need deter a Court from applying its own*

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*magnifying glass or its own eyes and mind to the evidence and verifying the results submitted to it by the witnesses. In trial with the aid of jury, a question of handwriting or thumb-impression is entirely a matter for the jury.*

I have considered the rival submissions, gone through the objections and the statement of the witnesses. The contention of Sri M.M. Pandey, Advocate, repeals the arguments of Sri Z. Jilani, Advocate for the plaintiffs. There is nothing on record to show that the report was biased. The massive structure theory was not based on imagination. Evidence of bones found from different levels postulate the fact that Hindus also used to perform sacrifices of animals to please the Gods. About pillar bases there is nothing on record to suggest as to how the construction can be disbelieved. The main thrust of the plaintiffs is that there was a structure which was not a Hindu religious structure is not believable for the reasons that certain images were found on the spot were there. Hundreds of artefacts which find mention in the report were recovered during the excavation that denote the existence of Hindu religious structure.

It is not disputed that the Archaeological Survey of India submitted four reports during the years 1862, 1863, 1864 and 1865. Thereafter also they were entrusted with the task to organize archaeological researches and protection of the cultural heritage of the nation. Maintenance of ancient monuments and archaeological sites and remains of national importance is the prime concern of A.S.I. It regulates all archaeological activities in the country as per the

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provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

It also regulates Antiquities and Art Treasure Act, 1972 or the maintenance of ancient monuments and archaeological sites and remains of national importance the entire country is divided into 24 Circles. The organization has a large work force of trained archaeologists, conservators, epigraphist, architects and scientists for conducing archaeological research projects through its Circles, Museums, Excavation Branches, Prehistory Branch, Epigraphy Branches, Science Branch, Horticulture Branch, Building Survey Project, Temple Survey Projects and Underwater Archeology Wing.

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In this context, it would be useful to refer to the various provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (No. 24 of 1958). This Act provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects.

Thus, under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, excavations of ancient monuments etc. have to be regulated under the law of A.S.I. Thus A.S.I. is recognized expert body under the law and has been entrusted with various duties and entrusted functions including that of excavations. They have wide experience of excavation at different places of the country. At this stage, it may further be clarified that there was no even iota of

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evidence to suggest that 14 members team consisting of officers of highly repute, seniority and expertise, were coming from both the communities . Even the Muslims members have also signed over the report of A.S.I. Thus the cumulative effect is that it is unbiased report based on scientific investigation and without any influence on the body of expert which conducted excavation. The Court is taken full care and issued specific directions to maintain transparency. Two judicial officers remain posted there. The excavation was conducted in presence of the parties, lawyers and their nominees. Thus, no body can raise a finger about the propriety of the report on the ground of bias. There is nothing on record to suggest that the scientific report is incorrect. I have already referred to the statement of witnesses in another volume, which is a part of the judgment. Thus I am not referring them. It transpires from the report that it is without any bias. The only objection that has come prominently from the side of plaintiff is that A.S.I. team has worked under the pressure of the Central Government. It has nowhere been mentioned that who was the person in Central Government exercising any influence over 14 members team that excavated the site. The bald allegations cannot be accepted.

Sri Haji Mahboob Ahmad, D.W. 6/1-1 has failed to substantiate his allegations. He has not adduced any evidence in support of his contention as to who was the person interested in the Central Government and exercising influence over A.S.I. team.

Thus, on conjectures and on false allegations a scientific report

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submitted by a team which was working under the direct control of this Court, cannot be supposed to act under the influence of any Government or any person. It is a data based report. Videography and photograph were also conducted during excavation. On behalf of the plaintiffs, it has not been suggested that the report is against any of the videography film or photography film. These films are preserve. Thus, without any material on record, it cannot be said, at this stage, that the version of Sri Hazi Mahboob Ahmad, DW-6/1-1 may be accepted as truthful.

It does not believe to reasons that the Central Government can influence the body of experts conducting archaeological excavations with transparency and which was reducing everything in writing and preparing photography report as well as also conducting videography in presence of both the parties. It is also not worth believable that certain Muslims members of the team could be forced by the Central Government to sign over the report against their wishes and against the data collected by them.

It may further be clarified that all the members signed the report over and not even a single member objected to it. Thus, the pillar bases were found at the archaeological site. The observers were present there. Thus the objection to this effect that these pillar bases were coined out by the team is of no avail because old structure cannot be considered to have been formulated by a team which is not supposed to construct anything during excavation in presence of parties. There is not even a single complaint against the archaeological

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team that they expended the sphere of their working or acted contrary to the duties assigned to them. Thus, this Court has to trust the scientific team which was functioning under the direct control of this Court. The team was functioning with transparency and furnished his data based report. At the cost of repetition I may further refer that archaeological excavation under the law has been entrusted by the Parliament to A.S.I., which is the expert body and functions under the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

Thus from all angle on flimsy grounds not based on any scientific report to contradict the report of A.S.I. and this Court has to rely over this scientific report. There is nothing on record to contradict the report of A.S.I. There was no request from the side of plaintiff to call any other team to substantiate the objections against A.S.I. report except by producing certain witnesses to contradict the same. It has never been pointed out before this Court that the report of ASI should further be rechecked by any other agency. No request further been made to issue another commission to re-examine the whole issue and furnish the report against the report of A.S.I. Thus, I find that the statement of Sri Hazi Mahboob Ahmad, DW-6/1-1, at this stage, should not be accepted as truthful. ASI was also not not working under the pressure of the Central Government. I may further refer that Dr. R. Naga Swami, OPW-17, Sri Arun Kumar Sharma, OPW-18, Sri Rakesh Dutta Trivedi, OPW-19, Sri Jayanti Prasad Srivastava, DW-20/5 in material particulars corroborated the finding of ASI which is data based report. Dr. R. Naga Swami, OPW-17 has a wide experience of

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excavation and he was associated with ASI. Above named witnesses have stated before this Court the reasons as how the report of ASI is truthful. On a detailed examination, there is nothing to doubt their competence and expertise of the officers of A.S.I. team. They have a better experience of excavation then the witnesses produced by the plaintiff. It may further be necessary to refer that Prof. Suraj Bhan, P.W.-16 alone has an idea of excavation and rest of the witnesses, Prof. D. Mandal, PW-24, Dr. R.C.Thakarwal, Dr. Supriya Verma, PW-32 and Mohd. Abid, DW-6/1-2 have absolutely no idea for excavation. They were never associated with Archaeological Survey of India. Simply because of the fact that at few sites some of the witnesses produced by the plaintiff remain present would not make them expert. The team of ASI which is functional under the statute was working transparently under the directions of this Court.

The evidence adduced by the plaintiffs against ASI report is based on surmises and conjectures and in a non-scientific manner. Data based report cannot be contradicted by adducing oral evidence without any scientific investigation. There was no request from the side of the plaintiff to re-check the scientific report by another body of the experts. Probably, this was not done by the plaintiff for the reasons that it was not possible for them to contradict the data based report.

This Court took the assistance of the team of experts working under ASI which is entrusted under the law to excavate archaeological sites with the ends in view to obtain an impartial, fair and scientific

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report on the point whether the disputed structure, namely, Babari Masjid was built after demolishing the Hindu temple. ASI has answered the core issue which was referred to it on the basis of scientific evidence that a massive structure just below the disputed structure was of the 10th century. The relevant extract of gist of report is reproduced as under:

> " Whether there was any temple/structure which was demolished and mosque was constructed on the disputed site as stated on page 1 and further on P. 5 of their order dated 5th March, 2003, had given directions to the Archaeological Survey of India to excavate at the disputed site where the GPR Survey has suggested evidence of anomalies which could be structure, pillars, foundation walls, slab flooring etc. which could be confirmed by excavation. Now, viewing in totality and taking into account the archaeological evidence of a massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards up to the construction of the disputed structure along with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, *amalaka, kapotapali doorjamb* with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having *pranala* (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India"".

From the bare reading of the objections, it transpires that there was a structure beneath the disputed structure. The only dispute that it was not a temple or a religious structure. There is sufficient evidence before this Court that it was a religious structure. Certain data based findings of ASI is available to establish that there was a temple and a place of worship of Hindus. ASI has reported that the structural phases from the 10th century and onwards are available. It is obligatory

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on the part of this Court to further observe that under the Ancient Monuments and Archaeological Sites and Remains Act, 1958. After due excavation conducted ancient monuments covered under the definition as contained in Section 2(a) & (d) read as under:

> "**2(a) "Ancient Monument"** means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith which is of historical, archaeological or artistic interest and which has been in existence for not less than 100 years and includes-
>
> (i) remains of an ancient monument,
>
> (ii) site of an ancient monument,
>
> (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and
>
> (iv) the means of access to, and convenient inspection of, an ancient monument;
>
> **(d) "archaeological site and remains"** means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years, and includes-
>
> (i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and
>
> (ii) the means of access to, and convenient inspection of the area;

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Accordingly, all ancient historical monuments and archaeological sites have to be declared.

Needless to say, at this stage, that the Archaeological Survey of India in its report found a massive structure of religious importance. I avail this opportunity to request the Government of India to maintain this national monument under The Ancient Monuments and Archaeological Sites and Remains Act, 1958 to ensure that they are properly maintained. At the cost of repetition, I may further refer that it is mandatory on the part of the Central Government to act in accordance with the provisions of the Ancient Monuments and Archaeological Sites and Remains Act (No.24 of 1958) and ensure to maintain the dignity and cultural heritage of this country. The aforesaid request has been made to the Central Government in consonance with the directions of this Hon'ble Apex Court in case of **Rajeev Mankotia vs. Secretary to the President of India and others, AIR 1997 SC 2766** in para 21 which reads as under:-

> **"21.**It is needless to mention that as soon as the Indian Institute of Advance Studies vacates the building and hands it over to the Archaeological Department, the Government should provide the necessary budget for effecting repairs and restoring to the building its natural beauty and grandeur. It is also necessary that it proper maintenance and preservation is undertaken as an on-going process to protect the historical heritage and needed repairs are effected from time to time. We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmenship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. They are pride of Indians and places of public visit. The tourist visitors should be

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properly regulated Collection of funds by way of admission/entrance free should be conscientiously accounted for and utilised for their upkeep and maintenance under respect regulations/rules. Adequate annual budgetary provisions should be provided. In this behalf, it may not be out of place to mention that if one goes to Williamsburg in United States of America, the first settlement of the Britishers therein is preserved as a tourist resort and though it is one in the row, its originality is maintained and busying business activity goes on in and around the area attracting daily hundreds of tourists from all over the world. Similar places of interest, though of recent origin, need to be preserved and maintained as manifestation of our cultural heritage or historical evidence. Similar efforts should also be made by the Government of India, in particular the Tourism Department, to attract foreign tourists and to give them good account of our past and glory of the people of India as message to other countries and territories. Equally all the State Governments would do well vis-a-vis monuments of State important, thought given power under Entry 12, List II of the Seventh Schedule to the Constitution. From this perspective, the petitioner has served a great cause of national importance and we place on record his effort to have the Viceregal Lodge preserved and maintained; but for his painstaking efforts, it would have been desecrated into a five Star Hotel and in no time, "We, the people of India" would have lost our ancient historical heritage."

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The Hon'ble Apex Court has held in the case of ***Southern Command Military Engineering Services Employees coop. Credit Society Vs. V.K.K. Nambiar (since deceased) by legal representative Madhvi Devi, (1988) 2 SCC 292*** that the Commissioner's report is a legal evidence. Relevant extract of para-1 of the aforesaid case is reproduced as under:-

> *"**1.** ..... The High Court was obviously in error in its view that the Commissioner's report could not be acted upon or be treated as legal evidence."*

It is a settled proposition of law that the report of the Commissioner and the evidence would be evidence in the proceedings

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in which the Commissioner is appointed. In the present case, the Archaeological Survey of India (ASI) was appointed in the presence of both the parties. Accordingly ASI functioned as Commissioner in this case. The report of ASI along with other relevant material had been duly submitted in this court. The report and material submitted along with it have been used for the purpose of proceedings. The report of the Commissioner and the material enclosed with it constituted legal evidence and I do not see how it should not be used as substantive piece of evidence to base the findings. ASI was appointed to excavate the site and to make investigation and also to submit a report, accordingly this Court is entitled to accept the report and base its findings on such material. Even on the basis of report and material submitted along with it by ASI, the finding on the question is based on cogent evidence.

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The excavation report of the ASI is a scientific report of experts against whom bias and malafide has not been proved. Accordingly it has been relied upon as a piece of evidence on the basis of the case law referred to above.

Vis-a-vis in the sequence of events, referred to above, and on the basis of the report, it can conclusively be held that the disputed structure was constructed on the site of old structure after the demolition of the same. There is sufficient evidence to this effect that the structure was a Hindu massive religious structure. Accordingly, issue no. 1(b) is decided in favour of the defendants and against the plaintiffs.

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## ISSUE NO. 1-B (a)

**Whether the building existed at Nazul plot No. 583 of the Khasra of the years 1931 of Mohalla Kot Ram Chandra known as Ram Kot, city Ayodhya (Nazul estate of Ayodhya ? If so its effect thereon)"**

## FINDINGS:

It is admitted between the parties that disputed structure existed at Nazul plot No. 583 of Khasra of year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, city Ayodhya. The only dispute between the parties is with regard to the nature of the structure. The Hon'ble Apex Court has also in Dr. M. Ismail Farooqui's Case has limited the scope of the case by confining it in outer and inner courtyard. Thus the revenue entries may be presumed to be correct as none of the parties adduced any evidence against them. The property could not be demarcated, but it is admitted that the same was acquired. In view of the aforesaid circumstances, it can be said that the property existed on Nazul plot No. 583. Issues no. 1-B(a) is decided accordingly.

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## ISSUE NO.1- B(b)

**Whether the building stood dedicated to almighty God as alleged by the plaintiffs?**

## FINDINGS:

Plaintiffs have come out with a case that property in suit was dedicated to almighty and that is how the mosque came into existence. Plaintiffs have relied over certain documents to show that mosque was in existence.

On behalf of the defendants, it is urged that the waqf cannot be

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created against the Quranic commands. The holy Quran has already prohibited that building over the land of a temple is not a mosque and the owner of the land is entitle for restoration of possession with liberty to worship therein. It is further submitted that Waqif must be the owner and for creating valid waqf. Emperor Babar was not the owner of Hindu Shrine Shri Ram Janam Sthan. Accordingly, neither he nor his commander had any right to erect mosque and building by creating a waqf against the tenets of Islam.

To consider the rival submissions of the parties, it would be necessary to consult muslim religious books on the subject.

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**QURANIC COMMANDS ABOUT WAQF**

The holy Quran has given a vivid description about waqf. In this reference following aspects are relevant and are read as under :-

**1. Art. (1) Quranic Commands.-"...** But it is righteousness.... to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity....."

**Quran-Sura 2 : Aayat 177**

"..... And establish regular prayers and give regular charity; and loan to God a beautiful loan"

**Quran- Sura 73 : Aayat 20.**

" And be steadfast in prayer and regular in charity....."

**Quran-Sura 2 : Aayat 110**

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"By no means Shall ye attain righteousness unless ye give (freely) of that which you love, and whatever ye give, of a truth God knoweth it well."

**Quran-Sura 3 : Aayat 92 etc.**

In all countries where Muslim law is applicable, law of Waqfs is given much importance. In India Shariat Act (Section 2) gives legal sanctity to Waqfs. This is so because of commands of Quran and traditions of Prophet had encouraged Muslims to make Waqfs. Though it was not compulsory for every Muslim to make Waqfs of their properties but traditions of Prophet encouraged Muslims the world over to make Waqfs for different purposes. He said, "there is one Dinar which you have bestowed in the road of God, and another in freeing a slave, and another in alms to the poor, and another given to your family and children, that is the greatest Dinar in point of reward which you gave to your family." As in the sequence of giving alms to needy, ones family has been ordered to be put in top place.

Quran is very emphatic and it could be found almost after few pages that a man should give charity to poor, from what he has and it has become characteristic of Islam.

Thus, according to the Quranic injunctions a Waqif must be the owner of the property for creating waqf. To resolve the controversy, it would be expedient to have a glimpse over the historical events as well as Islamic injunctions with regard to creation of Waqf including the Farman issued by Mughal Emperor Shah Jahan, which reads as under:-

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Farman of the emperor Shahjahan held that the building over the land of a temple is not a mosque and owner of the temple is entitled for restoration of possession with liberty to worship therein according to his own religion has force of law:

1. In AIR 1963 SC 1638 (*Tilkayat Shri Govindalalji Maharat etc.. v. State of Rajasthan & Ors.)* the Bench comprised of Hon'ble Five-Judge of the Hon'ble Supreme Court has held that the *Farman* issued by an absolute ruler like the *Maharana* of Udaipur in 1934 is a law by which the affairs of the Nathdwara temple and succession to the office of the Tilkayat were governed after its issuance. Relying on said judgment it is submitted that the Farman of the Emperor Shahjahan wherein it has been held that a building constructed over the land of the temple of other person can not be a mosque is admissible as ratio of Law of Shar so far it doesn't contradict the law of Shar, and it is further submitted that any addition, alteration or modification made by any Rulers arbitrarily in violation of the law for the time being in force cannot convert Sri Ramajanmasthan Temple into an alleged mosque. Relevant paragraphs 32 and 33 of the aforesaid judgment reads as follows:

> "32. In appreciating the effect of this Firman, it is first necessary to decide whether the firman is a law or not. It is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby. This position is

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> covered by decisions of this court and it has not been disputed before us, vide Madhaorao Phalke v. State of Madhya Bharat, 1961-1 SCR 957 : (AIR 1961 SC 298). Ameer-un-Nissa Begum v, Mahboob Begum, AIR 1955 SC 352 and Director of Endowments, Government of Hyderabad v. Alkram Alim (S) AIR .1956 SC 60.
>
> 33. It is true that in dealing with the effect of this Firman, the learned Attorney-General sought to raise before us a novel point that under Hindu law even an absolute monarch was not competent to make a law affecting religious endowments and their administration. He suggested that he was in position to rely upon the opinions of scholars which tended to show that a Hindu monarch was competent only to administer the law as prescribed by Smgritis and the oath which he was expected to take at the time of his coronation enjoined him to obey the Smritis and to see that their injunctions were obeyed by his subject. We did not allow the learned Attorney-General to develop this point because we hold that this novel point cannot be accepted in view of the well-recognised principles of jurisprudence. An absolute monarch was the fountain-head of all legislative, executive and judicial powers and it is of the very essence of sovereignty which vested in him that he could supervise and control the administration of public charity. In our opinion there is no doubt whatever that this universal principle in regard to the scope of the powers inherently vesting in sovereignty applies as much to Hindu monarchs as to any other absolute monarch. Therefore, it must be held that the Firman issued by the Maharana of Udaipur in 1934 is a law by which the affairs of the office Nathdwara. Temple and succession to the office of the Tilkayat were governed after its issue."

2. In AIR 1961 SC 298 (*Madha Rao Phalke. v. Land of Madhya Bharat & Anr.)* a Bench comprised of Hon'ble five-Judges the Hon'ble Apex Court has held that the orders issued by absolute Monarch ruler of Guwalior State at force of law and would amount to existing law. Relevant paragraphs 11, 12, 14 and 18 of the said judgment reads as follows:

> "11. In dealing with the question as to whether the orders issued by such as absolute monarch amount to a law or

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regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of its citizens. In Ameer-un-Nissa Begum v. Mahboob Begum, AIR 1955 SC 352, this Court had to deal with the effect of a Firman issued by the Nizam, and it observed that so long as the particular Firman issued by the Nizam, held the field that alone would govern and regulate the rights of the parties concerned though it would be annulled or modified by a later Firman at any time that the Nizam willed. What was held about the Firman about all the Nizam would be equally true about all effective orders issued by the Ruler of Gwalior (Vide also : Director of Endowments, Government of Hyderabad v. Akram Ali, (S) AIR 1956 SC 60).

12. It is also clear that an order issued by an absolute monarch in an Indian State which had the force of law would amount to an existing law under Art. 372 of the Constitution. Article 372 provides for the continuance in force of the existing laws which were in force in the territories of India immediately before the commencement of the Constitution, and Art,. 366(10) defines an existing law, inter alia, as meaning any law, ordinance, order, rule or regulation passed or made before the commencement of the Constitution by any person having a power to make such law, ordinance order, rule or regulation. In Edward Mills Co., Ltd., Beawar v. State of Ajmer, (S) AIR 1955 SC 25, this Court has held that "there is not any material difference between the expressions 'existing law', and the 'law in force'. The definition of an existing law in Art. 366 (10) as well as the definition of an Indian law contained in Sec. 3(29) of the General Clauses Act make this position clear". Therefore, even if it is held that the Kalambandis in question did not amount to a quanun or law technically so called, they would nevertheless be orders or regulations which had the force of law in the State of Gwalior at the material time, and would be saved under Art. 372. The question which then arises is whether these Kalambandis were regulations having the force of law at the material time.

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> 18. It is not disputed that if the Kalambandis on which the appellant's right is based are rules or regulations having the force of law the impugned executive order issued by respondent 1 would be invalid. The right guaranteed to the appellant by an existing law cannot be extinguished by the issue of an executive order. In fact on this point there has never been a dispute between the parties in the present proceedings. That is why the only point of controversy between the parties was whether the Kalambandis in question amount to an existing law or not. Since we have answered this question in favour of the appellant we must allow the appeal set aside the order passed by the High Court and direct that a proper writ or order should be issued in favour of the appellant as prayed for by him. The appellant would be entitled to his costs throughout."

3. In AIR 1955 SUPREME COURT 352 "Ameer-un-Nissa Begum v. Mahboob Begum" the Hon'ble Supreme Copurt held that the firmans were expressions of the sovereign will of the Ruler and they were binding in the same way as any other law; nay, they would override all other laws which were in conflict with them. So long as a particular firman held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later Firman at any time. Relevant paragraph 15 of the said judgment reads as follows:

> "15. The determination of all these questions depends primarily upon the meaning and effect to be given to the various 'Firmans' of the Nizam which we have set out already. It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; - nay, they would override all

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> other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed."

It transpires from the aforesaid judgment that Farman issued by Shah Jahan were considered to be the law applicable in those days and the Indian Courts have always recognized the Farman of Shah Jahan that the building constructed over the land of a temple of other persons, cannot be a mosque, cannot be brushed aside because the principle is based on the law of Shar, which is based on divine law. Thus looking to both the versions, it transpires that it was not possible for Emperor Babar and its commanders or anybody to dedicate the land or the building to almighty. It is not covered under the valid waqf.

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Thus, in view of the circumstances referred to above, it transpires that according to the historical document it may conclusively be observed that the property in suit was in the control of Ibrahim Lodi and Hindus claim that they were having the temple over the property in dispute and Babur cannot acquire title of the said temple at Ayodhya. In this regard, according to the principles of Shar which is applicable in the matters of dedication of mosque and waqf cannot be over-looked.

According to holy Quran and subsequently according to the traditions, it was mandatory on the part of the muslim, firstly to become the owner of the property and thereafter waqf the property. Since Emperor Babar was a Hanafi Muslim and there is nothing on

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record to suggest that he acquired the title of the temple. Accordingly, the divine law, he was not in a position to erect a mosque against the tenets of Islam referred to above. Thus against the injunctions of Quran and Hadith, if anything has been done against the spirit of Islam, this Court is not in a position to recognize under the law, even the Farman of Shah Jahan and further relevant books written by certain authors like Mulla and others, leave no room for doubt that the property dedicated by way of waqf must belong to the waqif at the time of dedication. Even latest enactments referred to above are based on the same theory and they have been enacted just to give effect to the spirit of Islam, accordingly in this case to my mind a conqueror was not in a position to erect a building contrary to the religious mandate of Islam. Thus it cannot be construed that there was any valid dedication to the almighty and the building can be treated to be a waqf property or a valid mosque in accordance with Islam. If anything has been done against the tenets of Islam, it looses the significance under the Mohammedan law. Thus, if at all plaintiffs' version is accepted, it would be presumed that the property in dispute was dedicated to almighty against the divine law of Shar and against the Hanafi principles of law referred to above.

Thus, the waqf was not created in accordance with the spirit of Islam and it was done against the Islamic injunctions and contrary to the practice that was performed by holy Prophet. Even the Quranic injunctions are against the creation of such a waqf, which is against the religious norms.

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Thus, in view of the circumstances referred to above, issue no. 1-B(b) is decided against the plaintiffs and this Court is of the view that the building was not dedicated to the almighty as alleged by the plaintiffs contrary to the injunctions of Quran and other religious material referred to above.

## ISSUE NO. 1-B(c)

**Whether the building had been used by the members of Muslim community for offering prayers from times immemorial ? If so its effect?**

**FINDINGS:**

Muslims claim that the disputed structure stood dedicated to almighty God. It has been shown in the sketch map. In Dr. M. Ismail Farooqui's case, the Hon'ble Apex Court decided to divide the property into outside courtyard i.e. the open place and inner place i.e. covered place known as building. There is no evidence worth the name that muslims used to offer Namaz in the outside courtyard. The building is also not in existence. The Hon'ble Apex Court has directed to decide the title of respective parties over the land in dispute. The disputed structure has already been demolished. Consequently, there is no building there. It is a open place. The Hon'ble Apex Court in ***Dr. M. Ismail Farooqui Vs. Union of India (1994) 6 SCC 360*** at para-70 held as under:-

> "**70.** In Mosque known as Masjid Shahid Ganj and Ors. v. Shiromani Gurdwara Prabandhak Committee, Amritsar AIR 1938 Lahore 369, it was held that where a mosque has been adversely possessed by non-Muslims, it lost its sacred

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character as mosque. Hence, the view that once a consecrated mosque, it remains always a place of worship as a mosque was not the Mahomedan Law of India as approved by Indian Courts. It was further held by the majority that a mosque in India was an immovable property and the right of worship at a particular place is lost when the right to property on which it stands is lost by adverse possession. The conclusion reached in the minority judgment of Din Mohd., J. is not the Mahomedan Law of British India. The majority view expressed by the learned Chief Justice of Lahore High Court was approved by the Privy Council in AIR 1940 PC 116, in the appeal against the said decision of the Lahore High Court. The Privy Council held:

> ...It is impossible to read into the modern Limitation Acts any exception for property made wakf for the purposes of mosque whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with the religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely to the wakf, or that it is not so possessed so long as it is referred to as "mosque" or unless the building is razed to the ground or loses the appearance which reveals its original purpose."

Thus a mosque if adversely possessed by a Non-Muslim, it will loose it sacred character as a mosque. The plaintiffs are not in

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possession over the property in suit and filed the suit for recovery of the possession. There is no reliable evidence that the prayers were offered by Muslims from times immemorial. Plaint averments are contrary to the same. Issue No.1-B(c) is decided against the plaintiffs.

**ISSUE NO. 3**

**Is the suit within time?**

**FINDINGS:**

It is alleged by the plaintiffs that in the town of Ayodhya there exists an ancient historic mosque, commonly known as Babri Masjid, built by Emperor Babar more than 433 years ago, after his conquest of India and his occupation of the territories including the town of Ayodhya, for the use of the Muslims in general, as a place of worship and performance of religious ceremonies.

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The cause of action for the suit against the Hindu public arose on 23.12.1949 at Ayodhya, district Faizabad within the jurisdiction of this Hon'ble Court when the Hindus unlawfully and illegally entered the mosque and desecrated the mosque by placing idols in the mosque thus causing obstruction and interference with the rights of the Muslims in general, offering prayers and performing other religious ceremonies in the mosque. The Hindus are also causing obstructions to the Muslims in the graveyard, (Ganj-Shahidan) in reciting Fatiha to the dead persons buried therein. The injuries so caused are continuing injuries and the cause of action arising therefrom is renewed de-die-indiem and as against defendants 5 to 9 the cause of action arose to the plaintiffs on 29.12.1949, the date on which the defendant No.7, the

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City Magistrate Faizabad-cum-Ayodhya attached the mosque in suit and handed over possession of the same to Sri Priya Dutt Ram, defendant no.9 as the receiver, who assumed charge of the same on January 5, 1950.

The State Government and its officials, defendants 6 to 8 failed in their duty to prosecute the offenders and safeguard the interests of the Muslims.

The plaintiffs claim the following reliefs :--

"(a) A declaration to the effect that the property indicated by letters A B C D in the sketch map attached to the plaint is public mosque commonly known as 'Babri Masjid' and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim graveyard as specified in para 2 of the plaint may be decreed.

(b) That in case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of possession of the mosque and graveyard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship be passed in plaintiff's favour, against the defendants. **(Amended on 25.5.95)**

(bb) That the statutory Receiver be commanded to handover the property in dispute described in the Schedule 'A' of the Plaint by removing the un-authorised structures erected thereon.

(c ) Costs of the suit be decreed in favour of the plaintiffs.

(d) Any other or further relief which the Hon'ble Court

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considers proper may be granted."

On behalf of the defendant nos.1 & 2 it has been urged that the suit is time barred as no action was taken in time from the orders of the City Magistrate u/s 145 Cr.P.C; plaintiffs were never in possession over the temple in dispute since 1934 and the Hindus were holding it adversely to them, overtly and to their knowledge; Puja is going on in the said temple from the past at best 28 years i.e. 1934 and admittedly from January, 1950 when the City Magistrate directed the defendant No.9 to carry on puja as usual in the said temple.

Both the parties have advanced their arguments. Sri Zafaryab Jilani has urged that the suit is not barred by time and in view of the provisions of Article 142 and 144 of the Indian Limitation Act, 1908 the suit has been filed within 12 years. Accordingly with no stretch of imagination it can be said that plaintiffs are not entitled to maintain the present suit. On the contrary, learned counsel for the opposite parties have urged that the suit is barred by Article 120 of the Indian Limitation Act, 1908 and Articles 142 and 144 of the said Act are not applicable in the instant matter as the plaint was amended and prayer (b) was added on 25.5.95 after 33 years of the filing of the suit.

It is further averred that suit property was attached in the proceedings under Section 145 Cr.P.C. vide order dated 29.12.1949 and the instant suit was filed on 18.12.1961 i.e. after 12 years. Thus the instant case falls within the purview of Article 120 of Limitation Act and Articles 142 and 144 of the said Act are not applicable in the instant matter. In this context Sri Z.Jilani has urged that the suit is not

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barred by time and in view of the provisions of Articles 142 and 144 of the Indian Limitation Act the suit has been filed within 12 years and with no stretch of imagination it can be said that the plaintiff is not entitled to maintain the present suit.

On behalf of the plaintiffs, it has been claimed that Article 142 of the Limitation Act applies in this case or in alternative Article 144 may be applied by this Court and Article 120 is not applicable in the instant matter.

Sri P.N.Mishra, learned Senior Advocate submitted that the suit is barred by Article 120 of the Indian Limitation Act,1908:

1. As the Suit property was attached in the proceeding under Section 145 of the Criminal Procedure Code, 1898 in 1949 vide order dated 29th December, 1949 passed by the Ld. City Magistrate Faizabad & Ayodhya and; the instant suit was filed on 18th December, 1961; the instant case falls within the perview of Article 120 of the Limitation Act, 1908. Article 142 and 144 of the said Act are not applicable in the instant matter. The above referred Articles reads as follows:

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| Description of Suit | Period of limitation | Time from which period begins to run |
|---|---|---|
| 120. Suit for which no period of limitation is provided elsewhere in this schedule. | Six years | When the right to sue accrues. |
| 142. For possession of immovable property when the plaintiff while in possession of the property has been | Twelve years | The date of the dispossession or discontinuance. |

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| | | |
|---|---|---|
| dispossessed or had discontinued the possession. | | |
| 144. For possession of immovable property or any interest therein not hereby otherwise specially provided for. | Twelve years | When the possession of the defendant becomes adverse to the plaintiff. |

2. In AIR 1936 Oudh 387 Partab Bahadur Singh Vs. Jagatjit Singh the said Hon'ble Court held that where an order under Section 145 Criminal Procedure Code, 1898 was made by the Magistrate for attachment of the disputed property and the Tahsildar was appointed as receiver of the property, the possession of the receiver in the eye of the law was the possession of the true owner therefore in such suit Article 120 of the Limitation Act, 1908 is applicable and a suit brought within six years of the last invasion is in time. Relevant portion of the said Judgement from its page 395 reads as follows:

> "For the present it would be enough to say that in our opinion the attachment made in 1932 in pursuance of the order passed in the proceedings under S. 145, Criminal P. C., clearly gave rise to an independent cause of action for the plaintiff instituting the present suit for a declaration and the said suit having been throught within six years of the attachment is not barred by Art. 120, Limitation Act, if it is found that he had a subsisting title on the date of attachment. Next it was contended that the suit was governed by Art. 142 Sch. 1, Limitation Act, and that the plaintiff's suit had rightly been dismissed because he had failed to prove his possession within limitation. The Subordinate Judge also has laid great emphasis on it and his decision appears to be mainly based on this ground. In our opinion this position is altogether untenable. It is common ground between the parties that in S. 145 Criminal P. C., proceedings the Magistrate passed an order for attachment of the property. The Tahsildar

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> who was appointed receiver took possession of the property on 23rd February, 1932. The property was admittedly in possession of the Tahsildar as receiver at the time when the present suit was instituted. The possession of the receiver was in the eye of the law the possession the true owner. In the circumstances the plaintiff could undoubtedly maintain a suit for a mere declaration of his title and it was not necessary for him to institute a suit for possession. The suit is neither in substance nor in form a suit for possession of immoveable property. Art. 142 has therefore no application."

3. In AIR 1942 PC 47 Raja Rajgan Maharaja Jagatjit Singh Vs. Raja Partab Bahadur Singh the said Hon'ble Court upheld the ratio of law as laid down in AIR 1936 Oudh 387 Partab Bahadur Singh Vs. Jagatjit Singh. The Hon'ble Privy Council affirmed that in a suit for a declaration of plaintiff's title to the land in possession of the receiver under attachment in proceeding under Section 145 of the Criminal Procedure Code, 1898 by virtue of the Magistrate's order, Articles 142 and 144, the Limitation Act, 1908 do not apply and the suit is governed by Article 120 of the Limitation Act, 1908. Relevant portion of the said Judgement from its page 49 reads as follows:

> "In the first place, their Lordships are clearly of opinion, contrary to the view of the Subordinate Judge, but in agreement with the view of the Chief Court, that it was for the appellant to establish that the title to the lands in suit held by the respondent's predecessor under the first settlement of 1865 had been extinguished under S. 28, Limitation Act, by the adverse possession of the appellant or his predecessors for the appropriate statutory period of limitation, completed prior to the possession taken under attachment on 23rd February 1932, by the Tahsildar, who thereafter held for the true owner. Their Lordships are further of opinion that the present suit, which was subsequently instituted, was rightly confined to a mere

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declaration of title, and was neither in form nor substance a suit for possession of immovable property.

In the second place, on the question of the errors of procedure of the Subordinate Judge in placing the burden of proving his possession within the limitation period on the respondent and ultimately refusing to allow the respondent to lead evidence in rebuttal of the appellant's evidence of adverse possession, it is enough to say that the appellant's counsel felt constrained to state that he could not defend the exclusion of evidence by the learned Judge, and that, if otherwise successful in his appeal, he should ask that the case should be remanded in order to give the respondent the opportunity which was so denied to him. The Chief Court held that the appellant had failed to prove adverse possession, and found it unnecessary to remand the case.

With regard to the statutory period of limitation, Art. 47 of the Act does not apply, as there has been no order for possession by the Magistrate under S. 145, Criminal P. C. As the suit is one for a declaration of title, it seems clear that Arts. 142 and 144 do not apply, and their Lordships agree with the Chief Court that the suit is governed by Art. 120. This leaves for consideration the main issue of proof of adverse possession by the appellant and his predecessors, and the appellant is at once faced by a difficulty which proved fatal to his success before the Chief Court, viz., that unless he can establish adverse possession of the lands in suit as a whole, he is unable, on the evidence, to establish such possession of identified portions of the lands in suit. Before their Lordships, the appellant's counsel conceded that, in order to succeed in the appeal, he must establish adverse possession of the lands in suit as a whole. He further conceded that his case on that point rested either (a) on the Habibullah decision of 1899, on which he succeeded before the Subordinate Judge, or (b) on the compromised proceedings under S. 145 in 1903. He conceded that neither the Habibullah decision nor the boundary proceedings in 1903 amounted to a judicial decision. The appellant maintained that the Habibullah decision, given under S. 23 of the Act of 1876, was good evidence of the state of possession at that time, and of the possession of the whole of the land in dispute by Kapurthala. He maintained that it must be assumed that Mr. Habibullah did his duty and that the decision was based on actual possession; under S. 35, Evidence Act, it was good evidence of the fact of possession. Unfortunately for this contention it appears on the face of the judgment that possession was only proved in respect of land under cultivation, and that the

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> boundary line laid down by Mr. Habibullah was largely an arbitrary line, and, at least to that extent, was not based on actual possession by Kapurthala, and it is well established that adverse possession against an existing title must be actual and cannot be constructive."

4. In ILR 26 Mad 410 RAJAH OF VENKATAGIRI –VS- ISAKAPALLI SUBBIAH AND OTHERS Certain lands were attached by a Magistrate, in 1886, under section 146 of the Code of Criminal Procedure, in consequence of disputes relating to their possession. The Magistrate continued in possession of the lands, and realised some income from them. Both claimants instituted, in 1847, suits in which each claimed the lands as his own, end sought to obtain a declaration of title to them, as well as to the accumulated income, with a view to obtaining possession of the lands and money from the Magistrate. On the question of limitation being raised, the Hon'ble Madras High Court held, that in so far as the suits were for declaration of title to immoveable property and the profits therefrom, they were governed by article 120 of schedule II to the Limitation Act and Article 142 and 144 were not applicable. Relevant portion of the said Judgement from its pages 415 and 416 reads as follows:

> " In the present case the Magistrate acted in due course of law and, either because he found that neither party was in possession or because he was unable to satisfy himself as to which of them was then in possession, he has simply attached the property. Such attachment operates in law for purposes of limitation simply as detention or custody of the property by the Magistrate who, pending the decision by a Civil Court of competent jurisdiction, holds it merely on behalf of the party entitled, whether he be one of the actual parties to

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the dispute before him or any other person. For purposes of limitation the seizin or legal possession will, during the attachment, be in the true owner and the attachment by the Magistrate will not amount either to dispossession of the owner, or to His discontinuing possession.

In each of the present suits, the plaintiff claims as the true owner and as being in legal possession – the physical possession by the Magistrate being one on behalf of the true owner- and prays for a declaration of his title, as against the defendant (the plaintiff in the other suit) who denies his title and claims the property as his own. Under section 146, Criminal Procedure Code, the Magistrate is bound to continue the attachment and have statutory possession of the lands for purposes of continuing the attachment until a competent Civil Court determines the rights of the parties to the dispute before him or the person entitled to the possession of the lands and he cannot deliver the property to any of the parties or other person without an adjudication by a Civil Court. During the continuance of the attachment, the legal possession for purposes of limitation will constructively be in the person who had the title at the date of the attachment and such title cannot be extinguished by the operation of section 28 of the Limitation Act, however long such attachment may continue.

In the above view article 144 will be even less applicable to the suit than article 142.

The suits, therefore, are essentially suits for declaration of title to immoveable property and the profits thereof which are in deposit, the plaintiffs respectively claiming to be in legal possession thereof and the period of limitation applicable is therefore the period of six years prescribed by article 120 of the second schedule to Act XV of 1877, which period is to be reckoned from the time when the right to sue accrued (Pachamuthu Vs Chinnappan (1), Puraken V. Pareathi(2) and Muhammad Baqar V. Mango Lal(3). In this view it is immaterial whether the Rajjah of Venkatagiri (the plaintiff in Appeal No. 149) was or was not actually a party to the dispute before the Magistrate in 1886. The right to sue certainly accrued on the date of the attachment, the 5th May, 1886, which is rightly given as the date of the cause of action in both the suits. The alleged wrongful denial, by the defendants in each case, of the plaintiff's title and possession and the procuring by such denial of the attachment by the Magistrate, in the cause of action for

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> the declaratory suit and it is impossible to hold that there is a 'continuing wrong' within the meaning of section 23 of the Indian Limitation Act, during the time that the attachment continues so as to give for the purpose of reckoning the period of limitation a fresh starting point at every moment of the time during which the attachment continues."

5. In AIR 1925 Nagpur 236 Yeknath Vs. Bahia the said Hon'ble Court held that where there was a dispute between the parties regarding the land in suit and in proceedings under Chapter XII of the Criminal Procedure Code, 1898 the Magistrate attached the land under Section 146 and appointed a Receiver thereof, and where a suit was brought by the plaintiff for a declaration that he was the owner of the land Article 120 of the Limitation Act, 1908 applied to the suit and the period of Limitation starts from the date of the order of the attachment. Full text of the said Judgement from its page 236 reads as follows:

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> "In 1908 there was a dispute between the parties to the suit out of which this appeal arises regarding the land in suit and in proceedings under Ch. XII of Cr. P.C. Magistrate attached the land under S. 146 and appointed a Receiver thereof referring the parties to the Civil Court for the determination of their rights. The present suit was brought in 1920 by the plaintiff for a declaration that he was the owner of the land. The lower Appellate Court dismissed the suit on the ground that it was time-barred. The plaintiff challenges that finding in second appeal. The parties are agreed that Article 120 of the 1st Schedule, Limitation Act, applies to this case. The plaintiff however contends that the case being one of a continueing wrong the suit is within time. Brojendra Kishore Roy Chaudhury V. Bharat Chandra Roy(1), has been relied on by the plaintiff for the contention that there is a continuing wrong. But in that case it was found as a fact that the plaintiffs were in possession that the defendants attempted to interfere with their possession and a

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> breach of the peace bad become imminent when the property was attached by the Magistrate. In Panna Lal Biswas V. Panchu Ruidas (2), which is also relied on, the plaintiff was deprived of possession by the defendants two months prior to the attachment. There is no finding of either of these kinds in this suit. We do not know whether it was the plaintiff or the defendant who was guilty of interference with possession or dispossession. In the absence of all evidence as to the events preceding the attachment all that one can say as to what led the Magistrate to take possession is that it was either his inability to decide who was in actual possession or his decision that neither party was in possession. Neither of these can be said to be a wrong by the defendant. The alleged wrongful denial of the plaintiff's title was not what led the Magistrate to attach the property. The cases cited therefore do not help the plaintiff. In the circumstances of these cases it is the attachment by the Magistrate and not any wrongful act of the defendants that gave rise to the right to sue and the right accrued when the attachment was made. In this view no fresh period of limitation began to run under S. 23 of the Limitation Act after the date of the attachment by the Magistrate in 1908. The suit therefore was barred by time and was rightly dismissed. The appeal is dismissed with costs."

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6. In AIR 1935 Madras 967 Ponnu Nadar and others vs. Kumaru Reddiar and others the said Hon'ble Court held that the real cause of action was the date of the order of the Magistrate and limitation started from the date of order and Article 120 of the Limitation Act, 1908 was applicable not the Section 23 of the said Act. The relevant portions of the said Judgement from its pages 970 and 973 read as follows:

> "The question which we have to decide is one of limitation. The dispute has a somewhat long history, and we have to go back to 1900, when the Nadars of Mela Seithalai village at tempted to carry a corpse in procession over the same route. The police reported that there was likely to be resistance on the part of the other caste people, and a breach of the peace, and accordingly the Joint Magistrate, Mr. Vibert, I.C.S.,

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passed an order directing that no organized procession of Shanars or Christians should pass along those streets until a Civil Courts had declared that there was a right to do so. It is not disputed that this order was passed under S. 147, Criminal P. C., although it may be open to some question whether the occasion was really appropriate for an order of this character, nor is it contended that the order was without jurisdiction and therefore a nullity. The contention of the defendants in the present suit is in brief that this order being still in force and no suit having been filed within the prescribed period by the Nadars to establish the right in question the present claim is time-barred. This point has been decided against the plaintiffs by the Courts below and the plaintiffs accordingly appeal. ……..

In the present case it is no doubt arguable that some analogy exists between an order which bars a right to take a procession and an obstruction which bars a right of way. Both in a sense create a state of affairs which continues to exist. What we have to find however is the existence of a "continuing wrong," a wrong, that is, originated by and kept in existence by the opposite party. What in fact appears to have given rise to the Joint Magistrate's order was a police report of an apprehended breach of the peace between the rival factions and all that the opposite party did was to adopt an attitude which gave rise to that apprehension. So far as that attitude itself is concerned, it is impossible to find in it a continuing wrong, nor do we find it easier to hold that when the Joint Magistrate passed the order with a view to prevent a breach of the peace there was a "continuing wrong" caused by the defendants' party. There is nothing to show that it was passed at their instance and even if it were, responsibility for passing it must be taken by the Court and not laid upon the party. Again, once an order was passed, the matter was taken out of the hands of the defendant party, and it lay with the Nadars themselves to establish their right by suit.

From this point of view too we are not disposed to hold that even if there was a continuing wrong the defendant party was responsible for its continuance. Where the applicability of S. 23, Lim. Act, is doubtful the proper course must be, we think, to enforce against the plaintiffs the ordinary principles of limitation, and in the present case to apply art. 47 would be applied to the case of an order under S. 145, Criminal P.C., time

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> being taken to run from the date of the order. Adopting this view, the persons affected by the order of 1900 had a period of six years within which to establish their right, and we are not greatly impressed by the argument that, if the right itself may be indestructible, the remedy ought not to have been permanently lost by their failure to take action within that time. We must hold in agreement with 26 Mad 410(1) that the suit is barred under Art. 120, Limitation Act. The second appeal is dismissed with costs of the contesting respondents. We certify for a fee of Rs. 150 under R. 46, Practitioners' Fees Rules.

7. In AIR 1930 PC 270 (*Mt. Bolo. v. Mt. Koklan)* the said Hon'ble Court held that there can be no "right to sue" untill there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. And in such suit limitation starts from the date of unequivocal threat to infringe the right for the purpose of limitation, the suit is governed under Article 120 of the Limitation Act, 1908. In the instant case, the plaintiffs' averment is that they were dispossessed in the night of 22/23rd December, 1949 and it is also admitted fact that an order of attachment in respect of the suit property was passed on 29th December, 1949 as such at least a clear and unequivocal threat to infringe the right of the plaintiffs to use the disputed structure as Mosque materialized in the night of 22/23rd December, 1949. On that date right to sue was arisen. Relevant paragraph of the said judgment from its page 272 reads as follows:

> "There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by

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> the defendant against whom the suit is instituted. No doubt Mt. Koklan's right to the property arose on the death of Tara Chand, but in the circumstances of this case their Lordships are of opinion that there was no infringement of, or any clear and unequivocal threat to her rights till the year 1922, when the suit, as stated above, was instituted."

8. In AIR 1931 PC 9 (*Annamalai Chettiar & Ors. v. A.M.K.C.T. Muthukaruppan Chettiar & Anr.)* the Hon'ble Privy Council has held that in case of an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted for the purpose of limitation Article 120 of the Limitation Act, 1908 is applied. Relevant paragraph of the said judgment from page 12 reads as follows:

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> "In their Lordships view the case falls under Art. 120, under which the time begins to run when the right to sue accrues. In a recent decision of their Lordships' Board, delivered by Sir Binod Mitter, it is stated, in reference to Art. 120"

9. In AIR 1960 SC 335 (*Rukma Bai. v. Lala Laxminarayan)* the Hon'ble Supreme Court held that where there are successive invasion or denials of right, the right to sue under Article 120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question where that threat effectively invites or jeopardizes the said right. Relevant paragraph 33 of the said judgment reads as follows:

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> "33. The legal position may be briefly stated thus: The right to sue under Art. 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said, right."

10. In AIR 1961 SC 808 (*C. Mohammad yunus. v. Syed Unnissa & Ors.)* the Hon'ble Supreme Court has held that a suit for declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Article 120. Under the said Article there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right. Relevant paragraph 7 of the said judgment reads as follows:

> "7. The surplus income of the institution is distributed by the trustees and the plaintiffs are seeking a declaration of the right to receive the income and also an injunction restraining the defendant from interfering with the exercise of their right. The High Court held that plaintiff No. 1 was at the date of the suit 19 years of age and was entitled to file a suit for enforcement of her right even if the period of limitation had expired during her minority within three years from the date on which she attained majority by virtue of Ss. 6 and 8 of the Indian Limitation Act, Apart from this ground which saves the claim of the first plaintiff alone, a suit for a declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Art. 120 of the Limitation Act and in such a suit the right to sue arises when the cause of the action accrues. The plaintiffs claiming under Fakruddin sued to obtain a declaration of their rights in the institution which was and is in the management of the trustees. The trial judge held that the

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> plaintiffs were not "in enjoyment of the share" of Fakruddin since 1921 and the suit filed by the plaintiffs more than 12 years from the date of Fakruddin's death must be held barred but he did not refer to any specific article in the first schedule of the Limitation Act which barred the suit. It is not shown that the trustees have ever denied or are interested to deny the right of the plaintiffs and defendant No. 2; and if the trustees do not deny their rights, in our view, the suit for declaration of the rights of the heirs of Fakruddin will not be barred under Art. 120 of the Limitation Act merely because the contesting defendant did not recognise that right. The period of six years prescribed by Art. 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right. If the trustees were willing to give a share and on the record of the case it must be assumed that they being trustees appointed under a scheme would be willing to allow the plaintiffs their legitimate rights including a share in the income if under the law they were entitled thereto, mere denial by the defendants of the rights of the plaintiffs and defendant No. 2 will not set the period of limitation running against them."

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11. In AIR 1970 SC 1035 (*Garib Das. v. Munish Abdul Hamid)* the Hon'ble Supreme Court has held that in a suit for recovery of possession after cancellation of sale deed in favour of the defendants on the ground that a previous valid wakf had been created, Article 142 was not applicable and the suit was to be filed within a period of six years that is to say Article 120 was applicable. Relevant paragraph 13 of the said judgment reads as follows:

> "13. The fourth point has no substance inasmuch as Article 142 of the Limitation Act was not applicable to the facts of the case. The suit was filed in 1955 within six years after the death of Tasaduk Hussain who died only a few months after the execution of the documents relied on by the appellants."

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12. In AIR 1973 All 328 (*Jamal Uddin. v. Mosque, Mashakganj)* the Hon'ble Allahabad High Court has held that in a suit for possession, the plaintiff specifically alleged that they had been dispossessed by the defendant before filing of the suit, the suit would be governed by Article 142 and the residuary Article 144 would have no application, then the burden in such a case was on the plaintiffs to prove their possession within 12 years before the suit. That case is distinguishable from this case because in that case no order of attachment was passed by the Magistrate, but in the instant case order of attachment was passed by the Magistrate and, as such, in the instant case Article 120 of the Limitation Act, 1908 is applicable. Relevant paragraph Nos.29 and 31 of the said judgment read as follows:

> "29. The next point that was urged by the counsel for the appellants was that the courts below committed a legal error in applying Art. 144 of the Limitation Act, 1908, to the suit and placing the burden on the defendants to prove their adverse possession for more than twelve years, while the suit on the allegations contained in the plaint clearly fell within the ambit of Art. 142 and the burden was on the plaintiffs to prove their possession within twelve years. This contention also is quite correct. It was clearly alleged by the plaintiffs that they had been dispossessed by the contesting defendants before the filing of the suit. As such, the suit would be governed by Article 142 and the residuary Article 144 will have no application. The courts below have unnecessarily imported into their discussion the requirements of adverse possession and wrongly placed the burden on the defendant to prove those requirements. Now the trial Court has approached the evidence produced by the parties would be evident from the following observation contained in its judgment.
> "The onus of proving adverse possession over the disputed land lies heavily upon the defendants and their possession has to be proved beyond doubt to be

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notorious, exclusive, openly hostile and to the knowledge of the true owner as laid down in AIR 1938 Mad 454."

After a consideration of the documentary and oral evidence produced by the defendants to prove their possession the trial Court has opined that the document on record do not prove the title and possession of the defendants to the hilt in respect of the disputed land. So far as the plaintiffs' evidence is concerned it was disposed of by the trial Court with the following observations :

"..... No doubt, the oral evidence of the plaintiffs about the use of the land for saying the prayers of 'Janaze Ki namaz' and about the letting out of the land in suit for purposes of 'D or Sootana' is equally shaky and inconsistent. But as already pointed out above the plaintiffs have succeeded in proving their title over the disputed land and as such possession would go with the ownership of the land. The defendants cannot be allowed to take advantage of the plaintiffs faulty evidence and it was for them to prove beyond any shadow of doubt that they were actually in possession over the disputed land as owners and that they exercised this right openly hostile to the plaintiffs with the latter's knowledge. Judged in this context, the evidence of the defendant falls short of this requirement."

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31. The learned Civil Judge has noted in his judgment that this land was enclosed by walls which were occasionally washed away during rains but were rebuilt though it was not clear from the Commissioner's report as to when the existing walls had been constructed. It has also been found that the defendant-appellants and their predecessors had set up a barber's stall on this land by placing wooden Takhat on it on which they used to shave their customers and sleep thereon in the night. But they were of the opinion that these acts did not amount to dispossession of the plaintiffs. It was not noticed by them that it is an admitted fact that some windows of the mosque opened towards this land and so any activity of the defendant-appellants or their predecessors on this land could escape the notice of plaintiff No. 2 or his predecessor. According to the plaintiffs' allegations the defendants had simply started digging foundation on this land when they treated this act of theirs as amounting to their dispossession and filed their suit out of which this appeal has arisen. It is therefore clear that if the evidence had been appraised from a correct angle that the burden under Article 142 is on the plaintiffs, a finding could not be recorded in favour of the plaintiffs. On the other hand, from the facts and circumstances of the case, it was

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> evident that the plaintiffs or their predecessors-in-interest had no possession over the land within twelve years prior to the suit. The suit was therefore barred by limitation under Article 142."

13. In AIR 2004 SC 1330 (*Chairman & MD, N.T.P.C. Ltd.. v. M/s. Reshmi Construction Builders & Contractors)* the Hon'ble Apex Court has held that no one can be allowed to approbate and reprobate at the same time. In view of such principle of law, the plaintiffs are estopped from relying on applicability of Article 142 on one hand and Article 144 on the other. Article 142 is applicable for recovery of possession of immovable property when the plaintiff's possession of the property has been dispossessed or had discontinued. Under this Article the burden of proof lies upon the plaintiffs to prove their possession within 12 years before the suit. While Article 144 is a residuary and which is applicable for recovery of possession of immovable property or an interest therein not specifically provided for by the Act and in that case burden of proof lies upon the defendants to prove their possession within 12 years before the suit. Relevant paragraph Nos.36 and 37 of the said judgment read as follows:

> "36. In Halsbury's Laws of England, 4th Edition, Vol. 16 (Reissue) para 957 at page 844 it is stated :
> "On the principle that a person may not approbate and reprobate a special species of estoppel has arisen. The principle that a person may not approbate and reprobate express two propositions :
> (1) That the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile.
> (2) That he will be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct, which he has first

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pursued and with which his subsequent conduct is inconsistent."

37. In American Jurisprudence, 2nd Edition, Volume 28, 1966, pages 677-680 it is stated :

"Estoppel by the acceptance of benefits :

Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction, contract, instrument, regulation which he might have rejected or contested. This doctrine is obviously a branch of the rule against assuming inconsistent positions.

As a general principle, one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the validity or binding effect on him of such contract or conveyance.

This rule has to be applied to do equity and must not be applied in such a manner as to violate the principles of right and good conscience."”

14. In AIR 1983 SC 684 = (1983) 3 SCC 118 (*State of Bihar. v. Radha Krishna Singh)* the Hon’ble Supreme Court has held that the statement made *post litem motam* is inadmissible on the ground the same thing must be in controversy before and after the statement is made. In view of the said judicial pronouncement, the statements of the plaintiffs which have been made in their written statement filed in the year 1950 in O.S. No.1 of 1989 to the effect that last *namaz* was offered on 16th December, 1949 and thereafter no *namaz* was offered is *ante litem motam*. In the same suit same thing is/was in controversy before and after the statement was made. The plea taken in the plaint of the instant suit being O.S.No.4 of 1989 to the effect that the disputed structure was used as Mosque till 22/23rd December, 1949 and on that date last *namaz* was offered is *post litem motam* which is inadmissible. As such on the basis of admission of the plaintiffs they have admitted that they

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discontinued in possession on or after 16th December, 1949 and, as such limitation starts from that day. Relevant paragraph Nos.132 and 138 of the said judgment read as follows:

> "132. Same view was taken by a Full Bench of the Madras High Court in Seethapati Rao Dora v. Venkanna Dora (1922) ILR 45 Mad 332 : (AIR 1922. Mad 71), where Kumaraswami Sastri. J. observed thus :
> "I am of opinion that Section 35 has no application. to, judgments, and a judgment which would not be admissible under Sections 40 to 43 of the Evidence Act would not become relevant merely because it contains a statement as to a fact which is in issue or relevant in a suit between persons who are not parties or privies. Sections 40 to 44 of the Evidence Act deal with the relevancy of judgments in Courts of justice."
>
> 138. In Hari Baksh v. Babu Lal AIR 1924 PC 126, their Lordships observed as follows:
> "It appears to their Lordships that these statements of Bishan Dayal who was then an interested party in the disputes and was then taking a position adverse to Hari Baksh cannot be regarded as evidence in this suit and are inadmissible."

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Admittedly, the plaintiffs filed the suit for declaration in the year 1961 and afterwards beyond the period of limitation and amended the suit after 33 years to cover the case under Article 142 and 144 beyond the period of limitation. Thus, the suit was barred by limitation even at the time of filing the suit and was not cognizable.

I have given anxious thought to the rival submissions of the parties. It transpires that Article 142 provides a limitation of 12 years to file the suit. The date of dispossession or discontinuance of possession as alleged is 23.12.1949 and 29.12.1949. Accordingly the plaintiff's claimed that their case is covered by Article 142 of the Act not at the time of filing the suit but through amendment of 1995. It is

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settled proposition of law that onus under Article 142 lies on the plaintiff and the plaintiff has to prove the assertions. As regards the scope of Article 142 and its applicability the question is mostly one of pleadings. In this context it would be expedient to refer the earliest Privy Council's case in which Article 143 of Act IX of 1871 came in consideration along with Article 144 of the Act. In the case of Bibi Sahodra Versus Rai Jang Bahadur it has been observed that Article 143 (now Article 142) refers to a suit for possession of immovable property, where the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession, and it allows twelve years from the date of the dispossession or discontinuance. But in order to bring the case under that head of schedule, he must show that there has been a possession or discontinuance. This Article was not applied where pleadings distinctly showed that there was no dispossession or discontinuance of the plaintiff. In Karan Singh Versus Bakar Ali Khan, there was a question of the application of Article 145 of Act IX of 1871 (now Art.144), and Sir B.Peacock, pointed out the difference of the provision from the rule formerly in force under Act XIV of 1859. Under the old law, the suit must have been brought within twelve years from the time of the cause of action; but under the Act of 1871, it might be brought within 12 years from the time when the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff.

Thus Article 142 applies to actions of ejectment and where the plaintiffs allege that they have been dispossessed is required to prove

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possession and dispossession within 12 years of the suit. The full bench of Calcutta High Court in Mohd.Ali Khan Versus Khwaja Abdul Gunny and Others (1883) ILR 9 Cal. 744 held that where the suit is for possession, and the cause of dispossession or discontinuance, the plaintiff is bound to prove this event from which limitation is declared to run having, occurred within 12 years of the suit. Thus Article 142 applies only to suits for possession of an immovable property. In all cases in which the applicability of Article 142 or 144 is in controversy it is necessary to scrutinize the pleadings of the plaintiff and the relief sought by him. In a suit governed by Article 142 the question is to be decided where the plaintiff directly and strictly has been in possession within 12 years of the suit and it does not matter if within the period continuous exclusive possession adverse to him has been one or of a trespasser.

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After going through the pleadings of the parties on the basis of arguments advanced by the learned counsel for the plaintiffs when he has relied over Article 144 of the Limitation Act, it has to be seen whether the case comes within the purview of Article 144 or not. Article 144 of Limitation Act, 1908 is the general residuary article for suits for possession of immovable property as is indicated by the words “not hereby otherwise specially provided for”. This article does not apply where the suit is otherwise specially provided for by some other Article referring to possessory suits in Sch.-I of the Limitation Act. It applies to suits for possession, not invariably meaning a suit for actual physical possession. Article 144 contemplates that if on the

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allegations made in the plaint the suit falls under Article 142, there is no justification for taking it out of that article for applying Article 144. Article 144 restricted to suits which are in terms and is in substance based on plaintiff's prior possession which he has lost by dispossession or discontinuance of possession. It is also a settled proposition that where the plaintiff bases his claim on his title with regard his possession or dispossession, the case falls under Article 144.

Article 120 is a residuary article before applying it the Court has to be satisfied that no other provision of the Limitation Act can be applicable. The scheme of Limitation Act provides a general residuary article for all suits not covered by specific article. The residuary article is applicable to every variety of suits not otherwise provided for. It should be applied only as a last resort, if no other article is applicable. The function of the residuary article is to provide for cases, which could not be covered by the exact words used in both the columns one & three of an Article. As a general principle of construction of statute, if there be two articles which may cover the case, the one, however, more general and the other more particular or specific, the more particular and specific article ought to be regarded as the one governing the case. The Rule is well established that if there is no specific or less general article applicable, this omnibus article applies. There are numerous decisions to the effect that, unless it is clear that no other specific article is applicable, the Courts ought not to apply Article 120 of the Limitation Act. Article 120 comes into operation

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only when no other article is applicable to a suit. It should never be invoked if there is any other article in the schedule which upon reasonable interpretation of its language covers the particular suit with which the Court is dealing. Wherever a specific article is shown and applicable in all its bearing, Article 120 would apply. If the plaintiff for any reason wishes to avoid the application of Article 120, it is for him to show which other article fits his claim. Where an attempt is made to secure a longer period of limitation under this article by drafting the plaint so as to evade a particular provision of the Limitation Act, with a lessor prescribed period. It is for the plaintiff to establish that Article 120, 142 or Article 144 fits his claim. In this context, undoubtedly regard should be had to the essence of the suit rather than to the particular colouring sought to be put upon it by the plaintiff.

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It is not disputed between the parties that the property was attached by the City Magistrate, Faizabad/Ayodhya on 29.12.1949. After invoking his powers under Section 145 Cr.P.C. he attached the property on 29.12.1949 and handed over the possession of the suit property to Priya Dutt Ram, defendant no.9 who assumed the charge of the same on January 5, 1950. The plaintiffs have sought the relief of declaration, delivery of possession and further prayed for a command to Receiver to hand over the property in dispute described in Schedule-A of the plaint, by removing the unauthorized structure existed thereon. In this context, it transpires that on the basis of the pleading of the parties, learned counsel for the plaintiffs have simply

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pointed out that the case falls either within the purview of Article 142 or 144, accordingly, the suit is within time. On the contrary, defendants contested the case on the ground that the suit is barred by limitation. Sri P.N. Misra, Advocate, has urged that Article 142 and 144 of Limitation Act, 1908 have no application in this case and the case falls within the purview of Article 120 of the Limitation Act for which the period of limitation is six years. Thus, from the date of attachment of the property, the suit ought to have been filed within six years and not within 12 years as claimed by the plaintiff.

In ***AIR 1936 Oudh 387 Partap Bahadur Singh Vs. Jagatjit Singh*** where this Court held that where an order under Section 145 Criminal Procedure Code, 1898 was made by the Magistrate for attachment of the disputed property and the Tahsildar was appointed as Receiver of the property, the possession of the Receiver was in the eye of the law was the possession of the true owner therefore, in such suit Article 120 of the Limitation Act, 1908 is applicable and a suit brought within six years of the last invasion is in time. In the circumstances, the plaintiff could undoubtedly maintain a suit for a mere declaration of his title and it was not necessary for him to institute a suit for possession. Thus, with no stretch of imagination it may be deem to be suit for possession for immovable property. Accordingly, Article 142 has no application.

In ***AIR 1942 PC 47 Raja Rajgan Maharaja Jagatjit Singh Vs. Raja Partab Bahadur Singh.*** The said Hon'ble Court has upheld the ratio of law as laid down in the case of Partap Bahadur Singh (supra),

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the Privy Council affirmed that in a suit for a declaration of plaintiff's title to the land in possession of the Receiver under attachment in proceeding under Section 145 of the Criminal Procedure Code, 1898 by virtue of the Magistrate's Order, Article 142 and 144, the Limitation Act, 1908 do not apply and the sit is governed by Article 120 of the Limitation Act.

Further in ***ILR 26 Mad 410 Rajah of Venkatagiri vs. Isakapalli Subbiah and others.*** In this case certain lands were attached by a Magistrate, in 1886, under Section 146 of the Code of Criminal Procedure, in consequence of disputes relating to their possession. The Magistrate continued in possession of the lands, and realised some income from them. The suit was instituted by rival claimants for realization of the amount. On the question of limitation being raised the Madras High Court took a view that a suit for declaration of immovable property and the profits therefrom, they were governed by Article 120 of of Schedule II to the Limitation Act and the case does not fall within the ambit of Article 142 and 144 of the Limitation Act.

In ***AIR 1925 Nagpur 236, Yeknath Versus Bahia*** wherein the Magistrate attached the land under Section 146 and appointed a Receiver thereof, and where a suit is brought by the plaintiff for a declaration that he was the owner of the land Article 120 of the Limitation Act applies and the period of limitation starts from the date of the order of the attachment.

In ***AIR 1935 Madras 967, Ponnu Nadar and others Versus Kumaru Reddiar and others***, Madras High Court held that the real

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cause of action was the date of the order of the Magistrate and limitation started from the date of order. There is no other article which can be applied in such a case and accordingly the case falls within the ambit of Article 120 of the Limitation Act and not u/s 23 of the Limitation Act.

In ***AIR 1930 PC 270 (Mt. Bolo v. Mt. Koklan)*** Hon'ble Court held that there can be right to sue until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted and in such suit limitation starts from the date of unequivocal threat to infringe the right for the purpose of limitation and the suit is governed by Article 120 of the Limitation Act. On behalf of the defendants, it has been urged that this case has full application in the instant case. According to plaintiffs, they were dispossessed in the night of 22/23rd December, 1949. It is also admitted for the plaintiff that an order of attachment in respect of the suit property was passed on 29.12.1949, as such at least a clear and unequivocal threat to infringe the right of the plaintiff's to use the disputed structure as Mosque materialized in the night of 22/23rd December, 1949 and on that date the right to sue was arisen. In ***AIR 1931 PC 9 (Annamalai Chettiar & Ors. v. A.M.K.C.T. Muthukaruppan Chettiar & Anr.),*** the Privy Council has held that in case of an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat Article 120 of the Limitation Act would apply. The Hon'ble Apex Court also considered the scope

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of Article 120 in ***AIR 1960 SC 335 (Rukma Bai v. Lala Laxminarayan)*** and held that where there are successive invasion or denials of right, the right to sue under Article 120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. As such in this case, the right to sue under Article 120 of the Limitation Act accrues. The Hon'ble Apex Court in ***AIR 1961 SC 808 (C. Mohammad Yunus v. Syed Unnissa & Ors.)*** held that a suit for declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Article 120. In ***AIR 1970 SC 1035 (Garib Das v. Munish Abdul Hamid)*** the Apex Court further held that in a suit for recovery of possession after cancellation of sale deed in favour of the defendants on the ground that a previous valid wakif had been created only Article 120 would apply and Article 142 in such a case is not applicable. In ***AIR 2004 SC 1330 (Chairman & MD, N.T.P.C. Ltd., v. M/s Reshmi Construction Builders & Contractors)*** the Hon'ble Apex Court held that no one can be allowed to approbate and reprobate at the same time. Thus, in this case the plaintiffs are estopped from relying on applicability of Article 142 on one hand and Article 144 on the other hand. Article 142 is applicable for recovery of possession of immovable property when the plaintiffs were dispossessed or had discontinued from the property in suit while under Article 144 a residuary which is applicable for recovery of the above property or an interest therein not specifically provided by the Act. The case of the plaintiffs, according to the defendants, does not fall

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within the purview of Article 142 or 144 of the Limitation Act.

Sri M.M.Pandey, learned counsel for the opposite parties has urged that in view of the plaint averments the case does not fall within the purview of Article 142 or Article 144 of Indian Limitation Act. The case falls within the purview of Article 120 of Limitation Act. It has further been submitted that after the attachment of the property, the disputed property was in custodia legis and the Receiver was holding the possession on behalf of the parties whom the Magistrate finds to have been in possession. Thus the Magistrate after the attachment was holding the property through the Receiver and accordingly the matter falls within the purview of Article 120 of the Act as there is no other provision under the Limitation Act. Accordingly, Article 120 has the application. In view of the submissions of Learned counsel Sri M.M. Pandey, there is no doubt that the property under attachment under Section 145 is in custodia legis. Thus the relief of declaration is required in this case which is covered under Article 120 of the Limitation Act. Sri M.M.Pandey has further relied upon the case reported in ***2008 SC 363, C.Natarajan Versus Ashim Bai and another*** according to him the view of the Hon'ble Apex Court on the subject is that it was obligatory on the part of the plaintiffs to aver and plead that they not only have title over the property but also are in possession of the same for a period of more than 12 years in consonance of terms of Article 142 and 144 of the Limitation Act. In this case after the attachment, Article 142 or 144 of the Limitation Act have no application. He has further relied over the

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case reported in (***1995) 1 SCC 311, Shyam Sunder Prasad and others Versus Rajpal Singh and another*** wherein the Hon'ble Apex Court held that the plaintiff before claiming any relief under Article 142 and 142 of the Limitation Act must prove not only his title to the property but also that he was dispossessed or had discontinued his possession within 12 years from the date of filing of the suit. In this case, the property was attached by the Magistrate. Consequently the question of dispossession does not arise. According to the learned Advocate, Article 142 and 144 of the Limitation have no application in this case. Further reliance has been placed on ***AIR 1922 Calcutta 419, Panna Lal Biswas Versus Panchu Raidas*** in which it has been held that after attachment under Section 146 Cr.P.C., suit for recovery of possession should be treated as one for declaration and only Article 120 applies. Reliance has further been placed on ***AIR 1959 SC 798, Balakrishna Versus Shree D.M.Sansthan*** stating that in a case of declaration only Article 120 applies. Further reliance has been placed on ***AIR 1928 Oudh 155, Abdul Halim Khan Versus Raja Saadat Ali Khan & others*** wherein it has been held that possession against a person not entitled to claim possession is not adverse. Lastly reliance has been placed on ***AIR 1916 Calcutta 751, Brojendra Kishore Roy Chawdhury & others Versus Bharat Chandra Roy and others*** wherein when the property was attached under Section 146 Cr.P.C., Article 120 was held to be applicable and it was a continuing wrong.

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I have given anxious thought to the rival submissions of the parties. Article 120 of the Limitation Act corresponds to Article 113 of

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Limitation Act, 1963 but only the period of limitation has been reduced to three years from six years. The scheme of Limitation Act is to provide a general residuary article for all suits not covered by a specific article. It is often spoken of as the omnibus article. Article 120 was final and residuary article like the present article 113 and includes all suits not specially provided for i.e. all action except those which are specifically provided in the statute are governed by Article 113, which corresponds to Article 120 of the Act. Admittedly, the plaintiff has filed the declaratory suit after the attachment of the suit by the Magistrate. He has brought the suit to recover the property which is custodia legis. It is a settled law that such a suit is considered as a suit for declaration as there is no continuing wrong. Accordingly, if the suit is brought for declaration after six years from the attachment after applying Article 120, it has to be held to be barred by Limitation. Article 120 (now Article 113) leaves no room for doubt that after attachment if a Magistrate appoints a Receiver and the parties referred to civil court for determination of their rights, such a suit for declaration after the attachment by the Magistrate falls under Article 120 of the Old Act (now under Article 113) and after the date of attachment by the Magistrate no fresh period of limitation began to run under Section 22, Limitation Act, there being no continuing wrong in such a case vide AIR 1942 PC 47 Raja Rajgan Maharaja Jagatjit Singh Vs. Raja Partab Bahadur Singh. For the purpose of limitation, possession during the period during which a disputed property is kept under attachment under Section 145 (4) Cr.P.C., is in law the

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possession of the party whom the Magistrate as a result of the proceeding finally declares to be entitled to retain possession as the party who was in possession on the date of the proceeding.

Thus, in view of the decision in the case of AIR 1942 PC 47 (supra) the property in the hands of Receiver in the proceedings under Section 145 Cr.P.C. in a suit for declaration of title before passing of the order of the possession shall come within the purview of Article 120 and Article 142 and Article 144 of the Act has no application in that case. Accordingly, admittedly the property was attached in this case in a proceeding under Section 145 Cr.P.C. Thereafter the instant suit has been filed to establish his right by the plaintiff and accordingly it has to be covered by Article 120 of the Limitation Act.

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In view of the rival submissions of the parties, I am of the view that the object of the proceedings under Section 145 Cr.P.C. being to determine as to which party was in possession on the date of the proceedings and to declare such party to be entitled to retain possession, the possession of the Court during the attachment in the course of the proceedings ensures for the benefit of such parties in whose favour such a declaration has to be made. Accordingly, Article 142 and 144 of the Limitation Act have no application in this case. Moreover Article 142 applies only where the plaintiff while in possession has been dispossessed or discontinued possession. In this case since the property was attached, the question of dispossession does not arise. The reference of dispossession by the plaintiffs after the attachment and to file thereafter a suit for declaration of the right

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to property is not a suit for possession in case of custodia legis. Article 142 and 144 do not apply where the relief of possession is not the primary relief claimed. Here in this case the primary relief is of declaration. Consequently, Article 120 of the Limitation Act would apply.

**Admittedly, the property in suit was attached in criminal proceedings u/s 145 Cr.P.C. The plaintiffs have brought the suit for declaration of their title in the year 1961 and for the recovery of possession over the property in suit was claimed in the year 1995. Thus at the time of filing of the suit it was barred by time.**

In this context it would be relevant to refer the view of Full Bench of Kerala High Court in the case of ***Pappy Amma vs. Probhakaran AIR 1972 Ker 1 (FB)*** wherein it has been held that the order passed by the Magistrate under Section 145 Cr.P.C. is only a police order and is in no sense final. The property concerned may be attached and placed in charge of a Receiver. Such possession of the Receiver appointed by the Criminal Court merely passes the property in custodia legis and is not dispossession within the meaning of this article. Consequently, the contention of the learned counsel for the plaintiff that they were dispossessed does not arise. Accordingly, Article 142 and 144 have no effect to the case and with full force Article 120 is applicable. Therefore, a suit after more than six years of the attachment, if filed, for declaration is barred by Article 120 of the Limitation Act as held in the case of Ambica Prasad vs. R.Iqbal AIR 1966 SC 605.

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Vis-a-vis the sequence of events and the law referred to above which leaves no room for doubt that the instant suit for declaration of title to the property attached under Code of Criminal Procedure is governed by Article 120 and not by Articles 142 and 144 of the Limitation Act. It is also settled proposition of law that after the attachment of the property under Section 145 Cr.P.C. and once a Receiver is appointed in respect of it, it passes into legal custody for the benefit of the true owner as the parties being referred to Civil Court for determination of their rights. In a suit falling under Article 120 together with Article 113 of the Limitation Act, the right to sue accrues when the attachment is made and not by any wrongful act of the defendant. Consequently, after the date of attachment by the Magistrate no fresh period of limitation began to run under Section 123 of the Limitation Act. There being no continuing wrong in such a case and it does not amount to dispossession or discontinuance of his possession as the property is under anticipation of an order, in which the right of title is to be declared by a competent court and possession of the Court should ensure for the benefit of a party in whose favour the Court would make a such declaration. Accordingly, the instant suit which has been filed after six years of the attachment is definitely barred by Limitation.

The Hon'ble Apex Court in ***AIR 1990 SC 10, S.S. Rathore vs. State of M.P.,*** held that Article 113 of the Act corresponding to Section 120 of the Act is a general one and would apply to suits to which no other article in the schedule applies. Thus, the statute of limitation Act

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provides a time limit for all suits conceivable.

It is the clear contention of the defendants that the plaintiffs' suit is barred by limitation being a suit for right to worship and not a suit for immovable property as is being made out by the plaintiff and therefore is governed by Article 120 of the Limitation Act, 1908 and not Articles 144 or 142 of the Limitation Act, 1908 therefore suit can only be filed within 6 years.

Under the above-mentioned circumstances it is very apparent that the suit of the plaintiffs is actually a suit for declaration which is governed by Art.120 of the Limitation Act, 1908 and not governed by Art. 142 or 144 of the said Limitation Act.

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It is an admitted fact that the Muslims had not been in possession of the said property from 22nd / 23rd December, 1949 and, therefore, any suit which had to be filed would have to be filed within 6 years and not within 12 years being under Art. 120. The plaintiffs filed the suit on18th December, 1961 much beyond the limitation period of 6 years. The suit, therefore, is clearly barred by limitation.

Reliance has been placed on the following cases;

**AIR 1929 Madras 313 – Raja Ramaswamy Vs. Govinda Ammal, Para 19 to 25** *states that "It is not the form of the reliefs claimed which determines the character of the suit for the purposes of ascertaining under which Article of the Limitation Act the suit falls."*

"19. As regards the first point, it has been well-settled by several decisions of their Lordships of the Privy Council that

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it is not the form of the relief claimed which determines the real character of the suit for the purpose of ascertaining under which article of the Limitation Act the suit falls. Though the relief claimed in the suit is possession of immovable property, yet if the property sued for is held by the contesting defendant under a sale or other transfer which is not void, but only voidable, and he cannot obtain possession without the transfer being set aside, the suit must be regarded as one brought to set aside the transfer though no relief in those terms is prayed for, but the prayer is only for possession of the property. It has been so held with reference to Article 12, Limitation Act, where the defendant is in possession under a sale held in execution of a decree of a Court and also as to Article 91 where the instrument under which the defendant claims is one which is prima facie binding on the plaintiff. The same view was also taken with regard to the article in the old Limitation Act relating to suits brought to set aside an adoption. Their Lordships held in Jagadamaba Chowdhrani v. Dakhina Mohun Roy (1886) 13 Cal. 308 that even when the plaintiff did not in terms sue to set aside an adoption but only to recover possession of property on his prima facie title as reversionary heir he was bound to bring his suit within the time allowed by Article 129, Act 9 of 1871, provided the defendant was in possession by virtue of an apparent adoption; and the

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plaintiff was not at liberty to bring his suit within the time allowed to reversionary heirs by Article 142 of that Act. As regards Article 12, Lim. Act, which relates to suits to set aside a sale in execution of a decree of a civil Court the leading case is Mallkarjun v Narhari (1901) 25 Bom. 337 . Their Lordships in that case held that though the suit was brought for redemption of a mortgage of immovable property for which the period of limitation is 60 years, yet as the defendant the mortgagee had purchased the equity of redemption in a judicial sale which was operative against the plaintiff, though liable to be set aside for due cause, the suit is governed by Article 12 and must be brought within the period of one year prescribed by that article. At p. 350 after referring to the case in Jagadamba Chaudrani v. Dakhina Mohun Roy Chaudhri, as supporting that view their Lordships observe with regard to that case:

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There was difficulty in the case because the expression "set aside an adoption" is inaccurate. An adoption cannot be set aside though its validity may be impeached and in fact the language was altered in 1877 before the appeal was heard.

In **AIR 1969 SC 843 – Pierce Leslie & Co. Ltd. vs. Miss Violet Ouchterlony Wapshare, Para 7:** The plaintiffs claim declaratory reliefs, a decree vesting or re-transferring the properties to the old company or to the plaintiffs and

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accounts. Such a suit is governed by Article 120. Even if the suit is treated as one for recovery of possession of properties it would be governed by Art. 120 and not by Art. 144. The old company could not ask for recovery of the property until they obtained a re-conveyance from the new company."

"Para 7. The next question is with regard to limitation. The conveyances in favour of the new company were executed on January 14, 1939, and May 15, 1939. Simultaneously with the execution of the conveyances the new company entered into possession of the properties. Even before that date by January 10, 1938, the appellant-company had taken possession of the properties. The suit was filed on December 21, 1950, when the Indian Limitation Act, 1908, was in force. The plaintiffs cannot claim relief on the ground of fraud and, consequently, Article 95 has no application. Section 10 does not apply as the properties are not vested in the new company for the specific purpose of making them over to the old company or to the plaintiffs. Article 144 does not apply for several reasons. In the plaint there is no prayer for recovery of possession. The plaintiffs claim declaratory reliefs, a decree vesting or re-transferring the properties to the old company or to the plaintiffs and accounts. Such a suit is governed by Article 120. The High Court passed a decree for money and

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not for recovery of immovable properties. A suit for such a relief would be governed by Article 120. Even if the suit is treated as one for recovery of possession of the properties, it would be governed by Article 120 and not by Article 144. The old company could not ask for recovery of the properties until they obtained a reconveyance from the new company. The cause of action for this relief arose in 1939 when the properties were conveyed to the new company. A suit for this relief was barred under Article 120 on the expiry of six years. After the expiry of this period the old company could not file a suit for recovery of possession. In Chhatra Kumari Devi v. Mohan Bikram Shah the Privy Council held that in a case where the property was not held by the trustee for the specific purpose of making it over to the beneficiary and the trust did not fall within Section 10, a suit by the beneficiary claiming recovery of possession from the trustee was governed by Article 120. Sir George Lowndes said:

> " The trustee is, in their Lordships' opinion, the 'owner' of the trust property, the right of the beneficiary being in a proper case to call upon the trustee to convey to him. The enforcement of this right would, their Lordships think, be barred after six years under Article 120 of the Limitation Act, and if the beneficiary has allowed this period to expire without suing, he cannot

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afterwards file a possessory suit, as until conveyance he is not the owner."

It follows that the suit is barred by limitation.

In **(1888) ILR 15 Cal 58 – Janki Kunwar Vs. Ajit Singh, Para 8:** *"It was not a suit for possession of the immovable property to which this limitation of 12 years is applicable. The immovable property could not have been recovered until the deed of sale had been set aside, and it was necessary to bring a suit to set aside the deed upon payment of what had been advanced..."*

***8.*** Both the lower Courts seem to have treated this question in a manner which cannot be regarded as satisfactory. The District Judge, having stated the previous proceedings, says: "Under these circumstances I think it but just that she" that is, the present appellant- "should be allowed to count her limitation from the 31st of May 1881, the date on which the District Judge decided her husband had been defrauded in the cases then before him." He takes no notice of the fact that Bijai was also a party to the suit, and that his knowledge was a material matter to be regarded, and he fixes, apparently in a somewhat arbitrary manner, on the 31st of May 1881, the date of the decision of the District Judge in the former suits, as that from which the period of limitation would run. That ground cannot be

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supported. The District Judge has not directed his mind to the real question, which is when the circumstances that are said to constitute the fraud became known to Bijai. Then the Judical Commissioner deals with the case in a different way. He says the suit is essentially a suit for the possession of immoveable property, and as such falls within the 12 years' limitation. Now he is clearly wrong there. It was not a suit for the possession of immoveable property in the sense to which this limitation of 12 years is applicable. The immoveable property could not have been recovered until the deed of sale had been set aside, and it was necessary to bring a suit to set aside the deed upon payment of what had been advanced, namely, the Rs. 1,25,000. Therefore there has been on the part of the lower Courts a misapprehension of the law of limitation in this case. Their Lordships are clearly of opinion that the suit falls within Article. 91 of the Act XV of 1877, and is therefore barred.

In **AIR 1937 Cal 500 – Jafar Ali Khan & Ors. Vs. Nasimannessa Bibi; para 7 "**It may be taken to be established now that where there is a suit for recovery of possession there is an obstacle in the way of granting relief in the shape of gift or settlement, the plaintiff cannot get any relief until such instrument is set aside; and asset has been said, if it is too late for setting aside the document suit for possession would also fail."

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“14. The question of limitation arises for consideration in the case. In view of the conclusion arrived at by the Judge in the Court below that there was delivery of possession of the property covered by the deed of settlement (Nirupanpatra) executed by Saheb Jan Khan, it could not, in our judgment, be said that the plaintiff had no knowledge of the document she wanted to avoid. The Hebanama executed by her on the same date as the deed of settlement executed by Saheb Jan, contained a recital to this effect: "I have given my consent to the deed of settlement executed (this day) by my husband Saheb Jan Khan in your favour (that is, in favour of Jafar Ali Khan, defendant 1 in the suit) and I am bound by that." We have in the case giving rise to Appeal from Original Decree No. 43 of 1934, held that the Hebanama could not be avoided as the document was executed by the plaintiff with full knowledge of its contents. Our decision therefore must be, and it is, that the plaintiff had knowledge of the deed of settlement at the time of the execution of the Hebanama and of the deed of settlement executed on the same date-one by the plaintiff herself and the other by her husband Saheb Jan Khan, on 27th January 1929. With reference to the application of Article 91, Schedule 1, Lim. Act, we have given our decision in our judgment in the connected Appeal No. 43, and for the reasons stated in that judgment, Article 142, Sch. 1, Lim.

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Act, cannot apply to this case. The plaintiff's suit was barred by limitation and it must be dismissed on that ground."

In view of the discussions, referred to above, it transpires that the claim of the plaintiffs is governed by Article 120 of the Limitation Act, 1908 and not by Articles 142 and 144 of the Limitation Act,1908. Therefore, the suit could only be filed within 6 years, therefore, the suit is barred by limitation. Issue No.3 is decided against the plaintiffs and in favour of the defendants.

**ISSUE NO. 5(a)**

**Are the Defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff' No. 1 in view of provision of 5(3) of U.P. Act 13 of 1936?**

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**FINDINGS:**

This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge.

**ISSUE NO. 5(b)**

**Has the said Act no application to the right of Hindus in general and defendants in particular to the right of their worship?**

**FINDINGS:**

It has been urged on behalf of the defendants that U.P. Act No. 13 of 1936 United Provinces of Waqf Act, 1936 has no application to the rights of Hindus in general and defendants in particular and the rights of Hindus of worship is not affected by it. Muslim side has not advanced any argument against the aforesaid submissions. It

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transpires from the bare reading of the Act that it was enacted with a view that it should apply to all the Waqfs whether created before or after commencement of this Act. It does not affect the right of worship of Hindus. It does not deal with the right of Hindus about their worship. Consequently, U.P. Act No. 13 of 1936 has no application to the right of Hindus about their worship. Issue No. 5(b) is decided against the plaintiffs and in favour of the defendants.

**ISSUE NO. 5(c)**

**Were the proceedings under the said Act conclusive?**

**FINDINGS:**

This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge.

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**ISSUE NO. 5(d)**

**Are the said provision of Act XIII of 1936 ultra vires as alleged in written statement?**

**FINDINGS:**

This issue was not pressed by counsel for the defendants, hence not answered by the learned Civil Judge, vide his order dated 21.4.1966.

**ISSUES NO. 5(e) and 5(f)**

**5(e). Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no. 17 to the effect that, "No valid notification under Section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the**

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**property in dispute", the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?**

**5(f). Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?**

**FINDINGS:**

Both issues are connected with each other and conveniently be disposed of at one place. On 21.4.1966, learned Civil Judge has already decided issue no.17 that no valid notification was made in respect of the property in dispute. The relevant extract of the said order is reproduced as under:-

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"In view of the facts and reasons discussed above, I hold under issue no. 17 that no valid notification under Section 5(1) of U.P. Muslim Waqf Act No. XIII of 1936 was ever made so far relating to the specific disputed property of the present suits at hand. The alleged Government Gazette Notification Paper No.243/C read with the list paper No.243/1A do not comply with the requirements of a valid notification in the eyes of law and equity as I have already discussed above. The aforesaid two papers, therefore, serve no useful purpose to the plaintiffs of the leading case."

In view of my above findings I hold that the bar provided in Section 5 (3) of U.P. Act No. XIII of 1936 does not hit the defence of the defendants of the leading case and their suits which are connected with the aforesaid leading case. Issue No. 17 is answered

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accordingly."

In view of the aforesaid findings, the attention of this Court was invited to this effect that the Waqf was registered under the Muslim Waqf Act No. XIII of 1936. Without any valid notification and registration the Waqf is not in accordance with the provisions of the Act of under Section 5(1) of the Muslim Waqf Act (No. XIII of 1936) and as such even for want of pleadings Sunni Central Board of Waqf has no right to maintain the present suit in view of Section 87(1) of the Muslim Waqf Act, 1995. Learned counsel for the plaintiffs has refuted the aforesaid argument and has urged that Section 87 of the Waqf Act, 1995 is not applicable in the instant case. Plea of registration of Waqf has not been denied and there being no allegation about the non-registration of the Waqf, no issue was framed in this respect. As such Section 87 cannot be invited that there being any factual foundation for such plea. Thus to resolve the controversy it is necessary to go through the United Provinces Muslim Waqfs Act, 1936. Section 5 reads as under:-

> *"5. Commissioner's report:-(1) The local Government shall forward a copy of the Commissioner's report to each of the Central Boards constituted under this Act. Each Central Board shall as soon as possible notify in the Gazette the waqfs relating to the particular sect to which, according to such report, the provisions of this Act apply.*
>
> *2. The mutwalli of a waqf or any person interested in a waqf or a Central Board may bring a suit in a civil court of competent jurisdiction for a declaration that any transaction held by the Commissioner of waqfs to be a waqf*

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*is not a waqf, or any transaction held or assumed by him not to be a waqf is a waqf, or that a waqf held by him to pertain to a particular sect does not belong to that sect, or that any waqf reported by such Commissioner as being subject to the provisions of this Act is exempted under section 2, or that any waqf held by him to be so exempted is subject to this Act:*

*Provided that no such suit shall be instituted by a Central Board after more than two years of the receipt of the report of the Commissioner of waqfs, and by a mutawalli or person interested in a waqf after more than one year of the notification referred to in sub clause (1):*

*Provided also that no proceedings under this Act in respect of any waqf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.*

*3. Subject to the final result of any suit instituted under sub section (2) the report of the Commissioner of waqfs shall be final and conclusive.*

*4. The Commissioner of waqfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith under colour of this Act."*

The parties have failed to produce any notification under Section 5(1) of the Muslim Waqf Act, 1936 before this Court. Consequently, the finding recorded by civil judge on 21.4.1966 is factually correct. Thus, without any valid notification under Section 5(1) of the Muslim Act, 1936 the property in suit was registered as Waqf. It is also a settled proposition of law 'if a thing has to be done, it should be done in accordance with law or otherwise not'. Thus the registration of the Waqf was required to be done only in accordance with the provisions of U.P. Muslim Act, 1936. Thus without any notification under Section 5(1) legally it was not possible to register

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the property in suit as a Waqf by the Board. Thus in this case since there is no Gazette notification under Section 5(1). Accordingly, the registration of the property as Waqf property cannot be deemed to be legal registration under the Act. There is nothing in the Act which overcomes the provision of Section 5(1) of the Act. There is no provision under the Act to dispense with the requirement of Section 5(1) of the Waqf Act, 1936. Thus the registration is made in contravention of the provisions of Section 5(1) of the Act, 1936 and on the basis of registration plaintiffs cannot successfully plead before this Court that Section 87(1) of Waqf Act, 1935 (Act No. 43 of 1995) has no application in this case.

Let me understand the provisions of Section 87 of Waqf Act, 1995 which reads as under:-

**"87. Bar to the enforcement of right on behalf unregistered wakfs.—** (1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-Section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

Shri P.N. Misra, Advocate has submitted that in view of findings of the learned Civil Judge dated 21.4.1966 **Sunni Central Board of Waqf has no right to maintain the present suit** and the present suit is liable to be dismissed. His submissions are as under:-

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INSTANT SUIT IS BARRED BY SECTION 87(1) OF THE WAQFS ACT, 1995:

1. In view of the findings recorded by the Learned Civil Judge on 21.04.1966 in deciding the issue no. 17 to the effect that. "No valid notification under Section 5(1) of the Muslim Act (No. XIII of 1936) was ever made in respect of the property in dispute" ; **the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit and the present suit is liable to be dismissed under Section 87 of the Waqf Act, 1995** (Act No. 43 of 1995) which reads as follows :

> "**87. Bar to the enforcement of right on behalf unregistered wakfs.-**
>
> (1) Notwithstanding anything contained in any other law for the time being in force no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.
>
> (2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of

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any wakf which has not been registered in accordance with the provisions of this Act,

2. As the said Section 87(1) of the Wakf Act, 1995 contains a non-obstante clause which shall not only prevail over the contract but also other laws in view of the judicial pronouncement made in the Union of India & Ors Vs. SICOM Ltd. & Anr. Reported in 2009 AIR SCW 635 as also in 2009 CLC 91 (Supreme Court) relevant portion of paragraph 3 whereof (at page SCW 638) reads as follows:

"3. Mr. Shekhar Naphade, Learned senior counsel appearing on behalf of the respondent, on the other hand, submitted that principle that a crown debt prevails over other debts is confined only to the unsecured ones as secured debts will always prevail over a crown debt. Our attention in this behalf has been drawn to the non obstante clause contained in Section 56 of the 1951 Act. It was furthermore contended that for the self-same reason Section 529A in the Companies Act was inserted in terms by way of special provisions creating charge over the property and some of the State Governments also amended their Sales Tax Laws incorporating such a provision. The Central Government also with that view, amended the Employees' Provident Funds and (Miscellaneous) Provisions Act, 1952 and employees' State Insurance Act, 1948.

The learned counsel appears to be right."

3. In State Bank of India Vs. Official Liquidator of Commercial Ahmedabad Mills Co. & ors. Reported in 2009 CLC 73 (Gujrat High Court) it has also been held that a non-obstante clause would override

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all other provisions of the Act as well as any other law in force in the said date. Paragraphs 13, 14, and 17 of the said judgement read as follows:

> **"13.** Section 529-A of the Act opens with a non obstante clause and stipulates that notwithstanding anything contained in any other provisions of the Act or any other law for the time being in force in the winding up of a Company, workers' dues and debts due to secured creditors, shall rank pari passu and shall be paid in priority to all other debts. Therefore, the said provision has an overriding effect not only qua the provisions of the Act but also any other law for the time being in force. Section 529-A of the Act was inserted on the statute book vide Act No. 35 of 1985 with effect from 24.5.1985 and, therefore, would override all other provisions of the Act as well as any other law in force on the said date.
>
> **14.** Therefore, prima facie, provisions of Section 42 of ULC Act cannot claim primacy over provisions of Section 529-A of the Act considering the fact that ULC Act was brought on statute in 1976 while Section 529-A of the Act is a subsequent legislation brought on statute book in 1985. Possibly this aspect of the matter, may not have been brought to the notice of the Company Court. However, the jurisdiction vested in a Company Court is a special jurisdiction and considering the true scope and object of the provisions of Section 529-A of the Act, Official Liquidator functions under the directions of the

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Company Court and acts for and on behalf of the company Court, primarily to ensure that the interest of workmen of a company (in liquidation) do not go unrepresented and are taken care of. This salutary feature of functioning of Company Court could not have been overlooked by the Company Court while determining the issue in question.

**17.** Thus, what is the effect of provisions of Section 529-A of the Act have to be necessarily considered by the Company Court in every matter where the properties/assets of the Company (in liquidation) are claimed by a person other than secured creditors and workmen. The Company Court could not have decided the matter as if the issue was only a dispute between the land owner and the competent authority under the ULC Act. It is equally well settled in law that though procedural compliance is required to be established in justification of an action, yet at the same time, mere form over substance cannot be preferred."

4. The bar to the enforcement of right on behalf of the unregistered wakfs imposed under Section 87(1) of the Wakf Act, 1995 is clearly reasonable and in the interest of the general public in view of the judicial pronouncement of the Hon'ble Supreme court of India in bhandar District Central Cooperative Bank Ltd. & ors. Vs. State of Maharashtra & Anr. Reported in 1993 Supp (3) SCC 259 wherein the provisions of Section 145 of Maharashtra Cooperative Societies Act, 1996 which barred an unregistered society from using the word 'co-operative' in its name or title, was held reasonable and in the interest

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of the general public as the purpose of said Section 145 was to ensure that the general public had adequate notice that a society they might have to deal with, was unregistered. Paragraph 3 of the said judgement reads as follows:

> **"3**. According to the case of the petitioners, the designated officers are entitled to manage the affairs of the co-operative societies as entrusted to them by the members, without any interference by the legislature, and the restrictions imposed by the impugned provisions are violative of their fundamental rights as protected by Articles 19(1)(c) and (g) of the Constitution. The members of a co-operative society, according to the argument, are entitled to conduct the affairs of the society in accordance to their choice and any interference in this is uncalled for. We were not able to fully appreciate this argument, and so we pointed out to Mr. Anil B. Divan, the learned Counsel for the petitioners (that is, the appellants in Civil Appeal No. 2706/88), that there was no impediment in the running of the societies, and the impugned provisions are attracted only in such cases where the societies are desirous of being registered under the Act with a view to take advantage of the provisions thereunder. The Act does not place any restriction on the formation of any association or union for carrying on any trade or business, nor does it require such unions or societies to be registered under the Act. The petitioner-societies were free to proceed as they wished (of course, they could 'not be allowed to

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contravene any law) without being subjected to any condition placed by the Act, but in that case they would not be entitled to the benefits of the Act. Mr. Divan appreciating the situation, explained his point by saying that as a consequence of Section 145 of the Act an unregistered society is not entitled to use the word "co-operative" in its name or title (without the sanction of the State Government) and this by itself puts the society under a disadvantage, affecting its trade and business. The learned Counsel fairly conceded that he is not in a position to rely on any other circumstance in support of his argument based on Articles 19(1)(c ) and (g). We do not find any merit in this point which is solely based on the ban of the use of the word "co-operative", by Section 145. The restriction is clearly reasonable and in the interest of the general public and is, therefore, saved by Clause (6) of Article 19. The purpose of Section 145 is to ensure that the general public has adequate notice that a society they may have to deal with, is unregistered and, therefore, not amenable to the provisions of the Act, before taking a decision about their relationship with the same. The persons desirous of running such a society have been placed under an obligation to publicly declare that their society is not registered under the Act, and we do not see any valid objection to this course. The main argument of Mr. Divan is, therefore, overruled.

5. In AIR 1958 A.P. 773 (Pamulapati Buchi Naidu College Committee Nidubroly & Ors. V. Government of Andhra Pradesh &

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ors.) the Hon'be Andhra Pradesh High Court held that if a society is not registered under the Act, it would have the character of an association which cannot sue or be sued except in the name of all the members of the association. The registration of the society confers on it certain advantages. Once the society is registered it enjoys the status of a legal entity apart from the members constituting the same and is capable of suing or being sued. Relying on said judgment, it is humbly submitted that similar fate is of unregistered waqf. Registration of waqf confers right upon the Central Board of Waqfs to sue or be sued in respect of the affairs and properties of the registered waqf while in case of unregistered waqf of alleged Babri Masjid the Sunni Central Board of Waqfs has no right to maintain instant suit as such the instant sit is liable to be dismissed. Relevant extracts from paragraph 19 of the said judgment reads as follows:

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> "(19) The basic assumption made by the learned counsel for the petitioner that the registration of society can be equated to the granting of a Royal Charter, does not rest on a solid foundation. A society registered under the Societies Registration Act is an association of individuals which comes into existence with certain aims and objects.
>
> If it is not registered as a society under the Act, it would have the charter of a association which cannot sue or be sued except in a name of all the members of the association. The registration of the Society confers on it certain advantages. The members as well as the Governing body of the Society are not always the

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same. Even though the members of the Society or the Governing body fluctuate from time to time, the identity of the society is sought to be made continuous by reason of the provisions of the Societies Registration Act.

The Society continues to exist and to function as such until its dissolution under the provisions of the Act. The properties of the society continue to be vested in the trustees or in the governing Body irrespective of the fact that the members of the society for the time being are not the same as they were before; nor will be the same thereafter.

By reason of the provisions of the Societies Registration Act, once the society is registered with the Registrar, by the filing of the memorandum and certified copy of the rules and regulations and the Registrar has certified that the society is registered under the Act, it enjoys the status of a legal entity apart from the constituting the same and is capable of suing or being sued.

But the fact to be noted is that what differentiates a society registered under the Act of 1860 from a company incorporated under the Companies Act is that the latter case the share-holders of the company hold the properties of the company as their own whereas in the case of a society registered under the Act of 1860, the members of the society or the members of the governing body do not have any proprietary or beneficial interest, in the property the society holds.

Having regard to the fact that the members of the general body

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of the society do not have any proprietary or beneficial interest in the property of the society, it follows that upon its dissolution, they cannot claim any interest in the property of the dissolved society. The Societies Registration Act, therefore, does not create in the members of the registered society any interest other than that of bare trustees. What all the members are entitled to is the right of management of the properties of the society subject to certain conditions.

6. In ***AIR 1959 MP 172 (Radhasoami Satsang Sabha Dayalbag V. Hanskumar Kishanchand)*** the Hon'ble Madhya Pradesh High Court held that the registration under the Societies Registration Act, confers on a society a legal personality and made it corporation or quasi-corporation capable of entering into contracts. Relying on said judgment it is submitted that unregistered alleged Babri Mosque waqf Cannot confer any right upon the Sunni Central Board of Waqfs to make them competent to maintain the instant suit for and on behalf of such unregistered waqf. Relevant paragraph 13 of the said judgment reads as follows:

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"**13.** It is not disputed that the plaintiff society being a registered society under the Societies Registration Act is a corporation or a quasi-corporation capable of entering into a contract. The registration confers on the plaintiff Sabha a legal personality and consequently any contract entered into by it would bo legally enforceable, unless it was vitiated by an illegality or was shown to be void for any other reason."

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7. The United Provinces Muslim Waqfs Act, 1936 provides that under its Section 4(1) within three months of the commencement of the said Act, the local Government shall by notification in the gazette appoint for each District Commissioner of Waqfs for the purpose of making a survey of all waqfs in such district and to submit his enquiry report to the local Government under Section 4(5) of the said Act. Section 5(1) of the said Act provides that the local Government shall forward a copy of the Commissioner's report to each of the Central Boards and each Central Board shall, as soon as possible, notify in the gazette the waqfs relating to the particular sect to which, accordingl to such report, the provisions of that Act apply. Only after such notification a waqf can be registered under Chapter III. As such, after declaration of the notification under Section 5(1) of the said Act invalid by the learned trial Judge in disposing of the issue No. 17 in the instant wuit vide His order dated 21.04.1966, the registration of the waqf based on said notification became ab initio null and void.

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8. The relevant provisions of the United Provinces Muslim Waqfs Act, 1936 read as follows:

> **"4. (1)** Within three months of the commencement of this Act the Local Government shall by notification in the Gazette appoint for each district a gazette officer, either by name or by official designation, for the purpose of making a survey of all waqfs in such district, whether subject to this Act or not. Such Officer shall be called "Commissioner of Waqfs.
>
> a.....

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5) The Commissioner of Waqfs shall submit his report of inquiry to the Local Government.

**(5). (1)** The Local Government shall forward a copy of the Commissioner's report to each of the Central boards constituted under this Act. Each Central Board shall as soon as possible notify in the Gazette the waqfs relating to the particular sect to which, according to such report, the provisions of this Act apply.

**38. (1)** Every waqf whether subject to this Act or not and whether created before or after the commencement of this Act shall be registered at the office of the Central Board of the sect to which the waqf belongs.

(2) The mutwalli of every such waqf shall make an application for registration within three months of his entering into possession of the waqf property, or in the case of waqf existing at the time of formation of the first Central Board, within three months of the formation of such Central Board.

(3) Application for registration may also be made by a waqif or his descendants or a beneficiary of the waqf, or any Muslim belonging to the sect to which the waqf belongs.

(6) On receipt of an application for registration the Central Board may before registering the waqf make such inquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particulars in the statement filed with the application and when the application is made by any person other than the person holding possession of any property or

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properties belonging to the waqf, the Central Board shall give notice of the application to the person in possession and hear him, if he desired to be heard, before passing final orders.

**40.** The Central Board may direct a mutawalli to apply for the registration of a waqf, or to supply any information regarding a waqf or may itself collect such information and may cause the waqf to be registered or may at any time amend the register of waqfs."

9. Sections 18(1) and 18(2)(e) & (g) of the United Provinces Muslim Waqfs Act, 1936 provide that the Central Board can maintain suit in respect of administration and recovery of lost properties only of those waqfs to which the provisions of the said Act applies. As the provisions of the said Act does not apply to the waqf inrespect whereof notification under Section 5(1) has not been made and in furtherance whereof has not been registered under Section 38 or Section 40, as the case may be. Be it mentioned herein that Section 38(1) which is a mandatory provision provides that the mutawalli of every waqf whether created before or after the commencement of that Act shall make an application for registration within three months of its entering into possession of the waqf property or in the case of waqf existing at the time of formation of the first Central Board within three months of jthe formation of such Central Board. Sections 18(1), 18(2)(e), (f) & (g) of the said Act read as follows:

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**"18. (1)** The general superintendence of all waqfs to which this Act applies shall vest in the Central Board. The Central Board shall do all things reasonable and necessary to ensure that waqf or endowments under its superintendence are properly maintained, controlled superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Central Board shall be---

(e) to institute and defend suits and proceedings in a Court of Law relating to

administration of waqfs,

taking of accounts,

appointment and removal of mutawallis in accordance with the deed of waqf if it is traceable,

putting the mutawallis in possession or removing them from possession,

settlement or modification of any scheme of management,

(f) to sanction the institution of suits under Section 92 of the Code of Civil Procedure, 1908, relating to waqfs to which this Act applies;

(g) to take measures for the recovery of lost properties;

…."

10. Prior to 21.4.1966 that is the date of invalidating the notification

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under Section (51) of the United Provinces Muslim Waqfs Act, 1936 by the learned trial Judge in the instant suit, the Uttar Pradesh Muslim Wakfs Act, 1960 (Act No. XVI of 1960) had already come into force wherein under Section 6(2) the Commissioner of Wakfs was empowered to make inquiries in respect of wakfs and to send his inquiry report to each of the Boards and State government under Section 6(4) of the said Act for its notifying the same in official gazette. Thereafter the notified wakfs were to be registered under Section 29 or 31 as the case may be. The aforesaid provisions of the said Act read as follows:

**6. Survey of Wakfs.-(1) …**

(2) The Commissioner of wakfs shall after making such inquiries as he may consider necessary, ascertain and determine-

(a) the number of all wakfs in the area showing the Shia wakfs and Sunni wakfs separately,

(b) the nature and objects of each wakf,

(c ) the gross income of the property comprised in each wakf,

(d) the amount of revenue, cesses, rates taxes and surcharge payable to the Government or the local authority in respect of each wakf property,

(e) expenses incurred in the realization of the income and the pay or other remuneration of the mutawalli of each wakf,

(f) [omitted by U.P. Act 28 of 1971]

(g) such other particulars relating to each wakf as may be prescribed,

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Provided that where there is a dispute as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the recitals of the deed of wakf as to the sect to which it pertains, such dispute shall be decided on the basis of such recitals.

…...

(4) The Commissioner, the Additional Commissioner of wakfs or Assistant Commissioner of Wakfs shall submit his report of enquiry containing the particulars mentioned in sub-section (2) above to each of the Boards and the State Government and the State Government shall, as soon as possible, notify in the official Gazette the wakfs relating to particular sect, to which, according to such report, the provisions of this Act apply.

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**29. Registration.- (1)** Every other wakf, whether subject to this Act or not and whether created before or after the commencement of this Act shall be registered at the office of the Board of sect to which the wakf belongs.

(2) Application for registration shall be made by the mutawalli within three months of his entering into possession of the wakf property.

Provided that such application may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belongint to the sect to which the wakf belongs.

…...

(7) On receipt of an application for registration, the Board may

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before the registration of the wakf, make such inquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particular therein, and, when, the application is made by any person other than the person registering the wakf, give notice of the application to the person administering the wakf property and shall, after affording him a reasonable opportunity of hearing pass such orders as it may deem fit.

(8) Any person aggrieved by an order of the Board under sub-section (7) may, by application within 90 days from the date of that order refer the dispute to the tribunal which shall give its decision thereon."

**31. Power to cause registration of wakf and to amend register.-** The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself collect information and cause the wakf to be registered or may at any time amend the register of wakf."

11. As after invalidation of notification under Section 5(1) of the United Provinces Act, 1936 neither fresh survey of the waqf in question was caused under Section 6 of the Uttar Pradesh Muslim Wakfs Act, 1960 nor application for registration was made under Section 29 (2) of the said Act of 1960 within a period of three months nor the Board did take any steps for registration of the said wakf under Section 31 of the said Act of 1960. The alleged wakf remained unregistered wakf to which neither 1936 Act nor 1960 Act or 1995 Act are applicable as such the Plaintiff Wakf board has no locus standi and

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instant Suit is hit by the provision of Section 87(1) of the Wakf Act, 1995. As such, the instant suit is not fit for being continued, heard, tried or decided and is liable to be dismissed on this score alone.

12. Be it mentioned herein that in the Wakf Act, 1954 since repealed Section 66.E had also provision similar to Section 87(1) of the Wakf Act, 1995. Section 66.E of the Wakf Act, 1954 reads as follows:

> **66.E. Institution of suit or legal proceedings in certain cases.-** Notwithstanding anything contained in any other law for the time being in force, no suit or legal proceeding in respect of the administration or management of wakf, or any other matter or dispute for the determination or decision of which provisions have been made in this Act, shall be instituted in any court or Tribunal except under, and in accordance with, the provisions of this Act.

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13. It is also note worthy that Section 6 of the Societies Registration Act, 1860 and Section 69(2) of the Partnership Act, 1932 filing of suits by or against the registered Societies or Registered Firms respectively and thereby debar office bearer or partner of unregistered Society or Firm for or on behalf of such Societies or Firms allows. For the purpose of interpretation intention of the legislatures may be inferred by importing form those provisions.

> Section 6 of the Societies Registration Act, 1860 reads as follows:
>
> Suits by and against societies.- Every society registered under this Act may sue or be sued in the name of President, Chairman,

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or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim, or demand against the society, to sue the President or Chairman, or Principal Secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

Section 69 (1) & (2) of the Partnership Act, 1932 reads as follows:

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**"69. Effect of non-registration.-** (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on a behalf of any persons suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm : Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third

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party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

14. In AIR 1961 SC 808 (C. Mohammad Uunus V. Syed Unnissa & Ors.) the Hon'ble Supreme court has held that under Section 2 of the Shariat Act, 1937 in questions relating to charities and charitable institutions and charitable and religious endowments, a custom or usage would prevail. But Section 2 of the as amended by Madras Act, XVIII of 1949 the rule of decision even in matters regarding wakf relating to above subject is the Muslim personal law notwithstanding a custom or usage to contrary. Though the provision affect vested rights of the parties, the intention of the legislature was clear and the act applied to all cities and provinces pending even in appeal on the date when the Act was brought into operation. Relevant paragraph Nos. 9 and 10 of the said judgment read as follows:

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"9. Under the Shariat Act, 1937, as framed, in questions relating to charities and charitable institutions and charitable and religious endowments, the custom or usage would prevail. But the Act enacted by the Central Legislature was amended by Madras Act 18 of 1949 and s. 2 as amended provides :

"Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract, or gift or any other provision of personal law, marriage, dissolution of marriage, including Tallaq, ila,

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zihar, lian, Khula and Mubarrat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

10. Manifestly by this act, "the rule of decision" in all questions relating to intestate succession and other specified matters including wakfs where the parties to the dispute are Muslims is the Muslim Personal Law. The terms of the Act as amended are explicit. Normally a statute which takes away or impairs vested rights under existing laws is presumed not to have retrospective operation. Where vested rights are affected and the question is not one of procedure, there is a presumption that it was not the intention of the legislature to alter vested rights. But the question is always one of intention of the legislature to be gathered from the language used in the statute. In construing an enactment, the court starts with a presumption against retrospective if the enactment seeks to affect vested rights : but such a presumption may be deemed rebutted by the amplitude of the language used by the Legislature. It is expressly enacted in the Shariat Act as amended that in all questions relating to the matters specified, "the rule of decision" in cases where the parties are Muslims shall be the Muslim Personal Law. The injunction is one directed against the court : it is enjoined to apply the Muslim Personal Law in all cases relating to the

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matters specified notwithstanding any custom or usage to the contrary. The intention of the legislature appears to be clear; the Act applies to all suits and proceedings which were pending on the date when the Act came into operation as well as to suits and proceedings filed after that date. It is true that suits and proceedings which have been finally decided would not be affected by the enactment of the Shariat Act, but if a suit or proceeding be pending even in appeal on the date when the Act was brought into operation, the law applicable for decision would be the Muslim Personal Law if the other conditions prescribed by the Act are fulfilled. In our view, the High Court was right in holding that it was bound to apply the provisions of the Shariat Act as amended by Madras Act 18 of 1949 to the suit filed by the plaintiffs.

15. In the application for registration of waqf made under Section 38 of the United Provinces Muslim Waqfs Act, XIII of 1936 being exhibit 38 on pages 199 to 205 of the volume No. 11 of the documents filed in the instant suit by the Plaintiffs in its column no. 3 it has been stated that there is no waqf but the waqifs are Emperor Babar and Nawab S'-a-Dat Ali Khan. Below column no. 16 there is a note which says that the claim of the alleged Mutwalli's family is that within mentioned property said to be granted for maintenance of the alleged Babari Mosque at somewhere else is not a waqf but a Service Grant in their favour. The aforesaid application tells Emperor Babar and Nawab Sa'-a-Dat Ali Khan as joint waqifs which is quite impossible

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because the Emperor Babar died in 1530 AD while Nawa Sa'-a-Dat Ali Khan ascended on throne in 1732 AD as such the persons who were not contemporary and there was a gap of 202 years between the former and latter they cannot be joint waqifs of same and one waqf alleged to be Babri Masjid Waqf. This fact alone totally falsify the claim of the plaintiffs that the alleged waqf was created by the Emperor Babar. The grant in question was also a service grant not a waqf. The person who made application namely, Syed Kalbe Hussain had also his vested interest as it appears from the note of the application that his intention was to file a case against the persons who were enjoying their property claiming the same to be a service grant; from being motivated with such spirit and he made the aforesaid application for registration making fraudulent dishonest false and frivolous statements.

16. Be it mentioned herein that the plaintiffs have used fraud upon this Hon'ble Court by producing wrong transliteration of the note contained in said application for registration. Though in its original Urdu text it has been recorded that the persons recorded in revenue records do not consider it waqf but in Hindi transliteration thereof the plaintiffs by deleting the word 'nahi' of vital importance which finds place in between the words 'waqf' and 'tasleem' have made it meant that those persons says that it is waqf and *nankar mafi*. This fact came into light when the original text was read over in open Court by the Hon'ble Justice S.U. Khan, J. during my argument.

17. In the list of Sunni Waqfs published in supplement to the

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Government Gazette of United Provinces dated 26th February, 1944 under Section 5 of U.P. Muslim Waqfs Act, XIII of 1936 to which, according to the report of the Commissioner of waqfs, the provisions of the said Act apply; on page 11 at serial no. 26 (being the volume No. 12 of the documents filed in the instant suit) it has been notified that Babri Mosque is located at Qasba shahnawa not at Ramkot in ayodhya. Hindi transliteration of relevant page of the said gazette notification containing the name of Badshah Babar on serial No. 26 is on page no. 341 to 345 of volume 12 of the documents filed in the instant suit. Hindi Transliteration of the proforma of the list as well as the entries against item no. 26 of the said reads as follows:

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| | नामे वाकिफ या वक्फ | नाम–मतवली मौजूदा | नौ इयते जायदाद मकूफा |
|---|---|---|---|
| 26 | बदशाह बाबर | सैयद मोहम्मद जकी मतबली मस्जिद बाबरी कस्बा शाहनबा डाकखाना दर्शनगर | |

From the above Gazette notification dated 26th February, 1944 it appears that badshah Babar had erected a Mosque in Shahnawa town within the postal jurisdiction of Darshan Nagar of which Syed Mohammed Zaki was Mutawalli. The said gazette notification did not say that there was a mosque in Ramkot Pargana Havelli, Ayodhya in the district of Faizabad. As such said Babri Mosque Waqf cannot be construed to be waqf of any other Babri Mosque located anywhere else.

18. In the said gazette notification dated 26th February, 1944 (on page 479 of the volume 12 of the documents filed in the instant suit) another Babri Mosque along with the Mausoleum of the Emperor

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Babur has been mentioned in some other district perhaps in the district of Knapur. It is well known recognized and admitted fact that the Mausoleum of the Emperor Babur is in Kabul, Afghanistan not in India. This is glaring example of the facts of fraud, forgery and fabrication.

19. From the above mentioned relevant entries of the list of the gazette notification dated 26th February, 1944 it becomes clear that the waqf commissioners had not discharged their duties as it was cost upon them under the provisions of the United Provinces Muslim Waqfs Act, 1936 and in very casual manner either on hearsay they have listed several properties as of waqfs or the concern Waqf commissioner were active participant in the fraud, forgery and fabrication.

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20. The Waqf Commissioner Faizabad's report dated 8th Fibruary, 1941 says that it appears that in 935 A.H. Emperor Babar built Babari or Janam Asthan Mosque at Ajudhya and appointed one Syed Abdul Baqi as the Mutwalli and khatib of the Mosque and for its maintenance an annual grant of Rs. 60 was allowed by the said emperor which continued till the fall of the Mughal kingdom. Later on said grant was increased by Nawab Sa-a-Dat Ali Khan to Rs. 302/3/6 but no original papers about this grant by the king of Oudh are available. Relevant extract of said report reads as follows:

> "It appears that in 935 A.H. Emperor Babar built this mosque and appointed Syed Abdul Baqi as the mutwalli and khatib of

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the Mosque (vide clause 2 statement filed by Syed Mohammad Zaqi to whom a notice was issued under the wakf Act.) An annual grant of Rs. 60/- was allowed by the Emperor for maintenance of the mosque and the family of the first mutwalli Abdul Baqi. This grant was continued till of the fall of the Moghal Kingdom at Delhi and the ascendancy of the Nawabs of Oudh.

According to Cl. 3 of the written statement of Mohammad Zaki nawab Sa'adat Ali Khan, King of Oudh increased the annual grant to Rs. 302/3/6. No original papers about this grant by the king of Oudh are available."

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From the aforesaid extract it is crystal clear that the Commissioner on the basis of mere statement of Syed Mohammed Zaki found that the Disputed Janam Asthan Structure was a mosque built by emperor Babar which is in total discard to his duty cast upon him under said Act XIII of 1936.

21. Commissioner's said report dated 8th Feb. 1941 says that after the mutiny the British Govt. continued the above grant in cash upto 1864 and in the later year in lieu of cash some revenue free land in village Bhuraipur and Sholeypur was granted. The said report further records that Syed Mohammed Zaki produced a copy of the grant order of the British Govt. which was made on condition that Rajab Ali and Mohammad Asghar would render Police, Military or Political service etc. thereafter the commissioner records that the above-mentioned

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object is elucidated in Urdu translation as follows:

> "After the Mutiny, the British Government, also continued the above grant in cash upto 1864, and in the latter year in lieu of the cash grant, the British Government ordered the grant of some revenue free land in villages Bhuraipur and Sholeypur. A copy of this order of the British Government has been filed by the objector Syed Mohammad Zaki (vide Flag A). this order says that 'the Chief Commissioner under the authority of the Governor General in Council is pleased to maintain the Grant for so long as the object for which the grant has been made is kept up on the following conditions'. These conditions require Rajab Ali and Mohammad Asghar to whom the sunned was given, to perform duties of land holder in the matter of Police Military or political service etc. The object mentioned above is elucidated in the Urdu translation as follows:-
>
> Thus the original object of the state grant of emperor Babar and nawab Sa'adat Ali Khan is continued in this Sunnad by the British government also i.e. maintenance of the mosque. The Nankar is to be enjoyed by the grantees for so long as the object of the grant i.e. the mosque is in existence."

22. In fact, this Urdu elucidation is creation of the said Waqf Commissioner as it is not in the alleged Sunned being page 33 of the volume 6 of the documents filed in the instant suit. Hindi transliteration and meaning of the said elucidative Urdu text as

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incorporated in the Waqf Commissioner said report reads as follows:

उस नानकार को जबतक कि मस्जिद जिसके वास्ते ये नानकार दी गयी थी बरकरार है। हसबे शरायत, दर्ज जैल कायम फरमाते हैं (जो शर्ते लिखी गयी हैं उसे कहते हैं)

A handwritten copy of the said Sunnad with some error has been reproduced at page 27 of volume 10 of the documents filed in the instant suit. In the said alleged original version of the grant Urdu elucidation did not find place. From the said alleged original version of the alleged grant, it becomes crystal clear that the grant, if any, it was a service grant for rendering police, military and political services to the British Govt. against the enemies of the British Govt. Be it mentioned herein that in those days in the eyes of the Britishers the persons who were fighting against them for liberation of their motherland i.e. India they were considered to be mutineers and enemies of the Britishers. As such it can be inferred that the said service grant was given for helping the Britishers to defeat and rout the freedom fighters, not for a good cause of maintaining any Mosque. Full text of the alleged SUNNAD from page 33 of Vol. 6 (hand written copy on page 27 of Vol. 10 that is not accurate) is reproduced as follows:

Chief Commissioner

> "It having been established after due enquiry, that Rajub ally and Mohamad Usgar received a Cash Nankar of (Rs. 302.3.6) Rupees three hundred two and three annas and six pie from Mouzah Shanwah Zila Faizabad from former government. The Chief Commissioner, under the authority of the Governor

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General in Council is pleased to maintain the grant for long as the object for which the grant has been made is kept the following conditions. That they shall have surrendered all sunnads, title deeds, and other documents relative to the grant. That they and their successor shall strictly (illegible) all the duties of land-holder in matter of police, and an (torn) or political service that they may be required of them by the Authorities and that they shall never fall under the just suspicion of favouring in any way designs of enemies of the British Government. If any one of these conditions is broken by Rajub ally and Mohamad Usgar or their successor the grant will immediately resumed."

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23. From the aforesaid alleged to be original text of the grant as produced by the plaintiffs it becomes crystal clear that Urdu interpolation has been done by the said Commissioner with sole motive to deprive the hindus from their sacred shrine of Sri Ramjanamsthan which has been described as Babri Mosque in the plaint as well as Janam Asthan Mosque in the said commissioner's report. From the words 'Janam Asthan Mosque' itself it becomes clear that the alleged Mosque was erected over the birth place of someone, and since time immemorial said place is being worshiped by the Hindus asserting that it is the birth place of the Lord of Universe Sri Ram it is needless to say that according to the said Commissioner, the alleged Mosque was erected over the janamsthan of Sri Ramlala.

24. The said Waqf Commissioner after recording the facts that Syed

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Mohammed Zaki had submitted before him that the said British grant was a service grant in favour of his predecessors for rendering police, military and political services to the Britishers subject to resumption on nonfulfilment of the aforesaid conditions thus it was not a waqf property granted for maintenance of the alleged mosque; the commissioner without any cogent evidence rejected his said contention simply stating that he did not agree to that view because the grant was not originally granted by the Britishers but it was continuation of original grant granted by the Muslim rulers as also for the reasons that after the Ajodhya riot of 1934 Syed Mohammad Zaki had presented an application to Deputy Commissioner in which he has described himself as Mutawalli or trustee of the mosque and of the trust attached thereto. In fact, prior to coming on this reference, in the preceding paragraphs of his said report the said commissioner himself has recorded that no paper of old grant even of the Nawabs of Oudh was available and placed before him. It is contrary to the law of evidence to draw inference on the basis of the statement of a person whose credibility was found suspicious, doubtful and non-reliable. As in his report the commissioner records that said Syed Mohammed Zaki was an opium addict and most unsuited for the proper performance of the duties expect of a Mutawalli of an ancient and historical mosque, which was not kept even in proper repairs for which reason he recommended to discharge the said Mutwalli. Relevant extract from said report is reproduced as follows:

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"Syed Mohammad Zaki, the objector, who is know as the

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Mutwalli of the Babari mosque, and also calls himself as such raises an objection to the land in Sholeypur and Bhuranpur being regarded as a waqf, because he says the grant has been made for his substenance only (in Urdu). I do not agree with this view of his. The written statement filed by Mohammad Zqki himself is sufficient to show that the grant has been continued ever since 935 A.H. Only because he and his ancestors were required to look after the mosque and keep it in proper condition out of the income allowed to them and also to provide for the maintenance of himself and his ancestors out of a part of the same grant.

Clearly then the grant of land to Mohammad Zaki must be regarded as a Waqf, the purpose of which is the maintenance of the religious building know as the Babari Mosque.

The learned counsel for Mohammad Zaki has also argued.

1) That the particular grant of land in Sholeypur and Bhrepur has been made by the british Government. A Non-Muslim body and hence the grant cannot be regarded as Muslim Waqf.

2) That the grant is a conditional one, being subject to resumption on non-fulfillment by the grantee of any of the police Military or duties enjoined in the Sunnad, and that on account of these conditions the grant cannot be classed as Muslim Waqf.

I do not agree with either view. Firstly the British Government only continued a grant which had been made by the Muslim Government originally and in these circumstances, I cannot but

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regard the grant as a waqf.

3) As for the second point the conditions have been imposed upon the grantee, and not upon the way in which the grant to be utilized, which latter purpose is recognized as maintenance of the mosque. It is clear that if the conditions are broken the enjoyment of the grant by the Mutwalli himself for his sustenance is to be withdrawn apparently implying that any other mutwalli will then be appointed to administer the grant for the original purpose of maintaining the mosque. I am strengthened in this view because I find the mention of the object of the grant i.e. maintenance of the mosque at the very outset of the Sunnad and the desirability thereof seems to be clear from the whole Sunnad.

I also find that after the Ajodhya riot of 1934, Syed Mohammad Zaki presented an application (Flag Ex.A) to Deputy Commissioner, in which he clearly described himself as Mutwalli or trustee of the mosque, pay of Imam Muezzin and the provisions of Iftari etc., during Ramzan after deduction of Rs. 20/- per month for sustenance of the Mutwalli himself. The pay of the Mutwalli spends a much greater portions of the income on his own personal needs."

25. The Waqf Commissioner Faizabad in his said report dated 8th Feb. 1941 ways that he examined Abdul Ghaffar, the then Pes Niwaz who deposed that the imam was not being paid for last 11 years and thereafter the said commissioner says that the then Syed Mohammad

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Zaki was an opium addict and most unsuited to the proper performance of the duties expected from a Mutwalli of an ancient and historical mosque, thus he was liable to be discharged from his duties. Relevant extract from the said report which is on page nos. 45 to 48 of the volume No. 6 of the documents filed in the instant suit read as follows:

> "The present Mutwalli is of course a Shia. There is no information as to the sect to which Abdul Baqi himself belonged, but the founder Emperor Babar was admittedly a Sunni, the Imam and Muezzin at the mosque are Sunni and only Sunnis say their prayer in it. Abdul Ghaffar the present Pesh niwaz was examined by me. He swear that the ancestors of Mohammad Zaki were Sunnis who latter on was converted to Shia. He further said that he did not receive his pay during the last 11 years. In 1936 the Mutwalli executed a pronote promising to pay the arrear of pay by installment but upto this time nothing actually was done. I think therefore that this should be regarded as a Sunni Trust.
>
> I must say in the end that from the reports that I have heard about the present Mutwalli, he is an opium addict (vide his statement flag Ez) and most unsuited to the proper performance of the duties expected of a Mutwalli of an ancient and historical mosque, which is not kept even in proper repairs. It is desirable that, if possible, a committee of management should be appointed to supervise the proper maintenance and repairs of

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the mosque and discharge of his duties by the Mutwalli."

26. From the second report of the Commissioner of Waqf, Faizabad being report dated 8th February, 1941 it becomes clear that the Imam was not being paid since 1930 and the alleged Mutwalli was an opium addict and most unsuitable person and in 1934 riots on 27th March, the alleged Mosque was demolished it can be safely inferred that Sri Ramjanamsthan temple structure was being used by the Hindus as their sacred place of worship and it was not being used as a mosque because it cannot be imagined that a person will discharge duty of imam without getting salary for such a long period as according to Islamic law, only salary is the prescribed means of livelihood no imam can survive for want of salary as such in fact neither there was any mosque nor there was any mutwalli or imam.

27. From exhibit-62 being page nos. 367 to 405 of volume 12 of the documents filed in the instant suit which is a report of the four historians it becomes crystal clear that how said report has been prepared having some design in mind or inadvertently and negligently which reflects from page 397 of the said volume where the dimension of the vedi described by Tieffenthaler has been wrongly reproduced as "a square platform 5 inches above ground, 5 inches long and 4 inches wide, constructed of mud and covered with lime. The Hindus call it Bedi, that is to say, the birth place. The reason is that here there was a house in which Beschan (Bishan=Vishnu) took the form of Ram." though correct dimension given by Tiffenthaler reads "a square chest, raised five inches from the ground, covered with lime, about five ells

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in length by not more than four in breadth. The Hindoos call it bedi, the cradle; and the reason is, that there formerly stood here the house in which Beshan (Vishnoo) was born in the form of Ram." This correct translation is given in the book "Modern Traveller" volume 3, published by James Duncan in 1828. It is crystal clear that in the report of said historians the word 'ells' has been translated as 'inches' in fact, ells means yards which has been correctly translated in the translation made available by the Govt. of India to this Hon'ble Court. Tieffenthelar has not stated that the Bedi was of mud, it is creation of the mind of the aforesaid historians, as such said report of the historians is not reliable for the reasons of being prepared by incompetent persons or for being biased, motivated.

28. The page no. 155 of colume 6 of the documents filed in the instant suit purported to be copy of a folio of a register contains a pedigree wherein it has been written that the mafi was created for the muezzin and khattib of masjid Babari of Oudh date and year of the waqf is unknown to Syed Baqi thereafter his son Syed (illegible) Ali, his son Syed Hussain Ali who was in possession for about 60 years now his son-in-law Rajab Ali and his daughter's son Muhammad Asgar are in existence and were in receipt of cash from village Shahnawa vide receipt (illegible) till fasali year 1263. In the year 1264 fasali enquiry about mafi was started but riot took place (illegible) crop (illegible year 63 fasali was found (illegible) original (illegible) of and is document (illegible) in respect of mafe (illegible) settlement of village versus (illegible). A copy of the said contents has

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also been compiled in the said volume no. 6 of the documents filed in the instant suit on its page nos. 157 to 161.

29. From the said enquiry report it appears that during the period of 332 years people of five generations incouding Syed Baqi held the office of muezzin and khattib of alleged Babri mosque during the period of 1528 to 1860 which means 66½ years was average of each generation which is quite impossible as according to Life Insurance Corporation's assessment average span of a change of generation is 26 years. And this pedigree is completely false, forged and fabricated one. During this period 16 generations of the Mughal rulers elapsed average whereof comes about 20¾ years. In the matter of Radha Krishna V. State of Bihar the Hon'ble Supreme Court has laid down the principle of law to evaluate and judge authenticity of a pedigree which has been reproduced in this argument at relevant place.

30. The alleged documents and/or transliteration thereof being page nos. 53 to 61 of the volume no. 6 of the documents filed in the instant sit tells that the alleged Babri Mosque was demolished by the rioters and Bairagis on 27th March, 1934. The damaged domes were beyond repair. The alleged list of damages says that apart from damaging the building, the Hindus either burnt or took away with them three pieces of mats, six pieces of mattress, one piece of box, two pieces sandal, six pieces of curtains, five pieces of pitchers, hundred pieces badhana mitti four pieces of small earthen pot, one piece chahar, water pot, (illegible) three pieces, Kasauti Patthar Tarikhi, 3x1½ sq. ft. one piece, ladder two pieces, large iron jar two pieces. From the said list it is

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crystal clear that no engraved stone i.e. inscription was either carried away by the rioters or destroyed by the rioters. As such the story of the destruction of inscription is wholly concocted and the inscription which was prepared by the contractor was done at the instance of the Britishers to deprive the Hindus from their religious place and make the said place as bone of contention between Hindus and Muslims to facilitate their policy of divide and rule. As it has been written in the East India Gazetteer 1828 p. 352 2nd column las tpara as well as the preface of the Neil B.E. Baillie's Digest of Moohummudan Law Vol.2 Edn. 1875| Instruction p. xi & xii.

31. In Waqf Commissioner's report dated Feb. 8 1941, it has been recorded that the alleged Babri Mosque was built by one Abdul Baqi on being ordered to do so by the Emperor Babur. He records that there is no document to show that grant was sanctioned to the said Mosque either by the Mughal Emperors or Nawabs of Oudh, but as in 1864 a sunnud was issued stating that the grant was given to the grantee for rendering military, police and political services. It may be presumed that it was granted in continuance of the grants of Mughal Emperors to Nawabs of Oudh right from the Emperor Babur. The said Commissioner in his waqf report has committed forgery and fabrication by inserting certain words in Urdu transcript to show that the grant was give for maintenance of the alleged Babri Mosque. In fact, said sunnud is on record and entire sunnud is in English language and nothing is written in the said sunnud in Urdu transcript as such question of grant for maintenance of Babri Mosque cannot and does

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not arise at all. He says that some return submitted in the office of Tahsildar in 1995 shows that though major expenses was done by the grantee for his own maintenance, but a portion thereof was spend on maintaining alleged Babri mosque its account would have been submitted to the District Civil court which was made mandatory under the provisions of the Mussalman Wakf Act, 1923 under Section 3 of the said Act. Report also says that the Imam was not paid for last 11 years i.e. since 1930 as also that the Mutwalli is a drug addict and the alleged Mosque is in not good condition as such Mutwalli should be removed. Relevant portion of the said report read as follows: A copy of the said report is on pages 44 to 48 of the Vol. 6 of the documents filed in the instant Suit by the plaintiff's. Relevant extract from the said report reads as follows:

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32. Section 3 of the Musslaman Wakf Act, 1923 (Act No. 42 of 1923) reads as follows:

> **"3. Obligation to furnish particulars relating to wakf.-** (1) Within six months from the commencement of this Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the Mutwalli is situated or to any one of two more such Courts, a statement containing the following particulars, namely:--
>
> (a) a description of the wakf property sufficient for the identification thereof;
>
> (b) the gross annual income from such property;
>
> (c) the gross amount of such income which has been

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collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter;

(d) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property;

(e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate;

(f) the amount set apart under the wakf for--

(i) the salary of the mutwalli and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes;

(iv) any other purposes; and

(g) any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(3) Where--

(a) a wakf is created after the commencement of this Act, or

(b) in the case of a wakf such as is described in section 3 of the Wakf Validating Act, 1913, the person creating the wakf

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or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder.

The statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid' or of the last survivor of any such persons as the case may be."

The Hon'ble Apex Court in the case of ***The Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke and others, AIR 1975 SC 2238,*** on page 2244 at paragraph No. 10 approved the earlier quote words:-

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**Para-10** *In Doe V. Bridges, (1831) 1 B & Ad. 847 at page 859 are the famous and oft quoted words of Lord Tenterden, C.J. saying:*

*"Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot ber enforced in any other manner."*

*This passage was cited with approval by the Earl of Halsbury, L.C. In Pasmore V. The Oswaldtwistle Urban Disteict Council 1898, AC 387 and by Lord Simonds at ;. 407 in the case of Cutler V. Wandsworth Stadium Ltd. 1949 AC 398.*

Thus, in view of the decision of the Hon'ble Apex Court, it transpires that United Provinces Muslim Waqf Act, 1936 is an Act,

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which creates an obligation and enforces the performance in a specified manner. Under Section 5 of the aforesaid Act, it was necessary to make a publication before making any registration. Thus, it was incumbent upon the authorities to act in accordance with law and should have performed the duties in the manner provided under the law.

Thus, in this case the procedure as contemplated under Section 5(1) of Waqf Act was not complied with and the registration was made ignoring the provision, accordingly it has no relevance. It may further be clarified that it makes not difference whether the registration was challenged or not. When it is apparent that the obligation to enforce the Act was not performed in the manner provided under the law by complying the provisions of Section 5 by the Board. In that event the registration has no effect and it does not bind with properties. It may further be clarified that once the Board has tried to get the Waqf registered and after enquiry the registration was not completed, it make no difference whether two other modes were applied or not for registration. Other modes of registration could have been applied in accordance with law only. It is not the case where it has been urged that besides two other modes, the 3rd mode was adopted. The sole mode that was adopted to register this Waqf as Sunni Waqf by holding an enquiry and without making any publication. Thus in view of the decision of the Apex Court, the registration is not in accordance with law.

I have given my anxious thought to the facts of the case. I am of

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the view that since there is no valid notification under Section 5(1) of the Muslim Waqf Act, 1936 in respect of the property in dispute. The registration though is not disputed and pleadings can be looked into by this Court. It further transpires that the registration was done by ad-hearing the provisions of the Act and accordingly it cannot be deemed to be a valid registration. The registration does not confer any right to the Waqf Board to maintain the present suit without complying with the valid required notification. The registration can be done in accordance with law after adhering the provisions of the Waqf Act, 1936. Thus the registration was not made in accordance with the provision of Section 5(1) of the Muslim Waqf Act, 1936. It cannot be deemed to be a valid entry, the Board has no right to maintain the suit and the same is barred by time.

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In view of the finding of issue no. 5(e) it transpires that since the Waqf Board has no right to maintain the present suit, the suit was not maintainable under U.P. Muslim Waqfs Act, 1960 also. The plea that under Section 19(q) of Waqf Act, the suit could be filed by the Board is of no avail for the reasons that the property was not validly registered by complying with the provisions of Section 5(1) of Muslim Waqf Act, 1936. Issue No. 5(e) and 5(f) are decided against the plaintiffs.

**ISSUE NO.6**

**Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus ?**

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**FINDINGS:**

The instant suit has been filed by moving an application under Order 1 Rule 8 C.P.C. by the plaintiff's. The court has permitted the plaintiff's to file the suit and after complying of the provisions of Order 1 Rule 8 C.P.C., the court gave the permission for institution of the suit to the plaintiff's. This order was not challenged by the defendants. Accordingly, I hold that the present suit is a representative suit and plaintiff's are representing the interest of Muslims and defendants have been arrayed representing the interest of Hindus. On behalf of defendants no legal remedy was availed challenging the order passed by the learned Civil Judge dated 8.8.62 through which the permission to institute the suit was granted in terms of the provisions of Order 1 Rule 8 C.P.C.

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Issue no. 6 is accordingly decided in favour of plaintiff's and against the defendants.

**ISSUE NO.7(a)**

**Whether Mahant Raghubar Dass, plaintiff of Suit No.61/280 of 1885 had sued on behalf of Janma-Sthan and whole body of persons interested in Janma-Sthan?**

**FINDINGS:**

It has been urged on behalf of the plaintiffs that Mahant Raghubar Das filed suit no. 61/280 of 1885 on behalf of Janma Sthan and whole body of person interested in Janmsthan were the consenting parties and accordingly the suit should be treated as representative

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suit. On behalf the defendants the assertion has been refuted and it has been urged before this Court that the suit was not a representative suit, it was filed by Mahant Raghubar Das in his personal capacity and whole body of persons of Hindu interested in Janmsthan had no concern with the aforesaid proceedings. It has further been submitted that in a representative suit two or more persons having interest in the matter after obtaining the leave of the Court, can file the representative suit. While in this case admittedly Mahant Raghubar Das was the sole plaintiff. Neither Raghuvar Dass or two or more persons having interest in the property in suit obtained the leave of the Court to file the same. Consequently, the suit cannot be treated as representative suit. It may be noticed that Section 92 C.P.C. and Order 1 Rule 8 C.P.C. are applicable in such type of cases and after legislative changes the gist remains the same. Section 92 C.P.C. corresponds with section 539 of the Code of 1983 which provides that with the consent of Advocate General or Collector of a District the suit may be filed in representative capacity. The main purpose of Section 539 of the Code of 1983 is to give protection to the public trust of religious nature from being subjected to harassment by suits being filed against them. That is why it was provided that the suit be filed by two persons having the interest in the trust with the written consent of the Advocate-General or of the Collector of the District. It was incumbent upon the Advocate-General before giving consent to satisfy himself that prima facie there was either breach of trust and necessity of obtaining directions from the Court. Thereafter the suit could have

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been filed with the leave of the Court. After going through the plaint of R.S. No. 61/280 of 1885, Mahant Raghubar Das vs. Secretary of State of India and Mohd. Asghar Khateeb, it transpires that the suit was not filed in accordance with the provisions of Section 539 of the Code of 1883. Thus the suit was filed in the individual capacity by Mahant Raghubar Das and with no stretch of imagination it can be considered as a representative suit. It further transpires that even at the stage of deciding the civil appeal no. 27 of 1885 the procedure adopted under Section 539 of the Code of 1883 was not made applicable. Consequently, the suit cannot be regarded as representative suit. Thus the judgment in R.S. No. 61/280 of 1885 and civil appeal no. 27 of 1885 leave no room for doubt that Mahant Raghubar Das filed suit in his personal capacity and accordingly the judgment cannot be considered as judgment in rem under Section 41 of Indian Evidence Act, 1872. It will be considered as judgment in personam under Section 43 of Indian Evidence Act. Learned counsel for the plaintiff has failed to demonstrate any material to show that the procedure as provided under Section 539 of Code of 1883 was followed at the time of filing R.S. No.61/280 of 1885. It is a settled proposition of law that the burden lies on the plaintiffs to show as how the whole body of persons interested in Janmsthan were interested in the suit and how the suit can be treated as representative suit. Since the plaintiffs have failed to discharge his obligation and provided no material before the Court and on the basis of the plaint of R.S No. 61/280 of 1885 and the judtment of trial court and appellate court leave no room for doubt that

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the suit was filed by Mahant Raghubar Das in his personal capacity and not on behalf of Janmsthan and whole body of the person interested in Janmsthan cannot be treated as interested person at the time of filing the suit or they may be treated to be in representative capacity under Section 539 of the Code of 1883. Accordingly I hold that Mahant Raghubar Das filed the suit in his personal capacity. Issue no. 7(a) is decided against the plaintiffs and in favour of the defendants.

## ISSUE NO.7(b)

**Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?**

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**FINDINGS:**

It has been contended that Mohd. Asghar or Mutwalli of Babri Masjid contested the suit on behalf of such mosque. At the cost of repetition, I may again refer that in view of Section 539 of the Code of 1883. The procedure was not adopted by Mahant Raghubar Das for filing any representative suit. Accordingly, Mohd. Asghar was contesting the case in his personal capacity. It further transpires from the trial court judgement and also of appellate court judgment that under no event Mohd. Asghar made any objection that the suit should be dismissed as it has a representative capacity. Suit was not filed in the representative capacity by Mahant Raghubar Das and procedure as provided under Section 539 of the Code of 1883 was not adopted. Thus, it may conclusively be said that the plaintiffs have failed to

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point out that Mohd. Asghar was contesting the case in representative capacity, but on the other hand he was contesting the case in his personal capacity. Issue No. 7(b) is also decided against the plaintiffs and in favour of the defendants.

**ISSUE NO.7(c)**

**Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute ? If so, its effect?**

**FINDINGS:**

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Learned counsel for the plaintiffs has raised the plea and the Court accordingly framed the issue to this effect that in view of the judgment in R.S. No. 61/280 of 1885, the members of the Hindu community including the contesting defendants are estopped from denying the title of the Muslim community.

At the cost of repetition, it may be further referred that in the above suit, the procedure so was not adopted for filing a representative suit as contemplated under Section 539 of the Code of 1883. There is not even iota of evidence to suggest that any point of time two or more persons along with Mahant Raghubar Das took permission from the Advocate General or Collector of the district to file the suit on behalf of Hindu community and the leave was obtained by them before the institution of the suit. On being specifically questioned, learned counsel for the plaintiffs could not show any paper to establish the

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aforesaid contention. Thus it transpires that Mahant Raghuvar Das had not filed the above suit in representative capacity. So far as the question of issue estoppel is concerned, it transpires that the learned counsel for the plaintiffs have failed to establish any circumstance under which the principle of issue estoppel apply in this case. It is a settled proposition of law that the onus to prove that the suit was instituted in representative capacity is on the plaintiffs who assert the same. The burden of proof does not lie on the respondents. The contention of the plaintiffs cannot be considered as good in law in view of the discussion referred to above. It cannot be regarded at this stage that whole body of Hindu community was interested in the outcome of the result or they were at all interested in maintaining the suit. Thus the question of resjudicata or issue estoppel in this case does not arise. Thus the factual finding relating to the nature and character of the suit leave no room for doubt that on the basis of governing legal principles as well as for non-observance of the procedure under Section 539 of the Code of 1883, it cannot be re-agitated on behalf of the plaintiffs successfully that the suit was a representative suit and principle of issue estoppel apply on the Muslim community and Hindu community both. Thus, looking to the case from all or any angle, it transpires that this is not a case of representative suit, accordingly the Hindu and Muslim community are not bound by the decision in R.S. No. 61/280 of 1885. This was simply a personal dispute between Mahant Raghubar Das and the defendant. The judgment that was rendered by the trial court as well as

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by the appellate court can be treated as a judgment in rem. Under section 43 of Indian Evidence Act it would be treated as judgement in personam. Consequently, the question of issue estoppel or of filing a suit in representative capacity is not evident from the facts of the case and plaintiffs have failed to discharge his onus to provide any material to substantiate his version before this Court. Accordingly, issue no.7(c) is decided against the plaintiffs.

**ISSUE NO.7(d)**

**Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit? If so, its effect?**

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**FINDINGS:**

Learned counsel for the plaintiffs has pointed out that in R.S. No. 61/280 of 1885 plaintiff Mahant Raghubar Das admitted the title of Muslim in the property in suit. It has further been suggested that in one portion or the other the plaintiffs admitted the possession of the Muslim community. According to the learned counsel for the plaintiffs in view of principle of issue estoppel the defendants now cannot re-agitate the issue before this Court and the judgment is not binding on them. At this outset, it may be clarified that in view of the foregoing discussion on above issues, it has been made abundantly clear that neither any permission was obtained from Advocate General or from the Collector of the District by Mahant Raghubar Das before filing the suit in terms of Section 539 of the Code of 1883.It further transpires that the suit was filed in his personal capacity, consequently

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there is nothing on record to suggest that it was a representative suit. Consequently, if at all there is any admission on the part of Mahant Raghubar Das, it would not have binding effect on the Hindu community or Muslim community. This is not a case where a judgment in rem was passed by the Court and the suit can be termed as representative suit. Consequently, there was a personal dispute between Mahant Raghubar Das and Mohd. Asghar. State was also arrayed as a party. Consequently, there is no effect on the present suit of the proceedings that took place earlier before the competent Court in personal dispute between Mahant Raghubar Das and Mohd. Asghar, the defendant. Learned counsel for the plaintiffs has further failed to point out as to which is the portion of the property in suit which was admitted by Mahant Raghubar Das, plaintiff of the suit belonging to the Muslim community. After going through the record, it transpires that the site plan annexed with the plaint of R.S. No.61/280 of 1885 has no bearing on the facts of the case. After considering the entire material on record, it further transpires that section 115 of Indian Evidence Act, 1872 has no application to the facts of the case for the reasons that only to describe the topography certain places were shown in the site plan without asking any relief in the plaint. In this context, the decision in civil appeal no. 27 of 1885 dated 18.03.1886 reveals that the Deputy Commissioner contended that the civil court was not competent to adjudicate the aforesaid matter for want of jurisdiction. The relief asked for was in contravention of the clause D of Section 56 of the Act No. 1 of 1877. Consequently, it can be

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inferred from the appellate court judgment that the appeal was also dismissed by the district judge accepting the contention of the Deputy Commissioner that the matter was not cognizable by the civil court under Cause (d) of Section 56 of Act No. 1 of 1877 to set aside any order passed in criminal proceedings by a Magistrate. Thus with no stretch of imagination it can be gathered that the civil court entertained the suit and decided it. On the contrary, it transpires from the bare reading of the judgment of the appellate court that the civil court refrained to give any finding and refuse to set aside the order passed by a Magistrate on the ground that the suit was not cognizable by the civil court. Thus the effect in such a circumstance would be that neither the suit was cognizable by the civil court nor civil court entertained the suit nor the decision has any effect like estoppel or issues estoppel. It would also not operate as resjudicata between the parties. Moreover, I have also considered the aspect of Section 539 of the Code of 1883 and I am sure that the suit was also not filed in representative capacity. Thus the admission of Mahant Raghubar Das cannot operate as issues estoppel or stopped the defendants to believe and refute the averments made in the plaint. Moreover there is nothing on record to suggest that except topography of the property in suit, there is nothing which is material before this court to demonstrate that after admitting the claim of the Muslims, the land in suit with no stretch of imagination without calling for any relief can be considered as a matter which was binding for consideration before the Court. Thus, if at all there is any admission of plaintiff Mahant Raghubar

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Das, it would not stop Hindu community and Muslim community both to raise issues before this Court as suit is not in the nature of representative suit. Issue No.7(d) is accordingly decided against the plaintiffs and in favour of the defendants.

Learned counsel for the plaintiffs has heavily relied over the decision of R.S. No. 61/280 of 1885, Mahant Raghubar Das vs. Secretary of State of India and on its strength has submitted that the judgment operates as resjudicata against the defendants. At the cost of repetition I may refer that in view of Section 539 of the Code of Civil Procedure of 1883 which corresponds to Section 92 of the present C.P.C. it transpires that without adhering any procedure in accordance with Section 539 of the above code, the above regular suit was filed. I have already given my finding on issue no.7 that it was not a representative suit. It further transpires that the judgment was not judgment in rem but it was judgement in personam. Consequently the judgment would have a binding effect only on the parties referred in the plaint and arrayed as parties. It further transpires that Section 18 of the Indian Evidence Act, 1972 has full bearing on the facts of the case for convenience it is reproduced as under:-

> "*S.18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.*
> *Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character."*

Thus, in view of provisions of Section 18 of Indian Evidence

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Act even in a case of representative character statements made by the parties to the suits, suing or sued are not admissions unless there were made while the party making them held that character. It is not disputed by the plaintiff that defendants were not holding the character while it is clear from the finding on issue no.7 that the suit was not of a representative character. Thus, question of issue estoppel does not arise. Plaintiffs have also failed to substantiate before this Court that the defendants are the persons from whom the parties to the suit have derived their interest in the subject matter of the suit. Consequently, at this stage, it can not be said that the defendants of the present suit are the successor of Mahant Raghubar Das. It has nowhere been mentioned in the plaint that the defendants have derived the interest in the subject matter from Mahant Raghubar Das, the plaintiff of the suit. Consequently, for want of any evidence before this Court, it is not possible to accept the contention of the plaintiffs that Mahant Raghubar Das could in any way be said to be the predecessor in title of the defendants and the defendants derived their interest in the said matter through him. Consequently, neither this is a suit of representative character nor this is a suit in which it has been alleged by the plaintiffs that the defendants have derived their title from Mahant Raghubar Das. Thus, with no stretch of imagination he can be said to be predecessor in suit. Consequently, admissions if any made in R.S. No. 61/280 of 1885, Mahant Raghubar Das vs. Secretary of State of India would not bind the defendants.

**ISSUE NO.8**

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**Does the judgment of Case No.6/281 of 1881, Mahant Raghubar Dass Vs. Secretary of State and others, operate as res judicata against the defendants in suit ?**

**FINDINGS:**

Issue No.8: It is admitted between the parties that prior to this litigation one case bearing no.61/280 of 1885, Mahant Raghubar Das Versus Secretary of State and others, was filed. Plaintiffs have come out with a case that it shall operate as resjudicata against the defendants.

I have already considered the scope of the earlier suit. This Court has already given finding that this suit is not a representative suit and it was an individual suit between Mahanth Raghubar Das and Mohd.Asghar who was the Mutwalli of the mosque. In view of the provision of Section 539 of CPC of 1883 the suit has no binding effect on the members of Hindu community as well as on Muslim community. It is also nobodies' case that the present defendants are the successors of Mahanth Raghubar Das. Thus there is no material that Mahanth Raghubar Das was the predecessor in title of the defendants. There is no averment in the plaint itself. Consequently defendants of this suit have not derived a title from Mahanth Raghubar Das. Consequently they cannot be treated to be party to the earlier suit.

Sri Mushtaq Ahmad Siddiqui, learned counsel for the plaintiffs has submitted that in view of the plaint averments it is very much established that the suit was filed for the benefit of entire Hindu community, having faith in Lord Ram. Hindus wanted to construct a

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temple over Chabutra treating it as a sacred place. Hence, the case falls within Explanation 6 to Sec.11 CPC. It is further submitted that the judgment is binding on all the Mahanth and Shebait of Janam Asthan of Nirmohi Akhara. It is further submitted that in the year 1885 Order-1 Rule-8 CPC was not there. Accordingly in view of Explanation 6 of Section-11 the principle of resjudicata will operate. It is further submitted that in view of issue estoppel principal of res judicata shall operate against the defendants in suit. Learned counsel for the plaintiff has relied over Explanation 4 and 6 of Section-11 CPC. On the contrary it is submitted by the defendants that neither the procedure as provided u/s 573 of CPC of 1883 was adhered to nor there is anything to show that the suit was filed by Mahanth Raghubar Das in representative capacity. Consequently the suit is not barred by principle of res judicata.

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Let me read Section-11 of the CPC as under;

"Section-11: Res judicata- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in Issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

> Explanation I.--The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.
>
> Explanation II.--For the purposes of this section, the

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competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.--Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.--Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.--Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

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Explanation VII.--The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.--An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]"

I have gone through the following rulings placed by Sri M.A. Siddiqui, learned counsel for the plaintiffs;

1. Talluri Venkata Versus Thadikonda, AIR 1937 PC 1.
2. Kumara Vellu Versus T.P.Ramaswami, AIR 1933 PC 183.
3. Mst.Sudehaiya Kumar and another Versus RamDass Pandey and others, AIR 1957 Alld.270 (DB)
4. Vidhu Mukhi Dasi Vs.Jitendra Nath, Indian Cases 1909

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Cal.H.C.442.

5. Madhav Versus Keshvan, 40 ILR Madras Series 191.
6. Lal Chand Versus Radha Kishan, AIR 1977 SC 789
7. Smt.Dhana Kuer Versus Kashi Nath, 1967 AWR High Court 290.
8. Sharad Chandra Ganesh Vs.State, AIR 1996 SC 61
9. Shiromani Gurudwara Vs. Mahant, AIR 2003 SC 3349
10. Waqf Khudawand Tala Vs.Seth Mohan Lal, 1956 ALJ 225.

On behalf of defendants reliance have been placed on the following case laws;

1. Satyadhyan Ghosal and others Versus Smt.Deorajin Debi and another, AIR 1960 SC 941.
2. Ferro Alloys Corpn.Ltd and another Versus U.O.I.and others AIR 1999 SC 1236.
3. Sulochana Amma Vs. Narayanan Nair, 1994 SC 152, Lonankutty Vs. Thomman and another, AIR 1976 SC 1645, Raj Lakshmi Dasi and others Versus Banamali Sen and others, AIR 1953 SC 33.

   Sajjadanashin Sayed MdB.E.Edr.(D) By Lrs Vs. Musa Dadabhai Ummer and others, AIR 2000 SC 1238, Gram Panchayat of Village Naulakha Vs. Ujagar Singh and others, AIR 2000 SC 3272

4. State of Punjab and others Vs.Amar Singh and another, AIR 1974 SC 994.
5. M/s International Woolen Mills Vs. M/s Standard Wool (U.K.)Ltd., AIR 2001 SC 2134.
6. P.K.Vijayan Vs.Kamalakshi Amma and others, AIR 1994 SC 2145.
7. Chandrabhai K.Bhoir and others Vs.Krishna Arjun Bhoir and others, 2009 AWC(1) 715.
8. Ramchandra Dagdu Sonavane by Lrs and others Versus Vithu Hira Mahar (dead) by Lrs. and others, AIR 2010 SC 818.

Thus, according to the defendants, decision in regular suit no.61/280 of 1885, Mahanth Raghubar Das Versus Secretary of State and others for permission to construct a Mandir on chabutra situated in

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outer courtyard will neither operate as res judicata nor the principles of constructive res judicata are applicable because neither any finding on issues involved in this case were recorded by the court nor the same was between the parties. Same parties means parties are persons whose names are on record at the time of the decision vide Baisu Reddi Versus Janardan Rao, AIR 1968 AP 306. The principle of res judicata and constructive res judicata were discussed by the Hon'ble Supreme Court in several decisions wherein the dispute must be between the same parties and it must be shown that same plea was required to be raised by the contesting parties. Matter must be directly and incidentally in issue between the same parties and there is some final decision on any particular issue and the matter ought to have been raised and decided. Thus in the present case none of the aforesaid conditions are complied with. Accordingly the suit is not hit by the principle of res judicata and constructive res judicata.

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I have given anxious thoughts to the rival submissions and perused the case laws, referred to above. In this context I have to add as under;

**Historical Aspects of Res Judicata.**

"Res judicata Pro Veritate Accipture" is the full maxim which has, over the years, shrunk to mere Res Judicata vide Deva Ram v. Ishwar ChandA.I.R.1996 S.C.378 and Kunjan Nair Shivaraman Nair v. Narayanan Nair A.I.R. 2004 S.C. 1761, which expression means a matter already decided. It has a very ancient history. It was known to

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ancient Hindu Law as Purva Nyaya. The plea of former Judgment has been illustrated in the text of Katyayana thus, "If a person though defeated at law sues again, he should be answered 'you were defeated formerly" (vide Raj Lakshmi Dasi v. Banamali Sen, AIR 1953 SC 33 and Sheoparsan Singh v. Ramnandan Singh [1916] 43 I.A. 91 ).

This principle was also known to Roman law as 'exceptio res judicatae'. Julian defined the principle thus, "and generally the plea of former Judgment is a bar whenever the same question of right is renewed between the same parties by whatever form of action -- Et generaliter (ut julianus definit) exceptio rel judicatae obstat, quotisns inter easdem personas esdem quaestio revocator, vel alio genere judicli.) This doctrine was adopted by the countries on the European continent which had modelled their civil law on the Roman pattern. In France, the doctrine is known as 'Chose jugee' -- thing adjudged. This principle of preclusion of re-litigation, or the conclusiveness of Judgment, has struck deep roots in Anglo-American jurisprudence and is equally well-known in the Commonwealth countries which have drawn upon the rules of Common law. The doctrine of res judicata is recognised as a principle of universal jurisprudence forming part of the legal systems of all civilised nations.

Section 11 of Code of Civil Procedure, 1908, contains the rule of conclusiveness of the Judgment which is- based partly on the maxim, of Roman jurisprudence. "interest republicae ut sit finis litium" (It concerns the State that there be an end to law suits) and partly on the maxim "nemo debet bis vexari pro Una et eadem causa"

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(no man should be vexed twice: over for the same cause). The section does not affect the jurisdiction of the Court but operates as a bar to the trial of the suit or issue, if the matter in the previous suit between the same parties litigating under the same title in a Court, competent to try the subsequent suit in which such issue has been raised. The rule of res judicata "while founded on ancient precedent is dictated by a wisdom which is for all time' and that the application of the rule by the Courts "should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

Res judicata is a doctrine based on the larger public interest. It is well settled that Section 11 of the Code of Civil Procedure, 1908 (hereinafter, "the Code of Civil Procedure") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. The rule of res judicata contained in Section 11 of the Code has some technical aspects, the general doctrine is founded on considerations of high public policy to achieve two objects namely (i) that there must be a finality to litigation and (ii) that individuals should not be harassed twice over with the same kind of litigation.

The object of introducing Section 11 in the Code of Civil Procedure is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest (Ram Bhaj v.

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Ahmad Saidakhtar Khan). Once the matter which was the subject matter stood determined by a competent Court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment. Res judicata is a rule of procedure and it cannot change the law of the land as applicable to specific parties by decisions of Courts vide Mathura Prasad v. Dossibai, AIR 1971 SC 2355. Section 11 of the Code of Civil Procedure recognizes this principle and forbids a Court from trying any suit or issue, which is res judicata, recognizing both 'cause of action estoppel' and issue estoppel.

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The principle of res judicata is conceived in the larger public interest which requires that all litigation must sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. It is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. The principle of res judicata envisages that a Judgment of a Court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another Court, where the said plea seeks to raise afresh the very point that was determined in the earlier Judgment. The principles of res judicata as contained in Section 11 Code of Civil Procedure bars any Court to try any suit or issue in which the matter

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directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. A finding which has attained finality operates as res judicata.

It is a doctrine applied to give finality to 'lis' in original or appellate proceedings. The doctrine in substance means that an issue or a point decided and attaining finality should not be allowed to be reopened and re-agitated twice over. The literal meaning of res is everything that may form an object of rights and includes an object, subject-matter or status and res judicata literally means: 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by Judgment.

Res judicata is meant to avoid conflict in decisions - it is now settled principle that even ex-parte decree does constitute res judicata if issue involve is one which constitutes basis or foundation of decree. But to this the qualification must be added that, if such a party is to be bound by a previous Judgment, it must be proved clearly that he had or must be deemed to have had notice that the relevant question was in issue and would have to be decided. In an issue, which is not adjudicated before the Court, the provisions of Section 11 of the Code of Civil Procedure cannot be invoked.

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The principle of res judicata also comes into play when by the Judgment and Order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res judicata on that issue is directly applicable. One of the tests in deciding whether the doctrine of res judicata applies to a particular case or not is to determine whether two inconsistent decrees will come into existence 'if it is not applied'.

If a suit is based on an earlier declaratory decree and such decree is contrary to the law prevailing at the time of its consideration as to its legality or is a decree granted by a Court which has no jurisdiction to grant such decree, principles of res judicata under Section 11 of the Code of Civil Procedure will not be attracted and it is open to the Defendant in such suits to establish that the declaratory decree relied upon by the Plaintiff is not based on a good law or Court granting such decree did not have the jurisdiction to grant such decree vide Shakuntla Devi v. Kamla, (2005) 5 SCC 390.

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**Plea of res judicata, when to be taken**

It is stated that the best method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the Judgments which operate as res judicata. Where the pleadings of the suits instituted by the parties have not at all been filed on the Court record, the Court had to rely upon the facts stated in the Judgment. It is well settled that the pleadings cannot be proved merely by recitals of the allegations mentioned in the

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Judgment vide Mohd. S. Labbai v. Mohd. Hanifa, AIR 1976 SC 1569.

The plea of res judicata has to be specifically and expressly raised. The foundation of the plea of res judicata must be laid in the pleadings. Not only the plea has to be taken, but also it has to be substantiated by producing the copies of the pleadings, issues and Judgment in the previous case. May be in a given case only copy of Judgment in previous suit is filed in proof of plea of res judicata and the Judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof Vide V. Rajeshwari v. T.C. Saravanabava, (2004) 1 SCC 551. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the Judgment. If this was not done, no party would be permitted to raise it for the first time at the stage of the appeal. The Constitution Bench in Gurbux Singh v. Bhooralal, placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the pleadings in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. The only exception to this requirement is when the issue of res judicata is in fact argued before the lower Court.

**Exceptions to the doctrine of Res judicata**

Broadly stated, the doctrine of res judicata operates when there

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occurs identity of subject-matter, of the cause of action; of parties or their privies; of capacity or jurisdiction. This is only a general statement admitting of limitations and exceptions. The doctrine, though sanctified by age, is not without its oodles features. If the rule of estoppel prevents a man from speaking the truth, the rule of res judicata prohibits a party from questioning the truth of everything contained in the Judgment. In other words, if a former Judgment perpetrates an error, the doctrine of res judicata perpetuates it. The principle, however, has been eulogised as salutary. A party whose interests have once been placed in jeopardy, has a right to judicial immunity from the consequences of the same matter being raked up again regardless of the fact whether the former Judgment was right and just. Emphasis is laid on rule of repose rather than on the absolute justness of the conclusion. Once a dispute has been concluded, then, that conclusion is right and just. The advantage to the society is that the doctrine of res judicata not only puts an end to strife, but also it produces certainty as to individual rights. The general welfare requires that litigation ought not to be interminable. It is said "Ne lites sint immorta-les, dum litantes sunt mortales, (since litigants are mortals, let litigation not continue for ever vide Mt. Lachhmi v. Mt. Bhulli, AIR 1927 LAH 289.

To this salutary rule, four specific exceptions are indicated. Firstly, the obvious one, that when the cause of action is different, the rule of res judicata would not be attracted.

Secondly, where the law has, since the earlier decision, been

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altered by a competent authority. Thirdly, where the earlier decision between the parties related to the jurisdiction of the Court to try the earlier proceedings, the same would not be allowed to assume the status of a special rule of law applicable to the parties and therefore, the matter would not be res judicata. Fourthly, where the earlier decision declared valid a transaction which is patently prohibited by law, that is to say, it sanctifies a glaring illegality vide The State of Punjab v: Nand Kishore, AIR 1974 P & H 303 and Shakuntla Devi v. Kamla, Manu/SC/0277/2005.

As and when the Court is examining the question of any right having emanated from a Judgment of the High Court and the said Judgment squarely having emanated, on following an earlier Judgment of the said Court, without any further reasoning advanced and no question of facts involved but purely a question of constitutionality of an Act, the moment the earlier Judgment of the High Court is reversed by the Supreme Court, that becomes the law of the land, binding on all parties vide Director of Settlements, A.P. v. M.R. Appa Rao, AIR 2002 SC 1598. The first writ was on the ground of apprehended bias. In the present case the allegation is actual bias. Also, the subject matter of both proceedings is different. Held, the second writ application is competent vide G.N. Nayak v. Goa University, AIR 2002 SC 790.

**Essentials for res judicata.**

The general principle of res judicata is embodied in its different forms in three different Indian major statutes--Section 11 of the Code

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of Civil Procedure, Section 300 of the Code of Criminal Procedure, 1973 and Sections 40 to 43 of the Indian Evidence Act, yet it is not exhaustive. Here, we are concerned only with Section 11 of the Code of Civil Procedure. Following conditions must be proved for giving effect to the principles of res judicata under Section 11:

(i) that the parties are same or litigating under same title,

(ii) that the matter directly and substantially in issue in the subsequent suit must be same which was directly and substantially in issue in the former suit,

(iii) that the matter in issue has been finally decided earlier and

(iv) that the matter in issue was decided by a Court of competent jurisdiction.

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If any one or more conditions are not proved, the principle of res judicata would not apply vide Life Insurance Corpn. of India v. Ganga Dhar v. Ranade, AIR 1990 SC 185 and Syed Mohd. S. Labbai v. Mohd. Hanifa, Manu/SC/0510/1976.

Where all the four conditions are proved, the Court has no jurisdiction to try the suit thereafter as it becomes not maintainable and liable to be dismissed. For application of principle of res judicata, existence of decision finally deciding a right or a claim between party is necessary vide M/s. International Woolen Mills v. M/s. Standard Wool (U.K.) Ltd., AIR 2001 SC 2134.

Res judicata is a mixed question of fact and law vide Madhukar

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D. Shende v. Tarabai Aba Shedage, AIR 2002 SC 637. It is dictated by wisdom which is for all times. It does not draw sustenance from any statute nor should any statutory provision be easily construed to render it ineffective vide Balbir Kaur and another v. Gram Panchayat Village Jalabehra and another, 1986 R.L.R. 112.

**(a) There must be two suits: One former suit and the other subsequent suit and Explanation I**

The bar only applies if the matter directly and substantially in issue in the former suit has been heard and finally decided by a Court competent to try such suit. This clearly means that on the matter or issue in question there must have been an application of the judicial mind and a final adjudication has been made. If the former suit is dismissed without any adjudication on the matter in issue merely on a technical ground of non-joinder, that cannot operate as res judicata vide State of Maharashtra v. M/ s. National Construction Co., AIR 1996 SC 2367.

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**Meaning of "Suit"**

The plain and grammatical meaning of the word "suit" occurring in clause "in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised" of Section 11 of Code of Civil Procedure includes the whole of the suit and not a part of the suit, so that giving the word "suit" its ordinary meaning it is difficult to accept the argument that a part of the suit or an issue in a suit is intended to be covered by the said word in the material clause vide Gulab Bai V. Manphool Bai, AIR 1962 SC 214.

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Having regard to the legislative background of Section 11, there can be no hesitation in holding that the word 'suit' in the context must be construed liberally and it denotes the whole of the suit and not a part of it or a material issue arising in it vide Mirza Abid Kazim Husain v. Mirza Nasir Husain, AIR 1977 All. 201. Section 11 is now made applicable by the Explanations and interpretation to certain proceedings giving more extensive meaning to the word 'suit'. In its comprehensive sense the word 'suit' is understood to apply to any proceeding in a Court of justice by which an individual pursues that remedy which the law affords. The modes of proceedings may be various but that if a right is litigated between parties in a Court of justice the proceeding by which the decision of the Court is sought may be a suit. But if the proceeding is of a summary nature not falling within the definition of a suit, it may not be so treated for the purpose of Section 11 vide Pandurang Ramchandra Mandlik v. Shantibai Ramchandra Ghatge, AIR 1989 SC 2240.

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**Explanation I**

In view of the risk of rigid application of the rule of res judicata defeating the ends of justice, several important exceptions have been recognised. One of the rules of guidance is that former Judgment, on the basis of which the plea of res judicata is rested, is to be construed with strictness in order to ascertain compliance with the requirements of the principle. The rule, therefore, assumes that at the earlier stage, the parties had effective opportunity to litigate the same matter in a Court of competent jurisdiction on issues which were directly in point

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and properly before the Court. This precaution cannot be overlooked, for, a decision, which has the force of res judicata, can "make the white black, the black white; the crooked straight, the straight crooked--res judicata facit ex alba nlgrum, ex nigro album, ex curvo rectum, ex recto curvum". A Judgment which is erroneous on facts or law, is, nevertheless, res judicata so long as it is not vacated or reversed by a superior Court. In other words, a suitor is entitled to one fair trial of his case and no one is permitted to harass another a second time, or take the time of the Court, for agitating the some controversy. Once a final Judgment is obtained, the same matter cannot be canvassed anew in another action, but it has to be a decision on merits by a competent tribunal between parties over whom it has jurisdiction vide Jaljodhan Singh v. Kirpa Singh, 1963 P&H 178.

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(b) Same parties or parties under whom they claim to litigate Section 11 requires that former suit which has been adjudicated upon must have been between same parties or between parties under whom they or any of them claim, litigating under same title. In other words in Order to make a person bound by res judicata it must be proved that he was in some way a party to the suit decided for a Judgment binds only parties and privies vide Ishwar Das v. State of M.P., AIR 1979 SC 551 e.g. If a karta of joint Hindu family property was party to a suit decided, a suit filed by another coparcener regarding same matter in issue is barred by res judicata vide Amrit Sagar v. Sudesh Behari, AIR 1970 SC 5. It is not necessary that parties should be common. Where a person is properly represented in a suit by another either by act of

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parties or by operation of law, he can be presumed to be a party to such suit. However, where after the finding or decision on a preliminary issue, new Defendant is added to a suit, such finding would not operate as res judicata against that Defendant vide S. Mohd. Ismail v. S. Anwar Ali, AIR 1991 Cal. 391. Similarly, where a decree is passed against a minor who was not properly represented, the principle of res judicata would not bar such person from contesting fresh suit. But a transferee is bound by the decree passed against transferor in respect of property transferred except where, the transfer has taken place before the former suit was filed.

In an earlier proceeding the wakf in question was described as "private", under law as it stood then in a subsequent proceeding that wakf was declared as public after commencement of Bombay Public Trusts Act. It was held, the earlier decision will not operate as res judicata in litigation filed subsequent to the second decision vide Sajjadanashin Sayed v. Musa Dadabhai Ummer, AIR 2000 SC 1238. In a case dispute between labour and Electricity Co. was referred to High Court. Subsequently, the Electricity

Company was amalgamated with State Electricity Board and the dispute was referred to the High Court. It was held that subsequent reference had nothing to do with the earlier reference. Principles of res judicata had no application vide Karnataka Power Transmission Corporation Ltd. v. Amalgamated Electricity Co. Ltd., AIR 2001 SC 291. However, in another case it was held that once the issue was directly and substantially involved in earlier proceedings and which

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was raised by the "forum", it is not permissible for the forum to once again raise the same issue in subsequent proceedings by coming under the "cloak" of the forum vide Junior Telecom Officers v. Union of India, AIR 1993 SC 787.

One of the pre-conditions for attraction of Section 11 for an issue to be barred by res judicata, is that, it must arise between the same parties and decided by a Court of competent jurisdiction. Section 11 does not encompass a situation where one of the parties to the subsequent suit was aware of the earlier suit and the question arising therein. It is also futile to submit that the Plaintiff ought to have got himself pleaded to the earlier suit. There is no compulsion on a person to get himself impleaded to any Court proceedings. As such, there cannot be any consequence of a person not volunteering for being impleaded to a suit. But, there are definite consequences provided for in the Code of Civil Procedure for not joining a proper or a necessary party to the proceedings vide Shri Narendra Akash Maharaj Petkar v. Shri Shahaji Baburao Petkar and The Saraswat Employee Co-op. Hsg. Soc. Ltd. v. Shri Shahaji Baburao Petkar.

Direct and Substantial as distinct from Incidental and Collateral. The effect of res judicata is, confined to the matter which was "directly and substantially in issue in the former litigation inter panes. A matter which is collaterally or incidentally in issue for the purposes of deciding the matter which is directly in issue in the case cannot be made the basis of a plea of res judicata. The question has to be decided on the pleadings, the issues and the findings given in that case vide

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Isher Singh v. Sarwan Singh, AIR 1965 SC 948. If the issue was "necessary" to be decided for adjudicating on the principal issue and was decided, it would be "directly and substantially in issue. A collateral or incidental issue is one that is incidental to a direct and substantive issue vide Sajjadanashin Sayed v. Musa Dadabhai Ummer, AIR 2000 SC 1238 being incidental only to the substantial issue, cannot operate as res judicata in a subsequent suit in which question of issue is directly raised vide Ganga Bai v. Chhabubai, AIR 1982 SC 20. In other words, when the question raised in the subsequent proceeding have no bearing on the finding made in the earlier proceedings the principle of res judicata is not applicable vide State of U.P. v. Rup Lal Sharma, (1997) 2 SCC 62. If the finding is given incidentally while determining another issue which was directly and substantially in issue, such finding cannot be said to be on an issue which was directly and substantially in issue in the former suit. Undoubtedly, the question whether a matter is "directly and substantially in issue" would depend upon whether a decision on such an issue, would materially affect the decision of the suit vide Bhai Hospital Trust v. Parvinder Singh, AIR 2002 Del. 311. When a finding as to title to immovable property is rendered by a Court of Small Causes res judicata cannot be pleaded as a bar in a subsequent regular civil suit for the determination or enforcement of any right or interest in immovable property. In Order to operate as res judicata the finding must be one disposing of a matter directly and substantially in issue in the former suit and the issue should have been heard and finally decided by the Court trying such

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suit. A matter collaterally or incidentally in issue for the purposes of deciding the matter which is directly in issue in the case cannot be made the basis of a plea of res judicata. It has long been held that a question of title in a Small Cause suit can be regarded as incidental only to the substantial issue in the suit and cannot operate as res judicata in a subsequent suit in which the question of title is directly raised vide Gangabai v. Chhabubai, AIR 1982 SC 20.

In this context I would like to refer that the plaintiffs have failed to prove the conditions which give effect to the principle of res judicata under Section 11, which are as under;

(I) that the parties are same or litigating under the same title.

(II) that the matter directly and substantially in issue in the subsequent suit.

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It is also settled proposition of law that if both the conditions are not proved, the principle of res judicata would not apply vide Life Insurance Corporation of India Versus Ganga Dhar Versus Ranade, AIR 1990 SC 185

It is settled proposition of law vide **AIR 1960 SC 941, Satyadhyan Ghosal and Ors. v. Sm. Deorajin Debi and Anr.** that the dispute must be between the same parties. It is clear from the judgement in suit no.61/280 of 1885, Mahant Raghubar Das vs. Secretary of State and others that the parties to the present suit are different and accordingly the suit is not hit by res-judicata. It is also clear that the dispute in the earlier suit of 1885 was with respect to Chabutra only while in this case the plaintiffs have sought different

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reliefs. Thus same plea was not taken before this Court. It is also not clear from the averment of the plaint as to how the same plea was required to be raised by the contesting parties when in a different context the present suit has been filed by the Sunni Central Waqf Board. It crystal clear that the matter in issue in 1885 case was with respect to Chabutra and not the matter with respect to other dispute as shown in the plaint. There is no final decision on any particular issue in the earlier suit which bind the parties and there is nothing on record to suggest that the matter might or ought to have been raised earlier. Consequently, the plaintiffs have failed to substantiate that the earlier judgment shall operate as res judicata against the defendants in the suit. Issue No. 8 is decided accordingly against the plaintiffs.

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**ISSUE NO. 9**

**Whether the plaintiff's served valid notices under Section 80 C.P.C.**

**FINDINGS:**

Deleted vide order dated May, 22/25, 1990).

**ISSUE NO. 17**

**Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?**

**FINDINGS:**

This issue has already been decided by Civil Judge, Faizabad on 21.4.66. The finding has become final between the parties and is

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binding on the parties.

**ISSUE NO. 18:**

**What is the effect of the judgdment of their lordships of the Supreme Court in Gulam Abbas and others Vs. State of U.P. and others, A.I.R. 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21st April, 1966 on issue no. 17?**

**FINDINGS:**

Admittedly, Civil Judge recorded finding on issue no. 17 on 21.4.66. It has been urged on behalf of the plaintiffs that the judgment of the Hon'ble Apex Court in ***Ghulam Abbas Vs. State of U.P., AIR 1981 SC 2198*** has an impact on the finding of the learned Civil Judge on issue no. 17. It has not been argued from the side of the plaintiffs that how finding on issue no. 17 was not be deemed to be final between the parties. It further transpires in Ghulam Abbas's case that there was a dispute between Shia and Sunni Muslims. The executive machinery was directed to act in accordance with the provisions of Section 144 Cr.P.C. The petition was filed before the Apex Court by a party, which was not a party to the suit. Thus, the effects of Ghulam Abbas's case do not apply in this case. However, at the cost of repetition, it may be referred that the finding on issue no. 17 is final between the parties and is not liable to be questioned by the plaintiffs while they have failed to get it set aside through proper forum. Thus there is no effect of the judgment of Ghulam Abbas's case on the finding of Civil Judge recorded on 21.4.1966 on issue no. 17. Issue

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no. 18 is decided accordingly in favour of the defendants and against the plaintiffs.

**ISSUE NO. 19(b):-**

**Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?**

**FINDINGS:**

It has been pointed out by the defendants that the disputed structure was surrounded by temples and other Hindu places of worships and it was not possible for the Muslims to reach at the disputed structure except by passing through places of Hindu worship. Thus, the building was land locked. Thus according to the map prepared by Sri Shiv Shankar Lal, Pleader in O.O.S. No. 2 of 1950 that the disputed structure was surrounded from all the sides and there were Hindu religious place of worship. It transpires that towards rest there was a Parikrama Asthal and one Chabutra towards east there was Ram Chabutra and Hanumat Dwar towards south Chabutra and Samadhi of Markendey Angira and towards east there were Samadhi of Sanak Nandan and others alongwith Sita Rasoi. Thus, the building was land locked and it was only possible to reach inside the disputed place through the places of Hindu worship. Consequently, according to the tenets of Islam there cannot be any mosque in the vicinity of Hindu place of worship where the bells are rung and prayers are offered. It is also admitted fact that at Hindu place of worship ringing of bell is integral part of worship. Thus according to the Islamic tenets

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such a vicinity cannot be a mosque.

In vicinity of bells there cannot be a mosque because it is revelation of the holy prophet that bell is abode of saitan, contrary to it bell is integral part of religious customs of worship of the Hindus as such as all along bells remained in the disputed site it can't be a mosque:

**1.** In a Hindu Temple ringing of bell is integral part of worship while according to *Shar* bell is considered to be an instrument of Saitan and angels do not enter in such a house where bell is rung as such, a place where angels do not enter can't be a Masjid. As it is evident from the Gazetteer of 1877-78 and Millet's Settlement Report that till 1855 Hindus were worshipping in the same and one building which was allegedly known as Babri Mosque said to be erected by Moghul Emperor Babur over the sacred site of Sri Ramajanamsthan by demolishing Hindu temple of that shrine and on annexation of Oudh to British India ( on 13th February, 1856 and Lord Canning's proclamation on 15th March, 1859, confiscating all proprietary rights in the soil of the Oudh Province) the Administration made an enclosure bifurcating the Temple compound and thereby ordered Hindus not to enter inside the said building inconsequence whereof Hindus erected a Platform in the Temple compound just after enclosure and started worshiping thereon, but from the several applications of the persons claiming to be Mutavallis/ Muezzins/ Khattibs it is

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very much apparent that even after 1855 and onwards Hindus were continuously worshipping in the said temple and, from their application of 1883 it becomes crystal clear that in addition to performing Idol worship in the said disputed building Hindus were celebrating their festivals as such for all practical purposes said building was a Hindu temple and according to Musalman Law due to presence of Idols & Bells it was not at all a Masjid.

**2.** The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 2113 and 2114 reveal that the Holy Prophet had said that Angels do not accompany the person who has with him a bell because the bell is the musical instrument of the Saitan. The said Hadiths read as follows:

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**[2113] Abu Huraira reported Allah's Messenger (may peace be upon him) had said: Angels do not accompany the travellers who have with them a dog and a bell(1).**

**[2114] Abu Huraira reported that Allah's Messenger (may peace be upon him) had said: The bell is the musical intrument of the Satan.**

**3.** The Sacred Compilation Hadith Sahih Muslim (Vol.-I) 377 as well as Jami' At-Tirmidhi (Vol.-1) 190 reveal that the Holy Prophet did not approve the method of giving Ajan/Adhan by ringing the bell like the persons of other faith; of course, reason behind this was that it was an instrument of Saitan. Said Hadiths read as follows:

> "[377] Ibn Umar reported: When the Muslims came to Mediha, they gathered and sought to know the time of prayer but no one summoned them. One day they

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> discussed the matter, and some of them said: Use something like the bell of the Christians and some of them said: Use horn like that of the Jews. Umar said: Why may not a man be appointed who should call (people) to prayer? The Messenger of Allah (may peace be upon him) said: O Bilal, get up and summon (the people) to prayer."
>
> (Hadith Sahih Muslim (Vol.-I) 377 at page 256)

> "**190.** Ibn Umar narrated: "When the Muslims arrived in Al-Madinah, they used to assemble for the *Salat,* and guess the time for it. There was no one who called for it (the prayers). One day they discussed that some of them said that they should use a bell like the bell the Christians use. Others said they should use a trumpet like the horn the Jews use. But Umar [bin Al-Khattab] said, 'Wouldn't it be better if we had a man call for prayer?' He said, 'So Allah's Messenger said: 'O Bilal! Stand up and call for the *Salat.*"
>
> (Jami' At-Tirmidhi (Vol.-1) 190 at page 215)

**4.** In 'Ibn Battuta' Travels in Asia and Africa' (1325-1354) on page 142 Ibn Battuta writes that he became surprised when he heard bells ringing on all sides of the mosque wherein he was staying. In his note on page 357 of the said book the editor/translator explains that the Muslim hold the ringing of bells in the greatest abhorrence and believe that the angels will not enter in the house wherein bells are rung. As the suit premises was surrounded by all sides from the temples and even in the alleged Temple -Mosque building Hindus were worshiping by ringing bells, according to *Shar* it cannot be termed as mosque. Relevant extracts from the said book read as follows:

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We stayed at Kafá in the mosque of the Muslims. An hour after our arrival we heard bells ringing on all sides. As I had never heard bells before,[19] I was alarmed and bade my companions ascend the minaret and read the Koran and issue the call to prayer. They did so, when suddenly a man entered wearing armour and weapons and greeted us. He told us that he was the qádí of the Muslims there, and said "When I heard the reading and the call to prayer, I feared for your safety and came as you see."

[19] Muslims hold the ringing of bells in the greatest abhorrence, and attribute to the Prophet the saying: "The angels will not enter any house wherein bells are rung."

**5.** The Sacred Compilation Hadith Sahih Muslim (Vol.-II) 851 & 851R3 reveal that it was commanded by the Holy Prophet that Muslims must observe silence during sermon on Friday. The said Hadiths read as follows:

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[851] Abū Huraira reported what Allah's Messenger (SAW) had said: If you ask your companion to be quiet on Friday while the Imām is delivering the sermon, you have in fact chattered (3)

[851R3] On the authority of Abu Huraira that the Holy Prophet said: "If you said to your companion: Be quiet, on Friday, and the Imam is delivering the sermon, you have in fact chattered.

From the aforesaid Hadith it becomes clear that in the noisiest place where bells were/are being rung and Conch Shells were/are being blown prayer could not be offered. As it is admitted by the then alleged Mutawalli that Conch Shell was being blown by the Pujari Neehang Singh even in 1861 said Structure can't be a Masjid but for all practical purposes it was/is only Temple.

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Since the structure has already been demolished but the report of Commissioner is available on record. Accordingly, the disputed structure cannot be deemed to be a mosque according to the tenets of Islam. Thus, Issue no.19(b) is decided in favour of the defendants and against the plaintiffs.

## ISSUE NO. 19 (d):

**Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did not have minarets?**

**FINDINGS:**

On behalf of defendants it is contended that the building in question was not a mosque under the Islamic Law. It is not disputed that the structure has already been demolished on 6.12.1992. According to Dr. M. Ismail Faruqui and others vs. Union of India and others case, 1994 (6) SCC 360, the Hon'ble Apex Court held at para 70 that the sacred character of the mosque can also be lost. According to the tenets of Islam, minarets are required to give Azan. There cannot be a public place of worship in mosque in which Provision of Azan is not available, hence the disputed structure cannot be deemed to be a mosque.

According to Islamic tenets, there cannot be a mosque without place of Wazoo and surrounded by a graveyard on three sides. Thus, in view of the above discussions, there is a strong circumstance that without any minaret there cannot be any mosque. Issue no.19(d) is decided accordingly, against the plaintiffs and in favour of the

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defendants.

**ISSUE NO. 19(e):**

**Whether the building in question could not legaly be a mosque as on plaintiffs own showing it was surrounded by a graveyard on three sides.**

**FINDINGS:**

It is not disputed that alleged mosque was surrounded by a graveyard from three sides. Defendants contend as below :-

There can not be a mosque in a place surrounded by graves as facing towards graves Namaz can not be offered:

1. In the schedule of the plaint the suit premises has been shown to be surrounded on all four sides by the graves, and sacred Hadiths prohibit from - offering prayers towards graves, visiting the graves of strangers, sitting on graves and erecting tent over a grave as such according to Islamic Law and tenets the Scheduled Premises was never appropriate place for offering prayers to Merciful Almighty Allah. As such no declaration of Mosque as prayed for can be granted.

2. The Sacred Compilation Jami‘ AT-Tirmidhi (Vol.-2) Hadith 1050 reveals that the Holy Prophet has commanded not to sit on the graves nor perform Salat i.e. prayer towards graves .

> **“1050.** Abu Marthad Al-Ghanawi narrated that the prophet said: “Do not sit on the graves nor perform Salat towards them.” (Sahih) (He said) There are narrations on Amr bin Hazm, and Bashir bin Al-Khasasiyyah.

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(Another route) with the chain, and it is similar."

3. The Sacred Compilation Jami' AT-Tirmidhi (Vol.-2) Hadith1054 and ibid (Vol.1) Hadith 230 reveal that the Holy Prophet had prohibited Muslims from visiting the graves except the grave of their mothers. The said Hadith reads as follows:

> **"1054.** Sulaiman bin Buraidah narrated from his father that the Messenger of Allah said: "I had prohibited you from visiting the graves. But Muhammad was permitted to visit the grave of his mother: so visit them, for they will remind you of the Hereafter."
>
> Jami' AT-Tirmidhi (Vol.-2) Hadith 1054

> "320. Ibn 'Abbas narrated: "Allah's Messenger cursed the women who visit the graves, and those who use them as Masajid and put torches on them." **(Da'if)**
>
> Jami' At-Tirmidhi (Vol.1) Hadith 230

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As such to go an alleged Mosque surrounded on all three sides by graveyards means to visit the graves of strangers every day which act has been prohibited in Islam wherefrom it can be safely inferred that the Muslims are forbidden from offering prayers in a graveyard-locked place/building.

4. The Sacred Compilation Jami' AT-Tirmidhi (Vol.-5) Hadith 2890 reveals that even a tent cannot be erected over the grave as it invites sin.

> "**2890**. Ibn Abbas narrated: "One of the Companions of the Prophet put up a tent upon a grave without knowing that it was a grave. When he realized that it was a person's grave, he

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recited Surat Al-Mulk until its completion. Then he went to the Prophet and said, 'O Messenger of Allah [Indeed] I erected my tent without realizing that it was upon a grave. So when I realized there was a person in it I recited Surat Al-Mulk until its completion.' So the Prophet said: 'It is a prevention, it is a salvation delivering from the punishment of the grave." **(Da'if )"**

5. Neil B.E. Baillie in his Book 'A Digest of Mahommedan Law' Part- First (Second Edition 1875) containing the doctrines of the Hanifeea Code of Jurisprudence at page 621-22 records that the bodies buried in the ground can be exhumed by the rightful owner if the land was usurped. Relevant extract from the above referred pages reads as follows:

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**When a body has been buried in the ground, whether for a long or short time, it cannot be exhumed without some excuse. But it may be lawfully exhumed when it appears that the land was usurped, or another is entitled to it under a right of pre-emption.**

Be it mentioned herein that the Plaintiffs' witnesses have admitted that the graves were dug up by the Hindus after purchasing the lands wherein graves were located. It is settled law that public Graveyard can not be sold wherefrom it becomes crystal clear that it was not a public Graveyard meant for the Muslims.

6. The Sacred Compilation Jami' AT-Tirmid (Vol.-2) Hadith 1052 reveals that the Holy Prophet had prohibited plastering graves, writing on them, building over them and treading on them.

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**1052- Jabir narrated: "The Messenger of Allah prohibited plastering graves, writing on them, building over them, and treading on them." (Sahih)**

As such it cannot be inferred that the plastered graves mentioned in Commissioner's report in 1950 were built by Emperor Babur of his soldiers who died in alleged war between him and the then ruler of Ajodhya because the Emperor Babur was a scholar of Hanafi School of Islamic Law which does not permit to build plastered graves of soldiers.

I have gone through site plan prepared by Advocate Commissioner in suit no. 2 of 1950, which goes to show that towards east, there is a graveyard for which there is controversy. Muslims claim in the plaint that this graveyard was used for the burial of soldiers, who fought from the site of Babur Army during the scuffle between Shaikh Bayazid, previous ruler of Ayodhya and Babur. It has been submitted on behalf of the plaintiffs that the said graveyard is Gang-e-Shahidan where certain muslims were buried, who were killed during the battle with Hindus that took place in Hanuman Garhi. Hindus claim that there is a kuti and chabutra towards east. Definitely there is a graveyard for which there is controversy to whom the same belongs.

Towards north and south of the disputed structure there are certain plastered graves, which are said to be Samadhi of Hindu saints and towards west there is open place.

In view of the circumstances referred to above, Hindus claim

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that namaz cannot be offered in a graveyard. Accordingly the case as set up in the plaint is contrary and the plaintiff's are not entitled for any relief .

Having regard to the rival submissions, it is clarified that the entire graveyard has already been acquired by the Central Government and the action has been upheld by the Hon'ble Apex Court in ***Dr. M. Ismail Faruqui Vs. Union of India, (1994) 6 SCC 360.***

According to the tenets of Islam since there was no place of wazu and the disputed structure, which was surrounded by three sides by the graveyard, could not be a functional mosque.

As there was no provision of water for wazu in the disputed structure it can't be a mosque:

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As there was no provision for Azan without minarets in the disputed structure, it can't be a mosque.

1. Without performing *wazu* by pure water in a mosque one cannot offer prayer. One Hadith says that for Friday's prayer one should take a bath in his house and thereafter perform *wazu* in a Mosque and then he should offer prayer from which it becomes crystal clear that performing *wazu* in a mosque is mandatory pre condition for offering one's prayer to Almighty Merciful *Allah*. As Friday's prayer is offered in congregation at least on that day huge quantity of water is required but in the alleged Temple-Mosque premises there was no such provision of water for Muslims for performing *wazu* from which it can be safely inferred that said structure was neither meant for offering

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*Namaz* nor was a Masjid at all but all along it was a temple as such the same cannot be declared *Baburi Masjid*.

**2.** The Sacred Compilation Hadith Sahih Muslim (Vol.-II) 844 & 845 reveal that before offering Friday's prayer one should take a bath in his house and thereafter perform *Wazu* in a Mosque. Said Hadiths read as follows:

[844] 'Abdullah reported that he heard Allah's Messenger (SAW) who said: When any one of you intends to come for Friday prayer, he should take a bath.

[845] 'Abdullah (b. 'Umar) reported from his father, that while be was addressing the people on Friday (sermon), a person, one of the Companions of the Messenger of Allah (SAW), entered (the mosque). 'Umar said to him loudly: What is the time hour (for attending the prayer)? He said: I was busy today and I did not return to my house when I heard the call (to Friday prayer), but I perfomed ablution (only). Upon this 'Umar said: Just ablution! You know that the Messenger of Allah (SAW) commanded (us) to take a bath (on Friday).

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**3.** The Sacred Compilations Hadith Sahih Muslim (Vol.-I) 225; (Vol.-II) 844-847R1 and Jami' At-Tirmidhi (Vol.-1) Hadiths 1-5, 90, 200-201, 497-498 say that prior to offering prayer performance of *Wazu* by pure water is necessary and for Friday's prayer it is must to take bath in one's house then visit the *Masjid* and perform *Wazu* in it by water prior to offering prayer.

[225] Hammām b. Munabbih, who is the brother of Wahb . Munabbih, said: This is what has been transmitted to us by Abū Huraira from Muhammad, the Messenger of Allah (SAW), and then narrated a hadīth out of them and observed that the Messenger of Allah (SAW) said: The prayer of no one amongst you would be accepted in a state of impurity till he performs ablution (1).

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[846] Abu Sa'id Al-Khūdrī reported what Allah's Messenger (SAW) had said: Taking a bath on Friday is essential[1] for every adult person.

[847] 'Ā'isha reported: The people came for Friday prayer from their houses in the neighbouring villages dressed in woollen garments full of dust which emitted a foul smell. A person among them (those who were dressed so) came to the Messenger of Allah (SAW) while he was in my house. The Messenger of Allah (SAW) said to him: Were you to cleanse yourselves on this day.

[847R1] 'Ā'isha reported: The people (mostly) were workers and they had no servants. Bad-smell thus emitted out of them. It was said to them: If you were to take bath on Friday.

**1.** Ibn 'Umar narrated that the Prophet ﷺ said: "*Ṣalāt* will not be accepted without purification, nor charity from *Ghulūl*[1] ." **(*Ṣaḥīḥ*)**

**2.** Abū Hurairah narrated that Allāh's Messenger ﷺ said: "When a Muslim, or believer, performs *Wuḍū'*, washing his face, every evil that he looked at with his eyes leaves with the water – or with the last drop of water, or an expression similar to that – and when he washes his hands, every evil he did with his hands leaves with the water – or with the last drop of water – until he becomes free of sin." **(*Ṣaḥīḥ*)**

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**3.** 'Alī narrated that the Prophet ﷺ said: "The key to *Ṣalāt* is the purification, its *Taḥrīm* is the *Takbīr*, and its *Taḥlīl* is the *Taslīm*."[1] **(*Ḥasan*)**

**4.** Jābir bin 'Abdullāh, may Allāh be pleased with them, narrated that Allāh's Messenger ﷺ said: "The key to Paradise is *Ṣalāt*, and the key to *Ṣalāt* is *Wuḍū'*." **(*Ḥasan*)**

**5.** Anas bin Mālik said: "When the Prophet ﷺ entered the toilet he would say: 'O Allāh! Indeed I seek refuge in You.'"

Shu'bah (one of the narrators) said: "Another time he said: 'I seek refuge in You from *Al-Khubthi* and *Al-Khabīth*.' Or: '*Al-Khubthi* and *Al-Khabā'ith*.'"[1] **(*Ṣaḥīḥ*)**

**90.** Ibn 'Umar narrated: "A man greeted the Prophet ﷺ (with *Salām*), and he was urinating, so he did not respond to him." **(*Ṣaḥīḥ*)**

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**200.** Abū Hurairah narrated that Allāh's Messenger ﷺ said: "None should call the *Adhān* except for one with *Wuḍū'*." (*Ḍa'īf*)

**201.** Ibn Shihāb narrated that Abū Hurairah said: "None should call for the prayer except for one with *Wuḍū'*." (*Ḍa'īf*)

**497.** Samurah bin Jundab narrated that Allāh's Messenger ﷺ said: "Whoever performs *Wuḍū'* on Friday, then he will receive the blessing, and whoever performs *Ghusl* then *Ghusl* is more virtuous." (*Ḥasan*)

**498.** Abū Hurairah narrated that Allāh's Messenger ﷺ said: "Whoever performs *Wuḍū'*, performing his *Wuḍū'* well, then he comes to the Friday (prayer), and gets close, listens and is silent, then whatever (sin) was between that and (the last) Friday are forgiven for him, in addition to three days. And whoever touches the pebbles, he has committed *Laghā* (useless activity)." (*Ṣaḥīḥ*)

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**4.** Holy Quran Surah 5 Al-Ma'idah Ayat 6 and the Sacred Compilation Hadith Sahih Muslim (Vol.-I) 367-370 provides that Tayammum i.e. purification by clean earth can be done only in extreme exigency at the time of travelling or war campaign when water is not available otherwise *Wazu* must be performed by water.

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**6. O you who believe! When you intend to offer *As-Salât* (the prayer), wash your faces and your hands (forearms) up to the elbows, rub (by passing wet hands over) your heads, and (wash) your feet up to the ankles[1]. If you are in a state of *Janâba* (i.e. after a sexual discharge), purify yourselves (bathe your whole body). But if you are ill or on a journey, or any of you comes after answering the call of nature, or you have been in contact with women (i.e. sexual intercourse), and you find no water, then perform *Tayammum* with clean earth and rub therewith your faces and hands.[2] Allâh does not want to place you in difficulty, but He wants to purify you, and to complete His Favour to you that you may be thankful.**

[367] Ā'isha reported: We went with the Apostle of Allah (may peace be upon him) on one of his journeys (3) and when we reached the place Baidā'or Thāt Al - Jaish (4), my necklace was broken (and fell some where). The Messenger of Allah (may peace be upon him) along with other people stayed there looking for it. There was neither any water at that place nor was there any water with them (the Companions of the Holy Prophet). Some people came to my father Abū Bakr and said: Do you see what' Āisha has done? She has detained the Messenger of Allah (may peace be upon him) and the people accompanying him, and there is neither any water here or with them. So Abū Bakr came there and the Messenger of Allah (may peace be upon him) was sleeping with his head on my thigh. He (Abū Bakr) said: You have detained the Messenger of Allah (may peace be upon him) and the people and there is neither water here nor with them. She (Aisha) said: Abū Bakr scolded me and uttered what Allah wanted him to utter and nudged my hips with his hand. And there was nothing to prevent me from stirring but the fact that the Messenger of Allah (may peace be upon him) was lying upon my thigh. The Messenger of Allah (may peace be upon him) slept till it was dawn at a waterless place. So Allah revealed the verses pertaining to Tayammum (1) and they (the Holy Prophet and his Companions) performed Tayammum. Usaid b. Al- Hudair who was one of the leaders (2) said: This is not the first of your blessings, O Family of Abū Bakr (3). Āisha said: We made the camel stand which was my mount and found the necklace under it.

[368] Shaqiq reported: I was sitting in the company of Abdullah and Abū Mūsā, when Abū Mūsā said: O'Abdel - Rahmān (kunya of Abdullah b. Mas'ūd), what would you like a man to do about the prayer if he experiences a seminal emission or has sexual intercourse but does not find water for a month(4)? Abdullah said: He should not perform Tayammum even if he does not find water for a month. Abdullah said: Then what about the verse in Sūra Mā'ida: «If you do not find water, betake yourself to clean with dust»? Abdullah said: If they were granted concession on the basis of this verse, there is a possibility that they would perform Tayammum with dust on find-

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ing water very cold for themselves. Abū Mūsā said to Abdullah: You have not heard the words of Ammār: The Messenger of Allah (may peace be upon him) sent me on an errand and I had a seminal emission, but could find no water, and rolled myself in dust just as a beast rolls itself. I came to the Messenger of Allah (may peace be upon him) and mentioned that to him and he (the Holy Prophet) said: It would have been enough for you to do this. Then he struck the ground with his hands once and wiped his right hand with the help of his left hand and the exterior of his palms and his face[1]. Abdullah said: Didn't you see that Umar was not fully satisfied with the words of Ammār only[2]?

[369] Umair, the freed slave of Ibn' Abbās, reported: I and Abdel - Rahmān b. Yasīr, the freed slave of Maimūna, the wife of the Apostle (may peace be upon him). came to the house of Abu'l -Jahm b. Al - Hārith Al-Simma Ansāri and he said: The Messenger of Allah (may peace be upon him) came from the direction of A-Jamal well and a man met him; he saluted him but the Messenger of Allah (may peace be upon him) made no response, till the Holy Prophet came to the wall, wiped his face and hands and then returned his salutations.

[370] Ibn Ymar reported: A man happened to pass by the Messenger of Allah (may peace be upon him) when he was making water and saluted him, but be did not respond to his salutation.

Since there was no provision of water reservoir in the disputed premises, the question of performing wazu by huge crowd for Friday's prayer did not arise at all in other words the said structure could not be used as Masjid for offering congregational prayer on Friday. In view of Islamic tenets, the property cannot be deemed to be a mosque.

In view of the photographs shown in the album, it is established that on the pillars, there were certain images of gods and other religious pictures of Hindu religion. Thus according to the following tenets of Islam a building cannot be treated to be a mosque. The Islamic tenets are as under:-

Structure **having images/idols and designed one cannot be a masjid under law of shar** as such the disputed structure as it was can not be termed as a mosque:

1. The Holy prophet has said that angels do not enter in a house which has images, portraits, pictures, idols etc. and even the

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designed garments detract attention from prayer and, for that reason prohibited to decorate a mosque with pictures. As the disputed structure on its columns and other parts had engraved/chiseled images/idols of Load-bearing *Yakshas*, *Devis*, Divine - couples, *Kalash,* Lotus, Leaves, *Varah, Swastiks, Srivatsa, Kapot-pallis, etc.* it does not come within the definition of Masjid according to Muslim Religious Law and belief but it comes within the definition of a Hindu Temple according to Hindu Personal Religious Law and belief.

**2.** The Sacred Compilation Hadith Sahih Muslim(Vol.-I) 528 reveals that the Holy Prophet prohibited to decorate Mosques with pictures. Said Hadith reads as follows:

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**[528] Â'isha reported: Umm Habiba and Umm Salama mentioned before the Messenger of Allah (may peace be upon him) a church which they had seen in Abyssinia and which had pictures in it. The Messenger of Allah (may peace be upon him) said: When a pious man amongst them (among the religious groups) dies they build a place of worship on his grave, and then decorate it with such pictures. They would be the worst of creatures on the Day of Judgment in the sight of Allah(1).**

From the aforesaid Hadith it is crystal clear that there is forbiddance in Islam to decorate the Mosque with pictures. As such a building decorated with pictures can't be declared as a Masjid.

**3.** The Sacred Compilations Hadith Sahih Muslim (Vol.-III) 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111 and 2112 as well as Jami' At-Tirmidhi (Vol.-V) Hadith 2804 reveal that the Holy Prophet had acknowledged that the Angels do not enter a house

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in which there is an object of images or a dog. Said Hadiths read as follows:

(Set out Hadith Sahih Muslim from running page 101 to 107)

"**2804.** Ibn abbas narrated: "I heard Abu Talhah saying: ' I heard the Messenger of Allah, saying: "The angels do not enter a house in which there is a dog or an object of images." ***(Sahih)***

**Comments:**
The taking or drawing of a picture is not allowed, keeping it is also not permissible, and whoever does so is deprived of the blessed and merciful supplications of the angels; while a person is in need of mercy and blessing at every moment. Likewise, a dog is an impure animal and some are of a satanic nature and the angels despise the devil."

(Jami' At-Tirmidhi (Vol.-V) Hadith 2804)

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From the aforesaid Hadiths it is crystal clear that a building which contains images or Gods does not come within the definition of an "Abode of Angels" for the reasons of such building being hated by the angels.

**4.** The Sacred Compilation Hadith Sahih Muslim (Vol.-I) 556 reveals that the Holy Prophet prohibited to use designed garment at the time of prayer. Said Hadith reads as follows:

[556] Ā'isha reported: The Apostle of Allah (may peace be upon him) p ayed in a garment which had designs over it, so he (the Holy Prophet) said: Take it to Abū Jahm and bring me a plain blanket from him, becuase its de- s gns have distracted me.

From the aforesaid Hadiths it is known that designs detract attention from prayer wherefrom it can be necessarily inferred that a Masjid wherein prayer is offered to Almighty must not have design in it otherwise it will detract the attention of the worshippers from prayer

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and lose its status of being a Masjid.

**5.** The Muwatta:Imam Malik 1743 reveal that the Holy Prophet declined to use a pillow (mattress) painted with pictures and said that no angels enter the house that contains a picture as also that the makers of pictures will suffer punishment on the day of judgment said Muwatta 1743 reads as follows:

(1743) 'Ã'ishah reported that she bought a pillow (mattress) on which were painted pictures. When the Messenger of Allah (may peace be upon him) saw it, he kept standing at the door of her apartment and did not enter and his face showed signs of displeasure. She said : Messenger of Allah, I repent and ask forgiveness of Allah and His Messenger ; what fault is mine ? He asked : What pillow (mattress) is this ? She said : I bought it, so that you may sit on it, recline on it. The Messenger of Allah (may peace be upon him) said : The makers of pictures will suffer punishment on the Day of Judgment. They will be told to give life to what they had painted in the world. Then he added : No angels enter the house that contains pictures.

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The defendants have proved through the tenets of Islam that the disputed structure was surrounded by grave yard from three sides. There was no place of Wazoo. There was no separate entrance in the disputed structure, i.e, mosque and further there was no minarets in the disputed structure . It is settled proposition of Mohammedan Law that mosque is a public place. Minarets are required to give Azan.

There should be separate entrance in a mosque which may be used by the public to enter into the mosque. There can not be any idol or image inside the mosque like pillars which were found inside and outside the mosque on which there were certain images of Hindu Gods and Goddesses. Muslims observe prayer and also following formalities; (I) Wazoo (ii) There must be recital of Azan or Ikamat by Pesh Imam or Moazzin and single Muslim can also offer prayer

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inside the house but if there is public place, there should be minarets to give Azan. A.S.I. also found that the disputed structure was raised on an earlier wall which was prior to construction. It was a long wall which indicates that the mosque was constructed on some of the portions of the earlier building against the tenets of Islam.

In view of the aforesaid discussion, the building in question could not be legally a mosque and was constructed against the tenets of Islam. Issue no. 19 (e) is decided against the plaintiffs.

**ISSUE NO. 19 (F)**

**Whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses? If the finding is in the affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?**

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**FINDINGS:**

It is not disputed between the parties that there were 14 pillars inside and outside the mosque. This Court directed prior to the demolition of the disputed structure to give report and also prepare photographs of those pillars. In all 30 photographs, leave no room for doubt that there are certain images of Hindu God and Goddesses and other religious marks on the pillars. It further denotes that people were offering prayers and worshipping the images. Photographs on pillar no. 1, photograph-48, photograph No. 50 and photograph on pillar No. 52 etc. go to show that in all the 14 pillars there were religious images of Hindu God and Goddesses and other religious

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structures and images of Hindu belief. These structures having images of idols and designed one cannot be a mosque under law of Shar. As such the disputed structure cannot be presumed as a mosque.

**STRUCTURE HAVING IMAGES/IDOLS AND DESIGNED ONE CANNOT BE A MASJID UNDER LAW OF *SHAR* AS SUCH THE DISPUTED STRUCTURE AS IT WAS CAN NOT BE TERMED AS A MOSQUE:**

1. The Holy prophet has said that angels do not enter in a house which has images, portraits, pictures, idols etc. and even the designed garments detract attention from prayer and, for that reason prohibited to decorate a mosque with pictures. As the disputed structure on its columns and other parts had engraved/chiseled images/idols of Load-bearing *Yakshas*, *Devis*, Divine - couples, *Kalash,* Lotus, Leaves, *Varah, Swastiks, Srivatsa, Kapot-pallis, etc.* it does not comes within the definition of Masjid according to Muslim Religious Law and belief but it comes within the definition of a Hindu Temple according to Hindu Personal Religious Law and belief.
2. The Sacred Compilation Hadith Sahih Muslim(Vol.-I) 528 reveals that the Holy Prophet prohibited to decorate Mosques with pictures. Said Hadith reads as follows:

**[528] Ā'isha reported: Umm Habiba and Umm Salama mentioned before the Messenger of Allah (may peace be upon him) a church which they had seen in Abyssinia and which had pictures in it. The Messenger of Allah (may peace be upon him) said: When a pious man amongst them (among the religious groups) dies they build a place of worship on his grave, and then de-**

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**corate it with such pictures. They would be the worst of creatures on the Day of Judgment in the sight of Allah(1).**

From the aforesaid Hadith it is crystal clear that there is forbiddance in Islam to decorate the Mosque with pictures. As such a building decorated with pictures can't be declared as a Masjid.

**3.** The Sacred Compilations Hadith Sahih Muslim (Vol.-III) 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111 and 2112 as well as Jami' At-Tirmidhi (Vol.-V) Hadith 2804 reveal that the Holy Prophet had acknowledged that the Angels do not enter a house in which there is an object of images or a dog. Said Hadiths read as follows:

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"**2804.** Ibn abbas narrated: "I heard Abu Talhah saying: ' I heard the Messenger of Allah, saying: "The angels do not enter a house in which there is a dog or an object of images." ***(Sahih)***

**Comments:**
The taking or drawing of a picture is not allowed, keeping it is also not permissible, and whoever does so is deprived of the blessed and merciful supplications of the angels; while a person is in need of mercy and blessing at every moment. Likewise, a dog is an impure animal and some are of a satanic nature and the angels despise the devil."

(Jami' At-Tirmidhi (Vol.-V) Hadith 2804)

From the aforesaid Hadiths it is crystal clear that a building which contains images or dogs does not come within the definition of an "Abode of Angels" for the reasons of such building being hated by the angels.

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**4.** The Sacred Compilation Hadith Sahih Muslim (Vol.-I) 556 reveals that the Holy Prophet prohibited to use designed garment at the time of prayer. Said Hadith reads as follows:

[556] Ā'isha reported: The Apostle of Allah (may peace be upon him) p ayed in a garment which had designs over it, so he (the Holy Prophet) said: Take it to Abū Jahm and bring me a plain blanket from him, becuase its de- s gns have distracted me.

From the aforesaid Hadiths it is known that designs detract attention from prayer wherefrom it can be necessarily inferred that a Masjid wherein prayer is offered to Almighty must not have design in it otherwise it will detract the attention of the worshippers from prayer and lose its status of being a Masjid.

**5.** The Muwatta:Imam Malik 1743 reveal that the Holy Prophet declined to use a pillow (mattress) painted with pictures and said that no angels enter the house that contains a picture as also that the makers of pictures will suffer punishment on the day of judgment said Muwatta 1743 reads as follows:

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(1743) 'Ã'ishah reported that she bought a pillow (mattress) on which were painted pictures. When the Messenger of Allah (may peace be upon him) saw it, he kept standing at the door of her apartment and did not enter and his face showed signs of displeasure. She said : Messenger of Allah, I repent and ask forgiveness of Allah and His Messenger ; what fault is mine ? He asked : What pillow (mattress) is this ? She said : I bought it, so that you may sit on it, recline on it. The Messenger of Allah (may peace be upon him) said : The makers of pictures will suffer punishment on the Day of Judgment. They will be told to give life to what they had painted in the world. Then he added : No angels enter the house that contains pictures.

On behalf of plaintiffs, it is submitted that the pillars do not contain images of Hindu God and Goddesses and they were taken from the ruins of any palace.

In view of the above referred tenets of Islam, it transpires that

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the pillars which contain images of Hindu God and Goddesses which were found inside the mosque go to show that they remained part of Hindu Temple. Thus, the disputed structure lacks the character of Mosque under the tenets of Islam. Issue No.19(f) is decided against the plaintiffs and in favour of the defendants.

**ISSUE NO. 20(a):**

**Whether the Waqf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutwalis were allegedly Shia Mohammedans? If so, its effect?**

**FINDINGS:**

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It has been urged on behalf of the defendants that the property does not belong to Sunni Waqf as the building was constructed by Mir Baqi who was a Shia Muslim and alleged Mutwalli was also Shia. In this context, the judgment dated 30.03.1946 in Original Suit No. 29 of 1945. Shia Central Waqf Board, U.P. (Lucknow) vs. Sunni Central Waqf Board, U.P. (Lucknow) is relevant. There was a dispute about the mosque. It was contented that since Mir Baqi was a Shia and Cash Nankar was awarded to the Zamindars of Bahorampur and Sholapur, who were Mutwallies and belong to Shia sect and claimed themselves to be descendants of Mir Baqi family. Accordingly, the mosque should be treated as Shia Mosque. On the contrary, it was alleged that the mosque was constructed by Emperor Babar, who was Sunni. Accordingly, the mosque belongs to Sunnies. The trial court framed

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issues no. 1, 2, 3, 4 & 5 and thereafter dismissed the suit without declaration filed by Shia Waqf Board holding that mosque was built by Sunnies. These facts are strongly suggestive of the facts that the founder of the mosque was Sunni.

Thus, in view of the findings in original Suit No. 19 of 1945, it transpires that this finding would operate as estoppel against Shia Central Board of Waqf and in view of the aforesaid finding the Shia Waqf Board is stopped to raise any objection against Sunni Central Waqf Board that the mosque belong to them. But this finding remained restricted between Shia and Sunni Board only. The trial court has not given any declaration in favour of Shia Waqf Board. Consequently, in view of the aforesaid finding the building was not constructed by Mir Baqi, who was a Shia Muslim. However, it has also been pointed out that since no valid notification has been issued under Section 5(1) of the Muslim Waqf Act, 1936 in respect of the property in suit. Sunni Central Board of Waqf has not right to maintain the present suit. The point of notification was not considered in the aforesaid suits. Consequently, the finding of issue no. 17 recorded by learned Civil Judge on 21.4.1966 has become final. Accordingly, its effect is that without any notification under Muslim Waqf Act even Sunni Waqf Board cannot maintain a suit. Issue No. 20(a) is decided accordingly against the plaintiffs.

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**ISSUE NO. 20(b):**

**Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit,**

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**the suit is not maintainable so far as it relates to relief for possession?**

## FINDINGS:

It has been urged on behalf of the defendants that no Mutwalli of the alleged Waqf has filed the suit, accordingly the suit is not maintainable. In view of the finding recorded by the learned civil judge on 21.4.1966 on issue no. 17 which has become final, it transpires that without any valid notification under Waqf Act the suit itself is not maintainable. Accordingly, it is irrelevant to consider this aspect for the reason that in the year 1960 Muslim Waqf Act came into operation. Under Section 19 (q) the Board was authorized to institute and defend the suit and proceeding in the court of law and it was not necessary that Mutwallies should have filed the suit. Thus, it was not necessary in the suit that Mutwalli should also be arrayed as plaintiffs in the suit. However, in the U.P. Waqf Act, 1960, the Board has a power to institute the suit. In this regard this Court is of the view that in view of the finding recorded by the learned Civil Judge on 21.4.1966 on issue no. 17 without any valid notification, the Board was also not competent to institute the suit. Accordingly, the suit as framed is not maintainable in accordance with law. Issue No. 20(b) is decided accordingly.

## ISSUE NO. 21:

**Whether the suit is bad for non-joinder of alleged deities?**

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## FINDINGS:

It has been urged on behalf of the defendants that the instant suit is barred for non-joinder of alleged deities. The plaintiffs have come out with a case in the plaint on 23.12.1949, a crowd of Hindus destroyed, damaged and desecrated the mosque by placing idol inside the mosque.

The plaintiffs in para 24-B sought the relief for removal of the idol and other article which the Hindus have placed in the mosque as object of their worship. On behalf of the defendants, it is suggested that the suit is barred for non-joinder of alleged deities. Learned counsel for the plaintiff has urged that since the Pran Pratishtha of the idol make them deities and there was no Pran Pratishtha of the idol. Accordingly, the idol cannot be termed as deities. Accordingly, it is not necessary to array them as a party. The sum and substance of the argument of the learned counsel for the plaintiffs is that the installed idols are not deity and they are not juristic person. Accordingly, they have not to be arrayed to the parties.

On behalf of the defendants Sri P.N. Misra, Advocate, has argued that Svyambhu symbols of deities do not need Pratistha while Pratistha of manmade symbols of deities can be done by single mantra of the divine Yajurved. His submissions are as under:-

1. According to Shastric (Scriptural) injunctions *Sri Ramajanmasthan Sthandil*, a *Svayambhu Linga (Symbol)* brought into existence and established by the Lord of Universe *Sri Vishnu Himself* as such in-spite of being decayed, or damaged,

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or destroyed It shall forever remain sacred place of Worship as it does not need purification or consecration or change. *Pratistha* is required only in respect of man-made Images/Idols/Symbols of Deities that can be done by chanting single *Mantra* XXXI.1 or II.13 of the Holy Divine *Sri Yajurved* (*Vagasaneyee Samhita* also known as *Sri Shukla Yajurved* ) .A deity needs to be worshipped by providing all things which are required for leading a healthy and excellent life.

**2.** *Svayambhu* i.e. Self-built or Self existent or Self-revealed *Lingas* (symbols) of *Devatas* (Gods) or the Lingas (Symbols) established by Gods, or by those versed in the highest religious truths, or by *Asuras,* or by sages, or by remote ancestors, or by those versed in the *tantras* need not to be removed though decayed or even broken. Only decayed or broken *Pratisthita* Images/Idols require to be replaced with new one. In respect of renewal of the images Treatise on Hindu Law celebrated Jurist Golapchandra Sarkar, Sastri reproduces the *Shastric* injunction (Scriptural law) as follows:

> "Raghunanda's Deva-Pratistha-Tantram, last paragraph reads as follows:
>
> "8. Now (it is stated) the prescribed mode of Renewal of Decayed Images. *Bhagwan* says – 'I shall tell you briefly the holy ordinance for renewing Decayed Images * * *'
> "Whatever is the material and whatever size of the image of *Hari* (or the God, the protector) that is to be renewed; of the same material and of the same size, and image is to be caused to be made; of the same size of the same form (and of the same material), should be (the new image) placed there; either on the second or on the third day (the image of) *Hari* should be established; if, (it be)

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established after that, even in the prescribed mode, there would be blame or censure or sin; in this very mode the *linga* or phallic symbol and the like (image) should be thrown away; (and) another should be established, of the same size (&c.) as already described, - *Haya-Sirsha".*
"9. God said, -
'I shall speak of the renewal in the prescribed mode of *lingas* or phallic symbols decayed and the like &c * * *. (A *linga*) established by *Asuras,* or by sages or by remote ancestors or by those versed in the *tantras* should not be removed even in the prescribed form, though decayed or even broken.'

(*Agnipuranam* Chapter 103 Poona Edition of 1900 AD. p.143)
[There is a different reading of a part of this *sloke* noted in the foot-note of the Poona Edition of this *Puran* as one of the *Anandashram* series of sacred books: according to which instead of – " or by remote ancestors or by those versed in the *tantras*" –
the following should be substituted, namely].

"Or by Gods or by those versed in the highest religious truths."

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"10. Now Renewal of Decayed (images is considered); that is to be performed when a *linga* and the like are burnt or broken or removed (from its proper place). But this is not to be performed with respect but a *linga* or the like which is established by a *Sinddha* or one who has become successful in the highest religious practice, or which is *anadi* i.e. of which the commencement is not known, or which has no commencement. But their *Mahabhisheka* or the ceremony of great *anointment* should be performed: - this is said by Tri-Vikrama" – Nirnaya – Sindhu – Kamalakar Bhatta, Bombay Edition of 1900 p.264.
The author of the *Dharma-Sindhu* says as above in almost the same words – see Bombay Edition of 1988 p.234 of that work. "

[Treatise on Hindu Law by Golapchandra Sarkar, Sastri (6th Edition, published by Easter Law House in 1927 at p.745-748]

**3.** Alberuni who compiled his book India in or about 1030 A.D. on page 121 of his book has written that the Hindus honour their

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Idols on account of those who erected them, not on account of the material of which they are, best example whereof is Linga of sand erected by Rama. In his book on pages 117, 209, 306-07 and 380 he has also narrated about the Lord of Universe Sri Rama. Relevant extract from page 121 of his book Alberuni's India Translated by Dr. Edward C. Sachau. Reprint 2007 of the 1st Edn. 1910 published Low Price Publications, Delhi reads as follows:

> "The Hindus honour their idols on account of those who erected them, not on account of the material of which they are made. We have already mentioned that the idol of Multan was of wood. E.g. the linga which Rama erected when he had finished the war with the demons was of sand. Which he had heaped up with his own hand. But then it became petrified all at once, since the astrologically correct moment for the erecting of the monument fell before the moment when the workmen had finished the cutting of the stone monument which Rama originally had ordered."
>
> (*ibid* page 121)

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**4.** According to the Hindus' Divine Holy & Sacred Scriptures there are two types of images one *Svayambhu* (self-existent or self-revealed or self-built) and other *Pratisthita* (established or consecrated). Where the Self-possessed Lord of Universe Sri *Vishnu* has placed himself on earth for the benefit of mankind, that is styled *Svayambhu* and it does not require *Pratistha*. As at *Ramajanamasthan* the Lord of Universe Sri Vishnu appeared and placed Himself on said sacred place said sacred place itself became *Svayambhu* for the reason that invisible power of the

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Almighty remained there which confers merit and salvation to the devotees. Consecrated artificial man-made *Lepya* images i.e. moulded figures of metal or clay; and *Lekhyas* i.e. all kinds of pictorial images including chiselled figures of wood or stone not made by moulds are called *Pratisthita*. . B. K. Mukherjee in his book on Hindu Law referring authorities describes *Svayambhu* and *Pratisthita* artificial Images as follows:

> "4.5 Images – their descriptions –
> images, according to Hindu authorities are two kinds; first is known as *Svayambhu* or self-existent, while the other is *Pratisthita* or established. The *Padmapuran* says : The image of *Hari* (God) prepared of stone, earth, wood, metal, or the like and established according to the rights laid down in *Vedas, Smritis* and *tantras* are called the established; …
> where the self possessed *Vishnu* has placed himself on earth in stone, or wood for the benefit of mankind, that is styled the self re-built." *Svayambhu* or self-built image is a product of nature, it is *anadi* or without any beginning and the worshipper's simply discover its existence. Such image does not require consecration or *Pratistha.* All artificial or man made images require consecration. An image according to *Matsyapuran* may properly be made of gold, silver, copper, iron, bronze or bell metal or any kind of gem, stone, or wood, conch shell, crystal or eve earth. Some persons worship images painted on wall or canvas says the says the *Britha Puran* and some worship the spheroidical stones known as *Salgran.* Generally speaking, the puranic writers classified artificial images under two heads; viz. (1) *Lepya* and (2) *Lekhya. Lepya* images are moulded figures of metal or clay, while *Lekhyas* denote all kinds of pectoral images including chiselled figures of wood or stone not made by moulds.
>
> [*Hindu Law of Religious and Charitable Trusts* of *B. K. Mukherjea* 5th Edition, Published by Eastern Law House at page 154.]

**5.** According to the Holy Scripture *Sri Narsingh Puranam (62.7-14*

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½ ) *Pratistha* of the Lord of Universe Sri Vishnu should be done by chanting 1st *Richa* of the *Purush Sukta* of *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXXI] and be worshipped dedicating prescribed offerings by chanting 2nd to 15th *Richas* of the *Purush Sukta*. And if worshipper so wish after completion of worship he may by chanting 16th *Richas* of the *Purush Sukta* pray to Sri Vishnu for going to his His own abode. Above-mentioned verses of *Sri Narsingh Puranam* and Hindi translation thereof reads as follows:

तस्य सर्वमयत्वाच्च स्थण्डिले प्रतिमासु च।
आनुष्टुभस्य सूक्तस्य विष्णुस्तस्य च देवता॥ ७

पुरुषो यो जगद्बीजं ऋषिर्नारायणः स्मृतः।
दद्यात्पुरुषसूक्तेन यः पुष्पाण्यप एव च॥ ८

अर्चितं स्याज्जगत्सर्वं तेन वै सचराचरम्।
आद्ययाऽऽवाहयेद्देवमृचा तु पुरुषोत्तमम्॥ ९

द्वितीययाऽऽसनं दद्यात्पाद्यं दद्यात्तृतीयया।
चतुर्थ्यार्घ्यः प्रदातव्यः पञ्चम्याऽऽचमनीयकम्॥ १०

षष्ठ्या स्नानं प्रकुर्वीत सप्तम्या वस्त्रमेव च।
यज्ञोपवीतमष्टम्या नवम्या गन्धमेव च॥ ११

दशम्या पुष्पदानं स्यादेकादश्या च धूपकम्।
द्वादश्या च तथा दीपं त्रयोदश्यार्चनं तथा॥ १२

चतुर्दश्या स्तुतिं कृत्वा पञ्चदश्या प्रदक्षिणम्।
षोडश्योद्वासनं कुर्याच्छेषकर्माणि पूर्ववत्॥ १३

स्नानं वस्त्रं च नैवेद्यं दद्यादाचमनीयकम्।
षण्मासात्सिद्धिमाप्नोति देवदेवं समर्चयन्॥ १४

संवत्सरेण तेनैव सायुज्यमधिगच्छति।

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अब पूजनका मन्त्र बताते हैं। शुक्ल यजुर्वेदीय रुद्राष्टाध्यायीमें जो पुरुषसूक्त है, उसका उच्चारण करते हुए भगवान्‌का पूजन करना चाहिये। पुरुषसूक्तका अनुष्टुप् छन्द है, जगत्‌के कारणभूत परम पुरुष भगवान् विष्णु देवता हैं, नारायण ऋषि हैं और भगवत्पूजनमें उसका विनियोग है। जो पुरुषसूक्तसे भगवान्‌को फूल और जल अर्पण करता है, उसके द्वारा सम्पूर्ण चराचर जगत् पूजित हो जाता है। पुरुषसूक्तकी पहली ऋचासे भगवान् पुरुषोत्तमका आवाहन करना चाहिये। दूसरी ऋचासे आसन और तीसरीसे पाद्य अर्पण करे। चौथी ऋचासे अर्घ्य और पाँचवींसे आचमनीय निवेदित करे। छठी ऋचासे स्नान कराये और सातवींसे वस्त्र अर्पण करे। आठवींसे यज्ञोपवीत और नवमी ऋचासे गन्ध निवेदन करे। दसवींसे फूल चढ़ाये और ग्यारहवीं ऋचासे धूप दे। बारहवींसे दीप और तेरहवीं ऋचासे नैवेद्य, फल, दक्षिणा आदि अन्य पूजन–सामग्री निवेदित करे। चौदहवीं ऋचासे स्तुति करके पंद्रहवींसे प्रदक्षिणा करे। अन्तमें सोलहवीं ऋचासे विसर्जन करे। पूजनके बाद शेष कर्म पहले बताये अनुसार ही पूर्ण करे। भगवान्‌के लिये स्नान, वस्त्र, नैवेद्य और आचमनीय आदि निवेदन करे। इस प्रकार देवदेव परमात्माका पूजन करनेवाला पुरुष छः महीनेमें सिद्धि प्राप्त कर लेता है। इसी क्रमसे यदि एक वर्षतक पूजन करे तो वह भक्त सायुज्य मोक्षका अधिकारी हो जाता है॥ ७–१४½॥

*(Sri Narsingh Puranam 62.7-14 ½ )*

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Be it mentioned herein that in the above *Sri Narsingh Puranam 62.13 Sloke* enumerates *Pradakshina i.e. Parikrama* (circumbulation) as 14th means of reverential treatment of the Deity and thereby makes it integral part of the religious customs and rituals of service and worship of a Deity.

**6.** 1st Holy Spells of *Purush Sukta* of the Holy Devine *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXXI] prescribed by the Holy *Sri Narsingh Puranam* for *Pratistha* of the Lord of Universe Sri Vishnu reads as follows:

सहस्रशीर्षा पुरुषः सहस्राक्षः सहस्रपात् ।
स भूमिं॑ सर्वतः स्पत्वाऽत्यतिष्ठद्दशाङ्गुलम् ॥ १ ॥

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**मन्त्रार्थ**—सभी लोकों में व्याप्त महानारायण सर्वात्मक होने से अनन्त शिर वाले, अनन्त नेत्र वाले और अनन्त चरण ( पैर ) वाले हैं। ये पाँच तत्त्वों से बने इस गोलकरूप समस्त व्यष्टि और समष्टि ब्रह्माण्ड को तिरछा, ऊपर, नीचे सब तरफ से व्याप्त कर नाभि से दस अंगुल परिमित देश, हृदय का अतिक्रमण कर अन्तर्यामी रूप में स्थित हुए थे ॥ १ ॥

(*ibid as translated by Swami Karpatriji and published by Sri Radhakrishna Dhanuka Prakasan Samsthanam, Edn. Vikram samvat 2048)*

Simple English translation whereof reads as follows:

> 'The Almighty God who hath infinite heads, infinite eyes; infinite feet pervading the Earth on every side and transgressing the universe installed Him in sanctum as knower of inner region of hearts'.

Be it mentioned herein in the Mimamsa Darshan as commented in Sanskrit by Sri sabar Swami and in Hindi by Sri Yudhisthir Mimamsak and Mahabhasya meaning of *"Sahasra"* has also been given "infinite" as also "one" apart from "thousand" and according to context one or other meaning is adopted.

**7.** *Nitya Karma Puja Prakash* has prescribed a *Mantra* of *Yajurved* [i.e. *Vagasaneyee Samhita* Chapter II.13] for *Pratistha* of Lord G*anesh*. Relevant portion of the said book reads as follows:

> [Nitya Karma Puja Prakash published by Gita Press Gorakhpur 32nd Edn. 2060 Vikram Samvat at page 244]

**8.** The Holy *Sri Satpath-Brahman* interpreting said *Mantra* II.13 of the Holy Sri *Shukla Yajurved* [i.e. *Vagasaneyee Samhita*] says that *Pratistha* of all Gods should be done by said *Mantra.* Be it mentioned herein that the Holy *Sri Satpath-Brahman* being *Brahmn* Part of Divine Sri *Shukla Yajurved,* interpreting

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*Mantras* of said *Vagasaneyee Samhita* tells about application of those *Mantras* in *Yajnas* (Holy Sacrifices). Said *Mantra* II.13 of the Divine *Sri Shukla Yajurved* (*Vagasaneyee Samhita*) as well as *Sri Satpath-Brahman* (I.7.4.22) with original texts and translations thereof read as follows:

मनो जूतिर्जुषतामाज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञꣳ समिमं दधातु ।
विश्वे देवासऽइह मादयन्तामोऽ३म्प्रतिष्ठ ॥ १३ ॥

[ ४४ ] ( जूतिः मनः आज्यस्य जुषतां ) तेरा वेगवान् मन घृतका सेवन करे, ( बृहस्पतिः इमं यज्ञं तनोतु ) यज्ञका स्वामी इस यज्ञको फैलावे, ( इमं यज्ञं अरिष्टं सं दधातु ) इस यज्ञको हिंसारहित करके सम्यक् धारण करे। ( विश्वे देवासः इह मादयन्तां ) सब देव यहां आनन्दित हों, ( ओं प्रतिष्ठ ) ऐसा ही होवे, प्रतिष्ठित होवे ॥ १३ ॥

*(ibid Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn. Published by Swayadhyay Mandal pardi)*

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English Translation of the above noted Hindi Translation reads as follows:

> "May your mind Delight in the gushing (of the ) butter. May Brihaspati spread (carry through) this sacrifice ! May he restore the sacrifice uninjured. May all the Gods rejoice here. Be established/seated here."

Sanskrit text of *Sri Satpath-Brahman* (I.7.4.22) as printed in '*Sri Shukla Yajurvediya Satpath Brahman'* Vol. I on its page 150, Edn. 1988 Published by Govindram Hasanand, Delhi 110006 is reproduced as follows:

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वाऽइदꣳ सर्वमाप्तं तन्मनसैवैतत्सर्वमाप्नोति बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञꣳ समिमं दधात्विति यद्विवृहं तत्संदधाति विश्वे देवास इह मादयन्तामिति सर्वं वै विश्वे देवाः सर्वेणैवैतत्संदधाति स यदि कामयेत ब्रूयात्प्रतिष्ठेति यꣳ कामयेतापि नाद्रियेत ॥२२॥ ब्राह्मणम् ॥ २.[७.४.] ॥ अध्यायः ॥७॥ ॥

English translation of *Sri Satpath-Brahman* (I.7.4.22) as printed in Volume 12 of the series "The Sacred Books Of The east" under title '*The Satpath - Brahmana'* Part I on its page 215, Edn. reprint 2001 Published by Motilal Banarasidass, Delhi 110007 is reproduced as follows:

22. [He continues, Vâg. S. II, 13]: 'May his mind delight in the gushing (of the) butter[1]!' By the mind, assuredly, all this (universe) is obtained (or pervaded, âptam): hence he thereby obtains this All by the mind.—'May Bṛihaspati spread (carry through) this sacrifice! May he restore the sacrifice uninjured!'—he thereby restores what was torn asunder.—'May all the gods rejoice here!'—'all the gods,' doubtless, means the All: hence he thereby restores (the sacrifice) by means of the All. He may add, 'Step forward!' if he choose; or, if he choose, he may omit it.

*(Sri Satpath-Brahman* I.7.4.22)

**9.** 19th Holy Spells of *Nasadiya Sukta* of the Holy Devine *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXIII] is also widely applied by the Knower of the Scriptures to invoke and establish a deity. Said Mantra reads as follows:

गणानां त्वा गणपतिꣳ हवामहे प्रियाणां त्वा प्रियपतिꣳ हवामहे निधीनां त्वा निधिपतिꣳ हवामहे वसो मम ।
आहमजानि गर्भधमा त्वमजासि गर्भधम् ॥

English Translation of this *Mantra* based on Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn.

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Published by Swayadhyay Mandal pardi reads as follows:

> "O, Lord of all beings we invoke Thee. O, Lord of beloved one we invoke Thee. O, Lord of Wealth we invoke Thee. O abode of all beings Thou are mine. O, Sustainer of Nature let me know Thee well because Thee the sustainer of Universe as embryo are Creator of All."
>
> [*Shukla Yajurved* Chapter XXIII *Mantra* 19]

**10.** The vivified image is regained with necessaries and luxuries of life in due succession changing of clothes, offering of water, sweets as well as cooked and uncooked food, making to sleep, sweeping of the temple, process of smearing, removal of the previous day's offerings of flowers, presentation of fresh flowers and other practices are integral part of Idol-worship. These worships in public temple in olden days were being performed by Brahmins learned in Vedas & Agamas. B. K. Mukherjea in his book on Hindu Law writes as follows:

> "4.7 Worship of the idol – after a deity is installed it should be worshipped daily according to Hindu *Shastras.* The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always carried out by a pious Hindu either by personal performance of the religious right or in the case of *Sudras* by the employment of a Bramhin priest. The daily worship of a sacred image including the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the reciprocal obligation of rice with sweets and water and other practices." The deity in shout is conceived of as leaving being and is treated in the same way as the master of the house would be treated by him humble servant. The daily routine of live is gone through, with minute accuracy, the vivified image is regained with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest.

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> [*Hindu Law of Religious and Charitable Trusts* of *B. K. Mukherjea* 5th Edition, Published by Eastern Law House at page 156.]

On behalf of the other Hindu defendants, it is suggested that the deity's Pooja and Archana were going on, they are juristic person and no decree can be passed to remove from the disputed structure unless the juristic person i.e. deities are arrayed as a party.

**The Hindu Law of Religious and Charitable Trust by B.K. Mukharjee**, in this connection the attention of this Court was invited from the side of Hindus on one of the most important book.“ **The Hindu Law of Religious and Charitable Trust by B.K. Mukharjee”**. The concept of deity in Hindu faith has been considered in this outstanding book. The concept of deity is a distinguishing feature of the Hindu faith. The deity is the image of Supreme Being. The temple is the home of the deity. It is enough that Supreme Super Human Being Power i.e. an idol or image of the Supreme Being installed in the temple. The worship of such an image of the Supreme Being is acceptable in Hindu law. Hindus have also the belief that idol represent deity. In this context, para 1.33 pages 26 and 27 of the Hindu Law of Religious and Charitable Trust by B.K. Mukharjee, 1952 Edition is reproduced as under:-

> *4.* The traditional and classical legal literature relating to Hindus has also duly sanctified such belief and faith which has been exalted to a juristic status requiring legal recognition. In this connection, “**the Hindu Law of**

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**Religious and Charitable Trusts" by B.K. Mukherjea** lays down some of the relevant concepts relating to deity and the temple along with concerned page number which are consistently being recognized as judicial authorities, not only in India but also abroad. The concept mentioned therein along with concerned page numbers are being quoted below:

**Page 26-27 – Para "1.33: Idols representing same divinity –** One thing you should bear in mind in connection with image worship viz. That the different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. **The rationale of image worship is thus given in a verse which is quoted by Raghunandan:**

**"***Chinmayasyaadwitiiyasya Naskalashariirina Saadhakaanaam Hinaathayi Brahmanii Roopakalpanaa."*

"**It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."**

Temples and mutts are the two principal religious institutions of the Hindus. There are numerous texts extolling the merits

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of founding such institutions. In *Sri Hari Bhaktibilash a* passage is quoted from Narsingha Purana which says that "whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated; what then shall be said of finishing the structure according to rule ….... He who dies after making the first brick obtains the religious merits of a competed Jagna."

"1.34. **Other kinds of religious and charitable benefactions.- "**A person consecrating a temple", says Agastya, "also one establishing an asylum for ascetics also, one consecrating an alms house for distributing food at all times ascend to the highest heaven."

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Besides temples and mutts the other forms of religious and charitable endowments which are popular among the Hindus are excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit of travellers, establishment of *Choultries, satras or alms* houses and Dharamsala for the neefit of mendicants and wayfarers, Arogyasalas or hospitals, and the last though not the least, Pathshalas or schools for giving free education. Excavation of tanks and planting of trees are Purtta works well known from the earliest times. I have already mentioned that there is a mention of **rest houses for travellers even in the hymns of the *Rigveda***. The Propatha of the Vedas is the same thing as Choultrie or sarai and the name given to it by subsequent

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writers is *Pratishraygrih*. They were very popular during the Buddhist tie. In *Dana Kamalakara*, a passage is quoted from Markandeya Puran which says that one should make a house of shelter for the benefit of travellers; and inexhaustible is his religious merit which secures for him heaven and liberation. There are more passages than one in the Puranas recommending the establishment of hospitals. "One must establish a hospital furnished with valuable medicines and necessary utensils placed under an experienced physician and having servants and rooms for the shelter of patients. This text says further that a man, by the gift of the means of freeing others from disease, becomes the giver of everything.

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The founding of educational institutions has been praised in the highest language by Hindu writers. Hemadri in his *Dankhanda* has quoted a passage from Upanishad according to which gifts of cows, land and learning are said to constitute *Atihaan* or gifts of surpassing merit. In another text cited by the same author, it is said that those excluded from education do not know the lawful and the unlawful; therefore no effort should be spared to cause dissemination of education by gift of property to meet its expenses".

**Page 38-Para "1.50. The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests:-** As you shall see later on the decision of the Courts of India as well as of the

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Privy Council have held uniformly that the Hindu idol is a juristic person in whom the dedicated property vests. "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued." You should remember, however, that the juridical 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 by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests."

**Page 38-39-Para "1.51. Deity owner in a secondary sense.-** The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Asutosh Mookerjee in his judgment in Bhupati v Ramlal and I will reproduce such portions of them as are necessary for my present purpose."

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Sulapani, a reputed Brahminical Jurist, in his discourse on Sraddha thus expresses his views regarding the proper significance of gift to God:- “in 'Donation' having for its dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz., the offer of the sacrifical fee etc. it has already been remarked in the chapter on the Bratis that such usage as Devagram, Hastigram, etc., are secondary”. Sree Krishna in commenting on this passage thus explains the meaning of the expression Devgram: “Moreover, the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas in the term Devagram) figuratively means abandonment for them (the Gods)”. Therefore, the expression is used in the sense of “a village which is the object of abandonment intended for the Gods”. This is the purport. According to Savar Swami, the well-known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use.”

**Page 39-Para “1.52.** These discussions are not free from obscurity but the following conclusions I think can be safely

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drawn from them:-(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense. (2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (Upchaar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. 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 and the correct view is that in the

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capacity alone the dedicated property vests in it."

Thus, the Hindu concept of deity is worship of the images. It is an admitted case that deities were installed and are being worshiped in the structure. The time of installation has been seen in another issue but the factum is the same that the deities were available inside the structure and the plaintiffs have sought the relief of the removal without arraying them as a party. It is not a matter of dispute that deity is a juristic person. The plaintiffs are not in a position to say whether Pran Pratishtha was performed or not? The Hindu concept is that deities had to be worshipped. Thus the idol is a juristic person but they did not recognize a temple to be so. It is also a settled proposition of law that no decree can be passed against the juristic person without arraying them as a party. Thus, in view of the decision of the Hon'ble Apex Court in 2**000 (4) SSC 146, Shiromani Gurudwara Prabandhak Committee Vs. Somnath Das**. The deities installed and admitted by the plaintiff are the juristic persons. In view of **AIR 1957 SC Page 133, Deoki Nandan Aggarwal vs. Murlidhar** endowment property in favour of an idol as they are juristic persons. On the contrary, that the defendants Hindus' claim that deities have been Pran Pratishthit and they are idol or deities and according to their faith they are being properly worshipped and Muslims cannot claim that the religious performance of Hindus were defective and accordingly they are not juristic persons. In view of **AIR 1966 Patna 235, Ram Ratan Lal vs. Kashi Nath Tewari and others** that the actual Sankalp and Samarpan is not necessary. It is always possible that by worship also,

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the deities acquire divinity. it is admitted between the parties that the prayers were offered to the deities at least from December, 1949 and the suit was filed after a long time even then the plaintiffs cannot, at this stage, suggest that there was no Pran Pratishtha in the temple of the deities. It is also a matter of common knowledge that deities are installed with Pran Pratishta. There is no difference between idol and deities. According to Hindu faith the worship is going on for the last 61 years. Accordingly at no stretch of imagination, at this stage, it can be said that without any Pran Pratishtha or Pooja the deities were installed.

Thus, in view of **AIR 1925 Privy Council 139 Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick** even idol is a juristic person and it can sue and be sued. It is not a property which can be shifted to other place. Thus in this case once the parties accept that idols were placed and the worship was going on in that event there is no difference between deities and idols. The worship/prayers were offered. They were properly being worshipped for the last many decades. Accordingly, at this stage there is no justification to hold that the idol should not be treated as juristic persons. There is no material available on record that deities or idols or images cannot be supposed to be juristic persons. Thus, on hyper technical grounds and for want of any evidence from the side of the plaintiffs that Pran Pratishtha of the idols were not done, accordingly they are not a juristic person, cannot be accepted.

Thus, I hold that the deities are juristic persons. In the decision

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of Hon'ble the Apex Court in the case of Udit Narayan AIR 1963 Supreme Court page 786, Re. Udit Narayan case, the Constitutional Bench of the Apex Court held that behind the back of a necessary party no decree should be passed. Further in the case of **Kasturi Vs. Iyya**m **Peumal and othe**rs reported in 2005 (6) SCC 733 the Hon'ble Court held that deity is a necessary party and without arraying deity as a necessary party, the suit filed by the plaintiff is not maintainable. In this context, it may be relevant to mention that Ram Lala Virajman is a juristic person and without arraying Him as a necessary party, no effective decree can be passed. Thus, deities are necessary parties in the suit. The contention of the plaintiffs that without any Pranprathistha of the deities, they are not juristic person is not accepted for the reasons ,referred to above. Moreover, the Hindus have claimed that there was Pran Prathistha and this fact could not be repelled by Muslim. Thus, I hold that idols are necessary parties. It is also settled proposition of law that deities become necessary party as declared against the interest of deities will not bind the deity vide AIR 1960 Supreme Court page 100, **Narayan Bhagwant Rao Vs. Gopal Vinay**ak . Further this Court in AIR 1957 Allahabad page 77 **Mukundji Mahraj Vs Persottam** held that if deities are not arrayed as a party, the decree shall be a nullity. Again in AIR 1957 Allahabad 743 **B. Jangi Lal V**s. **B. Panna Lal and anothe**r the Court held that if the interest of idols are not directly affected or its own existence is seriously imperilled, the appearance of the idols before the court is necessary.

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There is nothing on record to discredit the statement of Hindus that their idols are having Pranprathistha and are being worshipped, accordingly they are necessary parties and decree, if passed against the deity, shall be a nullity.

Thus, to my mind no effective relief can be granted without arraying the deities as parties in this suit and no effective decree can be passed against the deities, who are installed and worshipped prior to the filing of the suit. Suit is bad for non-joinder of the necessary parties. Issue no. 21 is decided accordingly in favour of the defendant and against the plaintiff.

**ISSUES NO. 23 & 24**

**23. If the wakf Board is an instrumentality of state? If so, whether the said Board can file a suit against the State itself?**

**24. If the wakf Board is State under under Article 12 of the constitution? If so, the said Board being the State can file any suit in representative capacity sponsoring the case of particular community and against the interest of another community"?**

**FINDINGS:**

These issues are inter related. The United Provinces Muslim Waqf Act, 1936 has already been repealed and the suit was filed by Board constituted under U.P. Muslim Waqf Act, 1960. The Constitution of India came into force on 26.1.1950 in view of Article 12 of the Constitution of India, Board is an instrumentality of the

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State. However, in view of Section 19(q) of Muslim Waqf Act, 1960, the Board can institute and defend suits and proceedings in court of law relating to Waqfs. Thus, issues no. 23 & 24 are decided accordingly that the Waqf Board is under the law is competent to institute the suit. However, it may be clarified that for want of valid notification under Section 5(1) of the Muslim Waqf Act, 1960 and the United Provinces Muslim Waqfs Act, 1936, the property cannot be deemed to be a Waqf Property. Accordingly the suit on this count is not maintainable. Issues No. 23 & 24 are decided against the plaintiffs.

## ISSUES NO. 25 & 26

**25. "Whether demolition of the disputed structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable?"**

**26. "Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished?"**

## FINDINGS:

These issues are inter related and can conveniently be disposed of at one place. Muslims claim that they can offer prayers in the open site as a Mosque even after the demolition of the disputed structure which goes to show that once a Mosque always a Mosque with or without any structure is the sum and substance of the arguments of the plaintiffs. On the contrary defendants claim that the suit is liable to be dismissed as the property is no more and the structure has

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already been demolished.

Defendants further claim that the property in suit was not in exclusive possession of Muslims right from 1858. It is further submitted that in view of the possession of Hindus from 1858 and onwards which is evident from Ext. 15, 16, 18, 19, 20, 27 and 31, the outer courtyard was exclusively in possession of Hindus and the inner courtyard was not exclusively in possession of Muslims but also in joint possession of Hindus and Muslims till 1934. Muslims were dispossessed from the inner courtyard also in 1934 and plaintiffs admit that Muslims were dispossessed on 22/23December 1949 from the inner courtyard. Thus, on the basis of Islamic tenets the Muslims claim that the property shall be construed as a Mosque. In this reference the controversy has already been set at rest by the Privy Council in the decision of **Masjid Shahid Ganj Vs. Shiromani Gurudwara Prabandhak Committee, Amritsar, AIR 1940 Privy Council 116.**

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The aforesaid view has been approved in **Dr. M. Ismail Faruqui Vs. Union Of India, 1994 (6) SCC 360,** Para 70 of the ruling is relevant which reads as under:-

In Mosque known as Masjid Shahid Ganj and Ors. v. Shiromani Gurdwara Prabandhak Committee, Amritsar AIR 1938 Lahore 369, it was held that where a mosque has been adversely possessed by non-Muslims, it lost its sacred character as mosque. Hence, the view that once a mosque is consecrated, it remains always a place of worship as a mosque was not the Mohammedan Law of India as approved by

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Indian Courts. It was further held by the majority that a mosque in India was an immovable property and the right of worship at a particular place is lost when the right to property on which it stands is lost by adverse possession. The conclusion reached in the minority judgment of Din Mohd., J. is not the Mohammedan Law of British India. The majority view expressed by the learned Chief Justice of Lahore High Court was approved by the Privy Council in AIR 1940 PC 116, in the appeal against the said decision of the Lahore High Court. The Privy Council held:

> "...It is impossible to read into the modern Limitation Acts any exception for property made wakf for the purposes of mosque whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with the religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely to the wakf, or that it is not so possessed so long as it is referred to as "mosque" or unless the building is razed to the ground or loses the appearance which reveals its original purpose."

In view of the aforesaid decision, it transpires that the case of the defendants that they adversely possessed the property in suit leave no room for doubt that the property in suit lost its sacred character as a Mosque. Moreover, the disputed structure has already been

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demolished. Accordingly, this place cannot be called as a Mosque and Muslims can not use the open place as a Mosque to offer prayers. Issues No. 25 & 26 are decided against the plaintiff and in favour of the defendants.

**ISSUE NO. 27:-**

**"Whether the outer court yard contained Ram Chabutra, Bhandar and Sita Rasoi? If so whether they were also demolished on 6.12.1992 along with the main temple?"**

**FINDINGS:**

It is not disputed that on 6.12.1992 the disputed structure and other adjoining places were demolished. Ext 18, application dated 2.11.1883 moved by Syed Mohammad Asgar against Raghubar Das reveals the existence of Chabutra, Ram Janam Sthan, Rasoi Bhandar and Charan Padhuka. Site plan prepared on 6.12.1885 by Commissioner Gopal Sahai in Suit No. 61/280 of 1885 confirms that foot prints, Chabutra and Bhandar were in existence. Thus, besides, the site plan Ext.25, the judgment dated 18.3.1886 further confirms the existence of Ram Chabutra,Charan Paduka and Rasoi Bhandaar. Lastly, in Original Suit No. 2 of 1950 Gopal Singh Visharad Vs. Jahoor Ahmad, the Commissioner made a local inspection and prepared site-plan, proved the existence of Sita rasoi, Ram Chabutra and Rasoi Bhandar. There is nothing on record to discredit the report of the Commissioner appointed by the Court.

In view of the aforesaid facts , I hold that the outer courtyard contained Ram Chabutra, Rasoi Bhandar and Sita Rasoi in the

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disputed premises which were demolished on 6.12.1992 along with disputed structure.

Issue no. 27 is decided accordingly.

Tripathi/Tanveer/-

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## ISSUES NO.1 & 1(a)

**1. Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiff ? If the answer is in the affirmative?**

**1a. When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13 ?**

## FINDINGS

These issues are interconnected and can conveniently be disposed of at one place.

Plaintiffs claim that the building in question was a mosque and has been described in the plaint. It was built by Babur more than 433 years ago after his conquest of India. In alternative it is urged assuming though not admitting that one time there existed a Hindu temple as alleged by the defendants then on the site of which temple Babur built the mosque, the mosque since long in continuous possession of Muslims and they perfected their rights by adverse possession. It is further the case of the plaintiffs that the building stood dedicated to Almighty. It is also the case of the plaintiffs that the building had been used by members of Muslim community for offering prayers from times immemorial and Muslims were in possession of the property in suit from 1528 AD continuously, openly and to the knowledge of the defendants and Hindus in general. On the contrary, on behalf of defendant no.13 it is urged that the property in suit was constructed by Mir Baqi. It was not used by members of Muslims for prayers. It remained in

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possession of Hindus and building was not dedicated to Almighty. It is also the case of Hindus that Muslims were not in exclusive possession of the property in suit which has already been demolished on 06.12.1992.

It has further been pleaded from the side of Hindus that it was Mir Baqi, who was Shia Muslim, who demolished the ancient Hindu temple of Sri Ram Janam Bhumi and raised a mosque like structure in its place with its materials. The masjid was known as Masjid Janmasthan in British times. 14 Kasauti pillars and other material reveal the structural features of the building. Mir Baqi was influenced by the so called Faquir named Fazal Abbas Qalandar, who had instructed the destruction of the ancient temple at Ram Janma Bhumi and construction of a mosque at that place for him to offer prayers, although the doing so is opposed to tenets of Islam.

Plaintiffs further claim that since it was a mosque and was constructed by Babur, accordingly they are entitled to retain the same.

On behalf of plaintiffs, oral as well as documentary evidence has been adduced.

First of all, I will take up documentary evidence. The plaintiffs have filed the documentary evidence in different categories.

**Regarding nature of the building :** In order to establish

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that Babur had camped near Ayodhya and he had not given any order for demolition of any temple and even on his return from the East, when he had called Mir Baqi at a place near Ayodhya, there is no mention that he had given instructions for demolition of any temple or construction of any mosque at the site of any temple. While there is specific mention of the desecration of the nude parts of the idols of Urwa in Babarnama.

Plaintiffs have relied over (Ext.82)- Extract of Memoirs of Babur by F.G.Talbot, (Ext.85)- Extract of Mughalkalin Bharat-Babur by S.Athar Abbas Rizvi, (Ext. 91),(Ext. OOS 5-48)-Extract of Memoirs of Babar by John Leyden (Vol. 20, P.129 – 137),(Ext. OOS 5-15)-Extract of Memoirs of Babar by John Leyden & John Erskine (1921) (Vol. 20, P.139, (Ext. OOS 5-16)-Extract of Baburnama by A.S.Beveridge Vol. 20, P.145 – 159. Plaintiffs have further relied over Epigraphia Indica (Arabic and Persian Supplement) (1965) by Dr. Z.A.Desai to establish that there were inscriptions on the Mosque. Sri Z. Jilani, Advocate further relied over Extract of Aine Akbari (Vol.III) (Vol. 42, P. 83-93) ,Extract of Aine Akbari (Vol.II) (Vol. 42, P. 97-137) and Ext.104 of OOS 4/89 and Extract of the report of William Finch from the Book-Early Travels in India by William Foster. These extracts go to show that even in these books written between 1584 and 1608 there is no mention either of the alleged belief of Hindus about the place of birth of Lord Rama being there in the Babri Mosque or about the alleged belief of demolition of any Ram Janam Bhoomi Temple

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by Babar or Mir Baqi. Aine Akbari is a public and historic document. It does not mention of several other places of Hindu worship but there is no mention of the so called Ram Janam Bhumi Temple or place of birth of Lord Rama. In this context it further transpires that the plaintiffs at para-2 of the plaint have mentioned that Babur visited Ayodhya and there was battle between Babar and then Muslim Ruler of Ayodhya and several persons were killed during the battle and they were buried in the ancient graveyard which has already been acquired by the Government of India. Thus the plaintiffs through these papers want to establish that Babur never visited Ayodhya.

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Plaintiffs have further relied over Vol. 3 of Mr. P.N.Mishra, Senior Advocate, P.203 – 205 Moghal India by Niccalass Manucli to show that between the period of 1653-1708 there was no such alleged belief that the building in dispute was the place of birth of Lord Rama or the same was constructed after the demolition of any Hindu temple. The aforesaid plea was reaffirmed in the Extract of Tieffenthaler published in 1786. It further shows that even upto that time there was no such alleged belief that the place of birth of Lord Rama was inside the Babri Mosque but rather Bedi i.e. “the cradle” referring to the place of Ram Chabutra was said to be the place of birth of Lord Rama. Plaintiffs have relied over Ext.D-28, Extract of Epigraphia Indica, Vol.4, Copper plates of the grant of Govind Chandra etc. (Vol. 30, P. 119-131),Extract of Epigraphia Indica, Vol. 14, to show that there was no temple

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known as Ram Janam Bhumi Temple referring to the place of birth of Lord Rama on the site in dispute.

The plaintiffs have further referred the Extract of Sanskrit Inscriptions of Delhi Sultanate by Pushpa Prasad (Vol. 30, P. 167-173), 198C-2/128-130 Extract of the Journal of Bihar and Orissa Research Society (1927)-The Sunga Inscription of Ayodhya(Vol. 30, P. 177, 175, 176). These documents show that it was not mentioned in history that some inscriptions placed in one building were later on shifted or installed in some other building also and that similar carvings on pillars etc. were found at other places also. Extract of the Catalogue of Historical Documents in Kapad Dwar Collection, Jaipur, Ext.105 shows that there is no sketch or photograph of any Janam Sthan or Janam Bhumi Temple in Ayodhya. The plaintiffs have further relied over extract of "An Advanced History of India" by R.C. Majumdar & Ray Chaudhary etc. (Vol. 38, P. 175-191),Extract of the Book "Society and Culture in North India in the Twelfth Century" by B.N.S.Yadav**,** (Ext.87)Extract of "The History of India as Told by its own Historians",Vol.VI, by Elliot and Dowson (Vol. 16, P. 2-6), (Ext.89)Extract of "The History of India as Told by its own Historians", Vol.III, by Elliot and Dowson (Vol. 16,P.14-20)**,**(Ext 102)Extract of "The History of India as Told by its own Historians",Vol.II, by Elliot & Dowson(Extract of Tabaqate Nasre (Vol. 16, P. 184-197)(Exts OOS5-D-5 & D-6)Extract of "The History of India as Told by its own Historians", Vol.II, by Elliot &

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Dowson (Extracts of Mirate Masoodi) (Vol. 38, P. 353-371)**,** (Ext 88)Extract of "The History of India as Told by Its Own Historians", Vol. IV,by Elliot & Dowson (Extracts of Tuzuke Babri and Tarikhe Dawoodi) (Vol. 16, P. 7-12) Extract of Moghul Empire in India by Prof.S.R.Sharma (1934) (Vol. 16, P. 169-181) 301C-1/1-3 Extract of "The Sharqi Architecture of Jaunpur" by A.Fuhrer (Vol.37, P. 135-139) Extract of "Encyclopaedia of Indian Archaeology" Edited by A.Ghosh (Vol. 37, P. 113) (Ext D-36)Extract of the Book "Destruction and Conservation of Cultural Property" Edited and Published by Roultedge, London in 2001 (Article of Prof.Ram Saran Sharma on Ayodhya) Vol. 38, P.211-229**,** (EXT 90) Extract of the Book "The Disputed Mosque-A Historical Inquiry" by Sushil Srivastava (1991) (Vol. 16, P. 158-163),Extract of the Book "The Secular Emperor Babar" by Surendra Kaur & Tapan Sanyal(1987) (Vol. 25, P. 49-121) Extract of "The Temples of India" published by the Govt. of India (1964) (Vol. 37, P.143 – 159)**,**Extract of "India Distorted" by S.C.Mittal (Vol. 26, P.3 – 51),(Ext E-6)Extract of "The Early History of India" by V. Smith (Vol. 26, P.57 – 111) (Ext E-4)Extract of "Hindu World",Vol.II by Benjamin Walker (Vol. 42, P.33 – 59)**,**(Ext 67)Extract of "A Journey through the Kingdom of Oudh",Vol.I(1849-50)by Maj.Gen.W.H.Sleeman (Vol. 38, P.257 - 273)311-C-1/10-19(Ext 68)Extract of "A Journey through the Kingdom of Oudh", Vol.II(1849-50)by Maj. Gen.W.H.Sleeman (Vol. 38, P.275 – 293).

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Plaintiffs on the basis of these documents claim that till 19th Century there was no such belief that Babri Masjid was constructed after demolition of any Hindu Temple and there was no mention of any such Ram Janam Bhumi temple. These books do not indicate this fact. It further strengthens that Babri Masjis was constructed independently without demolishing any temple. Ext.D-3, Extract of "British Paramountsey and Indian Renaissance, Part II", Vol.10 by R.C.Majumdar (Vol. 38, P.297 – 323) details of several communal riots of 19th Century and 20th of Century (pre independence era) but did not mention any so called communal riot of 1855 which is said to have taken place at Ayodhya.

(Ext.63/D-26)Book on "Ayodhya Archaeology After Demolition" by D.Mandal (Vol. 30, P. 7-95) 199C-2/1 Extract of the "Indian Archaeology " go so show that there was no evidence to prove about the alleged plea regarding the place of birth of Lord Ram therein Babri Mosque.

Plaintiffs have also placed reliance on extract of "Ramayana" by C.Rajgopalacharya, Extract of "Ram,Ramayana and Babar" by P.S.Sridhar Murti (1988) (Vol. 25, P. 171-209)Valmiki Ramayan I, Valmiki Ramayan II**,** Sri Ram Charit Manas**,** Gitawali, to show that the site of Babri Masjid is not the alleged place of birth of Lord Rama and there is no mention in the above books even about the so called demolition of any alleged Ram Janam Bhumi Temple and construction of Babri Masjid in place thereof. Ext OOS5-23) "Ayodhya" by Hains Baker refers

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that after the demolition of Ram Temple, Babri Masjid was constructed This book was written by a foreign author who was influenced by the belief of local people prevalent in Ayodhya. He has also referred the Gazetteers written after 1865. (Ext OOS 5-D-24) श्री राम जन्म भूमि का रक्त रंजित इतिहास by Sri Ram Raksha Tripathi (1985) (Vol. 25, P. 123-127), (Ext OOS 5-D- 38) श्री राम जन्म भूमि का रक्त रंजित इतिहास by Sri Ram Gopal Pandey "Sharad" (1997) (Vol. 25, P. 129-133) and 107 C-1/154 (Vol. 22, P.415- 511) Ext OOS 5-24: Shri Ram Janambhoomi by Dr. Radhey Shyam Shukla –

Such type of books have no authenticity and even the same do not fully support the case of the Hindu parties because these Authors also had acknowledged the offering of prayers in the building in dispute at different intervals and that by itself shows that the nature of the building has been acknowledged to be the Mosque even by these Authors who can in no way be treated as Historians. Such publications also can not be treated as Books of History.

Some books of this very kind written by some Muslims had also been filed by the Hindu side but they also are nothing more than a fiction, much less any kind of History. The Authors of these Books also were not at all Historians and these books are also based on no sources of History and as such no value can be attached to the assertions made in any of these books mentioned below:-

Vol. 21, P. 201-229 (Ext. OOS 5-18) Extract of the Book

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entitled as "Amir Ali Shaheed Aur Markae Hanuman Gahri" by Sheikh Mohd. Azmat Ali Alvi Kakorvi edited by Dr. Zaki Kakorvi (published in 1987). Vol. 21, P. 245-253 (107 C-1/90) Extract of "Gum Gushtae Halat-e- Ayodhya" by Moulvi Abdul Gaffar (1979) (Not proved) Vol. 21, P. 255-269 (107 C-1/92) Extract of "Tareekh-e-Awadh" by Najmul Ghani Khan Rampuri (Not proved).

Plaintiffs have further relied over extract of Gazetteers and other books to establish that there is no mention of Ram Janam Bhumi temple or place of birth of Lord Ram being inside the mosque.

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**Gazetteer of Walter Hamilton** (1815 / 1828) page 12, 16, 17 (Book Page 352 / 353) - No mention of Ram Janam Bhumi Temple or place of birth of Lord Rama.**Vol. 21, P. 321-322** (107C-1/109-110) (Ext. OOS 5-5) by **Montgomery Martin** (1838) **No mention of Ram Janam Bhumi Temple or place of birth of Lord Rama being inside the Mosque** – Tradition prevalent at that time was about the destruction of temple and erection of Mosque by Aurangzeb but Martrin refers to the fallacy of this tradition on the basis of the existence of 2 inscriptions on its walls showing the same built by Babur, 5 generations before Aurangzeb. It was also observed by Martin that Pillars in the Babur's Mosque were taken from a Hindu building and probably these Pillars were taken from the ruins of the palace. **Vol. 20, P. 21-23** (107C-1/10-110) (Ext. OOS 5-5) by **Edward Thorntone** (1858). In this Gazetteer also

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there is no mention of any such tradition or belief that any portion inside the Babri Masjid might have been considered as the place of birth of Lord Rama. Referring to Buchanan, the Author (Thorntone) says that out of 360 Temples said to have been constructed by Vikramaditya, no traces were available of any of them and **a**ccording to native tradition the demolition was made by Aurangzeb who built a Mosque on a part of the site. In this respect Thorntone says that the falsehood of the tradition is, however, proved by an inscription on the wall of the mosque, attributing the work to the conqueror Baber from whom Aurungzeb was fifth in descent. The mosque is embellished with fourteen columns of only five or six feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey-general Hanuman, who had brought them from Lanka or Ceylon. Altogether, however, the remains of antiquity in the vicinity of this renowned capital must give a very low idea of the state of arts and civilization of the Hindoo at a remote period. A quadrangular coffer of stone, whitewashed, five ells long, four broad and protruding five of six inches above ground, is pointed out as the cradle in which Rama was born, as the seventh Avatar of Vishnu; and is accordingly abundantly honoured by the pilgrimages and devotions of Hindus…"**Vol. 20, P. 25-34**, 107C-1/12-16(Ext. OOS 5-6) Four Reports by Alexandar Cunningham – 1862-65(1871 Edn.). In this respect also the places associated with Lord Rama

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were specifically mentioned including Guptur Ghat, Swarg Dwari and Ram Kot etc. and about the birth place Temple it was specifically mentioned on page 322 (page 29 of Vol. 20) that "in the very heart of the city stands Janam Sthan or "birth place Temple" of Rama" It is thus evident that in 1862-1865 the tradition and belief / faith was in respect of the Janam Sthan Temple situated in the Northern site of Babri Masjid to be the birth place of Lord Rama.**Vol. 20, P. 35-49** (107C-1/17-24-Ext. OOS 5-49) by Carnegy (1870). It was with this Gazetteer that the theory of demolition of Janam Sthan Temple and construction of Babri Masjid at the site thereof was introduced for the first time but that too was based on no source of History and rather was based only on local belief. The Author himself says under the heading "The Janam Sthan and other Temples" on page 20 of the Book (page 45 of the Vol.) that "it is locally affirmed that at the Mohamdan conquest Emperor Babar built the Mosque by demolishing Janamsthan Temple". In the same sequence it is also mentioned on page 21 of the Book:-

"In two places in the Babri mosque the year in which it was built 935 H., Corresponding with 1528 A.D, is carved in stone, with inscriptions dedicated to the glory of that Empror." Carnegy further says about the pillars that "To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere."

Thus the so called belief / tradition about the Janam Sthan

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Temple being demolished and Babri Masjid being constructed on its site starts from this Gazetteer of 1870. These very assertions are repeated in the Reports of Millet, Fuhrer and Nevill etc. being referred as under:-

**(i)**- Vol. 20, P. 51-53 (107C-1/25-26) Ext. OOS 5-7 - Gazetteer of the Province of Oudh
**(ii)**- Vol. 20, P. 55-62 (107C-1/27-30) Ext. OOS 5-8 - by Millet (1880)
**(iii)**- Vol. 20, P. 63-65 (107C-1/33-36) Ext. OOS 5-9 - by A. Fuhrer (1891)
**(iv)**- Vol. 20, P. 85-91 (107C-1/42-48) Ext. OOS 5-11- by H.R.Nevill (1905)
**(v)**- Vol. 20, P. 75-79 (107C-1/37-39=312C-1/22-23) Ext. OOS 5-10 Imperial Gazetteer(1908)
**(vi)**- Vol. 20, P. 99-107 (107C-1/49-53) Ext. OOS 5-12 – by H.R.Nevill (1928)
**(vii)**- Vol. 20, P. 109-123 (107C-1/54-61) Ext. OOS 5-13 - by E.B.Joshi 1960)
**06-** Vol. 21, P. 349-367 (107C-1/122) Ext.OOS 5-22 &50 - **Ayodhya**

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**Ka Itihas by Awadhwasi Lala Sitaram** (1932). **In this Book there is specific mention of the building in dispute being treated as a Mosque and even the inscriptions of the Mosque have been quoted**. The Author says on page 152 of the Book (P. 359 of the Volume) that " **बाक़ी बेग ने मन्दिर की ही सामग्री से मसजिद बनवाई थी।** मसजिद के भीतर बारह और बाहर फाटक पर दो काले, कसौटी के पत्थर के स्तम्भ लगे हुए है। ....**मसजिद के भीतर एवं फाटक पर दो लेख खुदे हुए हैं उनसे मसजिद के सम्बन्ध रखने वाली बात मालूम होती है।**" Ext. OOS 5-3 (289 C-1/1) "Ayodhya ka Itihas Evam Puratatva" by S.P. Gupta and T.P. Verma is a book written solely for the purposes of this case by 2 persons deeply interested and involved in this case, in order to support the claim of Hindus.

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The falsity of different averments made in the book is evident even from the statements of both the authors Viz. S.P. Gupta and T.P. Varma, recorded in this case where they have admitted even about incorrectness of some contents of the book. Even the inscription of Gahadwala period has been misquoted about Vishnu Hari Temple and the "Ajodhan" has been read as "Ayodhya". Reference about the so called attack of Salar Masood at Ayodhya being incorrect and wrong was also admitted by Dr. T.P. Verma. As such no reliance can be placed upon the contents of this book and specially so when both the co-authors of this book have appeared as OPW-3 and 9 in this case.

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**Documents filed for showing title of Muslims to the property in suit**:-

**01 –** Ext. A 3 (Vol. 6 Page 33) - original sanad granted by the Chief Commissioner of Awadh in favour of Rajjab Ali and Mohd. Asghar, the certified copy of which is filed as Exit. 1 in O.O.S. No. 4 of 1989 (Vol. 10 P. 27)-showing the cash Nankargrant of Rs. 302-3-6 for maintenance of the grant so long as the object for which the grant has been made is kept intact.

**02 –** Ext. A 10 (Vol. 6 Page 153-155) - certified copy of the Extract of Register Tahqiqat Mafi bearing orders dated 13-3-1860 and 29-6-1860 etc. referring to Babar Shah Badshah Dehli in column No. 6 and providing for continuance of the grant.

**03 –** Ext. A 11 (Vol. 6 Page 163-165) – certified copy of the Extract of Register Mafiat bearing Government Order dated 29-6-

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1860 specifically mentioning that the holder (who was an office bearer of Masjid) possessed a duly attested copy of a decree showing that Rs. 302-3-6 were granted by Nawab Asifuddaula and also providing that **the grant may be continued so long as the Masjid is kept up** and the Mohamdans conduct themselves properly. The said document gives the name of grantor as **Babar Shah Emperor of Delhi** and the name of grantee was given as "Maulvi of Masjid Babri." Another copy of this Register has been filed as Ext. 2 in O.O.S. No. 4. of 1989 (Vol. 10 P. 31) in column 9 of which it is specifically mentioned that **this grant is said to have been made for the expenses of Masjid Babri situated in Ayodhya**.

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**04 –** Ext. A 12 (Vol. 6 P. 167-169) copy of Register No. 6 (Jeem) regarding Mafi and bearing inspection note dated 9-7-1892 stating about inspection of the Mosque by the officer concerned.

**05 -** Ext. 3 (Vol. 10 P. 33) copy of Register No. (Jeem)-register Mafi of Mauza Bahoranpur Pargana Haveli Awadh, Tahsil and District Faizabad mentioning in Column 16 about the **inspection of the Mosque which was found not in good order and also mentioning that Mohd. Asghar had been given to understand to carry out the repairs as soon as possible**. This inspection note was dated 27-9-1902. In column 17 of the said document it was also mentioned that the site was inspected by the officers concerned on different occasions. – Ext. A-21 (Vol. 7 P. 233-235) - copy of Khasra of Mauza Ramkot regarding 1277 Fasli, part of

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Misil Haqqiyat Bandobast Sabiq decided on 22-8-1871 by Hakim (हाकिम) Bandobast showing plot No. 163 of the first settlement measuring 5 Bigha 4 Biswa as **Abadi Masjid**. A copy of this very document has been filed as Exibit 9 in O.O.S. No. 4. of 1989 (Vol. 10 P. 45) – Ext. A 14 (Vol. 7, P. 181) - copy of letter of Secretary, Chief Commissioner of Awadh to the Commissioner Faizabad Division dated 25-8-1863 mentioning that the Governor General has sanctioned Chief Commissioner proposal for the commutation of the cash **payment of Rs. 302-3-6 granted for the support of the Janam Asthan Mosque** to the grant of rent free land near Ayodhya (Vol. 7 P. 181)

Ext. A-15 (Vol. 7, P. 183) - copy of letter of the Financial Commissioner Oudh dated 5/6 September, **regarding Janam Sthan Mosque in Ayodhya** approving selection of land made by the officiating Deputy Commissioner of Faizabad.

Ext. A-16 (Vol. 7, P. 185-191) - copy of ordersheet of the court of Mr. B. Carnegy, Deputy Commissioner, Faizabad dated 31-8-63 **regarding grant of Mafi Nazool land (with income of Rs. 302-3-6) to Masjid Janam Sthan**.

Ext. 7 (Vol. 10, P. 41)-copy of ordersheet of the Deputy Commissioner, Faizabad dated 13-9-1865 regarding the approval of **land selcted for Masjid Janam Sthan**.

Exibit A-17 (Vol. 7, P. 193-197) - copy of ordersheet of the court of Mr. B. Carnegy, Deputy Commissioner, Faizabad dated 13-9-1865 regarding approval of the **grant of land for Masjid**

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**Janam Sthan** and for delivery possession of the same.

Ext. A-18 (Vol. 7, P. 199– 205)-copy of sanad from Extra Assistant Commissioner dated 30 October, 1865 with endorsement dated 5-12-1865 regarding **allotment of land for khateeb Masjid Janam Sthan**.

Ext. A-6 (Vol. 10 P. 39) copy of ordersheet of the Deputy Commissioner, Faizabad dated 13-9-1867 regarding the **land granted for Masjid Janam Sthan**.

Ext. A-19 (Vol. 7 P. 207-213) copy of order / decree of the Settlement Officer dated 3-2-1870 regarding the settlement of land of Sholapur and Bahoranpur in lieu of cash grant of Rs. 302-3-6 paid annually from the Imperial Revenue for the support of Janam Sthan Mosque in Ayodhya.

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Ext. A-20 (Vol. 7, P. 231) - copy of order, regarding the settlement, dated 22-8-1871 pertaining to the land of graveyard and Imli trees situated in front of the Babri Mosque and Janam Sthan holding that the trees belong to Mohd. Asghar etc. (plaintiffs) and further holding that graveyard land could not belong to any one. Ext. 8 (Vol. 10 P. 43) is the copy of the judgment and order dated 22-8-1871 of the same case.

Ext. 4 (Vol. 10 P. 35) is the certified copy of the map of the First Settlement showing symbol of Mosque in plot No. 163 of the first settlement.

Ext. 10 (Vol. 10 P. 47) is the copy of Khasra Abadi of Mauza kot Ram Chand showing entry of Masjid Pukhta against plot No. 163.

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Ext. 49 (Vol. 11 P. 271-281 and 283-329) is the copy of Tarmeemi Khasra of 1931 showing **entry of Nazul plot No. 583 as "Masjid Waqf Ahde Shahi."** **A**nother copy of the same Khasra has been filed as Ext 52 (Vol. 12 P. 351) which was filed as paper No. 65-A2 / 2, 3. Entry of the name of Mahant Raghunath Das as per order dated 26-2-1941 is only in respect of Chabutra Janam Sthan. This Khasra of Nazool has been relied upon as Soochi 18 to the affidavit of DW 3/20 and it ha been referred in his statement also at Page 11 (para 52) and on pages 16, 36 and 50. Another Khasra extract of plot No. 588 of this very year (Nazool) has been filed by Defendant No. 3 as Ext. A-11 (Vol. 14, P. 69) showing Sumitra Bhawan. Ext. 50 (Vol. 11 P. 331) copy of kishtwar map of 1931.

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**Documents showing the possession of Muslims regarding the Mosque:**

**01** – Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey, Station Officer dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.

**02** – Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

**03 -** Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1858 regarding Nishan by Nihang Faqir.

**04 -** Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey,

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Station Officer dated 1-12-1858 against Nihang Sikh for installing Nishan.

**(**All these documents have been filed by Plaintiff of OOS No. 1 of 1989 although they refer to Babri Masjid**)**

**05** – Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.

**06** – Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey( Fkkusnkj dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989**)**

**07** – Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.

**08** – Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.

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**09** – Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.

**10** - Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.

**11** – Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.

**12** – Ext. 30 (Vol. 5 P. 107-116-A,B.C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).

**13** – Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.

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**14** – Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.

**15** – Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)

**16** – Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.

**Documents relating to suit of 1885.**

**01**. Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61 / 280 of 1885 filed by Mahant Raghubar Das (also filed as Ext. A-22) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)

**02**. Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.

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**03**. Ext.15 (Vol. 10, P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as Ext. A-24 and A-25 in OOS 1/89-Volume 7, P. 271-281)

**04**. Ext.16 (Vol. 10 P. 79-85) Copy of Judgement of Pt. Shri Kishan dated 24-12-1885 (Also filed as Ext. A-26 in OOS 1/89-Vol. 7, P. 283-301)

**05**. Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgement of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323)

**06**. Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)

**07**. Order of Judicial Commissioner passed in Second Appeal

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(summoned by the Court).

**Documents relating to the repair of the Mosque:**

**01** - Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

**02** - Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.

**03** - Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

**04** - Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his bill regarding repair of Mosque.

**05** - Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

**06** - Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.

**07** - Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

**08** - Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.

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**09** - Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and houses.

**10** - Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.

**11** - Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.

**12** - Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque.

**Documents showing admission of the Mahant of Nirmohi Akhara about the existence of Babri Masjid and recognition of the same as the Mosque:-**

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**01** - Exhibit A-4 (Vol. 14 Page 15) Copy of order dated 4-6-1942 deciding the R.S. No. 95 of 1941 (Mahant Ram Charan Das Vs. Raghunath Das) in terms of compromise.

**02** - Exhibit A-5 (Vol. 14 P. 17-29) Copy of Decree of R.S. No. 95 of 1941 dated 6-7-1942 with the compromise terms **admitting Mosque in Item No. 2 (P. 37/38**)

**03** - Exhibit A-6 (Vol. 14 P. 31-44) Copy of report of Pleader – Commissioner dated 18-4-1942 filed in Rs. 95 of 1941 (See P. 37/38- Item No. 2)

**Documents showing the alleged acknowledgement of Babri Masjid and its user by Muslims available on the record**

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**of the case u/s 145 Cr.P.C.:-**

**01** - (Vol. 2 Page251-252) Original FIR dated 23-12-1949 lodged by Ramdeo Dubey at 7 p.m. (also filed as Ext. 51 in O.O.S. No. 4 / 89 – See Vol. 12 P. 337-338).

**02** - (Vol. 1 P. 29) Attachment order dated 29-12-1949.

**03** - (Vol. 1, P.45) Application of local Muslims dated 6-1-1950 for friday Prayers.

**04** - (Vol. 2 P. 211) Written Statement of Salar Mohd. and Mohd Hashim dated 2-7-1950.

**05** - (Vol. 2 P. 215-219) Written Statement of Anisurrahman asserting possession of Muslims since 1528.

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**Documents showing the alleged Control and management of Babri Masjid by Muslims.**

**01** - Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

**02** - Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc.

**03** - Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 regarding Babri Masjid etc.

**04** - Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.

**05** - Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding Babri Masjid etc.

**06** - Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal

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Remembrancer dated 18-12-1929 for sanction to file suit u/s 92 CPC. regarding Babri Masjid etc.

**07** - Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.

**08** - Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghafoor, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)

**09** - Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

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**10** - Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf.

(copy filed as Ext. 21, in OOS 4 / 89 – Vol. 10, P. 117 - 123)

**11** - Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

**12** - Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

**13** - Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

**14**. Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed

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Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943 regarding management of mosque.

**15** - Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414)

**16** - Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

**17** - Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

**18** - Ext. A-63 (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

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**19** - Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

**20** - Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

**21** - Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

**22** - Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB

**23** - Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

**24** - Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Plaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board

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against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

**25 -** Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgement of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115)

Some more documents have been filed by the parties which may also be of significance and reference may be made to some of these documents in order to elucidate some points of controversy involved in the case. Such documents may be summarized as under:-

**A** – Documents showing different photographs of Mosques and some other Muslims religious places having foundation of Pillars as given in the Book entitled as Indian Architecture (Islamic Period) by Percy Brown (Ext. OOS 5-35). Plate No. XVI, XVII, XVIII, XX, XXI, XXIV, CXII, CXV, CXVIII AND CXXI of the said book may be of relevance in this respect.

**B – 'Historian's** Report to the Nation' is also an important document which has been filed by both the parties Viz. plaintiffs of this suit as well as Plaintiffs of OOS No. 5 / 89 which is marked as Ext. 62 (Volume 12, P. 367-405) in this suit and Ext. OOS 5-45 (Vol. 32, P.231-245) in OOS 5/89. This report not only supports Muslims claim but also belies the case of Hindu side.

**C** – Similarly some documents have been filed to show the manner in which Pillars are generally found in Hindu Temples. These documents prove the contention of the Muslims that the place in dispute had no such structure which might have rested on Pillars.

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Some pillar bases are also visible in the documents marked as paper No. 333 C-1/1 - to 335 C-1/20 (Vol. 40 P. 159 - 319) (Ext. D-17, D-18 and D-19) and Ext. D-9, 10 and 11 (Vol. 39, P.17-45). Different other features and places of putting idols in Temples are also evident from these photograps which support the contention of the Muslims that the walls 16 and 17 found during the Excavation could not be said to be the wall of any Temple but rather the same could be the wall of the Idgah.

**D.** Reliance has been placed by the plaintiffs on some books of History which were referred during the arguments in rebuttal advanced from the side of plaintiffs. These Books included:-

**(i)** 'Travels in the Mogul Empire,' AD 1656-1668, Translated by Archibald Constable, revised by V.A. Smith, Oxford, 1916 , (p.5)

**(ii)** W. Foster (ed.),. 'The English Factories in India,' 1668-69, Oxford, 1927 (p.184)

**(iii)** Jerome Xavier, 'Letters from the Mughal Court,' 1593-1617, translated by H. Hosten, Journal of Asiatic Society of Bengal, NS, XXIII (1927) (pp. 121-22, 105)

**(iv)** Nicolao Manucci, Storia do Mogor, 1656-1712, transl. W. Irvine, 4 vols (Vol. II, P. 46)

**(v)** James Mill, The History of British India (London, 1817), ed. H.H. Wilson, 6 vols., London, 1840, I, (pp. 137-140)

From these accounts it is clear that, as Bernier puts it, the King was the owner of all soil, except for the houses and lands that

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were allowed to be sold and purchased. Thus it follows that all vacant land automatically belonged to the sovereign – a doctrine that continued under the British government.

**FOLLOWING WITNESSES HAVE BEEN PRODUCED BY THE PLAINTIFF/MUSLIM SIDE**:-

The witnesses produced by the Muslim side may be divided in the following categories:-

**A- Witnesses of fact deposing about the Mosque being used for the prayers by Muslims upto 22-12-1949**:-

**Annexure-V**
**Page 240-281**

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(i) PW-1 (Mohd. Hashim), resident of Ayodhya, aged about 75 years

(ii) PW-2 (Haji Mahboob Ahmad) resident of Ayodhya, aged about 58 years (also examined as DW 6/1-1 regarding Excavation details)

(iii) PW-3 (Farooq Ahmad), resident of Ayodhya, aged about 90 years

(iv) PW-4 (Mohd. Yaseen) resident of Ayodhya, aged about 66 years

(v) PW-5 (Abdul Rahman), resident of Maghlasi, Faizabad, aged about 71 years.

(vi) PW-6 (Mohd. Yunus Siddiqi, Advocate), resident of Faizabad, aged about 63 years

(vii) PW-7 (Hashmatullah Ansari), resident ofAyodhya, aged about

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65 years

(viii) PW-8 (Abdul Azeez), resident of Shahjahanpur, Faizabad, aged about 70 years

(ix) PW-9 (Syed Akhlaq Ahmad), resident of Ayodhya, aged about 60 years.

(x) PW-14 (Jaleel Ahmad), resident of Faizabad city, aged about 78 years

(xi) PW-21 (Dr. Mohd. Hashim Qidwai), (Ex. Member of Parliament, Rajya Sabha) resident of Aligarh, aged about 80 years – offered prayers from December 1939 to May 1941 while residing with his father who was then posted as Dy. Collector in Faizabad.

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(xii) PW-23 (Mohd. Qasim Ansari), resident of Ayodhya, aged about 74 years

(xiii) PW-25 (Sibte Mohd. Naqvi), resident of Akbarpur, then Distt. Faizabad, aged about 76 years

**B- Witnesses having special knowledge in Sharia deposing about the Rules / Principles of Shariat regarding the Mosque**:-

(i) PW-10 (Maulana Mohd. Idrees), teaching at Jamai Ashrafia, Mubarakpur, Azamgarh.

(ii) PW-11 (Maulana Mohd. Burhanuddin), teaching at Nadwa, Lucknow

(iii) PW-19 (Maulana Ateeq Ahmad), teaching at Nadwa, Lucknow

(iv) PW-22 (Maulana Mohd. Khalid Nadwi), teaching at Nadwa,

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Lucknow.

(v) PW-26 (Maulana Syed Kalbe Jawwad), Shia cleric of Lucknow.

(vi) PW-25 – Chawdhry Sibte Mohd. Naqvi - Shia cleric of Faizabad / Lucknow

**C- Witnesses having Special knowledge of History / Archeology**:-

**Annexure-III**
**Pages 164-350**

(i) PW - 13 Dr. Suresh Chandra Misra (Historian)

(ii) PW - 15 Dr. Sushil Srivastava (Historian)

(iii) PW - 16 Prof. Suraj Bhan (Archaeologist)

(iv) PW - 18 Prof. Suvira Jaiswal (Historian)

(v) PW - 20 Prof. Shirin Moosvi (Historian)

(vi) PW - 24 Prof. D. Mandal (Archaeologist)

(vii) PW - 27 Prof. Shereen F. Ratnagar (Archaeologist)

(viii) PW - 28 Dr. Sita Ram Rai (Archaeologist)

(ix) DW - 6/1 - 2 Mohd. Abid (Archaeologist)

(x) PW - 29 Dr. Jaya Menon (Archaeologist)

(xi) PW - 30 Prof. R. C. Thakran (Archaeologist)

(xii) PW – 31 Dr. Ashok Dutta (Archaeologist)

(xiii) PW - 32 Dr. Supriya Verma (Archaeologist)

PW 16 (Prof. Suraj Bhan), PW 24 – Prof. D.Mandal PW - 29 (Dr. Jaya Menon), PW – 30 (Dr. R. C. Thakran), PW-31 (Dr. Ashok Dutta), PW-32 (Dr. Supriya Verma) and DW - 6/1 - 2

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(Mohd. Abid) have deposed about the deficiencies of the ASI report.

**E-** PW-17 Zafar Ali Siddiqi, Advocate Sultanpur had visited the site along with the survey staff of the Board of Revenue and he has deposed about the existence of Mosque in plot No. 583 of the Nazul Khasra of 1931.

**WITNESSES PRODUCED BY THE HINDU PARTIES**:-

**The witnesses produced by the Hindu Parties may also be divided in following categories:-**

**Annexure-V**
**Pages 240-281**

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**A- Witnesses of fact deposing alleged worship in the Building in dispute prior to 23rd December 1949**:-

(i)- OPW-1- Sri Param Hans Ramcharndra Das

(ii)- OPW-4 – Sri Harihar Prasad Tiwari

(iii)- OPW-5 – Sri Ramnath Misra @ Banarsi Panda

(iv)- OPW-6 – Sri Hausla Prasad Tripathi

(v)- OPW-7 – Sri Ram Surat Tiwari

(vi)- OPW-12 – Sri Kaushal Kishore Mishra

(vii)- OPW-13 – Sri Narad Saran

(viii)- DW1/2 – Sri Krishna Chandra Singh

(ix)- DW1/3 – Sri Sahdeo Prasad Dubey

(x)- DW17/1 – Ramesh Chandra Triphati

(xi)- DW20/3 – Brahmachari Ramrakshanand

(xii)- DW3/1 – Sri Mahant Bhaskar Das (Plaintiff)

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(xiii)- DW3/2 – Sri Rajaram Padey

(ixv)-DW3/3 – Sri Satya Narain Triphati

(xv)-DW3/4 – Sri Mahant Shiv Saran Das

(xvi)- DW3/5 – Sri Raghunath Prasad Pandey

(xvii)- DW3/7 – Sri Mahant Ramjidas Shastri

(xviii)-DW3/8 –Sri Pandit Shyam Sunder Mishra @ Barkaoo Maharaj

(ixx)- DW3/9 – Sri Ram Asrey Yadav

(xx)- DW3/10 - Sri Pateshwari Dutt Pandey

(xxi)- DW3/11 – Sri Bhanu Pratap Singh

(xxii)- DW3/12 – Sri Ram Achchaibar Pandey

(xxiii)- DW3/13 – Sri Mahant Ram Subhagdas Shastri

(xxiv)- DW3/14 – Sri Ramanandacharya Swami Haryacharya

(xxv)- DW/3/15 – Sri Narendra Bhadur Singh

(xxvi)- DW3/16 – Sri Shiv Bheek Singh

(xxvii)- DW3/17 – Sri Mata Badal Tiwari

(xxviii)- DW3/18 – Sri Mahant Banshidhar Das @ Uriya Baba

(xxix)- DW3/19 – Sri Ram Milan Singh

(xxx)- DW3/20 – Sri Mahant Rajaramchandracharya

**B- Witnesses claiming special knowledge about Hindu religion and deposing about the place of Birth of Lord Rama on the basis of books of Hindu religion**:-

(i) – OPW-16 – Sri Jagadguru Ramananda Charya Swami Ram Bhadracharya

(ii) – DW 2/1-3 – Sri Mahant Dr. Ram Vilas DasVedanti

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(iii) – DW 3/14 - Sri Ramanandacharya Swami Haryacharya

(iv) – DW20/2 – Swami Awimukteshwara Nand Saraswati

**C- Witnesses claiming special knowledge of History/Archaeology**:-

(i)- OPW-9- Dr.Thakur Prasad Varma (Plaintiff) (Historian)

(ii)- OPW-10- Dr. K.V. Ramesh (Epigraphist)

(iii)- OPW-11- Dr. Satish Chandra Mittal (Historian)

(iv)- OPW-15- Sri M.N. Katti (Epigraphist)

(v)- DW13/1-3 – Dr. Bishun Bahadur (Historian)

(vi)- DW2/1-1 - Sri Rajendra Singh (Sardar Ji) (Author of the Book)

(vii)- DW2/1-2 – Sri Ram Saran Srivastava (Author of the Book)

(viii)- OPW- 3 – Dr. S.P. Gupta (Archaeologist)

(ix)- OPW-17 – Dr. R. Nagaswamy (Retired Director of Archaeology, Tamil Nadu) Archaeologist)

(x)- OPW- 18 – Arun Kumar Sharma ( Retired Supdtt. Archaeologist, ASI) (Archaeologist)

(xi)- OPW- 19 – R.D. Trivedi (Retired Director of ASI / Head of Temple Survey Project) (Archaeologist)

(xii)- DW- 20 / 5 – Sri Jayanti Prasad Srivastava (Archaeologist) (Retired Superintendant Archaeologist ASI)

**D-** OPW-2 – Sri Deoki Nandan Agarawal (Plaintif) whose cross examination remained incomplete.

Plaintiffs have filed following documents to show that disputed structure was Muslim property Ex. A-3 in the original

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sanad granted by the Chief Commissioner of Awadh in favour of Rajjab Ali and Mohd.Asghar, the certified copy of which is filed as Exit. 1 in O.O.S. No.4 of 1989 showing the cash Nankar grant of Rs. 302-3-6 for maintenance of the grant so long as the object for which the grant has been made is kept intact.

**Documents relating to suit of 1885 filed by the plaintiff;**

**01**. Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61 / 280 of 1885 filed by Mahant Raghubar Das (also filed as Ext. A-22) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)

**02**. Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.

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**03**. Ext.15 (Vol. 10, P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as Ext. A-24 and A-25 in OOS 1/89-Volume 7, P. 271-281)

**04**. Ext.16 (Vol. 10 P. 79-85) Copy of Judgement of Pt. Shri Kishan dated 24-12-1885 (Also filed as Ext. A-26 in OOS 1/89-Vol. 7, P. 283-301)

**05**. Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgement of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323)

**06**. Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)

**07**. Order of Judicial Commissioner passed in Second Appeal (summoned by the Court).

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**Documents relating to the repair of the Mosque :**

**01** - Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

**02** - Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for **cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services**.

**03** - Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

**04** - Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his **bill regarding repair of Mosque**.

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**05** - Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

**06** - Exhibit A-44 (Vol. 8 P. 461-465) Copy of **Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid**.

**07** - Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

**08** - Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding **Bills of repair of Babri Masjid**.

**09** - Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar

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Khan Thekedar dated 27-1-36 regarding **Bills of repair of Babri Masjid** and houses.

**10** - Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 **regarding the repair of the Mosque**.

**11** - Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding **payment of Rs. 6825/12/- for repair of Babri Mosque**.

**12** - Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque.

**Documents filed by the plaintiffs about the existence of Babri Masjid and recognition of the same as the Mosque which is a disputed structure;**

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**01** - Exhibit A-4 (Vol. 14 Page 15) Copy of order dated 4-6-1942 deciding the R.S. No. 95 of 1941 (Mahant Ram Charan Das Vs. Raghunath Das) in terms of compromise.

**02** - Exhibit A-5 (Vol. 14 P. 17-29) Copy of Decree of R.S. No. 95 of 1941 dated 6-7-1942 with the compromise terms **admitting Mosque in Item No. 2 (P. 37/38**)

**03** - Exhibit A-6 (Vol. 14 P. 31-44) Copy of report of Pleader – Commissioner dated 18-4-1942 filed in Rs. 95 of 1941 (See P. 37/38- Item No. 2)

**Documents filed by the plaintiffs about user by Muslims available on the record of the case u/s 145 Cr.P.C.:-**

**01** - (Vol. 2 Page251-252) Original FIR dated 23-12-1949 lodged

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by Ramdeo Dubey at 7 p.m. (also filed as Ext. 51 in O.O.S. No. 4 / 89 – See Vol. 12 P. 337-338).

**02** - (Vol. 1 P. 29) Attachment order dated 29-12-1949.

**03** - (Vol. 1, P.45) Application of local Muslims dated 6-1-1950 for Friday Prayers.

**04** - (Vol. 2 P. 211) Written Statement of Salar Mohd. and Mohd Hashim dated 2-7-1950.

**05** - (Vol. 2 P. 215-219) Written Statement of Anisurrahman asserting possession of Muslims since 1528.

**Documents filed by the plaintiffs showing the Control and management of disputed structure;**

**01** - Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

**02** - Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. **regarding Babri Masjid etc**.

**03** - Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 **regarding Babri Masjid etc**.

**04** - Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar **regarding Babri Masjid etc**.

**05** - Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar **regarding Babri Masjid etc**.

**06** - Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for sanction to file suit u/s 92

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CPC. regarding Babri Masjid etc.

**07** - Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.

**08** - Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghafoor, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)

**09** - Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

**10** - Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf.

(copy filed as Ext. 21, in OOS 4 / 89 – Vol. 10, P. 117 - 123)

**11** - Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

**12** - Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

**13** - Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

**14**. Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943

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regarding management of mosque.

**15 -** Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414)

**16** - Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

**17 -** Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

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**20 -** Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

**21 -** Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

**22 -** Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB

**23 -** Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

**24 -** Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Plaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

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**25** - Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgement of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115).

Shri P.N. Mishra, Advocate on behalf of the defendants urged that on the basis of historical books Memoirs of Mughal Kings, Princess, their Commander, Gazetteers & Travellers' account leave no room for doubt that Babri Mosque never existed. On the contrary, they prove existence of Ram Janmsthan temple. To support his contention, he has invited the attention of this Court on various books and authorities, which are as under :-

**AUTHENTIC HISTORICAL BOOKS, MEMOIRS OF MUGHAL KINGS, PRINCESS, THEIR COMMANDER, GAZETTEERS & TRAVELLERS' ACCOUNT DID NOT PROOVE OF ERECTION OF ALLEGED BABARI MOSQUE BUT PROVE EXISTENCE OF SRI RAMJANMSTHAN & TEMPLE THEREON:**

1. From the Babur-Nama, Humayun-Nama, Tuzuk-I-Jahangiri, Tarikh-I Badauni also known as Muntakhap-ut-Tawarikh, Tarikh-I Feristha, A-In-I Akbari, Tabkat-I Akbari, Waqiyat-I Mushtaqi, Tarikh-I Daudi, Tarikh-I Shahi, Tarikh-I Salatin-I Afaghana, India in the 17th Century (Memoirs of Francois Martin), History of Indian and Eastern Architectures, Mughal Documents etc.; one comes to know the fact that the Emperor Babur did not build any Mosque in Ayodhya as there is no mentioning of any such Mosque till the reign of

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his great great grandson Emperor Shah Jahan. In 1770 when a Jesuit Priest Father Tieffenthaler visited he found Hindus worshiping inside Sri Ramjanamsthan temple. He has written that according to tradition Sri Ramjanamsthan temple described as Babri Mosque in the plaint of the instant suit was converted into a mosque by Emperor Aurangzeb. But apart from scriptures Yuan Chwang's travel account, A-In-I Akbari, Travel account of William Finch, Storia Do Mogor, Del' Inde of Father Josheph Tieffenthaler, The East India Gazetteer, 1828, The Gazetteer of the Territories under the Government of East India Company and of the native States on the continent of India, 1858, the Gazetteer of the Province of Oudh, 1877-78, The Gazetteer of Faizabad, 1960 as well as from the several applications made from time to time by the alleged Mutwallis, Muezzins, Khattibs etc. the Hindus are found worshipping at the said Sri Ramjanamsthan temple upto date.

2. The Chinese Traveler *Yuan Chwang* who travelled India in the reign of Emperor Harshavardhan during the period of 629 A.D.to 645 A.D. has recorded existence of Ten prominent Deva Temple of the Hindus in Ayodhya which shows that the prominent Temples described in *Sri Skandapuranam* including the Sri Ramjanamsthan Temple were still in existence during the Ayodhya visit of Yuan Chwang. Relevant extract from page 355 of the book *On*

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*Yuan Chwang's Travels in India (A.D.629 – 645* translated by Thomas Watters reads as follows:

> "The Ayudha country, the Records proceeds to tell us, was above 5,000 *li* in circuit, and the capital was above twenty *li* in circuit. The country yielded good crops, was luxuriant in fruit and flower, and had a genial climate. The people had agreeable ways, were fond of good works, and devoted to practical learning. There were above 100 Buddhist monasteries, and more than 8000 Brethren who were students of both 'vehicles'. There were ten *Deva-Temples* and the non-Buddhists were few in number."
>
> (*On Yuan Chwang's Travels in India (A.D.629 – 645* translated by Thomas Watters p.355).

3. In his memoirs Babur-Nama Babar did not record any entry to show that there was fighting between him and the then ruller of Ayodhya or to show under his order any mosque was erected in Ayodhya as such the plaint case that there was fighting between Babur and the then ruler of Ayodhya wherein several soldiers of Babur were killed and for corpse of those soldiers said Emperor made grave-yards and for other Muslims made a mosque has no foundation at all. In his memoirs Babur has mentioned name of the places and nature of constructions carried on at such places but he has not mentioned Ayodhya and Babri mosque. In 935 A.H. itself Babur remembered that construction works were going on in Dhulpur and Agra but did not mention construction of Baburi Mosque at Ayodhya. He has recorded his orders given for constructing wells, building, mosque, ponds etc.

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very minutely and he has referred construction of one place several times in his Memoirs as such there is no possibility of his missing any construction at Agra. Relevant extracts from pages 520, 606-607, 615-616 and 642 from the Babar-Nama translated by Annette Susannah Beveridge reprint of 2006 published by the Low Price Publications, Delhi read as follows:

> "680 men worked daily on my buildings in Agra and of Agra stone-cutters only; while 1491 stone-cutters worked daily on my buildings in Agra, Sikri. Biana, Dulpur, Gualiar and Kuil. In the same way there are numberless artisans and workmen of every sort in Hindustan." (ibid p. 520)

Babur-Nama's entry dated 21st September 1528 (935 A.H.) records his order to erect a mosque in Dhulpur, said entry reads as follows:

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> "(c. Work in Dulpur (Dhulpur).)
> That place is at the end of a beaked hill, its beak being of solid red building-stone (imarat-task). I had ordered the (beak of the) hill cut down (dressed down?) to the ground-level and that if there remained a suffering height, a house was to be cut out in it, if not, it was to be levelled and a tank (hauz)cut out in its top. As it was not found high enough for a house, Ustad Shah Muhammad the stone-cutter was ordered to level it and cut out an octagonal, roofed tank. North of this tank the ground is thick with trees, mangoes, jaman (Eugenia jambolana), all sorts of trees; amongst them I had ordered a well made to by to; it wa almost ready; its water goes to the afore-named tank. To the north of this tank Sl. Sikandar's dam is flung across (the valley); on it houses have been built, and above it the waters of the Rains gather into a great lake. On the east of this lake is a garden; I ordered a seat and four-pillared platform (talar)to be cut out in the solid rock on that same side, and a mosque built on the western one." (ibid p.606-607)

Babur-Nama's entry dated 14th October, 1928

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records inspection of the work at Sikari as follows:

"At the top of the dawn, we bestirred ourselves from that place, and in the first that place, and in the first watch dismounted at the garden now in making at Sikri. The garde-wall and well-buildings were not getting on to my satisfaction; the overseers therefore were threatened and punished."

(ibid p. 615-616)

Babur-nama's entry dated 1st February, 1929 records the appointment of the supervisors for the work which was being carried on at Agra and Dhulpur as follows:

"(Feb. 1st ) On Tuesday, after writing letters to be taken by those going to Kabul, the buildings in hand at Agra and Dulpur were recalled to mind, and entrusted to the charge of Mulla Qasim, Ustad Shah Muhammad the stone-cutter, Mirak, Mir Ghias, Mir Sang-tarash (stone-cutter)and Shah Baba the spadesman. Their leave was then given them."

(ibid p. 642)

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4. Princes Gul-Badan Begam, the daughter of the Emperor Babur in her book Humayun-Nama has mentioned several constructions at different places wherein Ayodhya and Baburi Mosque did not find place. From which facts it becomes clear that no construction of Baburi Mosque was done by the Emperor Babur in Ayodhya was made by Relevant extract from her said book read as follows:

"He commanded buildings to be put up in Agra on the other side of the river, and a stone palace to be built for himself between the haram and the garden. He also had one built in the audience court, with a reservoir in the middle and four chambers in the four towers. On the river's bank he had a chaukandi built.

He ordered a tank made in Dholpur, ten by ten, out of a single mass of rock, and used to say, 'when it is finished, I will fit it with wine.' But as he had given up wine before the fight with Rana Sanga, he filled it with lemonade."(ibid p.98)

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> "When we had been in Agra three months, the Emperor went to Dholpur. Her Highness Maham Begam and this lowly person also went. A tank had been made there, ten (gaz) by ten, out of one piece (of rock). From Dholpur his Majesty went on to Sikri. He ordered a great platform made in the middle of the tank, and when it was ready, he used to go and sit on it, or to row about. This platform still exists."
>
> (ibid p. 102)
>
> From Gulbadan-Begam's account related to the event which took place just after death of Emperor Babur it appears that Mir Baqi was not Governor of Oudh but some one else. Relevant extract from her book read as follows:
>
> "As Gul-chihra Begam was in Oude, and her husband, Tukhta-bugha Sultan, went to the mercy of God, her attendants wrote to his Majesty from Oude and said: 'Tukhta-bugha Sultan is dead. What is the order about the begam?' His Majesty said to Mir Zaycha: 'Go and bring the begam to Agra. We also are going there'." (ibid p.115)

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5. In his book "History of Indian and Eastern Architecture" 1st published 1910 reprinted by Low Price Publication, Delhi in 2006 in its Chapter X 'Mughal Architecture' James Fergusson writes that no buildings erected by Babur or his son Humayan are existent. The writer also writes that the Babur in his memoirs had written that he had employed 680 persons on his palaces and 1491 stone cutters at Agra, Sikri, Biana, Dholpur, Gwaliar and Koil for construction work. From this recording it becomes clear that if Babur would have employed workers to erect lofty firmament building in Ayodhya somewhere in four corners of his memoirs sooner or later certainly he would have mentioned. Relevant

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extract from the page 285 of "History of Indian and Eastern Architecture" read as follows:

> "There is, again, a little difficulty and confusion in our having no examples of the style as practised by Babar and Humayun. The well-known tomb of the latter king was certainly built by his son Akbar; Babar was buried near Kabul, and no building known to be his has yet been identified in India. Yet that he did build is certain. In his own 'Memoirs' he tells us. "In agra alone, and of the stone-cutters belonging to that place only, I everyday employed on my palaces 680 persons; and Agra, Sikri, Biana, Dholpur, Gwaliar and Koil, there were every day employed on my works 1,491 stone-cutters." In the following pages he describes some of these works, and especially a Baol of great magnificence he excavated in the fort of Agra. This was in the year 1526, and he lived to carry on these works for five years longer. During the ten years that his son retained the empire, we learn from Ferishta and other sources that he adorned his capital with many splendid edifices: one, a palace containing seven pavilions or audience halls – one dedicated to each of the planets, in which he gave audience on the day of the week dedicated to the planet of the day. There are traditions of mosque he is said to have built on the banks of the Jamna, opposite where the Taj now stands; and his name is so frequently mentioned in connection with buildings both at Agra and Delhi that there can be little doubt that he was a builder to as great an extent as the troubled character of his region would admit of. But his buildings have perished, so that practically the history of Mughal architecture commences with the buildings of an Afghan dynasty who occupied the throne of India for sixteen years during the last part of Humayun's lifetime."
>
> (ibid p. 285)

6. Within 26th years of the death of Emperor Zahiruddin Muhammad Babar in the year 1556 his grandson Emperor Jalaluddin Muhammad succeeded his empire. During the

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reign of Akbar, the Great, *A-in-I Akbari, the* Gazetteer of his Kingdom was compiled by Emperor's close confident and an erudite scholar Abul Fazl Allami. In the said Gazetteer Abul Fazl gives very minute and microscopic account of Ajodhya he records that Ajodhya is esteemed ones of the holiest places of antiquity and was the residence of Ramchandra in the *Treta* age. He further records that near the city there were two tombs of six and seven yards in length alleged to be of Seth and the Prophet Job. He also records the presence of the tomb of Kabir at Ratanpur as well as grabes of the Salar Masud and Rajab Salar located in Bahraich; but he did not mention existence of Babri Mosque or any other Mosque in Ayodhya from which it is crystal clear that during the reign of Akbar, the Great there was existence of Sri Ramjanmsthan but there was no existence of Baburi Mosque otherwise a person from whose notice even the graves have not been escaped would have certainly described said Babari Mosque more so a Mosque built by the grandfather of his patron. Relevant extract from page 182 of the Volume-II of the said book reads as follows:

> *Awadh (Ajodhya)* is one of the largest cities in India. It is situated in longitude $118^0$ 6' and latitude $27^o22'$. In ancient times, its populations side covered an extent of 148 *kos* in length and 36 in breadth and it is esteemed ones of the holiest places of antiquity. Around environs of the city, they sift the earth and gold is obtained. It was the residence of Ramchandra who in the *Treta* age combined in his own person both the spiritual supremacy and the

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kingly office.

> At the distance of one kos from the city, the Gogra, after its junction with the Sai, [Saraju] flows below the fort. Near the city stand two considerable tombs of six and seven yards in length respectively. The vulgar believe them to be the resting-places of Seth and the prophet Job, and extraordinary tales are related of them. Some say that at Ratanpur is the tomb of Kabir, the assertor of the unity of God. The portals of spiritual discernment were party opened to him and he discarded the effete doctorines of his own time. Numerous verses in the Hindi language are still extant of him containing important theological truths. Bahraich is a large town on the banks of the river Sarju. Its environs are delightful with numerous gardens. Salar Masud and Rajab Salar are both buried here."
>
> (*A-in-I Akbari* Vol-II p.182)

7. *A-in-I Akbari* describing Ten-incarnations of the Lord of Universe Sri Vishnu, records that Sri Rama was born in the city of Ayodhya on 9th day of bright half of Chaitra. Relevant extract from page 316-17 of Vol. III of the said book reads as follows:

> "He was accordingly born during the *Treta* Yuga on the ninth of the light half of the month of *Chaitra* (March-April) in the city of Ayodhya. That *Kausalya* one of the wife of Raja *Dasaratha.* At the first dawn of intelligence, he acquired much learning and withdrawing from all worldly pursuits, set out journeying through wilds and gave a fresh beauty to his life by visiting holy shrines. He became lord of the earth and slew *Ravana.* He ruled for eleven thousand years and introduced just laws of administration.
>
> (*A-in-I Akbari* Vol-III p.316-317)

8. A-in-I Akbari in its Chapter -*IX* enumerating sacred places of pilgrimage of the Hindus records that in Ajodhya on the birth day of the Lord of Universe Sri Rama a great religious

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festival was held in those days. Relevant extract from page 334 of Vol. III of the said book reads as follows:

> "Ajodhya, commonly called 'Awadh' this distance of forty *kos* to the east, and twenty to the north is regarded as sacred ground. On the ninth of the light half of the month of *Chaitra* a great religious festival is held".
>
> (*A-in-I Akbari* Vol-III p.334)

9. From the book Tarikh-I Badauni written by Abdul Kadir Badauni another court Historian of the Emperor Akbar it appears that said Emperor had very high regard for Sri Ram Chandra and at the instance of the Emperor, Abdul Kadir Badauni had translated Ramayana. Relevant extracts from his said book as contained in "History of India As Told By Its Own Historians" Vol.III translated by Sir H.M.Elliot and reprinted in 2008 by Low Price Publications, Delhi reads as follows:

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> "Translation of the Ramayana.
> [Text, Vol. ii. P. 336] [In this year the King commanded me to make a translation of the Ramayana, a composition superior to the Maha-bharat. It contains 25,000 shloks, and each shlok is a verse of sixty-five letters. The hero of its story is Ram whom the Hindus worship as a god in human form.]
> [Text, Vol.ii, p.366.] [In the month of Jumads- I awwal A.H. 999, ] completed the translation of the ramayan, having occupied four years in the work. When I presented the book, it was greatly praised.]
>
> (ibid p.539)

10. In his book "History Of The Rise Of The Mahomedan Power In India till the year A.D. 1612" Mahomed Kasim Ferishta enumerates the mosques which were rebuilt and

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repair by the Emperor Babur where in there is no mention of Babari Mosque from which fact it is clear that no Mosque in the name of Baburi was built by Babur. He also writes that Babur was Learned in the Doctrines of the sect of Huneef. Relevant extracts from the Vol.II of the said book translated by John Briggs and published by Low Price Publication, Delhi reads as follows:

> "The empty fort thus fell into the hands of the Mgouls, and Babur did not fail to rebuild and repair those mosques in Chundery, Sarungpoor, Runtunbhore and Raisein, which had been partly destroyed and otherwise injured by being converted into cattlesheds, by Medny Ray's order. He also restored those countries to their legitimate sovereign. Sooltan Ahmud, the son of Sooltan Mahomed, and grandson of Sooltan Nasir-ood-Deen Khiljy, King of Malwa." (ibid p.38)

> "He was learned in the doctrines of the sect of Huneef, and never omitted his daily prayers."
>
> (ibid p.41)

11. Abdul Kadir Badauni in his book has written that the Emperor Akbar had become very much sympathetic to Hindus. He had adopted sun worship and other mode of worship of the Hindus. He had handed over several Mosques to Hindus and had allowed Hindu converts to return back to their own religion. From the facts as stated by said critic historian of the Emperor's Court, it can be inferred that if any Mosque would have been erected over Sri Ramajanamsthan it would have been handed over to the Hindus and such transfer of Mosque would not have escaped

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notice of Badauni. The relevant extracts from the Badauni's said book reproduced in A-In-I Akbari Vol.I translated by H.Blochmann and reprinted in 1989 by the Low Price Publication, Delhi read as follows:

> "Moreover, Sumanis and Brahmins managed to get frequent private interviews with His Majesty. As they surpass other learned men in their treatises on morals, and on physical and religious sciences, and reach a high degree in their knowledge of the future, in spiritual power and human perfection, they brought proofs based on reason and testimony, for the truth of their own and the fallacies of other religions, and inculcated their doctrines so firmly and so skilfully represented things as quite self-evident which require consideration, that no man, by expressing his doubts, could now raise a doubt in His Majesty, even if mountains were to crumble to dust, or the heavens were to tear as under."
>
> (*Ibid.* p.188-189)

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> "The emperor also learned from some Hindus, formulae to reduce the influence of the sun to his subjection, and commenced to read them mornings and evenings as a religious exercise. He also believed that it was wrong to kill cows, which the Hindus worship; he looked upon cow-dung as pure, interdicted the use of beef, and killed beautiful men instead of cows. The doctors confirmed the emperor in his opinion, and told him it was written in their books that beef was productive of all sorts of diseases and was very indigestible."
>
> (*Ibid.* p.193)

> "In this year the *Tamgha* (inland tolls) and the *Jazya* (tax on infidels), which brought in several krors of dams, were abolished, and edicts to this effect were sent over the whole empire."
>
> (*Ibid.* p.198)

> "Beef was interdicted, and to touch beef was considered defiling. The reason of this was that, from his youth, His Majesty had been in company with Hindu libertines, and had thus learnt to look upon a cow - which in their opinions is one of the

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reasons why the world still exists - as some thing holy. Besides, the Emperor was subject to influence of the numerous Hindu princesses of the harem, who had gained so great an ascendancy over him as to make him forswear beef, garlic, onions, and the wearing of a beard, which thing His Majesty still avoids. He had also introduced, though modified by his peculiar views, Hindu customs and heresies into the court assemblies, and introduces them still, in order to please and win the Hindus and their castes, he abstained from everything which they think repugnant to their nature, and looked upon shaving the beard as the highest sign of friendship and affection for him. Hence this custom has become very general."

(*Ibid.* p.202)

"The ringing of bells as in use with the Christians, and the showing of the figure of the cross, and …..and other childish playthings of theirs, were daily in practice."

(*Ibid.* p.203)

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"In these days (991) new orders were given. The killing of animals on certain days was forbidden, as on Sundays, because this day is sacred to the Sun; during the first eighteen days of the month of Farwardin; the whole month of Aban (the month in which His Majesty was born); and on several other days, to please the Hindus."

(*Ibid.* p.209)

"He used to wear the Hindu mark on his forehead, and ordered the hand to play at midnight and at break of day. **Mosques and prayer-rooms were changed into store rooms, or given to Hindu chaukidars.** For the word *jama at* (public prayer) His Majesty used the term *jima* (copulation), and for *hayya ala*, he said *yalala talala.*

"The cemetery within the town was ordered to be sequestered."

(*Ibid.* p.210)

"These formulas were to take the place of our *salam* and the answer to the *salam.* The beginning of counting Hindu months should be the 28th day, and not the 16th because the latter was the invention and innovation of Bikramajit. The Hindu feasts, likewise, were to take place in accordance with this

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> rule. But the order was not obeyed, though farmans to that effect, as early as 990, had been sent to Gujrat and Bengal."
>
> (*Ibid.* p.215)

> "Cases between Hindus should be decided by learned Brahmins, and not by Musalman Qazis."
>
> (*Ibid.* p.215)

> "Hindus who when young, had from pressure become Musalmans, were allowed to go back to the faith of the fathers. No man should be interfered with on account of his religion, and every one should be allowed to change his religion, if he liked. If a Hindu woman fall in love with a Muhammadan, and change her religion, she should be taken from him by force, and be given back to her family. People should not be molested if they wished to build churches and prayer rooms, or idol temples, or fire temples." (*Ibid.* p.217)

**Annexure-IV**
**Page-13**
**William Finch**

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12. **William Finch,** who travelled India in the reign of Emperor Nuruddin Mohammad Jahangir from 1608 A.D. to 1611 A.D., saw the Hindus visiting the Birth Place of the Lord of Universe Sri Ram Chandra in Ramkot where Brahmins used to note down names of the visitors to that sacred place. Be it mentioned herein that in each and every prominent sacred places of the Hindus since time immemorial a class of Brahmins known as Panda has been helping the Devotees to perform customary rites as also noting down names of the Devotees. As such presence of Brahmin Pandas at Sri Ramjanmsthan during the visit of William Finch is conclusive proof that the Emperor Babar had not

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erected any Mosque over the said sacred site and Hindus were performing their traditional customary rites as laid down in Sri Skanda Puran. Relevant extract from page 176 of the book Early Travels in India 1583 – 1619 by William Foster reads as follows:

> "To Oudh [Ajodhya] from thence are 50c; a citie of ancient note, and seate of a Polan king, now much ruined; castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand [S] castle and houses, which the Indians acknowled[g]e for the great God, saying that he tooke flesh upon him to see the Tamasha of the World. In these ruines remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby, which custome, they say hath continued foure lackes of yeeres (which is three hundred ninetie foure thousand five hundred yeeres before the world's creation). Some two miles on the further side of the river is a cave of his with a narrow entrance but so spacious and full of turnings within that a man may well lose himselfe there, if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance, certaine grains of rice as blacke as gun-powder which they say have beene reserved ever since. Out of the ruines of this castle is yet much gold tryed. Here is great trade and such abundance of Indian asse-horne that they make here of bucklers and divers sorts of drinking cups. There are of these hornes, all the Indian affirme, some rare of great price, no jewell comparable, some esteeming them the right unicorns horne".
> (Early Travels in India 1583 – 1619 by William Foster p.176).

**Annexure-IV**
**Description of India by J. Tieffenthaler**
**Pages 129-162**

13. In his book Description Historique Et Geographique De l' Inde, Joseph Tieffenthaler who visited Sri Ramjanmsthan in

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the year 1770 A.D. during the reign of Emperor Shah Alam II (1759-1806 A.D.) evidenced the performance of customary rites by the Hindus in the central & left Halls of the Sri Ramjanmsthan Temple, Ajodhya in India. Tieffenthaler says that there was a *Vedi* i.e. *Sthandi*l inside the said Temple which was being worshipped by the Devotees by prostrating and circumambulating it thrice, but he did not mention offering of prayer therein by the Muslims; from the said facts made available by an eye witness it becomes crystal clear that in the 1770 the Hindus were in use and occupation of the Sri Ramjanmsthan as their sacred shrine which has been described as Babari Mosque by the plaintiffs in their pleadings and it was not being used as a Mosque by the Muslims. The said book is written in Latin language, an English translation of his narrative of Ajodhya finds place in the book Modern Traveler, a Popular Description, Geographical, Historical and Topographical of the Various Country of the Globe – India Vol-III published by James Duncan in the year 1828. Relevant extracts containing translation of Tieffenthaler's account from pages 312, 313, 314, 316 and 317 read as follows:

> "Its appearance, in 1770, is thus described by *Tieffen theler: "Avad, called Adjudea by the Learned Hindoos i*s a city of the highest antiquity. Its houses are, for the most part, only on mud, covered with straw or with tiles; many, however, are of brick. The principal street, running from S. to N., is about a *league* (mille) in length; and the

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breadth of the city is somewhat less. Its western part, as well as the northern, is situated on a hill; the north-eastern quarter rests upon *eminences;* but towards *Bangla,* it is level. This town has now but a scanty population, since the foundation of *Bangla* or *Fesabad; a* new town where the Governor has established his residence, and to which a great number of inhabitants of *Oude* have removed. On the southern bank of *Deva (or Goggrah),* are found various buildings erected by the *Gentoos* in memory of Ram, extending from east to west. The more remarkable place is that which is called *Sorgodoari,* that is to say, the heavenly temple; because they say, that Ram carried away from thence to heaven all the inhabitants of the city. The deserted town was repeopled and restored to its former condition by *Bikaramajit,* the famous King of *Oojain.* There was a temple here on the high bank of the river; but *Aurangzebe,* ever attentive to the propagation of the faith of Mohammed, and holding the heathen in abhorrence, caused it to be demolished, and replaced it with a mosque with minarets, in order to abolish the very memory of the Hindoo superstition. Another mosque has been built by the Moors, to the east of this. Near the *Sargodoari* in an edifice erected by *Nabalroy* a former Hindoo governor. But a place more particularly famous is that which is called *Sitha Rassoee,* the table of *Sitha* (Seeta), wife of Ram; situated on an eminence to the south of the city. The emperor Aurangzebe demolished the fortress called Ramcote, and erected on the site, a *Mohammedan* temple with a triple dome. According to others, it was erected by Baber. There are to be seen fourteen columns of black stone, five spans in height, which occupied the site of the fortress. Twelve of these columns now support the interior arcades of the mosque: the two other form part of the tomb of a certain Moor. They tell us, that these columns, or rather these remains of skilfully wrought columns, were brought from Isle of *Lanca* or *Selendip (Ceylon)* by *Hanuman,* king the of monkeys. On the left is seen a square chest, raised, five inches from the ground covered with lime, about 5 *ells* in length by not more than four in breadth. The Hindoos call it *Bedi,* the cradle; and the reason is, that there formerly stood here the house in which *Beshan (Vishnoo)* was born in the form of Ram and were also, they say, his three

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> brothers were born. Afterwards, Aurangzebe, or, according to others, Baber, caused the place to be destroyed, in order to deprive the heathen of the opportunity of practicing there their superstitions. Nevertheless, they still pay a superstitious reverence to both these places; namely, to that on which the *natal* dwelling of Ram stood, by going three times round it, prostrate on the earth. The two places are surrounded with a low wall adorned with battlements. Not far from this is a place where they dig up grains of black rice changed into little stones, which are affirmed to have been hidden underground ever since the time of Ram. On the 24th of the month *Tshet (Choitru),* a large concourse of people celebrate here the birth-day of Ram, so famous throughout India. This vast city is only a mile distant from *Bangla (Fyzabad)* towards the E.N.E."
>
> (Ibid. 312-314)
>
> "…Between three and four miles from *Fyzabad,* on the Southern bank of the *Goggrah,* there is a remarkable place planted with bushy trees, of which *Tieffenthaler* gives the following account:
>
> "It is seated upon a hill somewhat steep, and fortified with little doors of earth at the four corners (of the enclosure). In the middle it is seen a subterranean hole, covered with a dome of moderate dimensions. Closed by is a lofty and very old tamarind-tree. A p*iazza* runs round it. It is said that Ram, after having vanquished the giant Ravan, and returned from Lanka descended into this pit, and there disappeared: hence, they have given to this place the name of *Gouptar (or Gouptargath).* You have here, then, a descent into hell, as you had at *Oude and* ascension to heaven". "As the scene of many of the leading events in the great epic poem of the *Ramayuna, Oude* might be expected to abound with sports of traditional sanctity
>
> (Ibid.p.316-317)

14. The East India Gazetteer of Hindustan of Walter Hamilton, 2nd Edition first published in 1828 A.D., records that the remains of the ancient city of Oude (Ayodhya), the Capital of Great Rama was still in existence wherein reputed sites of temples dedicated to Sri Rama, Sri Seeta, Lakshman and

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Hanuman are located and; and the pilgrims who perform the pilgrimage to Ayodhya they walk round the temples and idols, bathe in holy pools, and perform the customary ceremonies. Relying on said Gazetteer it is submitted that even in or before1828 A.D. the Hindus were performing customary ceremonies at the birth place of the Lord of Universe Sri Rama ; and during said point of time there was no existence of alleged Babari Mosque as no such Mosque has been described in the four corners of the said Gazetteer. Relevant extract from page 353 of the said Gazetteer reads as follows:

> "***Oude***: the ancient capital of the province of *Oude,* situated on the South side of the *Goggra, seventy nine* miles east from *Lucknow*: lat. 2648' N., lon. 824'E By Abul Fazel in 1582 it is described as follows. " Oude is one of the largest cities of Hindostao. In ancient times this city is said to have measured 148coss in length and thirty-six coss in brendth. Upon sifting the earth which is round this city small grains of gold are sometimes found in it. This town is esteemed one of the most sacred places of antiquity." Pilgrimages resort to this vicinity, where the remains of the ancient city of *Oude*, the capital of the great Rama, are still to be seen; but whatever may have been its former magnificence it now exhibits nothing but a shapeless mass of ruins. The modern town extends a considerable way along the banks of the G*oggra,* adjoining *Fyzabad,* and is tolerable well peopled but inland is a mass of rubbish and jungle among which are the reputed sites of temples dedicated to *Rama, Seeta,* his wife, *Lakshman,* his general, and *Hunimaun (*a large monkey), his prime minister. The religious mendicants, who perform the pilgrimage to *Oude* are chiefly of the R*amata sect,* who walk round the temples and idols, bathe in the holy pools, and performed the customary ceremonies"

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(East India Gazetteer p.353)

15. Above referred East India Gazetteer of Hindustan of Walter Hamilton, 2nd Edition first published in 1828 A.D. in its preface declares that it contains accurate information the details whereof were collected by the persons best qualified from length of service residence on this spot, and established reputation to form a correct judgment of their authenticity. Relying on said declaration it is respectfully submitted that in or before 1828 A.D. there was existence of Sri Ramjanmsthan and temples in Ram-Kot, Ayodhya and the Hindus were worshiping therein and there was no existence of alleged Babari Mosque. Relevant extract from page xiv-xv of the said Gazetteer reads as follows:

> "To each description of any consequence, the authorities upon which it is founded are carefully sub-joined in succession according to their relative means, the author being particularly desires to the credit where it is justly due, as well as to establish the high Character of the sources from whence his originally information has been drawn But no person is to be considered wholly responsible for any article, the materials being so intimately blended with each other, and the result of the author's own experience during a ten years' residence in India, that it would be impossible to define the limits of the respective properties. In various cases the narrative is given as closely as the necessity of condensing many thousand pages into a small compass would permit; in others it has been necessary to compare contradictory and conflicting testimonies, and to select that which appeared to rest on the most solid foundation. Conciseness has been particularly aimed at, and the endeavour to effect it has added greatly to the labour; for it is easy to write a description of a country when the materials are scanty, not so when the mass has been

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accumulating for half a century. In the official correspondence of the different presidencies the surveys and reports of one functionary are sometimes incorporated with those of another, so that occasionally the statement of one public officer cannot be discriminated from those of another; but notwithstanding these difficulties it will be clearly perceptible that the details of this work were generally collected under circumstances singularly favourable for the acquisition of accurate information, and by persons the best qualified from length of service residence on this spot, and established reputation to form a correct judgment of their authenticity."

(East India Gazetteer of Hindustan p.xiv-xv)

**Annexure-IV**
**Gazetteer by Edward Thortan**
**Pages 38-42**

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16. The Gazetteer of the Territories under the Government of East India Company and of the Native States on the continents of India by **Edward Thornton**, first published in 1858 records that on the right bank of the *Ghogra,* are extensive ruins, about 2000 years old said to be those of the forts of Rama, king of *Oude,* hero of the *Ramayana,* and otherwise highly celebrated in the mythological and romantic legends of India; the ruins still bear the name of *Ramgurh*, "or of fort of Rama"; according to native tradition temples thereon were demolished by Aurangzebe, who built a mosque on part of the site, but an inscription on the wall of the mosque, falsify the tradition as it attributes work to the conqueror Baber, from whom Aurangzebe was 5$^{th}$ in descent. The mosque is embellished with 14 columns of only 5 or 6 feet in height, but of very elaborate and tasteful workmanship, A q*uadrangular* coffer of stone, whitewashed five *ells* long, 4 broad, and protruding 5 or 6 inches above ground, is pointed out as the cradle in which Rama was born

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as the 7th *Avatar* of *Vishnoo; and* is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos. From the aforesaid recording of the said Gazetteer it becomes crystal clear that Temple of Sri Ramjanmasthan was remodeled like mosque either by Babar or by Aurangzebe by utilizing the building materials of the said Temple and in spite of that the Hindus were worshipping on the Vedi established therein. It is submitted that the compilers has recorded two sources to ascertain the person who was responsible for damaging the Temple and converting the same into a mosque. Gazetteer says that according to tradition it was Aurangzebe but according to an inscription it was Babar. The compiler recording both sources gave weightage to the information of the alleged inscription. As in earlier part of this argument it has already been established that the alleged inscriptions were neither ever fixed on said alleged Babari Mosque nor were in existence in any point of time the opinion of the compiler formed thereon crumbles down and only source of traditional information remains as reliable. Relevant extract from pages 739-740 of the said Gazetteer reads as follows:

> "Oude- A town in the kingdom of the same name. It is situate on the right bank of the river *Ghogra,* which *Buchanan* considers here to be "fully larger than the Ganges at *Chunar,"* and which is navigable downwards to its mouth, upwards to *Mundiya Ghant,* in the district of *Bareilly.* It extends about a mile in a South-East direction, from the adjoining recent city of *Fyzabad;* the breadth of the town is something loss from North-East to South-West, or from the river L*andwards*. The greater part of the site is on gently swelling eminences; but to the north-west, or towards Fyzabad, islo. Most of the houses are of mud, and thatched, though a few are tilted. Here, in a large building a mile from the river, is an extensive establishment, called Hanumangurb, or Fort of Hanuman, in honour of the fabled monkey-god the auxillary of Rama. It has an annual revenue of 50,000 rupees, settled on

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it by Shuja-ud-daulah, formerly Nawaub Vizier. It is manage by a malik or abbot, the spiritual superior; and the revenues are dispensed to about 500 bairagis or religious ascetics, and other Hindoo mendicants of various descriptions; no Mussulman being allowed within the worlds other establishments of similar character are Sugrimkills, Ram-Prashad-ka-Kana, and Bidiya-kuod; maintaining respectively 100, 250, 200 bairagis. Close to the town on the East, and on the right bank of the *Ghogra,* are extensive ruins, said to be those of the forts of Rama, king of *Oude,* hero of the *Ramayana,* and otherwise highly celebrated in the mythological and romantic legends of India. *Buchanan* observes, "that the heaps of bricks, although much seems to have been carried away by the river, extend a great way; that is, more than a mile in length, and more than half a mile in width; and that, although vast quantities of materials have been removed to build the *Mahomedan Ayodha* or *Fyzabad, yet,* the ruins in many parts retain a very considerable elevation; nor is there any reason to doubt that the structure to which they belonged has been very great, when we consider that it has been ruined for about 2000 years." The ruins still bear the name of *Ramgurh*, "or of fort of Rama"; the most remarkable spot in which is that from which, according to legend, Rama took his flight to heaven, carrying with him the people of his city; in consequence of which it remained desolat until re-peopled by *Vikramaditya,* the king of *Oujein,* half a century before the Christian era, and by him embellished with 360 temples. Not the smallest traces of these temples, however, now remain; and according to native tradition they were demolished by Aurangzebe, who built a mosque on part of the site, the falsehood of the tradition is however, proved by an inscription on the wall of the mosque, an attributing work to the conqueror Baber, from whom Aurangzebe was 5$^{th}$ in descent. The mosque is embellished with 14 columns of only 5 or 6 feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey general Hanuman, who had brought they from L*anka* or Ceylon. Altogether, however, the remains of antiquity is the vicinity of the renowned capital must give a very low idea of the state of arts and civilization of the Hindoos at a

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> remote period. A q*uadrangular* coffer of stone, whitewashed five *ells* long, 4 broad, and protruding 5 or 6 inches above ground, is pointed out as the cradle in which Rama was born as the 7th *Avatar* of *Vishnoo; and* is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos …"
>
> (The Gazetteer of the Territories under the Government of East India Company p.739-740).

17. Gazetteer of the Province of Oudh first published in 1877-78 in its Chapter-III of the introduction records that The Birth-place of Sri Ram, the Lord of Universe is the most highly venerated of the sacred places to which Hind- pilgrims crowd. Relevant extract from page XXXI reads as follows:

> "Long before the dawn of the authentic history, *Oudh* stands out in the full blaze of legend and poetry. Ajodhya its eponymous city was the capital of that happy kingdom in which all that the Hindu race reveres or desires was realized as it can never be realized again, and the seat of the glorious dynasty which began with the sun and culminated after 60 generations of blameless rulers in the incarnate deity and perfect man, Rama. Whether criticism will finally enroll the hero among the highest creations of pure imagination or accord him a semi-historical personality and a doubtful date, it is barren to speculate; history is more nearly concerned with the influence which the story of his life still has on the moral and religious beliefs of a great people, and the enthusiasm which makes his birth-place the most highly venerated of the sacred places to which its pilgrims crowd."
>
> (Gazetteer of the Province of Oudh p.xxxi)

18. The said Gazetteer of the Province of Oudh of 1877-78 records that Ajodhya is to the Hindus what Mecca is to the Mohammadans and Jerusalem to the Jews. The Gazetteer further says that as it is unconquerable city of the creator i.e.

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*Brahma* it is called Ajodhya and as Sri Ram had promised to return after completion of the period of exile this city is also known as Oudh. From the said recording of the Gazetteer it is crystal clear that since the *Tretayug* Sri *Ramjanmsthan* is most sacred place of the Hindus and performing their customary rights thereon is integral part of Hinduism. Relevant extract from page 2 of the said Gazetteer reads as follows:

> "*Ajodiya – (Ajodhya) – Pargana Haweli Oudh – Tahsil Fyzabad – District- Fyzabad* : A town in the district of *Fyzabad,* and adjoining the city of that name is to the Hindu what *Mecca* is to the Mohammadans, *Jerusalem* to the Jews; it has in the traditions of the orthodox, a highly mythical origin, being founded for additional security, not on the transitory earth, but on the chariot wheel of the Great Creator himself. It lies 26 □47' N latitude and 82□15' E longitude, on the banks of the Gogra. The name *Ajodhya* is explained by well known local pundits to be derived from the sanskrit words 'ajud', 'unvanquished'; also 'Aj' a name of Brahma – 'The unconquerable city of the creator'. But Ajodhya is also called *Oudh* which in Sanskrit means a promise; in elusion, it is said, to the promise made by Ram Chandar when he went in exile, to return at the end of 14 years."
>
> (Gazetteer of the Province of Oudh 1877-78 p.2)

19. The said Gazetteer of the Province of Oudh 1877-78 records that within *Ramkot* the stronghold of Lord of Universe Sri Ram Chandra, there were 8 Royal Mansions where dwelt Sri Ram, an incarnation, his father Sri Dasrath and Sri Dasarath's wives. The relevant extracts from page 3 of the said Gazetteer reads as follows:

> "*Ramkot:* The most remarkable of those was, of

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> course, *Ramkot,* the stronghold of Ram Chandar. This fort covered a large extent of ground, and, according to ancient manuscripts, it was surrounded by 20 *Bastions,* each of which was commanded by one of Ram's famous general after whom they took the names by which they are still known. Within the fort were 8 Royal mansion where dwelt the Patriarch *Dasrath,* his wives, and Ram, his defied son".
>
> (Gazetteer of the Province of Oudh 1877-78 p.3)

20. The said Gazetteer of the Province of Oudh of 1877-78 records that prior to advent of Babar there were three important Hindu shrines namely the *'Janmasthan'* the *Swargaddwar Mundir'* also known as '*Ram Darbar',* and 'Treta-ke-Thakur' and; without disclosing source of information it says that on the *Janamsthan* the in 1528 A.D. emperor Baber built the mosque while on other two sacred shrines Aurangzeb did so. From the said recording of the Gazetteer it is crystal clear that over the sacred shrine Sri Ramjanmsthan any one of the Mughal Emperor had erected a Mosque in flagrant violation of the Law of *Shar* which mandatorily forbids from usurping others' land as such any building erected over the land of the Hindu Deity i.e. The Lord of Universe Sri Ram from the building materials of the Temple of the said Deity does not come within the definition of Mosque. The relevant extract from page 6 of the said Gazetteer reads as follows:

> "The *Janmasthan* and other temples – it is locally affirmed that at the *Muhammadan* conquest there were three important Hindu shrines, with but few devotees attached, at Ajodhya, which was then little

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> other than wilderness. These were the *'Janmasthan'* the *Swargaddwar Mundir'* also known as '*Ram Darbar',* and 'Treta-ke-Thakur'.
> On the first of these the emperor Baber build the mosque, which still bears his name, A.D.1528 on the second, Aurangzeb did the same A.D.1658 – 1707; and on the third the sovereign or his predecessors build a mosque, according to well-known *Muhmmaden* principle of enforcing their religion on all those whom they conquer.
> The *Janamsthan* marks the place where *Ram Chander* was born. The *swargaddwar* is the gate through which he passed into Paradise, possibly, the spot where his body was burnt. The *Treta-ke-Thakur* was famous as the place where Rama performed a great sacrifice, and which he commemorated by setting up their images of himself and *Sita*."
>
> (Gazetteer of the Province of Oudh 1877-78 p. 6)

21. The said Gazetteer of the Province of Oudh 1877-78 records that in 1855 A.D. in course of great rapture between the Hindus and the Muslims, loosing possession of Sri Ramjanmsthan for few days ultimately the Hindus re-occupied their said sacred shrine suffering 11 casualties and inflicting 75 casualties on Muslim-side. The Gazetteer further records that up to that time the Hindus and Muslims alike use to worship in the mosque-temple. Since British rule a railing had been put up to prevent the disputes within which, in the mosque, the Muslims used to pray; while outside the fence the Hindus had raised a platform on which they used to make their offerings. From the said recordings of the Gazetteer it becomes crystal clear that at least till 1855 A.D. the Hindus were worshipping in the same structure which has been described as Babari Mosque in the

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plaint of the instant suit and, a platform now known as *Ramchabutara* was erected by some Hindus after commencement of British Rule i.e. in 1856 A.D. as such the *Sthandil* i.e. *Vedi* (cradle) which was being worshipped by the Hindus in 1770 A.D. and seen by Joseph Tieffenthaler was other than the platform which was subsequently built in 1556 A.D. Be it mentioned herein that from the several applications of the self-proclaimed Mutawallis, Muezzins, Khattibs under or through whom the plaintiffs are claiming had seen it is crystal clear that since time immemorial Hindus are worshiping in the central Sanctum Sanctorum of the Temple Structure which has been described as Babari Mosque in the plaint of the instant suit, which makes it clear that the Hindus did not care for illegal and arbitrary prohibition imposed upon them by the British Rulers in 1856 A.D. or thereafter as alleged at all. Relevant extract from page 7 of the said Gazetteer reads as follows:

> "Hindu and Musalman – The *Janmasthan* is within a few hundred *paces* of the *Hanomangarhi* in 1855, when a great rapture took place between the Hindus and the Muhammadans, the former occupied the *Hanomangarhi* in force, while the Musalmans took possession of the *Janmasthan.* The Mohammadans on that occasion actually charged up the steps of the *Hanomangarhi,* but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the *Janmasthan* at the gate of which seventy-five *Muhammadan* were buried in the '*martyr's grave' (ganj-i-shahidan).* Eleven Hindus were killed. Several of the King's regiment were looking on all the time but their order were not to interfere. It is

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> said that up to that time the Hindus and Mohammadans alike use to worship in the mosque-temple. Since British rule a railing has been put up to prevent the disputes within which, in the mosque, the Mohammadans pray; while outside the fence the Hindus have raised a platform on which they make their offerings. A second attempt was made shortly afterwards by *Molvi Amir Ali* of *Amethi;* the object was to seize the alleged site of an old mosque on the *Hanoman Garhi".*
>
> (Gazetteer of the Province of Oudh 1877-78 p.7)

22. The said Gazetteer of the Province of Oudh of 1877-78 records that in the great fair of the *Ram Navami* i.e. Janm-mahotsva of Sri five lakh people used to participate. Said Gazetteer further records that about 150 years ago National feeling of the Hindus aroused by the tyranny of Aurangzeb or by success of Marathas or by the compilation of Ramayana in Hindi i.e. Sri Ramacharitmanas of Sri Goswami Tulsidas Ajodhya became again esteemed as a holy place; it grew favour each year, and then in all India, perhaps except the *Jagannath* festival and that at *Hardwar,* there was none to equal the *Ram Naumi* celebration at Ajodhya. It is needless to say that according to holy scripture of the Hindus Sri Skand-puran since the days of Sage Narad who was contemporary of Lord of Universe Sri Ram, it became integral part of Hinduism to celebrate Janm-mahotsav of the Lord of Universe Sri Ram and perform customary rituals at Sri Ramjanmsthan in Ayodhya. Be it mentioned herein that neither there was nor there is such a

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place other than Sri Ramjanmsthan, Ramkot, Ayodhya wich had/has capacity to attract and accommodate such a huge assemblage of the Devotees at least 150 years back from the 1877-8 A.D. the year of the publication of the instant Gazetteer i.e. 1727-28 A.D. it is further submitted that from the said facts as recorded in this Gazetteer it becomes crystal clear that after the death of Aurangzeb Sri Ramjanmsthan has become centre of Hinduism. Relevant extracts from pages 14, 451 and 452 of the said Gazetteer reads as follows:

> "There are 96 Hindu temples, of which 63 are in honour of *Vishnu* and 33 of *Mahadeo;* there are 36 mosques. There is also a vernacular school. There is little trade at Ajodhya. The great fair of the *Ramnauami,* on which 5,00,000 people assemble, is held here; it is described in the district of *Fyzabad"*.
>
> (Gazetteer of the Province of Oudh of 1877-78. p. 14)
>
> "Religious sect of Fyzabad- Religion in this district is of more than ordinary interest. Ajodhya, as is related in the account of that town, is the great centre of the hero worship which has selected the ancient king *Ram Chandar* as the object of its adoration. At the *Ram Naumi* festival 5,00,000 people assemble in honour of that potent monarch and innumerable shrines have been erected to *Ram Chandar*, his brother *Bharat,* his wife *Sita* and his ally in the great *dekkan war Hanoman,* the Monkey. This saint worship at the same time does not seem to interfere with the more spiritual theologh which concorns itself with the wholly unearthly beings, - Vishnu, Mahadeo and Bhawani or Debi".
>
> (Gazetteer of the Province of Oudh of 1877-78p.451)
>
> "…it may, however, be remarked here that the Hindu revival at Ajodhya is one of the most remarkable things in modern times. In Buddhist

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> times, the place had no peculiar sanctity, although there were doubtless temples and shrines. Long afterwards, during many centuries, *Gya, Benares, Puri* and *Muttra* kept their reputation, while Ajodhya became a wilderness and famous hunting-ground. About a hundred and fifty years ago there was a revival; where a national feeling was aroused by the tyranny of Aurangzeb or by the success of the *Marahtas,* or by the translation into popular language of the Ramayana, somehow or other Ajodhya became again esteemed as a holy place; it grew favour each year, and now in all India, perhaps except the *Jagannath* festival and that at *Hardwar,* there is none to equal the *Ram Naumi* celebration at Ajodhya."
>
> (Gazetteer of the Province of Oudh of 1877-78 p.452)

23. There are 20 terms and conditions of the Jizya out of which condition no.3 is that the Jimmis shall not prevent Muslim Travellers from staying in Idol Temples and, condition no.4 is that the Muslims shall have right to stay in the house of Jimmis as a guest for 3 days. As under the Islamic Rulers the Hindus was Jimmis in Oudh Province till its annexation to British Rule i.e. 1856 A.D. during this period they were bound to follow the terms and conditions of Jizya as modified by Great Imam Abu Haneef. From the readings of the said Gazetteer of 1877 – 1878 it appears that invoking the condition no.3 of the Jizya the Muslim travellers used to stay in Sri Ramjanmsthan compound and during their such temporary stay it might be that those travellers used to offer prayer in the rooms of the *Dharamshala* of the said Temple compound which was misconstrued by the compiler of the said Gazetteer. Even now-a-days the Muslims during their

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travels used to offer prayer in trains as also at the place of their temporary abode. As offering prayer in a building which has images is prohibited in Islam it can be said with certainty that no Muslim was offering prayer in Sri Ramjanmsthan Temple which has been described as Babari Mosque in the plaint of the instant suit. In nut-shell it can be inferred that only Hindus were performing religious rites and worship in the Idol Temple of the Lord of Universe Sri Ram. In the book "The Delhi Sultanate" 4th Edn. edited by renowned Historian Sri R.C.Majumdar and published in 1990 by Bharatiya Vidya Bhavan, Bombay on page 619 an extract from the book "Zakhirat-ul-Muluk" written by Shaikh Hamadani containing 20 terms and conditions of Jizya has been reproduced. Relevant extract from the said book reads as follows:

> "There is another mandate relating to those subjects who are unbelievers and protected people (zimmis). For their governance, the observance of those conditions which the Caliph 'Umar laid in his agreement for establishing the status of the fire-worshippers and the people of the Book (Jews and Christians) and which gave them safety is obligatory on rulers and governors. Rulers should impose these conditions on the zimmis of their dominions and make their lives and their property dependent on their fulfillment. The twenty conditions are as follows:

1. In a country under the authority of a Muslim ruler, they are to build no new homes for images or idol temples.
2. They are not to rebuild any old buildings which have been destroyed.
3. Muslim travelers are not to be prevented from staying in idol temples.
4. No Muslim who stays in their houses will commit a sin if he

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is a guest for three days, if he should have occasion for the delay.

5. Infldels may not act as spies or give aid and comfort to them.
6. If any of their people show any inclination towards Islam, they are not to be prevented from doing so.
7. Muslims are to be respected.
8. If the zimmis are gathered together in a meeting and Muslims appear, they are to be allowed at the meeting.
9. They are not to dress like Muslims.
10. They are not to give each other Muslim names.
11. They are not to ride on horses with saddle and bridle.
12. They are not to possess swords and arrows.
13. They are not to wear signet rings and seals on their ringers.
14. They are not to sell and drink intoxicating liquor openly.
15. They must not abandon the clothing which they have had as a sign of their state of ignorance so that they may be distinguished from Muslims.
16. They are not to propagate the customs and usages of polytheists among Muslims.
17. They are not to build their homes in the neighbourhood of those of Muslims.
18. They are not to bring their dead near the graveyards of Muslims.
19. They are not to mourn their dead with loud voices.
20. They are not to buy Muslim slaves."

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24. Staying of Muslims in the Temple or House of Jimmis was not only in theory but in practice also. During his retreat from Tibet campaign Bakhtiar Khilji took refuge in an Idol Temple in Kamrup which has been described in the book "Riyazu-s-Salatin" A History of Bengal on its pages 66 -67. During his travel Ibn Battuta stayed in a House of a Jimmi lady in Kaynuk, which fact has been recorded on page 138 of the book "Ibn Battuta" translated and selected by H.A.R. Gibb First Published in 1929 and, reprinted in 2007 by Low Price Publication, Delhi. Relevant extracts from the aforesaid two books read as follows:

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> "Muhammad Bakhtiar engulphed in the sea of confusion and perplexity, despaired of every resource. After much striving, he got news that in the neighbourhood there was a very lerge Temple, and that Idols of Gold and Silver were placed there in great pomp. It is said that there was an Idol in the temple which weighed a thousand maunds. In short, Muhammad Bakhtiar with his force took refuge in this temple, and was busy improvising means for crossing the river. The Rajah of Kamrup had ordered all his troops and subjects of that Country to commit depredations."
>
> (Riyazu-S-Salatin. P.67)
>
> "Kaynuk is a small town in the territories of Sultan Orkhan Bek, inhabited by infidel [Christan] Greeks under Muslim protection. There is only one household of Muslims in the place, and that belongs to the governors of the Greeks, so we put up at the house of an old infidel woman. This was in the season of snow and rain. She treated us well, and we spent that night in her house. Now this town has no trees or vineyards; the only thing cultivated there is saffron, and the old woman brought us a great quantity of it, thinking that we were merchants and would buy it from her."
>
> *(Ibn Battuta translated by H.A.R. Gibb reprint 2007 p.13*

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**Annexure-IV**
**A-In-I Akbari**
**Page 12**

25. It is noteworthy that in A-In-I Akbari Vol.II at page 182 it has been recorded that at that time in Ayodhya there were only two tombs of Seth and the Prophet Job of six and seven yards in length respectively. But from the Gazetteer of the Province of Oudh it is known that in the mean time another tomb Noah was also added and a story was concocted that the tomb of Nuh was built by Alexander the Great i.e. in 4$^{th}$ B.C., as this tomb of Nuh did not find place in A-In-I Akbari's account. In fact the tomb of Noah or Nuh is in the

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town Najaf in Iraq. In the light of aforesaid facts it becomes crystal clear that this tomb was brought into existence in deceitful manner in later days and to glorify it a fiction was created that it was existing in 4th B.C. It is respectfully submitted that the Babari Mosque has also been brought into fiction in later days i.e. after infliction of damages to Sri Ramjanmsthan Temple by the Emperor Aurangzeb and to glorify this subsequently name of the Emperor Babar was tagged with said disputed structure, which structure in fact was a Hindu temple and remained as such even after its defilement by the Emperor Aurangzeb. Relevant extract from page 11 and 12 of the Gazetteer of the Province of Oudh 1877-78 reads as follows:

> "The Tombs of the Patriarchs. – Adjoining the Maniparbat are two tombs, of which General Cunningham writes that "they are attributed to Sis paighambar and Ayub paighambar, or the Prophets Seth and Job. The first is seventeen feet long and the other twelve feet. These tombs are mentioned by Abul Fazl, who says: ' Near this are two sopulcjarai monuments, one seven and the other six cubits in length. The vulgar pretend that they are the tombs of Seth and Job, and they relate wonderful stories of them.' This account shows that since the time of Akbar the tomb of Seth must have increased in length, from seven cubits, or ten and a half feet, to seventeen feet, through the frequent repairs of pious Musalmans." These tombs are also mentioned at a later date, in the Araish-i-Mahfil. To these tombs Colonel Wilford adds that of Noad, which is still pointed out near the police station. The Colonel's account is as follows: "Close to Ajodhya or Oudh, on the banks of the Gogra, they slow the tomb of Noah, and these of Ayub, and Shis or Shish, (Job and Seth). According to the account of the venerable Darvesh

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> who watches over the tomb of Nuh, it was built by Alexander the Great, or Sikandar Rumi. I sent lately (A.D. 1799) a learned Hindu to make enquiries about this holy place: from the Musalmans be could get no further light; but the Brahmans informed him that where Nuh's tomb stands now, there was formerly a place of worship dedicated to Gapesha; and close to it are the remains of a baoli, or walled well, which is called in the Puranas Ganapat Kund. The tombs of Job and Seth are near to each other, and about one bow-shot and a half from Nuh's tomb; between them are two small hillocks, called Soma-giri, or the mountains of the moon: according to them these tombs are not above four hundred years old; and owe their origin to three men, called Nuh, Ayub, and Shis, who fell there fighting against the Hindus. These were, of course, considered as shahids, or martyrs; but the priests who officiate there, in order to increase the veneration of the superstitious and unthinking croud, gave out that these tombs were really those of Noah, Job, and Seth, of old. The tomb of Nuh is not mentioned in the Ain-i-akbari, only those of Job and Seth."
>
> On these quotations I have only to add that the distance between the tombs is greater than stated, being nearly a mile as the crow flies; while it is not the tomb of Nuh, but those of the other two men mentioned, that are close to the Gancsha Kund."
>
> (Gazetteer of the Province of Oudh 1877-78 p.11 – 12)

26. Ibn Battuta in his account of travels tells us that he visited the graves of Ali, Adam and Noah in the town Najaf in Iraq. This fact makes it clear that the so called tomb of Nuh in Ayodhya is not that of the original Nuh whose tomb is in Najaf, but to give antiquity and authenticity to their fiction the interested person tagged name of Alexander the Great as builder of the said tomb in Ayodhya though it is Historical truth that the Alexander had never been in Ayodhya. In similar manner interested persons tagged name of the

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Emperor Babar with Sri Ramjanmsthan Temple once upon a time which was defiled, damaged and tried to be converted into Mosque in the 8th decades of the 17th Century by the Emperor Aurangzeb ultimately which resulted into failure. The relevant extract of the Ibn Battuta Travels in Asia and Africa 1325-1354 (published by Low Price Publications, Delhi, 2007 Reprint of the 1st Edn. 1929) from page 81 and 82 reads as follows:

> "We went on from there and alighted in the town of Mash-had 'Alf at Najaf. It is a fine town, situated in a wide rocky plain- one of the finest, most populous, and most substantially built cities in 'Iraq'. It has beautiful clean bazaars. We entered by the [outer] Bab al-Hadra, and found ourselves first in the market of the greengrocers, cooks and butchers, then in the fruit market, then the tailors' bazaar and the *Qaysaruya*, then the perfumers' bazaar, after which we came to the [inner] Bab al-Hadra, where there is the tomb, which they say is the tomb of Alf. One goes through the Bab al-Hadra into a vast hospice, by which one gains access to the gateway of the shrine, where there are chamberlains, keepers of registers and eunuchs. As a visitor to the tomb approaches, one or all of them rise to meet him according to his rank, and they halt with him at the threshold. They then ask permission for him to enter saying "By your leave, O Commander of the Faithful, this feeble creature asks permission to enter the sublime resting-place," and command him to kiss the threshold, which is of silver, as also are the lintels. After this he enters the shrine, the floor of which is covered with carpets of silk and other materials. Inside it are candelabra of gold and silver, large and small. In the centre is a square platform about a man's height, covered with wood completely hidden under artistically carved plaques of gold fastened with silver nails. On this are three tombs, which they declare are the graves of Adam, Noah, and Alf. Between the tombs are dishes of silver and gold, containing rose-water, musk, and other perfumes; the visitor dips his hand in these and anoints his face with the perfume for a bleassing."

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*(Ibn Battuta translated by H.A.R. Gibb reprint 2007 p.81-82)*

**Annexure-IV**
**A.F. Millett, Officiating Settlement Officer**
**Pages84-89**

27. The report of the Settlement of the Land Revenue Officer of the Faizabad District by **A.F. Millett,** the Officiating Settlement Officer; published in 1880 records the similar facts as contained on page 7 of the Gazetteer of the Province of Oudh 1877-78 wherein the facts that in 1855 A.D. there was intense fighting between the Hindus and Muslims and the Hindus after being dispossessed regained possession of Sri Ramjanmsthan without loosing time by killing seventy five Muslims and loosing their eleven men. This report further records that prior to commencement of British Rule in Oudh i.e. 1856 A.D. the Hindus and the Muslims both used to pray in the Mosque – Temple and after the British Rule a railing was put up to prevent Hindus from entering into the disputed structure to avoid the dispute. It is needless to repeat and reiterate that in spite of such preventive measures of the British Rule the Hindus continue with their worship in the Sri Ramjanmsthan Temple which has been described as Babari Masjid in the plaint of the instant suit. Relevant extract from pages 235-36 reads as follows:

"**668.** If Ajudhya was then little other than wild, it

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must at least have possessed a fine temple in the *Janamsthan;* for many of its columns are still in existence and in good preservation, having been used by the *Musalmans* in the construction of the *Babri* mosque. These are of strong close-grained dark slate-colored or black stone called by the natives *'kasoti'* (literally touch-stone) and carved with different devices. To my thinking, these strongly resemble Buddhist pillars that I have seen at *Benares* and elsewhere. They are from seven to eight feet long, square at the base, centre, and capital, and round or octagonal intermediary.

**669.** *Hindu and Musalman difference* – The *Janmsthan* is within a few hundred paces of the *Hanuman Garhi.* In 1855, when a great rupture took place between the Hindu and Mahomedans the former occupied the *Hanuman Garhi* in force, while the Musalmans took possession of the *Janmasthan.* The Mohamedans on that occasions actually charged up the steps of the *Hanuman Garhi,* but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the *Janmsthan,* at the gate of which 75 *Mahomedans* are buried in the '*Martyrs grave' (Ganj-Shahid).* Several of the King's regiment were looking on all the time, but their orders were not to interfere. It is said that up to that time, the Hindus and Mahomedans alike used to worship in the mosque-temple. Since British rule, a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have, raised a platform on which they make their offerings."

(*The report of the Settlement of the Land Revenue Officer of the Faizabad District* by *A.F. Millett*, Edn.1880. p.235-236).

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**Annexure-IV**
**Faizabad Gazetteer**
**by E.B. Joshi**
**Pages 110-116**

28. That there was no mosque even till 1855 is established from the following narration in Faizabad Gazetteer 1960 at p. 63, where it is stated as under:-

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> " In 1855 a serious conflict between vairagis and the Muslims at the site of Hanumangarhi in Ayodhya, both claiming it to be a place of worship connected with their respective religions. King Wajid Ali Shah is said to have appointed a Committee to investigate this matter whichheld a public meeting in Gulab Bari. It appears that among those assembled no one testified the existence of the mosque. Therefore, the Committee unanimously decided the issue in favour of the Vairagis. When the report of the Committee reached Lucknow, it caused a sensation among the Muslims. A Council of action was formed of which Maulvi Amir Ali Amethi (District Lucknow) was elected leader. He was staying at Suhali and succeeded in attracting a large number of followers. On learning this the Vairagis started arrangements for the defence of the place. Wajid Ali Shah then ordered a regiment to guard it. At last on November 7, 1855 Maulavi Amir Ali started for Rudauli with his followers. On refusing to retrace his steps when ordered to do so by Captain Barlow, a fight ensued in which he and most of his followers were killed."
>
> The Gazetteer for the above has in the Footnote appended referred to Kawal-ud-din Haider: Qaisar-ut-Tawarikh or Tarikh-i-Avadh Part II pp. 110 & 128 Mirza Zan : Radiqa-i-Shuda (Lucknow 1772 A.H. / 1855-56 A.D.)
>
> (Faizabad Gazetteer of 1960.p.63 as reproduced in para 40 of the W.S. of the defendant no.20)

29. That in Faizabad Gazetteer of 1960 at pages 351 and 352 says that in the middle of 19th Century Ayodhya was regarded as a strong hold of Hinduism. From the said fact as recorded in the Gazetteer it is very much apparent that at the time of annexation of Oudh Province to the British Rule in the middle of 19th Century Hindus were strong enough to retain control at least over one of the most holiest place of worship of the Hindus i.e. Sri Ramjanmsthan at Ayodhya

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and they did so as it is very much apparent from the several applications made on an from 1858 to the date of inception of instant litigations by the alleged Mutawallis, Muezzins, Khattibs etc. Relevant extract of the aforesaid Gazetteer as quoted in paragraph 40 of the written statement of the this defendant no.20 reads as follows:

> "with the departure of the Court, the Hindus were left to themselves and numerous temples and monestries sprang into existence. Naval Rai, the Deputy of Nawab Safdar Jung built a fine house in Ayodhya which still stands on the river front. Probably this rise in importance was due to the creating popularity of th Ramcharitra Manas of Tulsidas and the progress of this place became even more rapid after the annexation of the Avadh by the British. Before the middle of the nineteenth century Ayodhya was regarded as a stronghold at Hinduism…."
>
> (Faizabad Gazetteer of 1960.p.351-352 as reproduced in para 40 of the W.S. of the defendant no.20)

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30. The Gazetteer of India Volume II (3rd Edn. 1990 published by the Director of Publication Division Ministry of Information and Broadcasting Government of India ) records the fact that even the Rulers like Firuz Shah Tughluq and Aurangzeb found it impossible to stop religious practices of the Hindus. Relevant extract from page 362 of the said Gazetteer reads as follows:

> " Firuz Shah Tughluq confessed his helplessness in preventing Hindus from openly blowing their conches, beating drums and going daily to the river Yamuna by the side of his palace, to worship their idols. Even Aurangzeb found it impossible to rule absolutely according to Islamic law and had to

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> concede to certain extra-Islamic practices of his predecessors. In fields relating to religion, the Hindus were allowed full freedom to have their cases tried by their own communal courts. Even in matters of property and several other non-religious affairs if both the parties were Hindus, the case was referred to the judgement of pundits or Hindu lawyers. The land-revenue system under Muslim rulers and the ceremonies and procedure at the Mughal court bear the unmistakable evidence of Indian traditions. These deviations from Muslim law, however, did not affect the fundamental Islamic character of the state."
>
> (The Gazetteer of India Volume II p.362)

31. Niccolao Manucci who was contemporary of the Mughal Emperor Aurangzeb came in India in 1656 and served as artillery commander in the army of Prince Dara Sukoh and on 8th June 1658 participated in the decisive battle of Samugarh, near Agra fought between The Armies of Prince Dara Sukoh and Prince Aurangzeb. After defeat of Dara Sukoh he joined Army of Emperor Aurangzeb. In December 1662 he made an expedition eastwards and travelled through Patna, Rajmahal, Dhakkah, Sunderbans, Hoogly and then returned to Agra by way of Qasimbazar. At Agra he adopted medicine as a profession. Here he met with Raja jai Singh of Amber and joined as a Captain of artillery to his son Prince Kirat Singh and accompanied Raja Jai Singh during his campaign against Chhatrapati Maharajadhiraj Shivaji in between March 1664 to July 1665. After the death of Raja Jai Singh in or about 1678 he came in service of Prince

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Shah Alam I, who later on succeeded emperor Aurangzeb, as his physician and ultimately left Mughal dominion in 1686. He died in India in 1717 (Source Storia Do Mogor Volume 1 Introduction Page lvi-lxvii ). In his book "Storia do Mogor" or Mogul India 1653 – 1708 Vol-III at page 244 under the caption of 'Hindu Holy Places' Niccolao Manucci records the facts that several temples including the four famous temples of the Hindus at Ayodhya, Kashi (Varanasi), Mathura and Hardwar were demolished by the Emperor Aurangzeb but shortly thereafter Hindus thronged to their those sacred sites and started worshipping as they were doing in past. From the said eye witness account leaves no doubt that Sri Ramjanmsthan Temple at Ayodhya was demolished by Aurangzeb and not by the Emperor Babur. As the Temple of Ayodhya has been enumerated along with three other famous temples which means it was Sri Ramjanmsthan as no other Temple can be equalised and compared with Sri Vishveshwar's Temple at Varanasi, Sri Krishna Janmsthan Temple at Mathura and the famous Temple at Hardwar. Relevan extracts from the said book of Niccolao Nanucci read as follows :

> "In this realm of India, although King Aurangzeb destroyed numerous temples there does not thereby fail to be many left at different places, both in his empire and in the territories subject to the tributary princes. All of them are thronged with worshipers; even those that are destroyed are still venerated by the Hindus and visited for the offering of alms. The

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Hindus assert that in the world there are seven principal places where it is possible to obtain what one has imagined and desired – that is to say, in cases where a person wishes to become Emperor or King, wealthy, powerful or to attain other positions of the same order. Now they ordinarily hold that on dying a person's soul is transferred according to the deeds he has done; if he has done good, his soul will pass into some one of consideration or of wealth, and should the deceased have done evil, his soul will be sent in to some animal – elephant, camel, buffalo, cow, tiger, wolf, a bird, a snake, a fish et cetera …"

*(Storia do Mogor or Mogul India 1653 – 1708 Vol-III p.244)*

"…bands of interested persons make these lengthy pilgrimages, enduring a thousand hardships on the way, only at the end to drown of their own choice, without considering where they are about to take up their abode.

The chief temples destroyed by King Aurangzeb within his kingdom were the following:

1. Maisa (?) Mayapur,
2. Matura (Mathura),
3. Caxis (Kashi),
4. Hajudia (Ajudhya)

and an infinite number of others; but, not to tire the reader, I do not append their names."

(Ibid p.245)

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**Annexure-IV**
**Gazetteer by F. Martin**
**Pages 34 to 37**

32. In the book 'India in the 17th Century (Social, Economic and Political) Memoirs of Francois Martin 1670-1694 (translated by Lotika Varadarajan and Published by Manohar Publishers 1984 Edn.), Francois Martin writes that the Emperor Aurangzeb caused demolition of the temples in the cities and villages of Gujrat whereafter people erected temples within their homes and saved them from demolition by giving presence to the

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Governors. He further records that when Emperor Aurangzeb's army on his command tried to demolish a temple in Karnataka the Hindus fought and repulsed the Imperial Army and one of his Hindu noble revolted against him and left his service. From the facts recorded by Francois Martin who was Governor of French East India Company it becomes crystal clear that the Emperor Aurangzeb was leaving no stone unturned in inflicting humiliation, oppression and excesses on Hindus in course whereof he was causing demolition of the Idol Temples but the same was by hook or by crook being opposed by the Hindus and they were not giving up to their religious places and rites. This fact corroborate the fact as recorded by the Niccolao Manaucci to the effect that the said Emperor caused demolition of Hindu temples but immediately thereafter Hindus thronged at their sacred sites of the temples and started their usual worship on those sites. Relevant extracts from page 914 of vol.-II part-1, p.1249 & 1256 vol.-II, part-II read as follows:

> "When it had come to the knowledge of the Emperor that many rich Gujarati banias had built temples within their homes to perform their devotions, in his religious fervour, he ordered that the Governors of the province should carry out an inspection. All the temples in the cities and villages had been destroyed. Now these inner sanctums were also to be laid low and the least sign of the practice of the Hindu religion was to be wiped out. The numbers of this community, particularly at Hyderabad and Cambay where they were to be found in large numbers, were greatly alarmed at these instructions. It was said that the banias managed to circumvent the Mughal orders by giving presents to the Governors who thereupon

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took their inspection tours very lightly." (ibid p.914)

" Following the Emperor's orders with regard to the destruction of temples, the Moors brought one down in the Carnatic. This incited the Hindus to revolt in an attempt to prevent this action. The two communities clashed openly and both sides sustained loss of life. As a result, the Moors were forced to postpone their demolition activities to a later date." (ibid p. 1249)

"Yachappa Nayak, the Hindu noble to whom I have referred earlier in my narrative, on seeing that the Mughal army after repeated orders from the Emperor, was bent on the destruction of the Hindu temples, left Mughal service and entered the territory of Gingee with his men. From there, he wrote to all the Hindu Princes, urging them to unite against the enemy of their community and religion."
(ibid p.1256)

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33. In the aforesaid book Francois Martin also records that in spite of injunctions of the Mugal Emperor the Hindus did not stop from performing their traditional religious ceremonies and continue to perform it in violation of prohibitory orders. This recording also corroborate the facts as recorded by Niccolao Manucci to the effect that in spite of the demolition of the temples the Hindus did not abandon their sacred places and soon thereafter started performing their customary religious rituals on those sites. From the recording of the Gazetteers of 1877-78 and the Settlement Report of Faizabad it becomes crystal clear that according to those official records also Hindus were worshiping in Sri Ramjanmsthan Temple described as Babri Mosque in the

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plaint of the instant suit at least prior to annexation of Oudh to British Rule in 1856. Relevant extracts from page 877-878 & 916 of vol.-II Part.-I read as follows:

> "The Hindus in Surat practice a certain rite during the month of August. I am not sure whether it is at the time of the full moon or new moon that they perform it. They go for boat rides on the river and throw large number of coconuts into the water, while all the ships and boats moored on the river are gaily bedecked with flags and buntings. This is an age-old practice based on the superstition that if this is done the ships which they have at sea will have successful voyages. Although many Hindu superstitions have been tolerated by the Moors, the Emperor had given explicit instructions that these festivals should be banned. The Governor forbade this practice but his orders were not always carried out. Some of the banias and members of the other castes did not show any signs of having departed from their normal customs and practices." (ibid p. 877-878)
>
> "The annual ceremony of throwing coconuts into the river was celebrated on 25 August. I have spoken about this earlier. Despite the Mughal injunction against the practice of this ancient rite by Hindus, it continues unabated. Even among Muslims, those possessing ships on the high seas sometimes join in. It marks the opening of the sailing season."
>
> (ibid p.916)

34. Ibn Battuta in his account of travels tells us that in Bud-Pattan city though there was not a single Muslim inhabitant it had a mosque which was being looked after and maintained by the Brahmins with due respect; though he did not describe it as noble gesture of Hindus but says that it was due to panic of some evil consequences fell down on Hindus but his said conjecture and surmise is based on his believed that as the Christians and Jews had not honoured sacred placed of the

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Muslims how Idolaters do it. If we go through the instances as recorded in the book 'Spirit of Islam' by Syed Ameer Ali it appears that excesses were committed by the Jews and Christians against the Muslims. But in fact as India was a religiously tolerant Country and Hindus always used to honour Religions and religious places of the others it can be inferred that the Hindus were maintaining said Mosque on account of their respect to religious place of Muslims. This spirit of the Hindus makes it clear that the Hindus neither can defile nor claim over the religious places of others and as Sri Ramjanmsthan described as Babari Mosque in the plaint is being possessed, claimed and asserted as their most holiest sacred place then indeed it is birth place of Loard of Universe Sri Ram. The relevant extract of the Ibn Battuta Ki Bharat Yatra (published by National Book Trust of India Reprint 1997 of the 1st Edn. 1933) from page 203 reads as follows:

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इसके अनंतर हम बुद-पत्तन' नामक एक बड़े नगर में पहुंचे जो एक बड़ी नदी के तट पर बसा हुआ है। नगर में एक भी मुसलमान न होने के कारण जहाज के मुसलमान यात्री समुद्र-तट पर बनी हुई एक मस्जिद में आकर ठहरते हैं। यह बंदर अत्यंत ही रमणीक है, यहां का जल भी अत्यंत मीठा है। अधिक मात्रा में उत्पन्न होने के कारण सुपारियां यहां से चीन तथा (उत्तर) भारत को भेजी जाती हैं।

नगर-निवासी बहुधा ब्राह्मण ही हैं। हिंदू जनता इन लोगों को बड़े आदर की दृष्टि से देखती है। परंतु मुसलमानों के प्रति इसका घोर द्वेष होने के कारण एक भी मुसलमान यहां निवास नहीं करता। मस्जिद विध्वस्त न करने का यह कारण बतलाया जाता है कि एक ब्राह्मण ने कभी इसकी छत तोड़कर कड़ियां निकाल अपने गृह में लगा दी थीं। उसके घर में आग लगने पर कुटुंब-संपत्ति सहित वह वहीं जलकर राख हो गया। इस घटना के पश्चात समस्त जनता मस्जिद को आदर-भाव से देखने लगी और इसके बाद किसी ने उसका अपमान नहीं किया। यात्रियों के पानी पीने के लिए मस्जिद के बाहर एक जलकुंड तथा पक्षियों का प्रवेश रोकने के लिए द्वारों में जालियां भी नगर-निवासियों ने बनवा दीं।

(*Ibid p.203*)

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34. Be it mentioned herein that the Sacred Compilation Jami‘ At-Tirmidhi (Vol.-2) Hadith 1063 enumerates five types of martyrs as such from the name of a place Ganj Shahidan it cannot be inferred that it was a place of the graves of the soldiers who lost their lives in a battle in between Emperor Babur and the then ruler of Ajodhya. Contrary to this it can be inferred that the inhabitant of that place in totality died with plague that is why people used to call it *Ganj Shahidan*. According to dictionary ‘Urdu Hindi Sabdakosh’ (published by Uttar Pradesh Hindi Sansthan) *Ganj* means *Nagar* as such Ganj Shahidan means city of martyrs. Said Hadith reads as follows:

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> “**1063.** Abu Hurairah narrated that the Messenger of Allah said: “The martyrs are five: Those who die of the plague, stomach illness, drowning, being crushed and the martyr in the cause of Allah.” **(*Sahih)***
>
> (Jami‘ At-Tirmidhi Vol.-2 Hadith 1063)

Shri P.N. Mishra, Advocate thereafter has further referred that there was no war in Ayodhya nor the emperor Babur built graveyard or mosque at Ram Janmsthan described as Babri Mosque and the allegations in the plaint are false. His submissions on the basis of certain books are as under:-

**THERE WAS NO WAR IN 935 AH (1528 AD) IN AYODHYA NOR THE EMPEREOR BABUR BUILT GRAVEYARDS OR MOSQUE AT RAMJANAMSTHAN DESCRIBED AS BABARI MOSQUE IN THE PLAINT OF**

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**THE INSTANT SUIT:**

1. The plaintiffs' case as made out in the paragraph 1 and 2 of the plaint is that in 935 A.H. there was a battle in between the Emperor Babur and the then Ruler of the Ayodhya in Ayodhya. After attaining victory Babur made graveyards for his soldiers who had lost their lives in the said battle and erected a Mosque for the Muslims of Ayodhya. Be it mentioned herein that according to English Calendar said 935 AH commenced on 15th September,1528 and ended on 5th September, 1529 and for this whole year's account is available in Babur-Nama save and except 3 days' account of 15th September 1528 to 17th September 1528. On 18th September, 1528 Babur was in his court at Agra. On 20th September, he left for Gwalior, said facts prove it beyond doubt that during said three days Emperor Babur was nowhere in the vicinity of Ayodhya but far away at Agra. Prior to defeat of Sultan Ibrahim Lodi in 1526 Mustafa Farmuli was his Governor of Oudh and just after the Sultan's defeat Shaikh Bayazid Farmuli was appointed Governor of Oudh by the victorious King Babur. He remained in the Good-book of the Emperor at least till December, 1527. In fact Babur himself was ruler of Oudh and his appointee Shaikh Bayazid was Governor thereof. Even when Shaikh Bayazid became hostile from January 1528 onwards neither Babur nor Shaikh Bayazid entered in

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the city of Ayodhya nor there was any fighting in Ayodhya between them either in 935 AH or in any other year during the life time of emperor Babur as such losing lives by Emperor Babur's soldiers in action in Ayodhya city and creation of Graveyards for those fall in action as well as erection of Mosque is false, frivolous, and concocted- one. The Plaintiffs have failed to plead and prove name of any independant ruler of Ayodhya as well as fighting between any such independant King and the Emperor Babur as such the instant Suit is liable to be dismissed with exemplary cost.

**Annexure-IV**
**Babur Nama by A.S. Beveridge**
**Pages 1-7**

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2. Babur –Nama (Translated by Anette Susannah Beveridge and Reprinted in 2007 by Low Price Publications, Delhi first published in 1921) tells us that after defeating the Sultan Ibrahim Lodi in the battle of Panipat on 8th of Rajab 932 AH corresponding to 20th day of April 1526 Babur became King of Delhi, Agra and Oudh (Babur-Nama p.472-74). Mustafa Farmuli was Sultan Ibrahim Lodi's Governor of Oudh and died before Sultan's defeat. His younger brother was Shaikh Bayazid (Farmuli). After Sultan Ibrahim Lodi's defeat, Shaikh Bayazid together with Firuz Khan and Mahmud Khan went to serve Babur.

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Babur writes that "I shewed them greater kindness and favour than was their claim." He gave Shaikh Bayazid 1 krur, 48 laks and 50,000 tankas from Aud, Firuz Khan 1 krur, 46 laks and 5,000 tankas from Jaunpur and Mahmud Khan 90 laks and 35,000 tankas from Ghazipur (*ibid* p. 527). Shaikh Bayazid, Firuz Khan, Mahmud Khan and Qazi Jia who were highly favoured commanders to them Eastern Paraganas were given (*ibid* p. 530). In January 1527 Humayun placed Shaikh Bayazid in Oudh (*Ibid* p.544).

3. In December 1527 Babur got wild news about Shaikh Bayazid (Babur-Nama P. 585). On the eve of Chanderi expedition Babur received a bad news on 28th January, 1528 that "the troops appointed for the East (i.e. against Bayazid) had fought without consideration, been beaten, abandoned Laknau, and gone to Qanuj" (Ibid p. 594). After conquering Chanderi Babur again got news on 22nd February, 1528 that his troops had abandoned Qanuj (Kannauj) and gone to Rapri; whereas the enemy's army under Biban, Bayazid and Maruf had taken over Shamsabad. Babur himself moved towards Kannauj. On hearing his march, Bayazid, Biban and Maruf crossed Ganga and seated themselves in its eastern bank opposite Kannauj for preventing Babur's passage (*Ibid* 598). But Babur and his Army , after having built bridge over the

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river Ganga, crossed the river on 15th March, 1528. But due to one day's delay in crossing the river Ganga, the enemy escaped. Babur ordered Chin-timur Sultan to chase Trio. Babur also placed Baqui Tashkinti under Chin-timur Sultan's command. But the pursuers did not do well. On 16th March Babur dismounted at Bangarmawn (*Ibid* 599-601).

4. On March 21, 1528 Babur visited Laknau and crossed Gomati, while he was one or two march away from Oudh on request of Chin –timur Babur sent a reinforcement of 1000 braves (Babur-Nama p.601). On 28th March, 1528 in course of his pursuit of rebel Shaikh Bayazid Babur dismounted 2 or 3 kurhos (i.e. 6 or 8 miles) from Oudh above the junction of Gagar (Goghgra) and Sirda. [John Leyden, and William Erskine created confusion by identifying Sirda with Sarju; whereas Annette Susannah Beveridge rightly identified it with Kali-Sarda on the Chouka affluent of the Gogra and not Sarju river.] At that time Bayazid was far away on otherside of the Sirda opposite to Oudh. Babur's army and generals who had crossed over first pursued Shaikh Bayazid till the evening prayer but he flung into jungle and escaped. Chin-timur Sultan chased Afghans dismounted late on the bank of standing-water, rode on at midnight after the rebel, went as much as 40 kurhos (80 miles) where Bayazid's family and

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relations had been, they however had fled. He sent gallopers off in all directions from that place.. Baqi *Shaghawal* and few brave drove the enemy, overtook family and brought in some Afghan prisoners. He stayed on that ground few days in order to settle the affairs of Audh. During his said stay Babur heard from the people that the land lying along Sirda 7 or 8 kurohs (14-16 miles), above Audh, was a hunting-ground. Mir Muhammad the raftsman was sent out and returned after looking at the crossing over the Gagar-water (Gogra) and the Sirda-water (Chauka). Babur, fond of hunting, rode out to hunt on 2nd April, 1528 (*ibid* p.602)

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5. There is no recording of Diary in Babur-Nama from 3rd April to 17 September, 1528. Ayodhya was under the Muslim rule for about last 300 years and under Babur's domain since 20th April 1526. As Bayzid was neither stationed in Ayodhya City nor his garrison, citadel or Army was there; question of a battle in Ayodhya for freeing Ayodhya from his control also didn't arise at all.

6. In 934 AH last entry in Babur-Nama is of Jumada II, 12th 934 corresponding to 2nd April 1528 A.D. while in 935 first entry therein is of Muharram 3rd 935 corresponding to 18th September 1528. As 935 AH commenced on 15th September 1528 for this year only 3 day's entries are missing. What Babur did during this interregnum can be

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fairly built up. A. S. Beveridge points out that "much can be gleaned of Babur's occupations during the 5 months of the lacuna from his chronicle of 934 and 935 A.H. which makes several references to occurrences of last year," If such references are put together it appears that Babur carried on his military operations against Afghans in the east and south Bihar as well. During this period five and half months he stayed at Jaunpur, Chausa and Buxar in defeating and driving away the Afghans and compelling them to take shelter in eastern Bihar and Bengal and after settling the affairs of the eastern region Babur returned to Agra (source: Ibid. 603-04).

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Shri P.N. Mishra, Advocate has further argued that there was no person like Mir Baqi or Abdul Baqi associated with emperor Babur, accordingly the alleged Babri Mosque was not constructed at Sri Ramjanamsthan by the Minister/Governor of the emperor. His submissions are as under:-

**THERE WAS NO PERSON NAMED MIR KHAN OR MIR BAQI OR ABDUL BAQI OR ABDUL BAQI ISPHAHANI ASSOCIATED WITH EMPEROR BABUR AS SUCH BUILDING OF ALLEGED BABARI MOSQUE AT SRI RAMJANAMSTHAN BY SUCH FICTITIOUS COMMANDER / MINISTER / GOVERNOR OF THE EMPEROR IN 923 A.H. (1516-17 A.D.), IN 930 A.H. (1523-24A.D.) AND IN 935 A.H. (1528-29 A.D.) CANNOT AND**

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**DOES NOT ARISE AT ALL:**

1. It is alleged that in 935 AH (corresponding to 15th September 1528 to 5th September 1529) one Mir Baqi named Counsellor & Minister of Emperor Babur built a Masjid in Ayodhya at the site of Sri Ramajanamasthan by demolishing the Temple of Sri Ramchandraji and utilizing its materials. In fact, nowhere in Babur-Nama a person by name of Mir Baqi has been mentioned. In the Indian context the name Baqi suffixed by Saghawal, Ming-Bashi has figured at 9 places in Beveridge's Translated Babur-Nama.

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2. In 932 A.H. *Baqi Shaghawal* figures at pages 463, 546 of the Babur-Nama relevant extracts wherefrom read as follows:

> "At the end of our first stage, I bestowed Dibalpur on Baqi *Shaghdwal*[2] and sent him to help *Balkh*; sent also gifts, taken in the success of Milwat, for (my) younger children and various train in Kabul."
>
> 2. Chief scribe (f. 13 n. to 'Abdu'l-wahhab). Shaw's vocabulary explains the word as meaning also a "high official of Central asian sovereigns, who is supreme over all *qazis* and *mullas*".
>
> (Babur-Nama Page 463)
>
> "I uplifted his head with favour and kindness, distinguishing him amongst his fellows and equals. When Baqi *shaghdwal* went [to Balkh] I promised him a *ser* of gold for the head of each of the ill-conditioned old couple; one *ser* of gold was now given to Mir Hamah for Baba Shaikh's head, over and above the favours referred to above."
>
> (Babur-Nama p.546)

3. In the year 934 A.H. Beg *Baqi mingbashi,* Baqi of Tashkint

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and Baqi Shaghawal figures at pages 590, 601 and 602 of the Babur-Nama relevant extracts wherefrom read as follows:

> *"(Jan. 12th)* On Sunday the 19th of the month Chin-timur Sl. was put at the head of 6 or 7000 men and sent ahead against Chandiri. With him went the begs *Baqi mingbashi* (head of a thousand), Quj Beg's (brother) Tardi Beg, 'Ashiq the taster, Mulla Apaq, Muhsin Duldai and, of the Hindustani begs, Shaikh Guran."
>
> (Babur Nama P. 590)
>
> (Sunday March 15th Jumada II. 23rd) On this day the carts were taken over, and at this same dawn the army was ordered to cross. At beat of drum news came from our scouts that the enemy had fled. Chin-timur SI. was ordered to lead his army in pursuit and the following leaders also were made —-ursuers who should move with the Sultan and not go beyond is word : Muhammad 'All Jang-jang, Husamu'd-din 'All (son) of Khalifa, Muhibb-i-'ali (son) of Khalifa, KukI (son) of Baba ) Qashqa, Dost-i-muhammad (son) of Baba Qashqa, *Baqi of Tashkint*, and Red Wali. I crossed at the Sunnat Prayer, the camels were ordered to be taken over at a passage seen lower down. That Sunday we dismounted on the bank of standing-water within a kuroh of Bangarmawu.Those appointed to pursue the Afghans were not doing it well; they had dismounted in Bangarmawu and were scurrying off at the lid-day Prayer of this same Sunday.)
>
> (Babur-Nama p.601)

> "(March 28th) On Saturday the 7th of Rajab we 2 or 3 kurohs from Aud above the junction of the Gagar (Gogra) and Sard[a]. Till today Shaikh Bayazid will have been on the other side of the Sird[a] opposite Aud, sending letters to the Sultan and discussing with him, but the Sultan getting to know his deceitfulness, sent word to Qaracha at the Mid-day Prayer and made ready to cross the river. On Qaracha's joining him, they crossed at once to where were some 50 horsemen with 3 or 4 elephants. These men could make no stand ; they fled ; a few having been dismounted, the heads cut off were sent in. Following the Sultan there crossed over Bi-khub (var. Ni-khub) SI. and Tardi Beg (the

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brother) of Quj Beg, and Baba Chuhra (the Brave), and Baqi Shaghawal. Those who had crossed first and gone on, pursued Shaikh Bayazld till the Evening Prayer, but he flung himself into the jungle and escaped. Chin-timur dismounted late on the bank of standing-water, rode on at midnight after the rebel, went as much as 40 kurohs (80 m.), and came to where Shaikh Bayazid's family and relations (nisba?) had been ; they however must have fled. He sent gallopers off in all directions from that place; Baqi Shaghawal and a few braves drove the enemy like sheep before them, overtook the family and brought in some Afghan prisoners."

(Babur-Nama p. 602)

4. In the year 935 A.H. Baqi, Baqi Tashkindi, Baqi Beg figures at pages 679,684 and 685 of the Babur-Nama relevant extracts wherefrom read as follows:

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"(May 27th) On Friday (19th) I rode out to visit Sikandarpur and Kharid. Today came matters written by 'Abdu'1-lah (kitabdar) and Baqi about the taking of Luknur.

(Babur-Nama p.679)

"(May 28th) On Saturday (20th) Kuki was sent ahead, with a troop, to join Baqi."

(Babur-Nama p.679)

"(June 13th) After crossing, we waited one day (Monday 7th) for all the army-folk to get across. Today Baqi Tashkindi came in with the army of Aud (Ajodhya) and waited on me."

(Babur-Nama p.684)

"(June 17th) Next day (Friday 11th) at the Other Prayer, one of Baqi Beg's retainers came in. Baqi had beaten scouts of Biban and Bayazid, killed one of their good men, Mubarak Khan Salwdni, and some others, sent in several heads, and one man alive."

(Babur-Nama p.685)

(June 20th) On Monday (14th) Jalal Tashkidi came from the begs and sultans of the advance. Shaikh Bayazid and Biban, on hearing of their expedition,

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> had fled to the pargana of Mahuba. As the Rains had set in and as after 5 or 6 months of active service, horses and cattle in the army were worn out, the sultans and begs of the expedition were ordered to remain where they were till they received fresh supplies from Agra and those parts. At the Other Prayer of the same day, leave was given to Baqi and the army of Aud (Ajodhya).
>
> (Babur-Nama p. 685)

From the above mentioned extracts of the Babur-Nama it becomes crystal clear that *Baqi* has been mentioned by Babur as *Baqi Tashkindi* ( i.e. Baqi, the inhabitant of Tashkent presently in Uzbekistan), *Baqi Shaghawal* (i.e. Baqi, the head Kazis and Mullas), *Baqi Ming-Bashi* (i.e Baqi, the commander of 1000 troops), *Baqi Beg* (i.e. Baqi, the Junior commander) and Baqi but nowhere in his Memoir Emperor Babur has mentioned him as *Mir Baqi*. From the Book Babar written by Stanley Lane-poole it is known that the Amir or Mir, Khan & Mirza titles were meant for the royal descents. Since nowhere in four corners of Babur-Nama epithet Mir has been used for Baqi it can be inferred with certainty that he was not a royal descent. From the aforesaid extracts it is also very much apparent that the 'Begs'. were junior Army Commanders and *'Sultans'* were Senior Army Commanders, that is why in a campaign against Sheikh Bayazid being a Beg, Baqi Saghawal was put under the command of Chin-timur Sultan. Holding a meeting of Sultans and begs by Emperor Babur leaves no doubt that these two were designations of the Senior and Junior commanders respectively. Till 1929 Baqi was only Beg i.e. a junior commander of 1000 troops. Thus it is clear that commander of

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Audh's Army was *Baqi Tashkindi* who was *Mingbashi* the head of Qazis & Mullas in February 1526 AD, a Beg (Junior Commander) and Shaghawal ( Commander of 1000 troops) in 1528-29 AD and nor Mir Baqi which figures in the latter forged Inscriptions supplied to A.S. Beveridge for her publication in 1921 as also to Z.A. Desai for his publication in A.S.I's Report 1964-65 because in the former Inscriptions supplied to A. Fuhrer for his publication in A.S.I.'s Report in 1889 the builder of the alleged Masjid was named as *Mir Khan*.

Shri P.N. Misra has further argued that Islam guarantees religious freedom and tolerance and does not permit to usurp sacred places of other religion. The principal submissions made on his behalf before this Court are as under:-

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**ISLAM GUARANTEES RELIGIOUS FREEDOM & TOLERATION AND DOES NOT PERMIT TO USURP SACRED RELIGIOUS PLACE OF OTHERS:**

1. The Holy Quran and the Holy Prophet has commanded that no one should be compelled to change religion, idolaters should be allowed to worship in their own way, the Holy Prophets have appeared in every community and they should not be compared but respected and a Muslim can maintain good relation with his *Pagan* (i.e. worshipper of multi -deities) relative.
2. The Holy Quran (Noble Quran, Surah-2 Al-Baqarah, Ayat

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256 at p.58) commands that there is no compulsion in religion. English translation of the said *Ayat* reads as follows:

> "**256.** There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in *Taghut* and believes in Allah, then he has grasped the most trustworthy handhold that will never break. And Allah is All-Hearer, All-Knower.
>
> (Noble Quran, Surah-2 Al-Baqarah, Ayat 256)

3. The Holy Quran (Noble Quran, Surah-107 Al-Ma'un, Ayat 1-6 at p.852-853) permits people of other religion to carry out their religious practices according to their own religion. English translation of the said *Ayat* reads as follows:

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> "**1.** Say: (O Muhammad .. .. .. (*Arabic text)* .. .. to these Mushrikun and Kafirun): "O Al-Kafirun (disbelievers in Allah, in His Oneness, in His Angles, in His Books, in His Messengers, in the Day of Resurrection, and in *Al-Qadar.)!*
> **2.** I worship not that which you worship.
> **3.** Nor will you worship that which I worship.
> **4.** And I shall not worship that you are worshipping.
> **5.** Nor will you worship that which I worship.
> **6.** To you be your religion, and to me my religion (Islamic Monotheism)."
>
> (Noble Quran, Surah-107 Al-Ma'un, Ayat 1-6 at p.852-853)

4. The Holy Quran (Noble Quran, Surah-10 Yunus, Ayat 47 at p.277) recognizes birth of Messengers of the Almighty in every community or nation. English translation of the said *Ayat* reads as follows:

> "**47.** And for every *Ummah* (a community or a nation) there is a Messenger, when their Messenger comes, the matter will be judged between them with justice,

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and they will not be wronged."

(Noble Quran, Surah-10 Yunus, Ayat 47 at p.277)

5. Sacred Compilation Hadith Sahih Bukhari 3.595 p.610-611 reveals that the Holy Prophet commanded not to give a Prophet superiority over another. Relevant portion of the said Hadith reads as follows:

> "The Prophet said, "Do not give a prophet superiority over another, for on the Day of Resurrection all the people will fall unconscious and I will be the first to emerge from the earth, and will see Moses standing and holding one of the legs of the Throne. I will not know whether Moses has fallen unconscious or the first unconsciousness was sufficient for him."
>
> (Hadith Sahih Bukhari 3.595 at p.611 )

6. The Sacred Compilation Hadith Sahih Bukhari 4.407 reveals that Holy Prophet allowed a Muslim to keep good relation with his mother who was *pagan* i.e. idolater. The said Hadith reads as follows:

> 4.407:
> Narrated Asma 'bint Abi Bakr: During the period of the peace treaty of Quraish with Allah's Apostle, my mother, accompanied by her father, came to visit me, and she was a pagan. I consulted Allah's Apostle, "O Allah's Apostle! My mother has come to me and she desires to receive a reward from me, shall I keep good relation with her?" He said, "Yes, keep good relation with her."

Sri P.N. Mishra has further submitted that in 1526 A.D. after defeating Sultan Ibrahim Lodhi, Babur became ruler of Delhi, Agra and Oudh and in view of the Principle of Darul Islam, he only acquired sovereignty rights. Thus it was not possible for him

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to change the nature of the land belonging to Hindus and the alleged creation of waqf is null and void. His submissions are as under:-

**IN 1526 A.D. WHEN BABUR BECAME RULER OF DELHI, AGRA & OUDH DEFEATING SULTAN IBRAHIM LODI IN THE BATTLE OF PANIPAT THESE TERRITORIES WERE COMPRISED IN DAR-UL-ISLAM:**

1. When in the year 1526 King Babur acquired sovereignty over Delhi, Agra and Oudh defeating Sultan Ibrahim Lodi In the battle of Panipat those territories were constituent of 'Dar-ul-Islam for the reason that outgoing Sultan was a Muslim and during his reign Law of Shar was Law of the Land. Therefore by defeating Sultan Ibrahim Lodi Emperor Babur acquired only those right of Sovereignty that a Islamic ruler had under Shar and; as Shar does not extinguish title of land owner on the basis of change of sovereignty or religion of the subjects he didn't become owner of the land owned by his Hindu subjects and their endowments. As a Hindu Endowment Ramajanamsthan Temple was already existing, Emperor Babur did not acquire ownership of that place as such alleged creation of Wakf for erection of Masjid thereon rendered the said alleged Wakf null and void.
2. Illustrated author and great jurist Syed Ameer Ali in his

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book the 'Spirit of Islam' (at p.215) describes the relationship between the citizens of three types of Nations Dar-ul-Islam i.e. an Islamic State, Dar-ul-Harb i.e. a State Ruled by belligerent *non-Islamic* Ruler, Dar-ul-Aman. i.e. a State Ruled by *non-Islamic* Ruler with which an Islamic State is at peace. Relevant extract of the said book reads as follows:

> "An examination, however, of the principles upon which the relations of Moslem states with non-Moslem countries were based, shows a far greater degree of liberality than has been evinced by Christian writers on international law. It is only in recent times, and under stress of circumstances that non-Christian states have been admitted into the "comity of nations". The Moslem jurists, on the other hand, differentiate between the condition of belligerency and that of peace. The expression, Dar-ul-Harb thus includes countries with which the Moslems are at war; whilst the States with which they are at peace are the Dar-ul-Aman. The harbi, the inhabitants of the Dar-ul-harb, is an alien, pure and simple. He has no right to enter Islamic States without express permission. But once he receives the aman or guarantee of safety from even the poorest Moslem, he is perfectly secure from molestation for the space of one year. On the expiration of that period, he is bound to depart. The inhabitant of the *Dar-ul-aman* is a *mustamin*. The *aman* may be for ever or for a limited duration, but so long as it lasts, the *mustamin's* treatment is regulated in strict accordance with the terms of the treaty with his country. The *mustamins* were governed by their own laws, were exempt from taxation and enjoyed other privileges.
>
> The spirit of aggression never breathed itself into that code which formally incorporated the Law of Nations with the religion; and the followers of Mohammed, in the plentitude of their power, were always ready to say to their enemies, 'Cease all hostility to us, and be our allies, and we shall be faithful to you; or pay tribute and we will secure and protect you in all your rights; or adopt our religion,

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> and you shall enjoy every privilege we ourselves posses."
>
> ( Spirit of Islam by Syed Ameer Ali at p.215)

3. Syed Ameer Ali in his book 'Commentaries on Mahommedan Law' also describes Dar-ul-Harb. Relevant extract from the foot note 1 of the said book reads as follows:

> "The Moslem jurists, like the jurists of Christendom, until very recent times, divided the world into two portions, one the *Dar ul-Harb*, and the other the *Dar ul-Islam*, the country of peace. Juridically, all Mussulman nations were at peace with each other. As a matter of fact, no *Mussulman* Sovereign could declare war against another without first pronouncing him to be a heretic and beyond the pale of Islam. The non-Moslem subjects of Moslem States are called *Zimmis*. The non-Moslem subjects of non-Moslem Sovereigns at peace with Islamic States are called *Mustamins*.

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(Mohammedan Law by Syed Ameer Ali, 5th Edn. Reprint 2009, published by Hind Publishing House,Allahabad, p.301)

4. Fighting between two Muslim Rulers is not fighting between Dar-ul-Islam and Dar-ul-Herb but it is fighting between to armies of Islam for Superiority for the benefit of Islam and subject people. This is very much apparent from the extract quoted in the preceding paragraph from Syed Amir Ali's book as also, from the answer given by Sultan Sikandar Lodi to the *Kalandar* (i.e. a person who had no worldly desires). When said *Darvesh* conveyed the Sultan that he would attain victory in ongoing battle, the Sultan told him that when two Islamic armies are fighting decision should not be given in one's favour but only good wishes

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should be given stating that who will be beneficial for Islam and subject people will attain victory. Relevant extract from the book *Tabkati- Akbari* published in the Book *Uttar Taimoorkalin Bharat* at page 227 reads as follows:

सुल्तान का क़लन्दर को उत्तर

कहा जाता है कि एक दिन जब वह अपने भाई बारबक शाह से युद्ध कर रहा था तो युद्ध के समय एक क़लन्दर[1] दृष्टिगत हुआ और उसका हाथ पकड़ कर उसने कहा "तेरी विजय है।" सुल्तान ने घृणा से अपना हाथ खींच लिया। दरवेश ने कहा कि, "मैं सुखद समाचार कहता हूँ और तुझे विजय की सूचना दे रहा हूं। किन्तु तू अपना हाथ किस कारण खींच रहा है?" उसने उत्तर दिया, "जब दो मुसलमान सेनाओं में युद्ध हो रहा हो तो एक के विषय में निर्णय न देना चाहिये अपितु वह कहना चाहिये कि जिससे इस्लाम का भला हो और जिससे प्रजा की उन्नति हो, उसे विजय हो और ईश्वर से यही शुभ कामना करनी चाहिए।"

Shri P.N. Misra, Advocate has argued that Muslims are bound to observe the law of *Shar* and transgression of divine law of *Shar* by an Islamic Ruler or Muslims is impermissible in Darul Islam. His submissions are as under:-

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**TRANSGRESSION OF DIVINE LAW OF *SHAR* BY AN ISLAMIC RULER AS WELL AS MUSLIMS IS IMPERMISSIBLITY IN DAR-UL-ISLAM:**

1. Muslims are not free to lead the life of their choice and they are bound by the law of Shar. Muslims should not transgress law as enunciated in Shar otherwise they will lose their status of being Muslim. According to *Shar* Plunderer & looters are not Muslims. Islamic Ruler and Muslims are subject to Divine Law of *Shar* according to which *duty* of an Islamic Ruler is to guard the lives, honour and property of his subjects, maintain peace, check the evil-doer, and prevent injuries and; duty of Muslims is to disobey oppressive and sinful order of a Tyrant

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Ruler and refrain himself from such sinful acts. Muslims should not approve bad deed of the Amirs i.e. the rulers. Making a just statement before tyrannical ruler is a greatest type of *Jihad.* A person who acts as God against the unlawful, is kind to his neighbour and loves the people as he loves himself is Muslim, otherwise not.

2. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-III) Hadith 1601 reveals that plundering and looting the property of others is an open violation of Islamic Law. Said Hadith reads as follows:

> **“1601.** Anas narrated that the Messenger of Allah said: “Whoever plunders then he is not of us.” (***Sahih)***
> . .
> **Comments:**
> Plundering and looting the property of others is an open violation of Islamic Law and against the basic concept of brotherhood in Islam, therefore, according to the words used in this narration “He is not from us.”

3. The Sacred Compilation Hadith Sahih Bukhari 8.763 reveals that the Holy Prophet said that at the time of commission of prohibited acts such as theft, robbery, drinking etc. a Muslim becomes non-Muslims. Said Hadith reads as follows:

> 8.763:
> Narrated Abu Huraira: Allah's Apostle said, "When an adulterer commits illegal sexual intercourse, then he is not a believer at the time he is doing it; and when somebody drinks an alcoholic drink, then he is not believer at the time of drinking, and when a thief steals, he is not a believer at the time when he is stealing; and when a robber robs and the people look at him, then he is not a believer at the time of doing it." Abu Huraira in another narration, narrated the same from the Prophet with the exclusion of robbery.

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4. The great Jurist & illustrated writer Syed Ameer Ali in his book 'Spirit of Islam' (at p.288-89) records duties of sovereigns of Islamic Nation towards their subjects as follows:

> "The importance which Islam attaches to the duties of the sovereigns towards their subjects, and the manner in which it promotes the freedom and equality of the people and protects them against the oppression of their rulers, is shown in a remarkable work on the reciprocal rights of sovereigns and subjects by Safi-ud-din Mohammed bin Ali bin Taba Taba, commonly known as Ibn ut-Tiktaka. The book was composed in 701 A.H. (1301-2) and is dedicated to fakhr ud-ain Isa bin Ibrahim, Ameer of Mosul.
>
> The first part deals with the duties of sovereigns to their subjects and the rules for the administration of public affairs and political economy. The author describes the qualities essential for a sovereign—wisdom, justice, knowledge of the wants and wishes of his people, and the fear of God; and adds emphatically that this latter quality is the root of all good, and the key to all blessings, "for when the king is conscious of the presence of God, His servants will enjoy the blessings of peace and security." The sovereign must also possess the quality of mercy, and "this is the greatest of all good qualities". He must have an ever-present desire to benefit his subjects, and consult with them on their wants, for the Prophet consulted always with his companions, and God hath said "Council with them on every affair". In the administration of public affairs, it is the sovereign's duty to superintendent the public income, guard the lives and property of his subjects, maintain peace, check the evil-doer, prevent injuries. He must always keep his word, and then, adds the author significantly, "the duty of the subject is obedience, but no subject is bound to obey a tyrant." Ibn rushd (the great Averroes) says, "the tyrant is he who governs for himself, and not for his people."
>
> (Spirit of Islam by Syed Ameer Ali at p.288-89)

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5. The Sacred Compilation Hadith Sahih Muslim (Vol.-I) 142 & 142R1 reveal that the Holy Prophet commanded that ruler must be honest in his dealing with those over whom he rules otherwise the ruler is cheater. Commentator explains that the Hadiths says that it is duty of the ruler to see that the life and honour of the subject people are protected and to ensure just social, political and economic system. Said Hadith as well as comments thereon read as follows:

[142] Hasan(1) reported: ;Ubaidullah b. Ziyād paid a visit to Ma'qil b. Yasīr Muzanī(2) in his illness which caused his death. Ma'qil said: I am going to narrate to you a hadīth which I have heard from the Messenger of Allah (SAW) and which I would not have transmitted if I knew that I would survive. Verily I have heard the Messenger of Allah (SAW) saying: There is no one amongst the bondsmen who was entrusted with the affairs of his subjects and he died in such a state that he was dishonest in his dealing with those over whom he ruled that the Paradise is not forbidden for him(3).

[142R1] Hasan reported: 'Ubaidullah b. Ziyād went to see Ma'qil b. Yasīr and he was in agony. He ('Ubaidullah) inquired (about his health) to which he (Ma'qil) replied: I am narrating to you a hadīth which I avoided narrating to you (before). Verily the Messenger of Allah (SAW) said: Allah does not entrust to his bondsman the reponsibility of managing the affairs of his subjects and he dies as a cheater (ruler) but Paradise is forbidden but Allah for such a (ruler). He(Ibn Ziyād) said: Why did you not narrate it to me before this day? He replied: I (in fact) did not narrate it to you as it was not (fit) for me to narrate that to you (4).

(3) Islam exhorts its followers to create a kingdom of heaven in their hearts but this kingdom of heart must be externalised in a just social, political and economic system. The ruler and the state have thus important responsibilities to shoulder. It is the bounden duty of the ruler to see that he acquits himself creditable of the responsibilities saddled on him. He should see that the life and honour of the people are protected. He should also see that no one falls victim to the high-handedness of another

6. The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1827-1829 reveal that Holy Prophet said that the ruler is a shepherd over the people and shall be questioned about his subjects as to how he conducted their affairs and if he is hard upon them, the Almighty will be hard upon him. Said Hadiths read as follows:

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[1827] It has been narrated on the authority of 'Abdullah b. 'Umar that the Messenger of Allah (may peace be upon him) said: Behold! the Dispensers of Justice will be seated on the pulpits of light beside God, on the right side of the Merciful, Exalted and Glorious[1]. Either side of the Being is the right side both being equally meritorious[2]. (The Dispensers of Justice are) those who do justice in their rules, in matters relating to their families and in all that they undertake to do.

[1828] It has been reported on the authority of 'Abdel-Rahmān b. Shumāsa who said: I came to 'Ā'isha to inquire something from her. She said: From which people art thou? I said: I am from the people of Egypt. She said: What was the behaviour of your governor towards you in this war of yours?[1] I said: We did not experience anything bad from him. If the camel of a man from us died, he would bestow on him a camel. If any one of us lost his slave, he would give him a slave. If anybody was in need of the basic necessities of life, he would provide them with provisions. She said: Behold! the treatment that was meeted out to my brother, Muhammad b. Abū Bakr, does not prevent me from telling you what I heard from the Messenger of Allah (may peace be upon him). He said in this house of mine: O God, who (happens to) acquire some kind of control over the affairs of my people and is hard upon them - be Thou hard upon him, and who (happens to) acquire some kind of control over the affairs of my people and is kind to them - be Thou kind to him.

[1828R1] This hadīth has been narrated on the authority of 'Abdel-Rahmān b. Shumāsa with another chain of transmitters.

[1829] It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: Beware, every one of you is a shepherd and every one is answerable with regard to his flock. The Caliph is a shepherd over th people and shall be questioned about his subjects (as to how he conducted their affairs). A man is a guardian over the memebers of his family and shall be questioned about them (as to how he looked after their physical and moral well-being). A woman is a guardian over the household of her husband and his children and shall be questioned about them (as to how she managed the household and brought up the children). A slave is a guardian over the property of his master and shall be questioned about it (as to how he safeguarded his trust). Beware, every one of you is a guardian and every one of you shall be questioned with regard to his trust[2].

7. The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1839, 1840R1 reveal that Holy Prophet commanded the Muslims not to do a sin and if he is ordered to do a sinful act by the commander, a Muslim should neither listen to him nor should he obey his orders. The said Hadiths read as follows:

[1839] It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: It is obligatory on a Muslim that he should listen (to the ruler appointed over him) and obey him whether he likes it or not, except that he is ordered to do a sin. If he is ordered to do a sinful act, a Muslim should neither listen to him nor should he obey his orders.

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[1840R1] It has been narrated on the authority of 'Alī who said: The Messenger of Allah (may peace be upon him) sent an expedition and appointed over the Mujāhids a man from the Ansār. (While making the appointment), he ordered that his word should be listened to and obeyed. They made him angry in a matter. He said: Collect for me dry wood. They collected it for him. Then he said: Kindle a fire. They kindled (the fire). Then he said: Didn't the Messenger of Allah (may peace be upon him) order you to listen to me and obey (my orders)? They said: Yes. He said: Enter the fire. The narrator says: (At this), they began to look at one another and said: We fled from the fire to (find refuge with) the Messenger of Allah (may peace be upon him) (and now you order us to enter it). They stood quiet until his anger cooled down and the fire went out. When they returned, they related the incident to the Messenger of Allah (may peace be upon him). He said: If they had entered it, they would not have come out. Obedience (to the commander) is obligatory only in what is good.

8. The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1854 & 1854R1 reveal that the Holy Prophet has commanded that Muslims should not approve bad deed of the Amirs i.e. the rulers. Said Hadith reads as follows:

[1854] It has been narrated on the authority of Umm Salama that the Messenger of Allah (may peace be upon him) said: In the near future there will be Amīrs and you will like their good deeds and dislike their bad deeds. One who sees their bad deeds (and tries to prevent their repetition by his hand or through his speech), is absolved from blame, but one who hates their bad deeds (in the heat of his heart, being unable to prevent their recurrence by his hand or his tongue), is (also) safe (as far as God's wrath is concerned). But one who approves their bad deeds and imitates them is spiritually ruined. People asked (the Holy Prophet): Shouldn't we fight against them? He replied: No, as long as they say their prayers.

[1854R1] It has been narrated (through a different chain of transmitters) on the authority of Umm Salama (wife of the Holy Prophet) that he said: The Amīrs will be appointed over you, and you will find them doing good as well as bad deeds. One who hates their bad deeds is absolved from blame. One who disapproves their bad deeds is (also) safe (as far as Divine wrath is concerned). But one who approves their bad deeds and imitates them (is doomed). People asked: Messenger of Allah, shouldn't we fight against them? He replied: No, as long as they say their prayers. («Hating and disapproving» refers to liking and disliking from the heart).

9. The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1855R1 reveals that the Holy Prophet has commanded the

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Muslims to condemn such act of their rulers which is an act of disobedience to God i.e. the Holy ordinances of the Allah and his Holy Messenger. Said Hadith reads as follows:

**[1855R1] It has been narrated on the authority of 'Auf b.Mālik Al-Ashja'ī who said that he heard the Messenger of Allah (may peace be upon him) saying: The best of your rulers are those whom you love and who love you, upon whom you invoke God's blessings and who invoke His blessings upon you. And the worst of your rulers are those whom you hate and who hate you, who curse you and whom you curse. (Those present) said: Shouldn't we overthrow them at this? He said: No, as long as they establish prayer among you. No, as long as they establish prayer among you. Mind you! One who has a governor appointed over him and he finds that the governor indulges in an act of disobedience to God, he should condemn the governor's act, in disobedience to God, but should not withdraw himself from his obedience(1).**

10. The Sacred Compilation Jami' At-Tirmidhi (Vol.-4) Hadith 2174 reveals that the Holy Prophet said that making a just statement before tyrannical ruler is a greatest type of *Jihad.* Said Hadith reads as follows:

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> "**2174.** Abu Sa'eed Al-Khudri narrated that the Prophet said: 'Indeed, among the greatest types of *Jihad* is a just statement before a tyrannical ruler." **(*Hasan)***

From the said Hadith it is crystal clear that greatest *Jihad* would be to curse action of a tyrant ruler converting a temple into mosque in flagrant violation of Divine commands of *Shar.*

11. The Sacred Compilation Hadith Sahih Bukhari 3.627-629 reveal that the Holy Prophet has strictly commanded to avoid oppression. Said Hadiths read as follows:

> 3.627:
> Narrated Ibn `Umar: The Prophet said, "Oppression will be a darkness on the Day of Resurrection."
>
> 3.628:
> Narrated Ibn `Abbas: The Prophet sent Mu`adh to

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Yemen and
said, "Be afraid, from the curse of the oppressed as there is no screen between his invocation and Allah."

3.629:
Narrated Abu Huraira: Allah's Apostle said, "Whoever has oppressed another person concerning his reputation or anything else, he should beg him to forgive him before the Day of Resurrection when there will be no money (to compensate for
wrong deeds), but if he has good deeds, those good deeds will be taken from him according to his oppression which he has done, and if he has no good deeds, the sins of the oppressed person will be loaded on him."

12. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith 2030 reveals that the Holy Prophet has cursed oppression. Said Hadith reads as follows;

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“**2030.** Ibn ‘Umar narrated that the Prophet said: ‘Oppression shall be darkness on the Day of Judgment.” ***(Sahih)***

**Comments:**
Tyranny and oppression in this world shall be required by darkness and doom on the Day of Judgment to which the Quran refers when Allah rhetorically poses the question: “Who rescues you from the darkness of the land and the sea?”

13. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith 2324 reveals that the Holy Prophet has said that this world is a prison for Muslims and as the prisoner is not free to lead the life of his choice and is bound by the law of the prison and the whims of its officers in the similar manner Muslims are also not free to lead life of their choice and they are bound by the law of Shar. Said Hadith as well as the

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comment thereto read as follows:

> "**2324.** Abu Hurairah narrated that the Messenger of Allah said: "The world is a prison for the believer and Paradise for the disbeliever. ***(Sahih)***
>
> **Comments:**
> The main characteristic of a prison is that the prisoner in it is not free to lead a life of his choice, but is bound by the laws of the prison and the whims of its officers. He is neither free in eating and drinking, nor in sleeping and awakening, nor in moving about nor in meeting with the people at will. In short, he has no freedom of any kind in a prison house, and has willy-nilly to obey the orders of others. The second thing is that no prisoner loves his prison like home, but is always on the lookout to somehow get rid of it. Paradise, on the other hand, is a place where the inhabitants will have no such restrictions. Each person will live a life of his choice, and every desire of his will be fulfilled and he will never feel the desire to get out of it."

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14. The Sacred Compilation Jami' At-Tirmidhi (Vol.-5) Hadith 2683 reveals that the Holy Prophet has directed the Muslims to refrain from any kind of major and minor sins. Said Hadith and comment thereto read as follows:

> "**2683.** Ibn Ashwa narrated from Yazid bin Salamah Al-Ju 'fi, he said: 'Yazid bin Salamah said: 'O Messenger of Allah! I heard so many narrations from you that I am afraid the last of them will cause me to forget the first of them. So narrate a statement to me that will encompass them.' So he said: "Have *Taqwa* of Allah with what you learn." ***(Da'if)***
>
> **Comments:**
> The extract and a full outcome of the whole religion is *Taqwa,* for this objective the Prophets, Messengers and the Books were sent; and *Taqwa* is to refrain from any kind of major and minor sins, it big and small."

15. The Sacred Compilation Jami' At-Tirmidhi (Vol.-5) Hadith 2687 reveals that the Holy Prophet has commanded the

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Muslims to accept everything that is good and perfect setting aside the worldly benefits, objectives and lusts. Said Hadith and comments thereto read as follows:

> "**2687.** Abu Hurairah narrated that the Messenger of Allah said: "The wise statement is the lost property of the believer, so wherever he finds it, then he is more worthy of it. ***(Da'if)***
>
> **Comments:**
> In the creation and nature of human, the passion of obedience and submission is planted, which is the origin and source of every good and righteousness, but because of worldly benefits, objectives and lusts it becomes neglectful of good and righteousness, whereas the demand of its nature and habit is to accept everything that is good and perfect."

16. The Sacred Compilation Jami' At-Tirmidhi (Vol.-5) Hadith 2826 reveals that if there is anyone to whom the Holy Prophet has made a promise it must be complied by the Rulers. Said Hadith read as follows:

> "**2826.** Isma'll bin Abi Khalid narrated that Abu Juhaifah said: "I saw the Messenger of Allah (he was) white and turning grey. Al Hasan bin 'Ali resembles him most. He had promised thirteen young she-camels for us, so we went to get them. When we arrived he had died without giving us anything. So, when Abu Bakr (became the *Khalifah*) he said 'If there is anyone to whom the Messenger of Allah made a promise, then let him come forth.' I stood to inform him about it, and he ordered that they be given to us." ***(Sahih)***

17. The Muwatta' Imam Malik 959 and 960 reveal that the Muslims should neither break vows nor kill disbelievers breaking promise of protection given to him. Said Muwatta nos. 959 & 960 read as follows:

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(959) It reached Mālik that ʻŮmar b. ʻAbd al-ʻAzîz wrote to one of his administrators : We have learnt that whenever the Messenger of Allah (may peace be upon him) sent out force, he used to command them : Fight taking the name of the Lord. You are fighting in the cause of the Lord with people who have disbelieved and rejected the Lord ; do not commit theft, do not break vows ; do not cut ears and noses, do not kill women and children. Communicate this to your armies. If God wills ! Peace be on you.

(960) A man of Kûfah reported that 'Umar b. al-Khattāb wrote to a commander of the army: I have received information that some of you call an unbeliever when he mounts a hillock and gives up fighting, and ask him not to fear and then, getting the opportunity, kill him. I swear by Him Who is the Master of my life, if I should learn anyone doing so, I shall behead him.

18. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith 2305 reveals that the Holy Prophet has said that a person who acts as guard against the unlawful, is kind to his neighbour and loves the people as he loves himself is Muslim, otherwise not. The said Hadith reads as follows:

> “**2305.** Al-Hasan narrated from Abu Hurairah that the Messenger of Allah said: “Who will take these statements from me, so that he may act upon them, or teach one who will act upon them?” So Abu Hurairah said: “I shall O Messenger of Allah! So he took my hand and enumerated five (things), he said: “Be on guard against the unlawful and you shall be the most worshipping among the people, be satisfied with what Allah has allotted for you and you shall be the richest of the people, be kind to your neighbor and you shall be a believer, love for the people what you love for yourself and you shall be a Muslim. And do not laugh too much, for indeed increased laughter kills the heart.” **(*Da‘if*)**

As such a person who laid down foundation of his building on hatred was not a Muslim and the structure alleged to be erected by him was not a mosque.

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19. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith 1987 reveals that the Holy Prophet has commanded the Muslims to follow an evil deed with a good one to wipe it out and treat the people with good behavior . Said Hadith reads as follows:

> "**1987.** Abu Dharr said: "the Messenger of Allah said to me: 'Have *Taqwa* of Allah wherever you are, and follow an evil deed with a good one to wipe it out, and treat the people with good behavior." ***(Hasan)***

It is further contended that freedom of religion and religious practices to Hindus under Islamic rule was granted to Hindus. His submissions are in many fold and they are as under:-

**FREEDOM OF RELIGION & RELIGIOUS PRACTICES TO HINDUS UNDER ISLAMIC RULE & MUSLIM LAW WAS GRANTED TO THE HINDUS:**

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1. Law of *Shar* as interpreted by Great Imam Abu Haneef recognized right of freedom of religion & religious practices of the Hindus of India under Islamic Rulers. Sultan Sikandar Lodi was dissuaded by the Greatest *Alim* of that age Miyan Abdullah Ajodhani from demolishing a Hindu Temple & putting ban on religious practices of the Hindus. Even Emperor Auragzeb who later on caused demolition of several Temples of the Hindus throughout his Empire in his *Farman* dated 1659 has admitted that *Shariyat* does not permit to demolish old Temples and impose restriction on performance of customary and other religious rituals of the

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Hindus. Ibn Battuta tells that Muhammad bin Tughlaq had granted permission to rebuild demolished Idol Temples to the King of China. During the reign of Caliphs, the people of other faith i.e. Zimmis were allowed to carry out processions, observe festivals, beat drums, erect places of worship & maintain images therein.

2. In Waqiyat-i –Mutaqi written by Rizkulah Mutaqi (b.1491-92 & d. 1581 A.D.), Tabkats I Akbari by Khwaja Nizamuddin Ahmad (completed in 1592-93 A.D.) and Tarikh-i-Shahi (completed in the beginning of Emperor Jahangir's reign) it has been narrated that once upon a time when Sultan Sikandar Lodi (r. 1488-1517 A.D.) was the Crown prince and known as Nizam Khan, he sought opinion of the *Alims* for the purpose of demolishing an ancient temple of the Hindus at *Thaneshwar* and putting ban on Hindus from taking holy dip in the Sacred pond at *Thaneshwar*. *Alims* unanimously made a request to him for putting that question to Greatest *Alim* of the age *Miyan Abdullah Ajodhani* who was available at that place. On being asked the Great *Alim Abdullah Ajodhani* replied that *Shar* does not permit destruction of ancient temple and prohibition of customary rites of the Hindus. From said answer Sikandar Lodi became very much annoyed and drew his sword inter alia stating that 'first I will kill you and thereafter attack Thaneshwar'. Then said *Alim* fearlessly

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answered that 'everyone has to die on one day and when anyone goes near a tyrant then he does it knowing fully well that his death is certain. I am not worried about my life but I say that if you had nothing to do with *Shar* then there was no need to put this question to me but since you asked me that question of Shar I replied it in accordance with Shar' . Relevant extracts of Hindi Translation of the aforesaid books as published in the book *Uttar Taimoorkalin Bharat Bhag.* 1 (History of the Part-Taimoor Sultans of Delhi , Part. I) pages 104,228 and 322 read as follows:

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**कुरुक्षेत्र पर आक्रमण की योजना**

बाल्यावस्था में ऐसा हुआ कि एक बार उसने कुरुक्षेत्र पर आक्रमण करना निश्चय किया। इस विषय पर आलिमों का मत ज्ञात करने के लिए उसने उन्हें एकत्र किया। उस युग के सबसे बड़े आलिम (१६) मियां अब्दुल्लाह अजोधनी भी उपस्थित थे। सभी ने उनकी ओर संकेत किया कि, "इनकी उपस्थिति में हम कुछ भी नहीं कह सकते।" मियां निज़ाम ने मियां अब्दुल्लाह से इस विषय में पूछा। उन्होंने पूछा, "वहां क्या होता है ?" मियां निज़ाम ने कहा कि, "उस स्थान पर प्रत्येक प्रदेश से काफ़िर एकत्र होकर स्नान करते हैं।" मियां अब्दुल्लाह ने पूछा कि, "यह प्रथा कब से चल रही है ?" शाहज़ादे ने कहा कि, "यह बड़ी प्राचीन प्रथा है।" मियां अब्दुल्लाह ने पूछा कि, "आपके पूर्व मुसलमान बादशाहों ने इस सम्बन्ध में क्या किया ?" शाहज़ादे ने कहा कि, "इसके पूर्व किसी बादशाह ने कुछ भी नहीं किया।" मुल्ला ने कहा कि, "इसका उत्तरदायित्व उन लोगों पर है। प्राचीन मंदिर को नष्ट करना उचित नहीं।" मियां निज़ाम ने रुष्ट होकर कटार निकाल ली और कहा कि, "सर्व प्रथम मैं तुम्हारी हत्या करूंगा तदुपरान्त वहां आक्रमण करूंगा।" उन्होंने कहा कि, "सभी के लिए मरना अनिवार्य है। बिना ईश्वर के आदेश के कोई भी नहीं मरता। जब कोई भी व्यक्ति किसी अत्याचारी के पास जाता है तो अपने लिए मृत्यु निश्चय करके जाता है। जो कुछ होना है वह होगा किन्तु आपने मुझसे शरा की समस्या के विषय में प्रश्न किया तो मैंने उसका उत्तर दिया। यदि आपको शरा की चिन्ता नहीं है तो पूछने की कोई आव-

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श्यकता नहीं।" सुल्तान ने अपने क्रोध को रोका और कहा कि, "यदि अनुमति प्रदान कर देते तो कई हज़ार काफ़िरों को नरक पहुंचा देता और अधिकांश मुसलमान उससे लाभान्वित होते।" मियां अब्दुल्लाह ने कहा कि, "मुझे जो कुछ कहना था मैंने कह दिया, अब आप जानें।" वह दरबार से उठ खड़ा हुआ। अन्य आलिम लोग उसके साथ चल दिये। मलिकुल उलमा[९] अपने स्थान पर खड़े रहे। मियां निज़ाम ने किसी अन्य ओर ध्यान न दिया और कहा, "मियां अब्दुल्लाह आप कभी-कभी मुझसे भेंट करते रहें।" यह कह कर उन्हें विदा कर दिया। बाल्यावस्था में उसकी यह दशा थी।

थानेश्वर के स्नान के विरोध का प्रयत्न

उसने अपनी बाल्यावस्था में जब कि वह शाहज़ादा था यह सुना कि थानेश्वर में एक कुण्ड है, जहां हिन्दू एकत्र होकर स्नान करते हैं। उसने आलिमों से पूछा कि "इसके विषय में शरा[१] का क्या आदेश हैं?" उन्होंने उत्तर दिया कि "प्राचीन मंदिरों को नष्ट करने की अनुमति नहीं है। जब कि उस कुण्ड में प्राचीन काल से स्नान करने की प्रथा चली आ रही है, उसमें स्नान का निषेध आपके लिए उचित नहीं।" शाहज़ादे ने कटार निकाल ली और उस आलिम की हत्या का संकल्प करते हुए कहा कि ,"तू काफ़िरों का पक्षपाती है।" उस बुज़ुर्ग ने उत्तर दिया कि, "जो कुछ शरा में लिखा है उसे मैं कहता हूँ और सत्य बात कहने में कोई भय नहीं।" शाहज़ादा संतुष्ट हो गया।

धर्मान्धता

एक दिन उसने आदेश दिया कि "थानेश्वर जाकर कुर्कक्षेत्र (कुरुक्षेत्र) को मिट्टी से पाट दिया जाय और वह भूमि वहां के धर्मनिष्ठ व्यक्तियों को बजहे मआश में नाप कर दे दी जाय।" उस काल का मलिकुल उलमा उस स्थान पर उपस्थित था। उसने शाहज़ादे से पूछा, "वहां क्या है?" उसने उत्तर दिया कि, "एक हौज़ है जहां १०००, २००० कोस से हिन्दू लोग स्नान हेतु आते हैं।" उसने पूछा, "कब से यह कार्य प्रारम्भ हुआ?" शाहज़ादे ने कहा, "वर्षों से यह बिदअत[१] चल रही है।" मलिकुल उलमा ने पुनः पूछा, "आप के पूर्व के बादशाह इस विषय में क्या करते थे?" उसने उत्तर दिया, "कुछ नहीं।" मलिकुल उलमा ने कहा, "यह तुम्हारा उत्तरदायित्व नहीं कारण कि तुम्हारे पूर्व मुसलमान बादशाहों ने इस विषय में कुछ नहीं किया?" शाहज़ादा इस बात से बड़ा गरम हुआ। उसने कहा, "इस काल (३१) के आलिम बड़े विचित्र प्रकार के हैं।" संक्षेप में, युवावस्था में वह इस्लाम का इतना बड़ा पक्ष-पाती था।

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3. In his *Farman/Manshur* of Emperor Aurangzeb of 15th March, 1659 AD. has said that in accordance with the Sharia the ancient temples, are not to be destroyed as such there should be no interference in offering prayers in temples of the Hindus. In spite of the fact that subsequently this ruler himself caused demolition of the Ram Janamsthan temple at Ajodhya and other famous temples of the Hindus including those of Varanasi and Mathura, in his Farman dated 1659 he has accepted that sharia neither permit to interfere with the worship of the Hindus nor allows to destroy their temples. The extract of the *Farman* taken from page 142 the book Mughal Documents AD.1628-59, Volume-II compiled and translated by S.A.I. Tirmizi and published by Manohar

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Publishers, Delhi, 1995 Edn. reads as follows:

426. *Manshur* of Aurangzeb addressed to Abul Hasan[1] states that it has been brought to the notice of the royal court that the Brahmins of Banaras are being removed from their ancient offices and that Hindus of Banaras and its neighbourhood are harassed. In accordance with the *sharia* the ancient temples, are not to be destroyed and new ones are not to be built and since our innate kindness of disposition and natural benevolence, the whole of our untiring energy and our upright intentions are engaged in promoting the public welfare and bettering the condition of all classes, high and low, it is ordered that no person should interfer with or disturb the Brahmins and other Hindus so that they may, as before, remain in their ancient occupation and engage themselves with peace of mind in offering prayers for the continuance of our God-gifted empire so that it may last for ever (JPHS, V(1)., pp. 247-48).

20 Jumada II/1069 A.H./15 March, 1659 A.D.

4. Ibn Battuta who held the office of the Kazi of Delhi as also functioned as Mutawalli of the Mausoleum of Sultan Kutubuddin during the reign of Sultan Mahommed Bin Tughlaq has noted down that Sultan Mahommed Bin Tughlaq had granted permission to the King of China to rebuild the idol temples that were demolished by his army in Himalayan region subject to payment of Jizya. Relevant extract from page 214 of his book 'IBN BATTUTA Travels in Asia and Africa 1325 -1354' translated and selected by H.A.R. Gibb first published in 1929 reprinted in 2007 by Low Price Publications, Delhi ) reads as follows:

THE king of China had sent valuable gifts to the sultan, including a hundred slaves of both sexes, five hundred pieces of velvet and silk cloth, musk, jewelled garments and weapons, with a request that the sultan would permit him to rebuild the idol-temple which is near the mountains called Qarájíl [Himalaya]. It is in a place known as Samhal, to which the Chinese go on pilgrimage; the Muslim army in India had captured it, laid it in ruins and sacked it.[1] The sultan, on receiving this gift, wrote to the king saying that the request could not be granted by Islamic law, as permission to build a temple in the territories of the Muslims was granted only to those who paid a poll-tax; to which he added "If thou wilt pay the *jizya* we shall empower thee to build it. And peace be on those who follow the True Guidance."

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5. Great Jurist syed Amir Ali in his book 'The Spirit of Islam' (at p.272) substantiate that the Islam itself has ever maintained the most complete tolerance in respect of religion and if any excesses was done, it was by the passions of the ruler. Using religious element as a pretext. Relevant extract of the said book reads as follows:

> "If we separate the political necessity which has often spoken and acted in the name of religion, no faith is more tolerant than Islam to the followers of other creeds. "Reasons of State" have led a sovereign here and there to display a certain degree of intolerance, or to insist upon a certain uniformity of faith; but the system itself has ever maintained the most complete tolerance. Christians and Jews, as a rule, have never been molested in the exercise of their religion, or constrained to change their faith. If they are required to pay a special tax, it is in lieu of military service, and it is but right that those who enjoy the protection of the State should contribute in some shape to the public burdens. Towards the idolaters there was greater strictness in theory, but in practice the law was equally liberal. If at any time they were treated with harshness, the cause is to be found in the passions of the ruler or the population. The religious element was used only as a pretext."
>
> ( Spirit of Islam by Syed Ameer Ali at p.272)

6. The 'Spirit of Islam' (at p.273) records the facts that the Holy Prophet gave guarantee of freedom of religion to the Christians of Najram and the neighboring territories, inter alia, stating that there would be no interference with the practice of their faith, monks would not be removed from their Monastery and no image would be destroyed. Relevant extract from the said book reads as follows:

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> "Has any conquering race or Faith given to its subject nationalities a better guarantee than is to be found in the following words of the prophet?
>
> "To [the Christians of] Najran and the neighbouring territories, the security of God and the pledge of His Prophet are extended for their lives, their religion, and the property- to the present as well as the absent and other besides; there shall be no interference with [the practice of] their faith or their observances; nor any change in their rights or privileges; no bishop shall be removed from his bishopric, nor any monk from his monastery, nor any priest from his priesthood, and they shall continue to enjoy everything great and small as heretofore; no image or cross shall be destroyed; they shall not oppress or be oppressed; they shall not practice the rights of blood-vengeance as in the Days of ignorance, no tithes shall be levied from them nor shall they be required to furnish provisions for the troops."
>
> (Spirit of Islam by Syed Ameer Ali at p.273)

7. The 'Spirit of Islam' (at p.273-74) records the facts that during the reign of Caliphs, the people of other faith i.e. Zimmis were allowed to carry out processions, observe festivals, beat drums, erect places of worship. Relevant extract of the said book reads as follows:

> "After the subjugation of Hira, and as soon as the people had taken the oath of allegiance, Khalid bin-Walid issued a proclamation by which he guaranteed the lives, liberty and property of the Christians, and declared that "they shall not be prevented from bearing their nakas and taking out their crosses on occasions of festivals." "And ths declaration" says Imam Abu-Yusuf was approved of and sanctioned by the Caliph and his council.
>
> The non-Moslem subjects were not precluded from building new churches or temples. Only in places exclusively inhabited by Moslems a rule of this kind existed in theory. "No new Church or temple", said Abdullah bin Abbas, "can be erected in a town solely inhabited by Moslems; but in other places where there are already Zimmis inhabiting from before, we must abide by our contract with them".

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…
"The best testimony to the toleration of the early Moslem government is furnished by the Christians themselves. In the reign of Osman (the third Caliph), the Christians patriarch of Merv addressed the bishop of Fars, named Simeon, in the following terms: "The Arabs who have been given by God the kingdom (of the earth) do not attack the Christian faith, on the contrary they help us in our religion; they respect our God and our Saints, and bestow gifts on our churches and monasteries."

(Spirit of Islam by Syed Ameer Ali at p.273-74)

It is further submitted that according to the Holy Prophet in one land there cannot be two Qibalahs or Idgah & mosque, as such Sri Ramjanmasthan Temple and a mosque cannot co-exists in disputed site. His submissions are as under:-

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**ACCORDING TO THE HOLY PROPHET IN ONE LAND THERE CANNOT BE TWO QIBALAHS OR IDGAH & MOSQUE AS SUCH SRI RAMJANMASTHAN TEMPLE AND A MOSQUE CAN NOT CO-EXIST IN DISPUTED SITE:**

1. The Holy Prophet has commanded that there must not be two sacred buildings of worship of two different religions in one land, in other words there cannot be a Masjid and an Idol Temple in one land. In view of the fact that in his said command the Holy Prophet has said that as Jizyah cannot be imposed upon Muslim, two *Qiblahs* cannot be in one land, coexistence of two *Qiblas* one of Hindus and other of Muslims in one land is mandatorily forbidden according to *Shar*. The Holy Prophet also says that neither prayer can be

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offered by forming rows between two columns nor funeral prayer can be offered in a mosque. An *Idgah* is a place where funeral prayers or the prayers of the two Ids are usually offered, as such same site cannot be a Masjid and *Idgah*. The Holy Quran says that foundation of a Masjid from very first day must be laid on piety not on hypocrisy and it must be always maintained by the Muslims. The Holy Prophet says that a *Masjid* must not be used as a home and place of gossiping. Imam Aboo Yoosuf and Imam Moohummud the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. It is admitted position that in the same land Temples were/are present prior to alleged erection of Mosque and even after the alleged erection of Mosque it retained columns of Hindu Temple. According to some of the plaintiffs admission lastly prayer was offered on 16th December 1949 while it was occupied in the night of 22/23rd December 1949 in abandoned condition. All these things as well as presence of *Chulha* as found during the ASI's excavation indicates that said building was being used as home of Deities and Sevayats & Pujaris; as it never acquired the status of a *Masjid* according to Muslim Law and belief no declaration as prayed for can be granted.

**2.** The Sacred Compilation Jami' At-Tirmidhi (Vol.-2) Hadith

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633 reveals that in one land there must not be two Religious buildings of two different religions. Said Hadith reads as follows:

> "**633.** Ibn Abbas narrated that the Messenger of Allah said: "Two *Quiblahs* in one land are of no benefit, and there is no *Jizyah* upon the Muslims. "(***Da'if)***

**3.** Divine Holy Quran Surah 9 At-Taubah Ayat 18 commands that Mosques can be maintained only by Muslims not by persons of other faith. Said Holy *Ayat* reads as follows:

> **256. There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in *Tâghût*[11] and believes in Allâh, then he has grasped the most trustworthy handhold that will never break. And Allâh is All-Hearer, All-Knower.**

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**4.** Neil B.E. Baillie in his Book 'A Digest of Mahommedan Law' Part-First (Second Edition 1875) at its page 616 records that Imam Aboo Yoosuf and Imam Moohummud the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. Relevant extract from the above referred pages reads as follows:

> **When an assembly of worshippers pray in a *musjid* with permission, that is delivery. But it is a condition that the prayers be with *izan*, or the regular call, two times or more, and be public, not private. For though there should be an assembly, yet if it is without *izan*, and the prayers are private instead of public, the place is no *musjid* according to the two disciples. But if one person were appointed to officiate both as *mooezzin* and *imam*, and he should make the call, and then stand up and pray alone, the place would become a *musjid* by general agreement.**

**5.** Divine Holy Quran Surah 9 At-Taubah Ayat 107-110

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commands that foundation of a Mosque must be laid from the first day on piety not hypocracy otherwise a mosque built by hypocrite is destined to crumble down. The said Holy *Ayat* reads as follows:

**107. And as for those who put up a mosque by way of harm and disbelief and to disunite the believers and as an outpost for those who warred against Allâh and His Messenger (Muhammad صلى الله عليه وسلم) aforetime, they will indeed swear that their intention is nothing but good. Allâh bears witness that they are certainly liars.**

**108. Never stand you therein. Verily, the mosque whose foundation was laid from the first day on piety is more worthy that you stand therein (to pray). In it are men who love to clean and to purify themselves. And Allâh loves those who make themselves clean and pure [i.e. who clean their private parts with dust (which has the properties of soap) and water from urine and stools, after answering the call of nature].**

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**109. Is it then he who laid the foundation of his building on piety to Allâh and His Good Pleasure better, or he who laid the foundation of his building on the brink of an undetermined precipice ready to crumble down, so that it crumbled to pieces with him into the Fire of Hell. And Allâh guides not the people who are the *Zâlimûn* (cruel, violent, proud, polytheist and wrong-doer).**

Be it mentioned herein that this Holy *Ayat* came down in respect of Masjid-i-Jarar built in Madina by the hyporites with ulterior motive. Ultimately this Masjid was burnt and destroyed on command of the Holy Prophet.

**6.** The Sacred Compilation Hadith Sahih Bukhari 4.403 reveals that the Holy Prophet has termed such a person hypocrite who breaks promise, did not honour covenant, tells lie and behave in a very imprudent and misleading manner. The

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said Hadith reads as follows:

> "4.403:
> Narrated `Abdullah bin `Amr: Allah's Apostle said, "Whoever has (the following) four characteristics will be a pure hypocrite: "If he speaks, he tells a lie; if he gives a promise, he breaks it, if he makes a covenant he proves treacherous; and if he quarrels, he behaves in a very imprudent evil insulting manner (unjust). And whoever has one of these characteristics, has one characteristic of a hypocrite, unless he gives it us."

**7.** The Sacred Compilation Jami' At-Tirmidhi (Vol.-5) Hadith 2684 reveals that two things will not be together in a hypocrite that is to say good manners and *fiqh* in the religion. Said Hadiths and comments thereto read as follows:

> "**2684.** Abu Hurairah narrated that the Messenger of Allah said: "Two things will not be together in a hypocrite: Good manners, and *Fiqh* in the religion." **(*Da'if*)**

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**8.** The Sacred Compilation Jami' At-Tirmidhi (Vol.1) Hadith 321 reveals that Masjid cannot be used as a home nor a place for gossiping. Relevant portion of said Hadith reads as follows:

> **"321.** ...
>
> Ibn Abbas said, "It is not to be used as a home nor a place for talking about this or that."

In view of the fact that during the ASI's excavation at suit premises a *chulha* (an oven) has been found. It leaves no doubt that said structure was being used as home of Hindu deity and *chulha* was being used for preparing food for the

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deity as such said structure cannot be inferred to be a Masjid.

**9.** The Sacred Compilation Jami‘ At-Tirmidhi (Vol.1) Hadith 229 reveals that the Holy Prophet had commanded the Muslims not to pray between two columns. Said Hadith reads as follows:

> “**229.** Abdul-Hamid bin Mahmud said: “We prayed behind one of the *Amirs,* the people compelled us such that we prayed between two columns. When we had prayed, *Anas bin Malik* said: ‘We would be prevented from this during the time of Allah’s Messenger.” ***(Sahih)***

As in the disputed structure there were admittedly several columns and in course of forming rows for offering prayer those columns were unavoidable the said structure was not fit for offering prayer.

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**10.** The Sacred Compilation Hadith Sahih Muslim (Vol.-II) 973 as interpreted by Imam Abu Hanifa on the basis of a Hadith recorded in Abu Dawud reveal that funeral prayer in the Mosque was prohibited.

[973] 'Abbād b. 'Abdullah b. Zubair reported that 'Ā'isha ordered that the bier of Sa'd b. Abū Waqqās be brought into the mosque, so she can pray for him. The people disapproved this (act) of hers. She said: How soon the people have forgotten that the Messenger of Allah (SAW) had offered the funeral prayer of Suhail b. Al-Baidā' but in a mosque [1].

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(1) There is a difference of opinion among the jurists whether a funeral prayer can be offered in a mosque or not. It is on the basis of this hadīth that Imām Shāfi'ī of the view that it can be offered in a mosque. Imām Abū Hanīfa and Imām Mālik on the basis of a hadīth recorded in Abū Dāwûd (viz. The Messenger of Allah said: He who offers funeral prayer in the mosque has nothing for him) disapprove saying the funeral prayer in the mosque. The scholars of Hadīth.

**11.** In Idgahs/Musallas funeral prayers can be offered. In his book Mahommedan Law, Syed Ameer Ali, describes Mosques and Idghas or Musalla as follows:

> "The word masjid is derived from sijda, devotion, and means a place of devotion or a place where prayers are offered to the Almighty.
> A very fair description of an ordinary mosque is given by Herklot in his *Qanoon-i-Islam.* *Musallas* are prayer-grounds, and the word is derived from the word *salat* or prayers. In India, they are generally called *Idgahs* or *namaz-gahs,* and consist of a plot of ground set apart for the performance of the daily prayers or the Id prayers."
>
> Mahommedan Law by Syed Ameer Ali, 5th Edn. Reprint 2009, published by Hind Publishing House,Allahabad, p.418 & 419)

> "Every ground set apart for prayers is not necessarily a *musallah* and subject to the rules governing a mosque. A *musalla* is a place where funeral prayers or the prayers of the two Ids are usually offered. In such cases only the place where the congregation gather and the worship is performed that is governed by the rules governing a mosque.
>
> *(Ibid.* p.420)

Sri P.N. Mishra, Advocate has further argued that Hindus were recognized as Zimmis by the Great Iman Abu Haneef as such Emperor Babar being follower of said Imam's school had no right to errect mosque over Hindu Shrine. His submissions are as under:-

**IDOLATOR HINDUS WERE RECOGNIZED AS**

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**ZIMMIS BY THE GREAT IMAM ABU HANEEF AS SUCH EMPEROR BABAR BEING FOLLOWER OF SAID IMAM'S SCHOOL HAD NO RIGHT TO ERECT MOSQUE OVER HINDU SHRINE:**

1. Hindus were recognized as Jimmis by in 712 AD by the Great Imam Abu Haneef by virtue of authorities conferred upon the Doctors of Islam by Hadiths for the purpose of showing the people right path on the basis of correct interpretation of Law of *Shar.*
2. Mahomed Kasim Feristha in his book Tarikhe Feristha records that in reply to a question of Sultan Allaooddeen Khiljy, Kaji Mugdis answered him that the Hindus were granted status of Jimmi by the Great Imam Abu Huneef. Relevant extract from page 198 of the English Translation of the said book ["History of the rise of the Mahomedan Power in India till the year AD 1612" translated by John Briggs first published in 1829 reprinted in 2006 by Low Price Publications, Delhi] reads as follows:

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is it lawful to exact obedience and tribute?"—Answer. "It is lawful to exact obedience and tribute from all infidels, and they can only be considered as obedient who pay the poll-tax and tribute without demur, even should it be obtained by force; for, according to the law of the Prophet, it is written, regarding infidels, 'Tax them to the extent that they can pay, or utterly destroy them.' The learned of the faith have also enjoined the followers of Islam, 'To slay them, or to convert them to the faith;' a maxim conveyed in the words of the Prophet himself. The Imam Huneef, however, subsequently considers that the poll-tax, or as heavy a tribute imposed upon them as they can bear, may be substituted for death, and he has accordingly forbidden that their blood should be heedlessly spilt. So that it is commanded that the Juzeea (poll-tax) and Khiraj (tribute) should be exacted to the uttermost farthing from them, in order that the punishment may approximate as nearly as possible to death.

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3. In 712 AD Imam Abu Hanifah recognized the Hindus of Sind and Multan as Jimmis it has been recorded on page 538 in the book 'The Mughal Empire' edited by renowned historian R. C. Majumdar (3rd Edn. 1990 published by Bharatiya Vidya Bhavan, Bombay). The relevant extract from the said book reads as follows:

in 712 A.D. Muhammad bin Qāsim, the conqueror of Sind, accorded the Hindus of Sind and Multan the status of *zimmīs* which was the special privilege of Christians and Jews, the famous Muslim Jurist, Abu Hanifah, recognised this enactment as legal.

4. The Sacred Compilation Jami' At-Tirmidhi (Vol.-5) Hadith 2681, 2682 & 2685 reveal that a learned jurist is greater than a thousand worshipers. Commentator explains that as a learned jurist does not only correct himself and is safe from the illusion of the Saitan, but also he protects others against the plots, conspiracies and errors of the devil and he guides them correctly by teaching the issues of religion he is superior than a dedicated worshiper who does not have firm knowledge, the benefit of his worship is restricted to his own self, and also it is easy for the Satan to misguide him. From the said Hadith it can be inferred that superiority to the learned jurist has been given only for the purpose to tell the people what is right or wrong according to religion. Said Hadiths read as follows:

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"**2681.** Ibn Abbas narrated that the Messenger of Allah said: "The *Faqih* is harder on *Ash-Shaitan* than a thousand worshippers."**(*Da'if*)**

**Comments:**
A dedicated worshipper who does not have firm knowledge, the benefit of his worship is restricted to his own self, and also it is easy for the Satan to misguide him; while a learned jurist does not only correct himself and is safe for the illusion of the Satan, but also he protects others against the plots, conspiracy and errors of the devil and he guides them correctly by teaching the issues of religion.

**2682.** Qais bin Kathir said: "A man from Al-Madhinah came to Abu Ad-Darda when he was in Dimashq. So he said: "What brings you O my nephew ? He replied: 'A *Hadith* has reached me which you have narrated from the Messenger of Allah'. He said: 'You did not come for some need?' He said: 'No'. He said: 'Did you come for trade?' He said: 'No, I did not come except seeking this *Hadith'*. So he said: 'Indeed, I heard the Messenger of Allah saying: 'Whoever takes a path upon which he seeks knowledge, then Allah makes a path to Paradise easy for him. And indeed the angels lower their wings in approval of the one seeking knowledge. Indeed forgiveness is sought for the knowledgeable one by whomever is in the heavens and whomever is in the earth, even the fish in the waters. And superiority of the scholar over the worshipper is like the superiority of the moon over the rest of the celestial bodies. Indeed the scholars are the heirs of the Prophets, and the Prophets do not leave behind Dinar or Dirham. The only legacy of the scholars is knowledge, so whoever takes from it, then he has indeed taken the most able share. **(*Da'if*)**

**2685.** Abu Umamah Al-Bahili narrated: "Two men were mentioned before the Messenger of Allah. One of them a worshipper, and the other a scholar. So, the Messenger of Allah said: 'The superiority of the scholar over the worshipper is like my superiority over the least of you.' Then the Messenger of Allah said: 'Indeed Allah, His angels, the inhabitants of the heavens and the earths – even the ant in his hole, even the fish – say *Sulat* upon the one who teaches the people to do good." (***Hasan****)*

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It is further submitted by Shri P.N. Misra that it was mandatory upon the Army of Islam to protect the shrine and life of Hindus since they were regularly making payment of Jazia, which was a tax for protection and freedom of religion for Hindus. Accordingly Babur or Mir Baqi and no authority under the Islam to convert the temple into a mosque or to erect a mosque over the Hindu shrine. His submissions are as under:-

**FREEDOM OF RELIGION SUBJECT TO PAYMENT OF JEZIYAH, AS HINDUS WERE PAYING SAID PROTECTION TAX IT WAS DUTY OF THE ISLAMIC RULER AND ARMY OF ISLAM TO PROTECT SHRINE AND LIFE OF THE HINDUS:**

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1. The Divine Law of *Shar* contained in Holy Quran and Hadiths guarantees freedom of religion and religious practices to the Jimmis/Dhimmiz (protectees) who pay jizya (a tax taken from the non-Muslims who are in the protection of the Muslim government). There were 20 conditions of Jeziyah one of which permits Muslim traveler to stay in Jimmis' temple while other permits them to stay in Jimmis' home for three days. These terms and condition were in practce which is very much apparent from the disclosure of Ibn Battuta that he stayed in the house of an old lady who was a Jimmy as in the city there was only one House of the Governor. Riyazu-S- Salatin, A History of Bengal on its page 67 has recorded the fact that Bakhtiyar Khilaji stayed

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in a temple within the territory of Kamrup Kingdom during his retreat from Tibbat campaign without harming the Temple.

2. Sacred Compilation Hadith Sahih Bukhari 4.386 p.836-837 reveals that the Holy Prophet's command was for the Muslim army to fight against the persons of other faith till they worship Allah alone or agree to pay jizya. Relevant portion of the said Hadith reads as follows:

> "Our Prophet, the Messenger of our Lord, has ordered us to fight you till you worship Allah Alone or give Jizya (i.e. tribute); and our Prophet has informed us that our Lord says:-- "Whoever amongst us is killed (i.e. martyred), shall go to Paradise to lead such a luxurious life as he has never seen, and whoever amongst us remain alive, shall become your master."
>
> (Hadith Sahih Bukhari 4.386 at p.837)

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3. The Sacred Compilation Hadith Sahih Bukhari 4.404 p.843-844 reveals that asylum to non-Muslims living in Muslim territory was granted by Allah and His Holy Apostle. Relevant extract of the said Hadith reads as follows:

> "… Narrated said: Abu Huraira once said (to the people), "What will your state be when you can get no Dinar or Dirhan (i.e. taxes from the Dhimmis) ?" on that someone asked him, "What makes you know that this state will take place, O Abu-Huraira ?" He said, "By Him in Whose Hands Abu Huraira's life is, I know it through the statement of the true and truly inspired one (i.e. the Prophet). "The people asked, "What does the Statement say ?" He replied, "Allah and His Apostle's asylum granted to Dhimmis, i.e. non-Muslims living in a Muslim territory will be outraged, and so Allah will make the hearts of those Dhimmis so daring that they will refuse to pay the Jizya they will be supposed to pay."

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(Hadith Sahih Bukhari 4.404 at p.844)

4. Sacred Compilation Hadith Sahih Muslim (Vol. III) Hadith 1731R1 p.180-181 reveals that when Holy Prophet appointed anyone as commander of an army he specially commanded them to invite the enemies who are polytheists to three course of action and if they respond anyone of these the commander must accept it and keep from doing them any harm. Out of three options one was to demand Jizya from the people who refused to accept Islam and if they agree to pay no harm should be done to them. The said Hadith reads as follows:

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**[1731R1] It has been reported from Sulaimān b. Buraid through his father that when the Messenger of Allah (may peace be upon him) appointed anyone as leader of an army or detachment(2) he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say: Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war; do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and keep from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Muhājirs(1) and inform them that, if they do so, they shall have all the privileges and obligations of the Muhājirs. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or fai'(2) except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islam, demand from them the Jizya(3). If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them. When you lay siege to a fort and the besieged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and His Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you besiege a fort and the besieged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His Command, but do so at your (own) command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them.**

5. Sacred Compilation Hadith Sahih Muslim (Vol. III) Hadith 1732 and 1733 p.182 reveal that when Holy Prophet deputed

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anyone of his Companions on a mission he always directed him to show leniency and not to create aversion towards religion. The said Hadiths read as follows:

**[1732] It is narrated on the authority of Abū Mūsā that when the Messenger of Allah (may peace be upon him) deputed any of his Companions on a mission, he would say: Give tidings (to the people); do not create (in their minds) aversion (towards religion); show them leniency and do not be hard upon them.**

**[1733] It has also been narrated by Sa'īd b. Abū Burda through his father through his grandfather that the Prophet of Allah (may peace be upon him) sent him and Mu'āth (on a mission) to the Yemen, and said (by way of advising them): Show leniency (to the people); don't be hard upon them; give them glad tidings (of Divine favours in this world and the Hereafter); and do not create aversion. Work in collaboration and don't be divided.**

6. Sacred Compilation Hadith Sahih Bukhari 2.559 p.381, 4.387 p.837, and 5.351 p.1103-1104 reveal that Holy Prophet allowed the King of Aila as well as Bahrain who were non-Muslims to remain and rule over their respective countries subject to payment of Jizya. Relevant extract from the Hadith 2.559 and 5.351 as well as full text of Hadith 4.387 read as follows:

> "A strong wind blew at night and a man stood up and he was blown away to a mountain called Taiy. The King of Aila sent a white mule and a sheet for wearing to the Prophet as a present, and wrote to the Prophet that his people would stay in their place (and will pay Jizya taxation)."
>
> (Hadith Sahih Bukhari 2.559 at p.381)
>
> "Narrated Abu Humaid As-Saidi: We accompanied the Prophet in the Ghazwa of Tabuk and the king of Aila presented a white mule and a cloak as a gift to the Prophet. And the Prophet wrote to him a peace treaty allowing him to keep authority over his country."
>
> (Hadith Sahih Bukhari 4.387 at p.837)
>
> "…Allah's Apostle sent Abu 'Ubaida bin Al-Jarrah to

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> Baharain to bring the Jizya taxation from its people, for Allah's Apostle had made a peace treaty with the people of Baharain and appointed Al-'Ala' bin Al-Hadrami as their ruler. So, Abu 'Ubaida arrived with the money from Baharain…."
>
> (Hadith Sahih Bukhari 5.351 at p.1104)

7. Sacred Compilation of *Jami' At-Tirmidhi* (Vol. 3) *Hadith* 1587 and 1588 p.355 reveal that Holy Prophet took *Jizya* from the Zoroastrians of Hazar & Bahrain, Caliph Umar and Caliph Uthman took it in Persia from Persians. The said Hadiths read as follows:

> " 1587. Bajalah narrated that 'Umar would not take the Jizyah from the Zoroastrians until 'Abdur-Rahman bin 'Awf informed him that the Prophet took the Jizyah from the Zoroastrians or Hajar. (Sahih) There is no more dialogue in the Hadith than this. And this Hadith is Hasan Sahih.
>
> 1588. Malik narrated the Az-Zuhri that Sa'ib bin Yazid said: "The messenger of Allah took the Jizyah from the Zoroastrians of Bahmain, and 'Umar took it in Persia, and 'Uthman took it from the Persians."
>
> *Jami' At-Tirmidhi* (Vol. 3) *Hadith* 1587 and 1588 at p.355

8. Sacred Compilation Hadith Sahih Bukhari 2.475, 4.287, 4.388 and 5.50 reveal the recommendation of Caliph Umar to his successor to abide by the rules and regulations concerning the Jimmis/Dhimmis (protectees). Relevant portion of the said Hadiths read as follows:

> "… I recommend him to abide by the rules and regulations concerning the Dhimmis (protectees) of Allah and His Apostle, to fulfill their contracts completely and fight for them and not to tax (overburden) them beyond their capabilities."
>
> (Hadith Sahih Bukhari 2.475 at p.355)
>
> "… Narrated 'Amr bin Maimun: Umar (after he was

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stabbed), instructed (his would-be-successor) saying, "I urge him (i.e. the new Caliph) to take care of those non-Muslims who are under the protection of Allah and His Apostle in that he should observe the convention agreed upon with them, and fight on their behalf (to secure their safety) and he should not over-tax them beyond their capability."

(Hadith Sahih Bukhari 4.287at p.798)

"… Narrated Juwairiya bin Qudama at-tamimi: We said to 'Umar bin Al-Khattqab, O Chief of the believers! Advise us." He said, "I advise you to fulfill Allah's Convention (made with the Dhimmis) as it is the convention of your prophet and the source of the livelihood of our dependents (i.e. the taxes from the Dhimmis.)".

(Hadith Sahih Bukhari 4.388 at p.837)

"… I also recommend him concerning Allah's and His Apostle's protectees (i.e. Dhimmis) to fulfill their contracts and to fight for them and not to overburden them with what is beyond their ability."

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(Hadith Sahih Bukhari 5.50 at p.1004)

9. The Sacred Compilation Hadith Sahih Bukhari 4.657 reveals that the Holy Prophet said that incarnation of Jesus would abolish Jizyah from non-Muslims. The said hadith reads as follows:

4.657:
Narrated Abu Huraira: Allah's Apostle said, "By Him in Whose Hands my soul is, surely (Jesus,) the son of Mary will soon descend amongst you and will judge mankind justly (as a Just Ruler); he will break the Cross and kill the pigs and there will be no Jizya (i.e. taxation taken from non Muslims). Money will be in abundance so that nobody will accept it, and a single prostration to Allah (in prayer) will be better than the whole world and whatever is in it." Abu Huraira added "If you wish, you can recite (this verse of the Holy Book): ––'And there is none Of the people of the Scriptures (Jews and Christians) But must believe

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in him (i.e Jesus as an Apostle of Allah and a human being) Before his death. And on the Day of Judgment He will be a witness Against them."

10. The Sacred Compilation Hadith Sahih Bukhari 8.809 and 8.825 reveal that the Holy Prophet administered justice to a Jew according to his scripture *Torah.* The said Hadith reads as follows:

8.809:
Narrated Ibn `Umar: A Jew and a Jewess were brought to Allah's Apostle on a charge of committing an illegal sexual intercourse. The Prophet asked them. "What is the legal punishment (for this sin) in your Book (Torah)?" They replied,"Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." `Abdullah bin Salam said, "O Allah's Apostle, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold! The Divine Verse of the Rajam was under his hand. So Allah's Apostle ordered that the two (sinners) be stoned to death, and so they were stoned. Ibn `Umar added: So both of them were stoned at the Balat and I saw the Jew sheltering the Jewess.

fbx8.825:
Narrated `Abdullah bin `Umar: The jews came to Allah's Apostle and mentioned to him that a man and a lady among them had committed illegal sexual intercourse. Allah's Apostle said to them, "What do you find in the Torah regarding the Rajam?" They replied, "We only disgrace and flog them with stripes." `Abdullah bin Salam said to them, 'You have told a lie the penalty of Rajam is in the Torah.' They brought the Torah and opened it. One of them put his hand over the verse of the Rajam and read what was before and after it. `Abdullah bin Salam said to him, "Lift up your hand." Where he lifted it there appeared the verse of the Rajam. So they said, "O Muhammad! He has said the truth, the verse of the Rajam is in it

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> (Torah)." Then Allah's Apostle ordered that the two persons (guilty of illegal sexual intercourse) be stoned to death, and
> so they were stoned, and I saw the man bending over the woman so as to protect her from the stones.

Again it is submitted that since Babur was not the owner of Hindu Shrine of Shri Ramjanamsthan, he or his subordinates had no right to erect mosque and any building erected contrary to religious mandate of Islam cannot acquire the character of Mosque, as such the disputed structure was all along a Hindu temple and a sacred shrine. His submissions are as under:-

**WAKIF MUST BE OWNER OF THE PROPERTY FOR CREATING VALID WAQF AS EMPEROR BABUR WAS NOT OWNER OF THE HINDU SHRINE SRI RAMAJANMASTHAN HE OR HIS COMMANDERS HAD NO RIGHT TO ERRECT MOSQUE AND ANY BUILDING ERECTED CONTRARY TO RELIGIOUS MANDATE OF THE ISLAM CANNOT BE CONSTRUED A MOSQUE AS SUCH THE DISPUTED STRUCTURE WAS ALL ALONG A HINDU TEMPLE & SACRED SHRINE:**

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**1.** By defeating Sultan Ibrahim Lodi in the battle of *Panipat* Emperor Babur acquired only those rights that said Monarch had. As defeated Monarch was not Owner of the Sri Ramajanamsthan Temple at Ayodhya, according to *Shar* Emperor Babur did not acquire title of the said Temple. According to the Divine Law of *Shar* a Muslim can erect

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Masjid only on such land of which he is lawful owner and he can create Wakf only of his own lawful property. Unless the first prayer was offered with permission of the lawful owner even dedication of Masjid and Wakf by user can not be claimed. *Shar* does not permit conversion of a Temple into a Mosque and says that even if a mansion was given by a Jimmi to Muslims for their using it as Masjid, after death of such Jimmi his said mansion goes back to his heirs. Suffice to say that according to *Shar* the Wakif must be owner of the property at the time of its dedication otherwise Wakf is invalid. As Emperor Babur was not owner of the Suit-land, alleged creation of Wakf for Masjid and Graveyard was ab initio void and the Plaintiffs are not entitled for the reliefs as prayed for in the instant Suit.

**2.** The Sacred Compilation Hadith Sahih Bukhari 3.92 as well as Sacred Compilation Hadith Sahih Muslim (Vol.-I) 524 reveal that the first Mosque in Madina was built by the Holy Prophet on the land which was gifted to the Holy Prophet by its owners, wherefrom it becomes crystal clear that a Mosque can be built by the *Wakif* only on the land acquired/procured lawfully. Said Hadiths read as follows:

> 3.92:
> Narrated Anas:
> The Prophet came to Medina and ordered a mosque to be built and said, "O Bani Najjar! Suggest to me the price (of your land)." They said, "We do not want its price except from Allah" (i.e. they wished for a reward from Allah for giving up their land

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freely). So, the Prophet ordered the graves of the pagans to be dug out and the land to be leveled, and the date–palm trees to be cut down. The cut date–palms were fixed in the direction of the Qibla of the mosque.

[524] Anas b. Mālik reported: The Messenger of Allah (may peace be upon him) came to Medina and stayed in the upper part of Medina for fourteen nights with a tribe called Banī Amr b Auf. He then sent for the chiefs of Banī Al- Najjār, and they came with swords around their necks. He (the narrator) said: I perceive as if I am seeing the Messenger of Allah (may peace be upon him) on his ride with Abū Bakr behind him and the chiefs of Banū Al-Najjār around him till he alighted in the courtyard of Abū Ayyūb. He (the narrator) said: The Messenger of Allah (may peace be upon him) said prayer when the time came for prayer, and he prayed in the fold of goats and sheep. He then ordered mosques to be built and sent for the chiefs of Banū Al- Najjār, and they came (to him). He (the Holy Prophet) said to them: O Banū Al-Najjār, sell me your lands. They said: No, by Allah, we would not demand their price, but (reward) from the Lord. Anas said: There (in these lands) were trees and graves of the polytheists, and ruins. The Messenger of Allah (may peace be upon him) ordered that the trees should be cut, and the graves should be dug out, and the ruins should be levelled. The trees (were thus) placed in rows towards the Qibla and the stones were set on both sides of the door, and (while building the mosque) they (the Companions) sang rajaz verses along with the Messenger of Allah (may peace be upon him):

O Allah: there is no good but the good of the next world,
So help the Ansār and the Muhājirin (emigrants).

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**3.** An illustrated author and great jurist Syed Ameer Ali in his book ‘Spirit of Islam’ at page 54 narrates that though the owners of the land whereon first Mosque was built by the Holy Prophet in Madina had offered it as a free gift but as they were orphans the Holy Prophet paid them its value. The relevant extract of the ‘Spirit of Islam’ reads as follows:

A mosque was soon built, in the erection of which Mohammed assisted with his own hands; and houses for the accommodation of the exiles rose apace. Two brothers, who owned the land on which it was proposed to build the mosque, had offered it as a free gift; but as they were orphans, the Prophet paid them its value.

**4.** The Sacred Compilation Hadith Sahih Bukhari 3.895 reveals that the Ist wakf in the history of Islam was created by Caliph Umar of the land owned by him in Khaibar after obtaining permission of the Holy Prophet, wherefrom it

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becomes crystal clear that wakif must be owner of the land. Said Hadith reads as follows:

> 3.895:
> Narrated Ibn `Umar: `Umar bin Khattab got some land in Khaibar and he went to the Prophet to consult him about it saying, "O Allah's Apostle I got some land in Khaibar better than which I have never had, what do you suggest that I do with it?" The Prophet said, "If you like you can give the land as endowment and give its fruits in charity." So `Umar gave it in charity as an endowment on the condition that would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the Kith and kin, for freeing slaves, for Allah's Cause, to the travelers and guests; and that there would be no harm if the guardian of the endowment ate from it according to his need with good intention, and fed others without storing it for the future."

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**5.** In the book 'Ibn Battuta Ki Bharat Yatra' Ibn Battuta writes that he was given fund and permission by Sultan Muhamad bin Tughlaq for purchasing 20 villages for the purpose of increasing income of the endowment of Mausoleum of Sultan Kutubuddin. From said fact it becomes crystal clear that the Sultan was not owner of the land of the subject people and he had to purchase land for accretion of said wakf property. In other words private proprietorship of land was in existence during the Sultanate period. Relevant extract from page 158 of the the book 'Ibn Battuta Ki Bharat Yatra' (translated by Madan Gopal published by National Book Trust of India first published in 1933 reprinted in 1997) reads as follows:

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**15. मकबरे का प्रबंध**

इसके पश्चात मैं सम्राट कुतुबउद्दीन के समाधि-स्थान के प्रबंध में दत्तचित्त हो गया। यहां पर सम्राट ने इराक के सम्राट गाजां शाह के[1] गुंबद से भी बीस हाथ अधिक ऊंचा (अर्थात सौ हाथ का) गुंबद निर्माण करने की आज्ञा दी; और इस 'देवोत्तर' संपत्ति की आय बढ़ाने के लिए बीस गांव और मोल लेने की आज्ञा दी। उसमें दलाली के दशमांश का लाभ कराने के विचार से इन गांवों के मोल लेने का कार्य भी मेरे ही सुपुर्द कर दिया गया था।

**6.** From the *Farman* of Emperor Shah Jahan of 1633-34 AD. it becomes clear that the right of private proprietorship was in existence during the Mughal period and for the purpose of creation wakf of Taj Mahal the Emperor had to acquire land of Raja Jai Singh by giving him other land in lieu of the acquired land. The extract of the *Farman* taken from page 53 and 54 the book Mughal Documents AD.1628-59, Volume-II compiled and translated by S.A.I. Tirmizi and published by Manohar Publishers, Delhi, 1995 Edn., reads as follows:

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**56. *Farman* of Shah Jahan addressed to Raja Jai Singh informs the Raja that in lieu of the plot of land acquired for the construction of the mausoleum of Mumtaz Mahal the following four havelis have been granted to him (Jai Singh):**

**1. Haveli of Raja Bhagwan Das.**
**2. Haveli of Madhav Singh.**
**3. Haveli of Rupsi Bairagi.**
**4. Haveli of Chand Singh, son of Suraj Singh.**
**The *zimn* on the reverse bears the *risala* of Afzal Khan and *waqia* of Makramat Khan. (MIM, IV, p.165; DLFMN, p. 55, CHDKD, pp. 176-177).**

**6 Ilahi/1633-34 A.D.**

**7.** In the *Farman* of Emperor Shah Jahan dated 3rd August, 1648 contained in *Nishan of Prince Dara Shukoh,* the then Viceroy of Gujrat it has been held that conversion of temple of Sati Das into mosque by erstwhile Viceroy of Gujrat prince Aurangzeb was in violation of Islamic Law and as it

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was constructed over the property of another person it could not be considered a mosque according to the inviolable Islamic Law. On the basis of said finding of Law of *Shar* the Emperor directed authorities to hand over the said building to Sati Das for his using the same as his temple. The extract of the *Farman* taken from page 89 of the book Mughal Documents AD.1628-59, Volume-II compiled and translated by S.A.I. Tirmizi and published by Manohar Publishers, Delhi, 1995 Edn. , reads as follows:

**It is now ordered that since the Emperor has granted the said temple to Sati Das, he should be left in possession of it as usual and he may worship there according to his creed in any way he likes and no one should cause any obstruction or hindrance to him in this regard. Some *faqirs* who have settled there be ejected and Sati Das be relieved of their obstruction and molestation. It has been represented to the Emperor that some of the Bohras have removed and carried away the *masala* (materials) of the said *deohara* (temple). If this be a fact the said material should be recovered from them and restored to (Sati Das) but if the said material has been used up, their price be recovered from them and paid to Sati Das. It bears the *tughra* of Shah Jahan in addition to the *tughra* and seal of Prince Dara Shukoh. There is a note on the top on the right hand side which begins with the word '*Huwa*' and directs the *hukkam* to act in conformity with the *nishan i ali*. (JUB, IX, pp. 39-41).**

**13 Rajab 22 *Julus*/1058 A.H./3 August, 1648 A.D.**

**8.** In his book 'Digest of Moohummudan Law' (first part) Neil B. E. Baillie writes that wakif or appropriator must be owner of the subject of the wakf at the time of making it and if a person usurp a piece of land, create wakf and then purchase it from the owner, it would not be a wakf. And if Zimmee gives his mansion for using it as a masjid for Mussulmans, after his death it would become the inheritance of his heirs. Relevant portions of the said book from page 557, 558, 561 & 562 read as follows:

"THE legal meaning of *wukf*, or appropriation,

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according to Aboo Huneefa, is the detention of a specific thing in the ownership of the *wakif* or appropriator, and the devoting or appropriating of its profits or usufruct in charity on the poor, or other good objects."

(*Digest of Moohummudan Law, by Neil B.E. Baillie ,Second Edn., 1875 published by Smith Elder & Co., London p.557)*

"According to the two deciples, *wukf* is the detention of a thing in the implied ownership of Almighty God, in such a manner that its profits may revert to or be applied fof the benefit of mankind, and the appropriation is obligatory, so that the thing appropriated can neither be sold, nor given nor inherited."

(*Ibid. p.558)*

"But if a *zimmee* should give his mansion as a *musjid*, or place of worship, for Mussulmans, and construct it as they are accustomed to do, and permit them to pray in it, and they should pray in it, and he should then die, it would become the inheritance of his heirs, according to all opinions."

(*Ibid.* p.561)

"It is also a condition that the thing appropriated be the appropriator's property at the time of the appropriation; so that, if one were to usurp a piece of land, appropriate, and then purchase it from the owner, and pay the price, or compound with him for other property, which is actually delivered up, it would not be a *wukf."*

(*Ibid. p.562)*

"And if a donee of land should make an appropriation of it before taking possession, and should then take possession, the *wukf* would not be valid."

(*Ibid.* p.562)

"If the appropriation were made before taking possession, it would not be lawful."

(*Ibid. p.562)*

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**9.** Great jurist Syed Ameer Ali in his book 'Commentaries on Mahommedan Law' extracting the authority writes that the wakif must be lawful owner of the property at the time of creation of wakf. Otherwise a wakf is invalid. Relevant extract from page 225 of the said book reads as follows:

> "The subject-matter of the dedication must be the lawful property of the wakif at the time the wakf is made, that is, he must be in a position to exercise dominion over it. Consequently, if a wakf is made by a person of some property which he has un-lawfully acquired, it would be invalid, although he may subsequently purchase it from the lawful owner. So also, when a man makes a *wakf*, for certain good purposes, of land belonging to another, and then becomes the proprietor of it, the (*sic* She) *wakf* is not lawful."

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(Mahommedan Law by Syed Ameer Ali, 5th Edn. Reprint 2009,published by Hind Publishing House,Allahabad, p.225)

**10.** In his book 'Principles of Mahomeddan Law' D.F. Mullah writes that wakif must be owner at the time of dedication. Relevant extract from page 149 of the said book reads as follows:

> "**146C. Subject of wakf must belong to wakif.—**The property dedicated by way of wakf must belong to the wakif (dedicator) at the time of dedication (*s*)."

(Principles of Mahomedan Law by D.F. Mullah, 11th Edn., 1938, published by Eastern Law House Publication p.149)

**11.** In the United Provinces Muslim Waqfs Act, 1936 (Act No.XIII of 1936) in Section 3(1) the wakf has been defined and in the Statement of Objects and Reasons of the said Act

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it has been stated that the Muslim Law is full and explicit on the powers, duties and liabilities of Mutawallies in relation to their office. As such the said Act was not aimed to legislate in the matter of personal law. Relevant extract from the Statement of Objects and Reasons as well as Section 3(1) of the said Act are reproduced as follows:

> "STATEMENT OF OBJECTS AND REASONS.—…
>
> This I must make clear that this Bill is not intended to deprive the mutawallis of any authority lawfully vested in them nor it aims at defining all the powers, duties and liabilities of the mutawallis in relation to their office. The Muslim Law is full and explicit on these points and it is neither necessary nor desirable to legislate in matters of personal law."
>
> 3. In this Act, unless there is anything repugnant in the subject or context—
>
> (1) "Waqf" means the permanent dedication or grant of any property for any purposes recognized by the Musalman law or usage as religious, pious or charitable and, where no deed of waqf is traceable, includes waqf by user, and a waqif means any person who makes such dedication or grant."

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**12.** The Uttar Pradesh Muslim Wakfs Act, 1960 (U.P. Act No. XVI of 1960) in Section 3(11) defines the wakf as follows:

> "3.(11). "Waqf" means the permanent dedication or grant of any property for any purposes recognized by the Muslim law or usage as religious, pious or charitable and includes *wakf al-al aulad* [to the extent to which the property is dedicated or granted for any such purpose as aforesaid] and *wakf* by user; and '*wakf*' means the person who makes such dedication or grant."

It is further submitted that emperor Babur was also subject to law of Shar and his action of erection of alleged mosque, if any

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done in transgression of said law is void. Shri P.N. Misra, Advocate has relied over following case laws, which are as under:-

**THE HINDU AND THE MUSLIM KINGS WERE SUBJECT TO LAW OF THEIR RESPECTIVE DHARMA & RELIGION AS SUCH THE EMPEROR BABAR WAS ALSO SUBJECT TO LAW OF SHAR AND HIS ALLEGED ACTION OF ERECTION OF ALLEGED MOSQUE IF ANY DONE IN TRANSGRSSION OF SAID LAW IS VOID:**

1. In AIR 1975 SC 2299 (*Indira Nehru Gandhi v. Rajnarain)* the Hon'ble Supreme Court speaking through the Hon'ble Justice M. H. Bag, J. (as His Lordship then was) explaining the law of sovereignty in paragraph 526 to 571, in paragraph 527, 532-534 and 571 held that the Muslim rulers as well as the Hindu rulers were subject to their respective divine sacred law and the law was king of the kings. Relying on said judgment it is submitted that conversion of Sri Ramajanamasthan Temple into an alleged mosque either by the Emperor Babar or Aurangzeb in violation of the Law of Shar makes their such act null and alb-into mill and void and such building does not comes within the definition of a mosque. Paragraph nos. 527, 532-534 and 571 of the aforesaid judgment read as follows:

> "527. I must preface my observations here about the concepts of "sovereignty" and exercise of "sovereign power" between which I make a distinction, with two kinds of explanation. The first kind involves an exposition of a functional or sociological point of view. I believe that every social political, economic, or legal concept or doctrine must answer the needs of

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the people of a country at a particular time. I see the development of concepts, doctrines, and institutions as responses to the changing needs of society in every country. They have a function to fulfil in relation to national needs. The second type of explanation may be called historical or meant merely to indicate and illustrate notions or concepts put forward by thinkers at various times in various countries so as to appropriately relate them to what we may find today under our Constitution. We have to appreciate the chronology or stages of their development if we are to avoid frying to fit into our Constitution something which has no real relevance to it or bearing upon its contents or which conflicts with these. It must not, if I may so put it, be constitutionally "indigestible" by a constitution such as ours. Of course, it is not a secret that we have taken some of the basic concepts of our Constitution from British and American Constitutions in their most developed stages. That too must put us on our guard against attempts to foist upon our Constitution something simply because it happens to be either a British or American concept of some particular period which could not possibly be found in it today. Therefore, both types of explanation appear to be necessary to an exposition of what may or may not be found in our Constitution.

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532. After the break-up of the Roman Empire, there were attempts in medieval Europe, both by the Church and the Kings, to develop spiritual and temporal means for checking wrong and oppression. Quests for the superior or a sovereign power and its theoretical justifications by both ecclesiastical and lay thinkers were parts of an attempt to meet this need. The claims of those who, as vicars of God on earth, sought to meddle with mundane and temporal affairs and acquire even political power and influence were, after a struggle for power, which took different forms in different countries, finally defeated by European Kings with the aid of their subjects. Indeed these Kings tried to snaatch, and, not without success, to wear spiritual crowns which the roles of "defenders of the faith" carried with them so as to surround themselves with auras of divinity.

533. The theory of a legally sovereign unquestionable authority of the King, based on physical might and victory in battle, appears to have been developed in ancient India as well, by Kautaliya, although the

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concept of a Dharma, based on the authority of the assemblies of those who were learned in the dharmashastras also competed for control over exercise of royal secular power. High philosophy and religion, however, often seem to have influenced and affected the actual exercise of sovereign power and such slight Jaw-making as the King may have attempted. The ideal King in ancient India, was conceived of primarily as a Judge deciding cases or giving orders to meet specific situations in accordance with the Dharma Shastras. It also appears that the actual exercise of the power to administer justice was often delegated by the King to his judges in ancient India. Indeed, according to some, the theory of separation of powers appears to have been carried so far (See: K. P. Jayaswal in "Manu and Yajnavalkya" - A basic History of Hindu Law - 1930 Edn. p. 82) that the King could only execute the legal sentence passed by the Judge.

534. We know that Semitic prophets, as messengers of God, also became rulers wielding both spiritual and political temporal power and authority although to Jesus Christ, who never sought temporal power, is ascribed the saying: "render unto Caesar the things that are Caesar's and to God things that are God's". According to the theory embodied in this saying, spiritual and temporal powers and authorities had to operate in different orbits of power altogether. Another theory, however, was that the messages of God had been given the sovereign will of God Almighty Which governed all matters and this could not be departed from by any human authority or ruler. In the practical administration of justice, we are informed, Muslim caliphs acknowledged and upheld the jurisdiction of their Qazis to give judgment against them personally. There is an account of how the Caliph Omar, being a defendant in a claim brought by a jew for some money borrowed by him for purposes of State, appeared in person in the Court of his own Kazi to answer the claim. The Kazi rose from his seat out of respect for the Caliph who was so displeased with this unbecoming conduct that he dismissed him from office. (See: Sir A. Rahim's "Muhammadan Jurisprudence", (1958) p. 21).

571. I find that the doctrine of the supremacy or sovereignty of the Constitution was adopted by a Bench of seven learned Judges of this Court in Special Reference No, 1 of 1964, (1965) 1 SCR 413 =

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(AIR 1965 SC 745) where Gajendragadkar, C. J., speaking for six learned Judges of this Court said (at p .446) (of SCR) = (at pp. 762-763 of AIR) :

"In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Art. 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution' itself. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England, cannot be claimed by any Legislature in India in the literal absolute sense."

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2. In AIR 1994 SC 2663 (*N. Nagendra Rao & Co. v. State of Andhra Pradesh)* the Hon'ble Apex Court has held when the law provides for compensation against confiscation, he must be compensated and confiscation cannot effect the right of owner to claim return of the goods. Relying on said judgment it is submitted that when the Law of Shar says that no one can acquire ownership of the property of others by virtue of adverse position but it can be only by purchase, alleged erection of alleged mosque over a Sacred shrine of the Hindus by virtue of forceful occupation makes such building only ordinary private building not the Mosque. Relying on said judgment it is submitted that when the Law of Shar says that no one can acquire ownership of the property of others by virtue of adverse position but it can be only by purchase, alleged erection of alleged mosque over a Sacred shrine of the Hindus by virtue of forceful occupation makes such building only ordinary private building not the Mosque. Relevant paragraph 8 of the said judgment reads as follows:

> 8. This sub-section ensures that a person who has

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been prosecuted or whose goods have been confiscated does not suffer if the ultimate order either in appeal or in any proceeding is in his favour. It is very wide in its import as it statutorily obliges the Government to return the goods seized or to pay the value of the goods if for any reason it cannot discharge its obligation to return it. The circumstances in which the goods are to be returned are;

(a) an order under S. 6A is modified or annulled by the State Government;

(b) where the goods were confiscated in consequence of prosecution of the person and he is acquitted;

(c) and in all these cases where it is not possible for any reason to return the essential commodity seized.

This provision cuts across the argument of the State that where even part is confiscated the person whose goods are seized is not liable to be compensated for the remaining. The section is clear that if only part of the goods are confiscated then the remaining has to be returned. The very first part of the sub-section indicates that where the order of confiscation, is modified in appeal meaning thereby if confiscation is confined to part only the Government is bound to release or return the remaining or pay the value thereof. But what is more significant of this sub-section which widens its reach is the expression, 'and in either case it is not possible for any reason to return the essential commodity seized' then, the State shall be liable to pay the market price of the value with interest. The expression, 'for any reason' should be understood in broader and larger sense as it appears from the context in which it has been used. The inability to return, giving rise to the statutory obligation of deeming it as sale to the Government may arise for variety of reasons and extends to any failure on the part of the Government. For instance, the goods might have been sold in pursuance of interim arrangement under S. 6A(2). Or it might have been lost or stolen from the place of storage. The goods might have deteriorated or rusted in quality or quantity. The liability to return the goods seized does not stand discharged by offering them in whatever condition it was. Confiscation of part of the goods thus could not affect the right of owner to claim return of the remaining goods. Nor the owner is bound to accept the goods in whatever condition they are. The claim of the respondent, therefore, that the appellant was bound to accept the goods in whatever condition they were is liable to be rejected.

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3. In AIR 1971 SC 1594 (*Union of India. v. Sudhangshu Mazumdar)* the Hon'ble Apex Court has quoted an extract from the United States v. Juan Prechman, (1831-34) L.Ed. 604 with approval wherein it has been stated that the modern usage of nations would be outraged if private properties are confiscated or private rights annulled. Relevant paragraph 7 of the said judgment reads as follows:

> "7. Dr. Singhvi says that the first premise on which the High Court has proceeded is that as a result of cession it would be competent for the Government of Pakistan to deal with the disputed territory as an absolute owner in complete disregard of the existing rights of the respondents. In other words it has been assumed that the Government of Pakistan will not recognise ownership or other similar rights of the respondents in the lands and properties which belong to them. This Dr. Singhvi claims, is contrary to the rule enunciated by Chief Justice Marshall in The United States v. Juan Perchman, (1831-34) 8 L. ed 604 in the following words :
> "The modern usage of nations, which has become law, would be violated: that sense of justice and of right which is acknowledged and felt by the whole civilized World would be outraged, if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property, remain undisturbed."
> The rule set forth in the Perchman case, (1831-34) 8 L. ed 604 has been followed in over forty American cases and has been accepted as the rule of International law in English, French, German and Italian law*
> * Extracts from the Law of Nations (2nd Edn. 1953), p. 237, Cf. F. B. Sayre, "Change of Sovereignty and Private Ownership of Land," 12 XII A. J. L L (1918), 475, 481, 495-497"

4. In 1999 (4) SCC 663 (*R.E.M.S. Abdul Hameed v. Govindaraju)* the Hon'ble Apex Court has held that under the Ancient Hindu

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Law there were two beneficial interests in land: (1) that of the sovereign or his representative, and (2) that of the cultivator or Ryot holding the land. The Ryot's right arose from occupation of the land, thus the grant of an *Inam* do not and could not have touched the cultivator's right in the land, except in rare cases where the grantor also hold the cultivator's interest at the time of the grant. Relying on Said judgment it is submitted that in our country since inception subjects were proprietor of their private properties and the Kings were only entitled for land revenue, Sri Ramajanamasthan was all along and is being owned by the Deity Sri Ramalala as such the right of private property of the Deity cannot be extinguished. Relevant paragraph 4 of the said judgment reads as follows:

> "4**.** The central question in issue is the interpretation of clause (*b*) Explanation I to Section 2(11) of Act 26 of 1963. Learned counsel for the aforesaid respective appellants, Mr Tripurari Ray and Mr A.T.M. Sampath, Senior Counsel submit on the facts of this case that the disputed land cannot be construed to be "part-village inam estate" to fall within Act 26 of 1963 but is a minor inam to fall under Act 30 of 1963. Before taking up this issue of "part-village inam estate", it is necessary to look back to the history of inam lands, how it emerged, was recognised, canalised and dealt with through various enactments till it reached the legislative umbrella of both Acts 26 and 30 of 1963. The law relating to the landholdings, agrarian reform, in the Presidency town of Madras, with reference to the landlords and ryots started from the previous century and it is interesting to note a few of the essential features of this agrarian development. The origin of inam tenure is traced back to its grant made by Hindu rulers for the support of temples and charitable institutions, for the maintenance of holy and learned men rendering public service, etc. This practice was followed by the Mohammedan rulers and by British administrators until about a century ago. According to the ancient Hindu law, there were two beneficial interests in land, namely, (*1*) that of the sovereign or his representative, and (*2*) that of the

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> cultivator holding the land. The sovereign's right to collect a share of the produce of the cultivated land was known by the name "melvaram", the share of the ryot or cultivator was known by the name "kudivaram". The ryot's right arose from occupation of the land. Thus, the grant of an inam did not touch, and could not have touched, the cultivator's right in the land, namely, the kudivaram, except in rare cases where the grantor was also holding the cultivator's interest at the time of the grant."

5. In AIR 1962 SC 342 (*Sunka Villi Suranna. v. Goli Sathiraju)* the Hon'ble Apex Court has held that where there was no evidence to show that the occupation of the lands by the Ryot commence under the *Zamindar* and there was no evidence as to the terms at which the Ryots or his predecessors were inducted in land. Commencement of the tenancy and the terms thereof were lost in antiquity but the Ryot's rights and his descendants were proved to have continued in possession of the land uninterruptedly till the enactment of the Madras States Land Act, 1908. In the light of the presumption that the Zamindar was, unless the contrary was proved, the owner of the *melvaram* and Ryot the owner of the *kudivaram* the interference was irresistible that the Ryot was the holder of the occupancy rights in the land and thus rights developed upon his successors and the occupancy right in the land were not acquired by virtue of the provisions of Madras States Land Act, 1908. It appears that prior to declaring the land as *nazul* land by the Governor-General in 1959 the Hindus were worshipping in the suit property as such the occupancy rights remained in the hands of the Hindus. Relevant paragraph 17 of the said judgment reads

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as follows:

> "17. To summarize, there is no evidence to show that occupation of the lands by Thammiah commenced under the Zamindar and there is no evidence as to the terms on which Thammiah or his predecessors were inducted on the lands: the commencement of the tenancy and the terms thereof are lost in antiquity, but Thammiah and his descendants are proved to have continued in possession of land uninterruptedly till the enactment of the Madras Estates Land Act, 1908. In the light of the presumption that the zamindar is unless the contrary is proved, the owner of the melvaram and the ryot the owner of the kudivaram the inference is irresistible that Thammiah was the holder of the occupancy rights in the lands and that these rights devolved upon his successors and that the occupancy rights in the lands were not acquired by virtue of the provisions of Madras Act VI of 1908."

6. In (2001) 4 SCC 713 (*Syndicate Bank. v. Prabha D. Naik)* the Hon'ble Apex Court has held that the Muslim jurisprudence neither recognised prescription nor limitation. Relying on said judgment it is Submitted that as Hindu Endowment was existing prior to acquisition of Kingship by the Emperor Babur and said ownership of the Deity existed till the day of confiscation of the rights of the proprietors in land in the year 1959 by the British government which right of the Deity again revived when the State of Uttar Pradesh gave up its said right by filing written statement in the instant Suit. As such the said sacred shrine of the Hindus is not liable to be declared as a mosque it is most respectfully Submitted. Relevant paragraph 6 of the said judgment reads as follows:

> **"6.** Incidentally, it may be noted that though the old Hindu law recognised both prescription and limitation but Muslim jurisprudence recognised neither of them. The new Law of Limitation in terms of the Limitation

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> Act of 1963 however, does not make any racial or class distinction since both Hindu and Muslim laws are amenable to the Law of Limitation as is presently existing in the statute-book (see in this context *B.B. Mitra's Limitation Act*; 20th Edn.)."

7. In AIR 1968 SC 683 (*V. D. Dhanwatey. v. Commissioner of Income Tax, M. P., Nagpur & Bhandara)* the Hon'ble Supreme Court held that while interpreting an ancient text, the Courts must give them a liberal construction to further the interest of the society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. Relying on said judgment it is submitted that the *Sthandil* i.e. Sri Ramjanmasthan which has been recognized by the scriptures a means of conferring merit upon the devotees and granting salvation to them be recognized as Juridical entity and not mere property in crude sense to do justice in the greater interest of the citizens of India in general and the Hindu and Muslim community in particular to pave the way of permanent peace it is with due respect submitted. Relevant paragraph 31 of the said judgment reads as follows:

> "31. Law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interests of the society. Our great commentators in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. To an extent, that function has now to be discharged by our superior courts. That task is undoubtedly a delicate one. In discharging that function our courts have shown a great deal of circumspection. Under modern conditions legislative modification of laws is bound to

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> be confined to major changes. Gradual and orderly development of law can only be accomplished by judicial interpretation. The Supreme Court's role in that regard is recognised by Article 141 of our Constitution."

8. In AIR 2008 SCW 1224 (*Dist. Basic Education Officer & Anr. v. Dhananjay Kumar Sukla & Anr.)* the Hon'ble Supreme Court has held that the rules of pleadings do not apply to question of law and new plea on question of law can be raised before the Supreme Court even it was not raised before the High Court. Relying on said judgment it is humbly submitted that the questions of law which has been raised during the argument are sustainable in the eye of law and needed to be decided for doing complete justice between the parties who are representing two major community of India. Relevant paragraph 14 of the said judgment reads as follows:

> "14. Rules of pleading contained in the Code of Civil Procedure do not cover questions of law. If a fact stands admitted the same in terms of Section 56 of the Indian Evidence Act need not be proved. Only because such a question was not allegedly raised before the High Court, this Court could not shut its eyes to the legal position. Yet again only because an illegality has been committed, this Court would not allow its perpetration. Respondent's father was on leave for a temporary period. He thereby did not cease to be the Manager of the school. It is apparent that he went on leave only for defeating the statutory provisions. Such an act amounts to fraud on the administration."

Lastly, Mr. Misra has submitted that according to the Farman of Shah Jahan there cannot be a valid mosque over a land of a temple and the owner of the temple is entitled for the

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restoration of the possession with liberty to worship.

**FARMAN OF THE EMPEROR SHAHJAHAN HELD THAT THE BUILDING OVER THE LAND OF A TEMPLE IS NOT A MOSQUE AND OWNER OF THE TEMPLE IS ENTITLED FOR RESTORATION OF POSSESSION WITH LIBERTY TO WORSHIP THEREIN ACCORDING TO HIS OWN RELIGION HAS FORCE OF LAW:**

1. In AIR 1963 SC 1638 (*Tilkayat Shri Govindalalji Maharat etc. v. State of Rajasthan & Ors.)* the Bench comprised of Hon'ble Five-Judge of the Hon'ble Supreme Court has held that the *Farman* issued by an absolute ruler like the *Maharana* of Udaipur in 1934 is a law by which the affairs of the Nathdwara temple and succession to the office of the Tilkayat were governed after its issuance. Relying on said judgment it is submitted that the Farman of the Emperor Shahjahan wherein it has been held that a building constructed over the land of the temple of other person can not be a mosque is admissible as ratio of Law of Shar so far it doesn't contradict the law of Shar, and it is further submitted that any addition, alteration or modification made by any Rulers arbitrarily in violation of the law for the time being in force cannot convert Sri Ramajanmasthan Temple into an alleged mosque. Relevant paragraphs 32 and 33 of the aforesaid judgment reads as follows:

"32. In appreciating the effect of this Firman, it is first

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necessary to decide whether the firman is a law or not. It is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby. This position is covered by decisions of this court and it has not been disputed before us, vide Madhaorao Phalke v. State of Madhya Bharat, 1961-1 SCR 957 : (AIR 1961 SC 298). Ameer-un-Nissa Begum v, Mahboob Begum, AIR 1955 SC 352 and Director of Endowments, Government of Hyderabad v. Alkram Alim (S) AIR .1956 SC 60.

33. It is true that in dealing with the effect of this Firman, the learned Attorney-General sought to raise before us a novel point that under Hindu law even an absolute monarch was not competent to make a law affecting religious endowments and their administration. He suggested that he was in position to rely upon the opinions of scholars which tended to show that a Hindu monarch was competent only to administer the law as prescribed by Smgritis and the oath which he was expected to take at the time of his coronation enjoined him to obey the Smritis and to see that their injunctions were obeyed by his subject. We did not allow the learned Attorney-General to develop this point because we hold that this novel point cannot be accepted in view of the well-recognised principles of jurisprudence. An absolute monarch was the fountain-head of all legislative, executive and judicial powers and it is of the very essence of sovereignty which vested in him that he could supervise and control the administration of public charity. In our opinion there is no doubt whatever that this universal principle in regard to the scope of the powers inherently vesting in sovereignty applies as much to Hindu monarchs as to any other absolute monarch. Therefore, it must be held that the Firman issued by the Maharana of Udaipur in 1934 is a law by which the affairs of the office Nathdwara. Temple and succession to the office of the Tilkayat were governed after its issue."

2. In AIR 1961 SC 298 (*Madha Rao Phalke. v. Land of*

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*Madhya Bharat & Anr.)* a Bench comprised of Hon'ble five-Judges the Hon'ble Apex Court has held that the orders issued by absolute Monarch ruler of Guwalior State at force of law and would amount to existing law. Relevant paragraphs 11, 12, 14 and 18 of the said judgment reads as follows:

> "11. In dealing with the question as to whether the orders issued by such as absolute monarch amount to a law or regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of its citizens. In Ameer-un-Nissa Begum v. Mahboob Begum, AIR 1955 SC 352, this Court had to deal with the effect of a Firman issued by the Nizam, and it observed that so long as the particular Firman issued by the Nizam, held the field that alone would govern and regulate the rights of the parties concerned though it would be annulled or modified by a later Firman at any time that the Nizam willed. What was held about the Firman about all the Nizam would be equally true about all effective orders issued by the Ruler of Gwalior (Vide also : Director of Endowments, Government of Hyderabad v. Akram Ali, (S) AIR 1956 SC 60).
>
> 12. It is also clear that an order issued by an absolute monarch in an Indian State which had the force of law would amount to an existing law under Art. 372 of the Constitution. Article 372 provides for the continuance in force of the existing laws which were in force in the territories of India immediately before the commencement of the Constitution, and Art,. 366(10) defines an existing law, inter alia, as meaning any law, ordinance, order, rule or regulation passed or made before the commencement of the Constitution by any person having a power to make such law, ordinance order, rule or regulation. In Edward Mills Co., Ltd.,

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> Beawar v. State of Ajmer, (S) AIR 1955 SC 25, this Court has held that "there is not any material difference between the expressions 'existing law', and the 'law in force'. The definition of an existing law in Art. 366 (10) as well as the definition of an Indian law contained in Sec. 3(29) of the General Clauses Act make this position clear". Therefore, even if it is held that the Kalambandis in question did not amount to a quanun or law technically so called, they would nevertheless be orders or regulations which had the force of law in the State of Gwalior at the material time, and would be saved under Art. 372. The question which then arises is whether these Kalambandis were regulations having the force of law at the material time.
>
> 18. It is not disputed that if the Kalambandis on which the appellant's right is based are rules or regulations having the force of law the impugned executive order issued by respondent 1 would be invalid. The right guaranteed to the appellant by an existing law cannot be extinguished by the issue of an executive order. In fact on this point there has never been a dispute between the parties in the present proceedings. That is why the only point of controversy between the parties was whether the Kalambandis in question amount to an existing law or not. Since we have answered this question in favour of the appellant we must allow the appeal set aside the order passed by the High Court and direct that a proper writ or order should be issued in favour of the appellant as prayed for by him. The appellant would be entitled to his costs throughout.”

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3. In AIR 1955 SUPREME COURT 352 "Ameer-un-Nissa Begum v. Mahboob Begum" the Hon’ble Supreme Copurt held that the firmans were expressions of the sovereign will of the Ruler and they were binding in the same way as any other law; nay, they would override all other laws which were in conflict with them. So long as a particular firman held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later

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Firman at any time. Relevant paragraph 15 of the said judgment reads as follows:

> "15. The determination of all these questions depends primarily upon the meaning and effect to be given to the various 'Firmans' of the Nizam which we have set out already. It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; - nay, they would override all other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed."

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Shri P.N. Mishra, Advocate has further argued that alleged inscriptions found on the disputed structure are false, fabricated, forged on the so-called Babri Mosque, which is virtually a Ramjanamsthan Temple under the law. His submissions are as under:-

**ALLEGED INSCRIPTIONS ARE FALSE, FABRICATED, FORGED, FICTITIOUS AND WERE NEVER FIXED ON SRI RAMJANAMSTHAN TEMPLE DESCRIBED IN PLAINT AS BABURI MOSQUE:**

**1.** The Inscriptions alleged to be found and /or fixed on *Sri Ramajanmasthan Temple* called as *Baburi Mosque* by the Plaintiffs were never fixed on it rather they had no

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existence. In fact transcript alleged to be of the Inscription fixed on said Structure are false, frivolous, forged, fabricated, and manufactured. When Jesuit Priest Father Josef Tieffenthaler, a world-fame Geographer, Historian and Linguistic who has written books in Sanskrit, Latin, Arabic, Persian etc. in the year 1770 personally visited he did not found any Inscription fixed on said Structure but saw the Hindus entering in the Central Hall of the said Temple and worshipping the Vedi located therein by prostrating and circumambulating it thrice. Mr. F.E.A. Chamier, the then District Judge Faizabad who took Judicial notice of and visited the *Sri Ramjananmsthan*/alleged *Baburi Masjid* on 18th March 1886 also did not find any Inscription fixed thereon save and except a superscription 'Allah' on the entrance of the said Structure. From the aforesaid facts it becomes crystal clear that none of the alleged Inscriptions were in existence at least till 18th March, 1886.

**2.** In fact none of the persons that is to say Mr. A. Fuhrer who published three Inscriptions being Inscription Nos. XL, XLI and XLII in 1989; Mrs. A. S. Beveridge who published two Inscriptions being Inscription Nos. 'a' and 'b' in 1921; and Mr. Z.A. Desai who published three Inscriptions being Inscription Nos. XVII (a), XVII (b) and XVII (c) in 1964-65 had personally visited the 'Sri Ramjanmsthan called as Baburi Mosque by the Plaintiffs' as such question of seeing

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those Inscriptions fixed on said Sri Ramajanmasthan cannot and does not arise at all. A. S. Beveridge tells that the transcripts of the Inscriptions published by her were supplied to her husband from whom she got the same. Mr. Z.A. Desai points out that correct transcript of the Inscriptions were not supplied to Mr. A. Fuherer and Mr. Desai had got correct version of the destroyed Inscriptions from the estampage obtained from Sayyid Badru'l-Hasan of Fyzabad as well as from the Inscriptions rebuilt by the contractor Tehwoor Khan some times after 27th March, 1934.

**3.** It reflect from the Transcripts of the alleged inscriptions supplied to A. Fuhere's that 'a firmanant-like lofty strong building was erected by an auspicious noble Mir Khan under the command of Babur in the year 930 A.H. i.e. 1523 A.D. and foundation of the said building was laid down by the King of China and Turkey in presence of Babur;' while the Transcripts of the alleged inscriptions supplied to S.A. Beveridge reveal that 'under the command of Emperior Babur, good-hearted Mir Baqi built that alighting place of angels in 935 A.H. i.e. 1528-29.' Mr. Z.A. Desai's one Inscription says that 'by the order of King Babur that descending place of the Angels was built by the fortunate noble Mir Baqi'; while his other Inscription tells that 'a lofty building and lasting house *(of God)* was founded by Mir

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*(and )* Khan *(Baqi)*.' The words placed within brackets are Dr. Desai's own insertions and it is needless to say that those words do not find place even in the text of the inscription procured by Mr. Z.A.Desai.

**4.** The Ld. Civil Judge Faizabad, Mr. A. Akhtar Ahasan who made an inspection of the Disputed Structure on 26th March 1946 and procured transcriptions of two Inscriptions fixed on it, in His Judgment dated 30.02.1946 records that '1st Inscription says 'by the order of Shah Babar, Amir Mir Baqi built the resting place of angels in 923 A.H.' i.e. 1516-17 A.D. ; while 2nd inscription says that 'Mir Baqi of Isphahan in 935 A.H.' i.e. 1528-29 A.D.' The texts of the alleged restored Inscriptions found by said Ld. Civil Judge are at variance with that of those estampage procured by Mr. Z.A. Desai. It is noteworthy that in this Inscription Mir Baqi Isfahani has been mentioned as founder of the said Structure while in Babur-Nama, the Emperor Babur has not mentioned any Mir Baqi Esfahani in any context but he has mentioned one Baqi Taskendi. Be it mentioned herein that the Taskend is a City of Uzbekistan while Esfahan is a province of Iran as such Baqi Esfahani and Baqi Taskendi cannot be regarded as one person and , Baqi Esfahani being an stranger and unknown to the Emperor Babur can be termed with certainty a fictitious person by whom a real Structure cannot be brought into existence.

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**5.** Father Josef Tieffenthaler, a Jesuit Missionary and noted geographer on Hindustan visited Ayodhya in 1770 did not find any Inscriptions even that superscription *"Allah" mentioned* by the Ld. District Judge in 1886. From Josef Tiffenthaler's description it appears that at that time also Hindus were worshipping inside the Ramjanmsthan Temple alleged to be converted into mosque either by Aurangzeb or by Babar. As he was not only a Missionary but an excellent Historian, Geographer and great linguistic having mastery over several languages including Arabic, Persian and Sanskrit, there was no possibility of overlooking the alleged Inscriptions by him as it would have enabled him to tell the people with certainty the name of the Tyrant Emperor who attempted to convert Sri Ramajanmasthan Temple into Mosque. English translation of a portion of his book "Descriptio Indiae" being description of Oude including the Sri Ramajanmasthan has been published on pages 312 to 317 in the " Modern Traveller, a Popular Description, Geographical, Historical, and Topographical of the Various Countries of the Globe- India. Vol. III" ; London Edn.1828 published by James Duncan and has been digitalised by Google. Relevant extracts thereof read as follows:

> 'Its appearance, in 1770, is thus described by Tieffen Thaler: "Avad with Ajudea by the learned Hindoos, is a city of the highest Antiquity." …….
>
> (Ibid.312

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)

"The most remarkable place is that which is called *Sorgodoari,* that is to say, the heavenly temple; because they say, that Ram carried away from thence to heaven all the inhabitants of the city. The deserted town was repeopled and restored to its former condition by Bikaramajit, the famous King of Oojein. There was a temple here on the high bank of the river; but Aurangzebe, ever attentive to the propagation of faith of Mohammed, and holding the heathen in abhorrence, caused it to be demolished, and replaced it with a mosque with minarets, in order to abolish the very memory of Hindoo superstition. Another mosque has been built by the Moors, to the East of this near the *Sorgodoari* in an edifice erected by *Nabalroy,* a former Hindoo governor. But a place more particularly famous is that which is called *Sitha Rassoce,* a table of *Sitha* (Seeta), wife of Ram; situated on an eminence to the south of the city. The emperor Aurangzebe demolished the fortress called Ramcote, and erected on the site of Mohammedan temple with a triple dome. According to others, it was erected by Baber. There are to be seen fourteen columns of black stone, five spans in height, which occupied the site of the fortress. Twelve of these columns now support the interior arcades of the mosque: the two other form part of the tomb of a certain Moor. They tell us that these columnsms, are rather these remains of skillfully wrought columns, were brought from the Isle of Lanca or Selendip (Ceylon) by Hanuman, King of the Monkeys. On the left is seen a square chest, raised five inches from the ground covered with lime about 5 ells in length by not more than four in breadth. The Hindoos call it *Bedi.* The cradle; and the reason is, that there formerly stood here the house in which Beshan (Vishnoo) was born in the form of Ram, and were also, they say, is three brothers were born. Afterwards, Aurangzebe or, according to others, Baber caused the place to be destroyed, in order to deprive the heathen of the opportunity of practising there their superstitions. Nevertheless, they still pay superstitious reverence to both these places; namely, to that on which the *Natal* dwelling Ram stood, by going three times around it, prostrate on the earth. The two places are surrounded with a low wall adorned with battlements. Not far from this is a place where they

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> dig up grains of black rice changed into little stones, which are affirmed to have been hidden under ground ever since the time of Rama. On the 24th of the month of *Tshet* (Choitru), a large concourse of people celebrate here the birth-day of Ram, so famous throughout India.''' …….
>
> (Ibid. 313-314)

**Annexure -IV Josef Tiefeenthaler Page 129-162**

**6.** Josef Tieffenthaler was born at Bozen in the Tyrol, on 27th August, 1710 and died at Lucknow on 5 July, 1785. He entered the Society of Jesus 9 October, 1729, and went in 1740 to the East Indian mission where he occupied various positions, chiefly in the empire of the Great Moghul. After the suppression of the Society he remained in India, and on his death was buried in the mission cemetery at Agra, where his tombstone still stands. He was a fine scholar with an unusual talent for languages; besides his native tongue he understood Latin, Italian, Spanish, French, Hindustani, Arabic, Persian, and Sanskrit. He was the first European who wrote an exact description of Hindustan. A brief list of his works is the best proof of his extraordinary power of work and his varied scholarship. In geography, he wrote a "Descriptio Indiae", that is a circumstantial description of the twenty two provinces of India, of its cities, fortresses, and the most important smaller towns, together with an exact statement of geographical positions, calculated by means of a simple quadrant. He wrote a large book on the

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courses of the Ganga. In history, he wrote many books. He wrote on the origin of the Hindus and their religion in Latin, expeditions of Nadir Shah to India in German, the Deeds of the Mughal Emperor Shah Alam in Persian, Incursions of the Afghans and the Conquest of Delhi in French. He wrote a book on contemporary history 1757-64. In linguistics he prepared a Sanskrit-Parsee Lexicon, treatises in Latin on the language of the Parsees, on the proper pronunciation of Latin, etc.. In the area of religion, he wrote 'Brahmanism' and works on Indian polytheism, Indian asceticism, the religion of Parsee Islam and relations of these religions to one another. In the field of the natural sciences he wrote on astronomical observations on the sunspots and zodiacal light, studies on the Hindu astronomy, astrology and cosmology. In addition, he wrote on the descriptions and observations of the flora and fauna of India. Thus he was an intellectual giant and a linguistic wizard and not mere a traveller or a merchant who made casual remarks. His published works along with biographical notes can be lucidly gleaned from Catholic Encyclopedia (1913) and 'Christianty in India' through Wikisource and Wikipedia's website respectively. His writings and contributions also find place in the books -HUONDER, Deutsche Jesuitenmissionäre des 17. und 18. Jahrh. (Freiberg, 1899), 179; NOTI. Jos.Tieffentaller, S. J., A Forgotten Geographer

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of India (Bombay, 1906); HOSTEN, Jesuit Missionaries in Northern India (Calcutta, 1907).

**7.** The District Judge of Faizabad who visited Sri Ramjanmasthan/alleged Baburi Masjid on 18th March 1886 did not find any of the Inscriptions published by A. Fuhrer in 1989 and by A. S. Beveridge in 1921. Said Ld. Judge in his Judgment has recorded that the entrance to the enclosure was under a gateway which bore the superscription *"Allah"* immediately on the left as the platform or Chabootra of masonary occupied by the Hindus. His said finding is recorded in Judgment and Order dated 18th March 1889 passed in Civil Appeal No.27 of 1886 Mahanta Raghubardass, Mahant Janam Asthan City Oudh VS. Secretary of State of India, Court of Council and Mohd. Asghar by the said Judicial Officer Mr. F.E.A. Chamier, District Judge Faizabad which constitute pages 87 to 91 of the volume 10 of the Documents of O.O.S. No. 4 of 1989 being Volume I of the plaintiffs' documents. Relevant portion from page 89 of the said Volume being an extract of the said judgment reads as follows:

> "I visited the land in dispute yesterday, in the presence of all parties.
> I found that the Masjid built by the Emperor Babar stands on the border of the town Ajudhia-that is to say to the west and south it is clean of inhabitations. It is most unfortunate that a Masjid should have been built on land specially held sacred by the Hindus, but as the event occurred 356 years ago it is too late now to remedy the grievance all that can

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> be done is to maintain the parties in status quo. In such a case as the present one any (Sic) would cause more harm and damage (Sic) of order than benefit. The entrance to the enclosure is under a gateway which bears the superscription *"Allah"* immediately on the left as the platform or Chabootra of masonary occupied by the Hindus. On this is a small superstructure of wood in the form of a tent. This "Chabootra" is said to indicate the birthplace of Ram Chan deer. Infront of the gateway in the entry to masonary Platform of the Musjid. A wall pierced (*illegible*) and therewith railings divides the platform of the Musjid from the enclosure in which stands the "Chabootra"."

Be it mentioned herein that said judgment is Judgment per Incuriam as it has been passed in ignoratum of law. Prior to annexation of Oudh to British Rule the Law of Shar was law in force which law neither had rule of Limitation nor did recognise adverse possession. Apart from this Hindu law in respect of Debutter property also did not recognise adverse possession. This principle of Law had already been laid down by the Indian Courts of Record as well as Privy Council, London as such said judgment passed in ignoratum of those judicial pronouncement has no force of law. Moreover in the said Suit the Disputed Structure was not subject matter of that suit nor was declaration of title in respect thereof prayed for.

**8.** In the aforesaid judgment recording of the Ld. Judge the entrance had the superscription *"Allah"* leaves no doubt that he had inspected the disputed premises and Structure very minutely and it is needless to say that if there would have been alleged Inscriptions that would not have gone

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unnoticed by him. Be it mentioned herein that according to Hindus' sacred book *"Allopanisad" "Allah"* is one of the several names of the almighty. Be it mentioned herein that the "Allopanishad" has been reproduced by the founder of Arya Samaj Maharshi Dayanand Saraswati in his book "Satyarthaprakash" 2nd revised edition published in Vikram Samvat 1939 i.e. 1882 A.D.. According to him it was written during the reign of Emperor Akbar. The text of "Allopanishad" as published on pages 556-67 of 'Satyarthaprakash' in "Dayanand-Granthmala published by Srimati Paropakarini Sabha, Ajmer 1983 Edn. reads as follows:

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**अथाल्लोपनिषदं व्याख्यास्यामः ।**

**अस्माल्लां इल्ले मित्रावरुणा दिव्यानि धत्ते ।**
**इल्लल्ले वरुणो राजा पुनर्वुः ।**
**हया मित्रो इल्लां इल्लल्ले इल्लां वरुणो मित्रस्तेजस्कामः ॥ १ ॥**

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होतारमिन्द्रो होतारमिन्द्र महासुरिन्द्राः ।
अल्लो ज्येष्ठं श्रेष्ठं परमं पूर्णं ब्राह्मणं अल्लाम् ।। २ ।।
अल्लोरसूलमहामदरकबरस्य अल्लो अल्लाम् ।। ३ ।।
आवल्लाबूकमेककम् । अल्लाबूक निखातकम् ।। ४ ।।
अल्लो यज्ञेन हुतहुत्वा । अल्ला सूर्य्यचन्द्रसर्वनक्षत्राः ।। ५ ।।
अल्ला ऋषीणां सर्वविद्यां इन्द्राय पूर्वं माया परममन्तरिक्षाः ।। ६ ।।
अल्लः पृथिव्या अन्तरिक्षं विश्वरूपम् ।। ७ ।।
इल्लां कबर इल्लां कबर इल्लां इल्लल्लेति इल्लल्लाः ।। ८ ।।
ओम् अल्लाइल्लल्ला अनादिस्वरूपाय अथर्वणाद्यामा हुं ह्रीं जनान-
पशूनसिद्धान् जलचरान् अदृष्टं कुरु कुरु फट् ।। ९ ।।
असुरसंहारिणी हुं ह्रीं अल्लोरसूलमहमदरकबरस्य अल्लो अल्लाम्
इल्लल्लेति इल्लल्लाः ।। १० ।।

इत्यल्लोपनिषत् समाप्ता ।।

**9.** A. Fuhrer was the first archaeologist who read and translated and got published three inscriptions alleged to be fixed on Babari Masjid which was alleged to be built under command of Emperor Babur at the site of Sri Ramjanmasthan. A. Fuhrer's book "The Sharqi Architecture of Jaunpur, with notes on Zafarabade, Sahet-Mahet and other Places in the North-Western Provinces and Oudh" containing those three Inscriptions was first published by the Archeological Survey of India in 1989.

A. Fuhere's translations and introductory notes thereto read as follows:

> "Babar's- Masjid at Ayodhya was built in A.H. 930, or A. D. 1523, by Mir Khan, on the very spot where the old temple Janamasthanam of Ramchandra was standing . The following inscriptions are of interest.

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Inscription No.XL written in Arabic character over the mihrab of the masjid it gives twice the Kalimah:-

" There is no God but' Allah, Muhammad is

His Prophet"

Inscription no.XLI is written in Persian poetry, the meter being Ramal, in six lines on the member, right-hand side of the masjid.

"1.By order of *Babar*, the king of the world,
2. This firmament-like, lofty,
3. Strong building was erected.
4. By the auspicious noble *Mir Khan.*
5. May ever remain such a foundation,
6. And such a king of the world."

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Inscription No.XLII is written in Persian poetry ,the metre being Ramal, in ten lines, above the entrance door of the masjid. A few characters of the second and whole third lines are completely defaced.

"1. In the name of God, the merciful, the clement.
2. In the name of him who…; may God perpetually keep him in the world.
3. . . . . .
. . . . . .
4. Such a sovereign who is famous in the world, and in person of delight for the world.
5. In his presence one of the grandees who is another king of Turkey and China.
6. Laid this religious foundation in the auspicious Hijra 930.
7. O God ! May always remain the crown, throne and life with the king.
8. May Babar always pour the flowers of happiness; may remain successful.
9. His counselor and minister who is the founder of this fort masjid.
10. This poetry, giving the date and eulogy, was written by the lazy writer and poor servant Fath-allah- Ghori, composer."

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> The old temple of Ramachandra at Janamasthan must have been a very fine one, for many of its columns have been used by the Musalmans in the construction of Babar's masjid. These are of strong, close-grained, dark- coloured or black stone, called by the natives *Kasauti*, "touch-stone slate," and carved with different devices. They are from seven to eight feet long, square at the base,centre and capital, and round or octagonal intermediately.
>
> ( The Sharqi Architecture of Jaunpur by A.Fuherer Ph.D. P 67-68)

**Annexure-IV Babur Nama by A.S. Beveridge**

**10.** Annette Susannah Beveridge was the second british scholar who in 1921 published texts of two Inscriptions purported to be of alleged Babri Mosque which were supplied by the Deputy-Commissioner of Fyzabad alongwith English Translation and Transliteration thereof done by a Muslim. Said Inscriptions are Appendix "U" of Babur-Nama (Memoires of Babur) translated by her. In her said book A.S. Beveridge before giving Text and Translation of the alleged two Inscriptions writes as follows:

> " Thanks to the kind response made by the Deputy-Commissioner of Fyzabad to my husband's enquiry about two inscriptions mentioned by several Gazetteers as still existing on 'Babur's Mosque" in Oudh, I am able to quote copies of both."

After giving text and transliteration of an Inscription he gives Translation with her exaggerating value thereof as follows:

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> "The translation and explanation of the above, manifestly made by a Musalman and as such having special value, are as follows:-"
>
> "The inscription inside the Mosque is as follows:-"

After giving its Text and Transliteration she translates the alleged First Inscription as follows:

> "1. By the command of the Emperor Babur whose justice is an edifice reaching up to very height of the heavens,
> 2. The good-hearted Mir Baqi built this alighting-place of angels;
> 3. Bavad khair baqi ! (May this goodness last for ever!)
> The year of building it was made clear likewise when I said Buvad khair baqi (=935)."

> "The inscription outside the Mosque is as follows:-"

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After giving its Text and Transliteration she translates the alleged Second Inscription as follows:

> "The explanation of the above is as follows:-"
> "In the first couplet the poet praises God, in the second Muhammad, in the third Babur - there is a peculiar literary beauty in the use of the word *la-makani* in the 1st couplet. The author hints that the mosque is meant to be the abode of God, although he has no fixed abiding-place. - In the first hemistich of the 3rd couplet the poet gives Babur the appellation of qalandar, which means a perfect devotee, indifferent to all worldly pleasures. In the second hemistich he gives as the reason for his being so, that Babur became and was known all the world over as a qalandar, because having become Emperor of India and having thus reach the summit of worldly success, he had nothing to wish for on this earth.
> The inscription is incomplete and the above is the plain interpretation which can be given to

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the couplets that are to hand. Attempts may be made to reed further meaning into them but the language would not warrant it."

(Babur-Nama Appendices U Page Ixxvii

-lxxix)

**11.** The Texts and Translations of the alleged inscriptions supplied to and published by S.A. Beveridge in 1921 are quite different from that the Texts and Translations of the alleged three inscriptions supplied to and translated by A. Fuhrer and published in 1889 by the Archaeological survey of India. Her statement that those Inscriptions were ' still existing on 'Babur's Mosque" is not trust worthy as it appears from her own admission that those inscriptions were supplied to her husband by the Deputy-Commissioner of Fyzabad and he had no occasion to see and examine the existence of the real Inscriptions.

**12.** In Waqf Commissioner's report dated Feb. 8 1941, it has been recorded that the Emperor Babur built the alleged Babri Mosque and appointed one Abdul Baqi its Mutawalli. No Papers related to grants in respect of alleged mosque were available. In this report one Abdul Baqi has been stated to be Mutwalli of the Janam Asthan Mosque at Ajudhya built by Emperor Babur. If inscriptions would have been there then he would have mentioned the same and in that event he would have mentioned the name of either Mir

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Khan or Mir (and) Khan Baqi or Mir Baqi instead of Abdul Baqi. A copy of the said report is on pages 44 to 48 of the Vol.6 of the documents filed in the instant Suit by the plaintiffs: Relevant extract from the said report reads as follows:

> "It appears that in 935 A.H. Emperor Babar built this mosque and appointed Syed Abdul Baqi as the mutwalli and khatib of the Mosque (vide clause 2 statement filed by Syed Mohammad Zaqi to whom a notice was issued under the the wakf Act.) An annual grant of Rs. 60/- was allowed by the Emperor for maintenance of the mosque and the family of the first mutwalli Abdul Baqi. This grant was continued till of the fall of the Moghal Kingdom at Delhi and the ascendancy of the Nawabs of Oudh.
> According to CI. 3 of the written statement of Mohammad Zaki Nawab Sa'adat Ali Khan, King of Oudh increased the annual grant to Rs. 302/3/6. No original papers about this grant by the king of Oudh are available."
>
> (Ibid p.45)

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**13.** Ld. Civil Judge Faizabad, Mr. A. Akhtar Ahasan caused Judicial Inspection of the Disputed Structure on 26th March 1946 in R. Suit No. 29 of 1945 Shia Central Board of Waqf U. P. Vs. Sunni Central Board of Waqf U.P. Said 'Inspection Note' of the Ld. Judge as well as Persian Text of Two Inscriptions alleged to be found on Disputed Structure are on pages 355 to 360 of the Volume 12 of the Documents i.e. Volume III of the Plaintiffs' documents filed in 0.5. No. 4 of 1989.1st Inscription is on page 356 while 2nd Inscription is on page 357. Notes are on pages355 & 357.

Inspection Notes read as follows:

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> "Inspection Notes
> 26-3-46
> Present:-. Mesud. Musanna & Khoja M. Yaqub, counsel for parties ( besides others).
> Inspected the mosque in suit and found the following inscriptions on a stone tablet near the pulpit.-
>
> …….(PersianTxt)
> …….
>
> According to both parties this-Kotba was replaced a new in place of the original tablet which was demolished during the communal riots in 1934. There is another tablet at the central arch of the mosque facing the court-yard & it contains the following couplets:-
> …….(PersianText)
> ……
> Note:- The above inscription was read by Sheikh Karamatullah (D. W. 5) who climbed up the arch by means of a ladder & he read verses and written in Arabic character.
>
> Sd. A. Akhtar Ahasan
> 26.3.46.

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**14.** In his judgment and Order dated 30-02-1946 passed in R. Suit No. 29 of 1945 Shia Central Board of Waqf U. P. Vs. Sunni Central Board of Waqf U.P., the Ld. Civil Judge Faizabad, has incorporated translation of the inscription N0. 1 in its entirety and, gist of the inscription N0.2. (Relevant portion of the said judgment containing translation of the inscription No.1 and gist of the inscription N0.2 extracted from page 113 of the Documents' Volume 10 being volume I of the Documents of the plaintiffs in 0.0.S. No. 4 of 1989 reads as follows:

> 'Lastly there are the two Inscription in the mosque which have been reproduced in my inspection notes. These are also referred to in the Gazettes and according to the date in the inscription on the pulpit

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> it was built in 923 Hijri, while according to other it was in 935 H. corresponding with 1528 A.D. These inscriptions were the sheet-anchor of the plff's case but I am of the opinion that they are inconclusive.
> The 1st inscription contains three couplets in Persian and when translated runs as follows:
>
> "By the order of Shah Babar, whose justice went up to the skies (i.e. was well known), Amir (Noble) Mir Baqi, of lofty grandeour, built this resting place of angels in 923 Hijri."
>
> The 2nd inscription is more elaborate and contains usual high flown language on eulogy of Babar & describe Mir Baqi of Isphahan as his adviser and the builder of the mosque. This inscription no doubt supports the plff's case, because it does not say that it was by the order of Babar shah & it only refers to the reign of Babar but the 1st couplet in the 1st inscription near the pulpit, clearly supports the theory that Babar had ordered the building of the as stated in the Gazettes and the settlement report.'

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**15.** From the above mentioned Notes and Judgment of the Ld. Civil Judge Faizabad it becomes crystal clear that the Inscriptions were destroyed in communal riot in 1934 and were subsequently restored by the contractor Tehwoor khan. Alleged two inscriptions records two different dates of erection of the building. In one it is given 923 Hijri corresponding to 1516-17 A.D. while in other Inscription it has been given 935 A.D. corresponding to 1528-29 A.D. In this Inscription Mir Baqi of Isphahan has been described as Babur's adviser and the builder of the mosque. As Esfahan and Taskend are part of two different Nations i.e. Iran and Uzbekistan respectively these two Baqi are to be construed two different persons. While in A. Fuhere's Inscription

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structure in question has been mentioned as lofty firmament building ; in the contractor Tehwoor khan's restored Inscription it has been purposely mentioned as resting place of angels.

**16.** In 1964-65 Dr. Z.A. Desai, Superintendent, Persian and Arabic Inscription Nagpur published Texts and Translations of three Inscriptions alleged to be fixed on Babari Mosque. Dr. Desai gives reason for his said publication of the Texts and Transalations of the said Inscriptions as follows:

> " The mosque contains a number of inscriptions. On the eastern façade is a *chhajja*, below which appears a Quaranic text and above, an inscription in Persian verse. On the central *mihrab* are carved religions texts such as *Kalima* (first Creed), etc. On the southern face of the pulpit was previously fixed a stone slab bearing a Persian inscription in verse. There was also another inscription in Persian verse built up into the right hand sidewall of the pulpit. Of these, the last mentioned two epigraphs have disappeared. They were reportedly destroyed in the communal vandalism in 1934 A.D., but luckily, I managed to secure an inked rubbing of one of them from Sayyid Badru'l-Hasan of Fyzabad. The present inscription, restored by the Muslim community, is not only in inlaid *Nasta'liq* characters, but is also slightly different from the original, owing perhaps to the incompetence of the restorers in deciphering it properly.[1]
>
> The readings and translations of the historical epigraphs mentioned above, except in the case of one, were published by Fuhrer and Mrs. Beveridge, but their readings are so incomplete and different from the text that their inclusion in this article is not only desirable but imperative.
>
> The epigraph studied below was built up into the southern side of the pulpit of the mosque, but is now lost, as stated above It is edited here from the estampage obtained from Sayyid Badru'l-Hasan of Fyzabad[4]. Its three-line text consists of six verses in Persian, inscribed in ordinary *Naskh* characters

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within floral borders."

*(Epigraphia Indica Arabic & Persian Supplement 1964 and 1965 p. 58-59)*

Dr. Desai's footnotes 1 & 4 reads as follows:

"[1] Below the restored epigraph is inscribed in four lines the following Urdu record conserning the fate of the original inscription-

original inscription :—

۲۷ مارچ سنه ۱۹۳۴ ع مطابق ۱۱ ذی الحجه سنه ۱۳۵۲ھ بروز بلوه هندو بلوائی مسجد شهید کرکے اصلی کتبه اٹھا لے گئے جسکو تہور خان ٹھیکہدار نے نہایت خوبی کے ساتھ تعمیر کیا ۔

Free English translation of the above Urdu record reads as follows:-

"On 27th March, 1934 the Hindus - after having made the masjid shahid took away the original inscription which was dexterously rebuilt by the contractor Tehwoor khan."

"[4] It may be argued that since the epigraph is not quoted in Fuhrer's SAJ, the slab had already disappeared before he wrote. But that is not the case, since the tablet was found therein 1906-07 A.D. by Maulavi M Shua'ib of the office of the Archaeological Surveyor Northern Circle, Agra (Annual Progress Report of the Office of the Archaeological Surveyor, Northern Circle Agra, for 1906-07; Appendix. D)"

(Ibid.p.59)

In fact Dr. Desai's this statement purported to prove his hollow claim is also wrong as no such Appendix as mentioned is available. For the sake of argument only if for a moment it is assumed that in 1906-07 Maulavi M Shua'ib had appended such Inscription even then it does not prove that it was in existence in 1889 when Fuhrer published Inscriptions otherwise it would have been necessarily transmitted to A. Fuherer.

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Dr. Z.A. Desai's Translation of the first inscription being Plate XVII (a) reads as follows:-

> "1. By the order of king Babur whose justice is an edifice, meeting the place of the sky (i.e. as high as the sky),
> 2. This descending place of the angels was built by the fortunate noble Mir Baqi.
> 3. It will remain an everlasting bounty, and (hence) the date of its erection became manifest from my words: *It will remain an everlasting bounty.*"
>
> (Ibid.p.59)

Dr. Desai deciphering the numerical value and hidden meanings of the chronogram of the First Inscription writes as follows:

> "The numerical value of the chronogrammatic contained in the second hemistich of the last line adds up to give the year A.H. 935 (1528-29 A.D.) There is also a play in the word Baqi in the above phrase: Baqi means everlasting and it is also the name of the noble-man-builder is both the meanings are equally applicable here. The phrase can be translated also as: It is a bounty of Baqi."
>
> (Ibid.p.59-60)

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Dr. Z.A. Desai's before publishing Text and Translation of the second inscription being Plate XVII (b) informs about its non-existence as follows:-

> "The second inscription on the mosque also in Persian verse, consisted of three couplets arranged in six lines. The epigraphic tablet, which was built up into the right-hand side wall of the pulpit, does not exist now and therefore, the text of the inscription is quoted from Fuhrer's work."
>
> (Ibid.p.60)

Dr. Z.A. Desai's Translation of the second inscription being Plate XVII (b) reads as follows:-

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> "1. In accordance with the wishes of the ruler of the world, Babur,
> 2. A lofty building like the palace of the spheres,
> 3. (that is to say) this lasting house *(of God),* was founded
> 4. By the fortunate noble Mir *(and)* Khan *(Baqi)*.
> 5. May ever remain such a founder of its edifice,
> 6. (and) such a king of the world and age!"
>
> (Ibid.p.60)

Dr. Z.A. Desai's before publishing Text and Translation of the third inscription being Plate XVII (c) says that Fuhrer must have been mis- informed about the same which means in fact A. Fuherer had not seen the third inscription himself but had relied on other's wrong information. His said statements read as follows:-

> " The third record of Babur in the Ajodhya masque, comprising a fragment of eight Persian verses of mediocre quality and a colophon appears over the central entrance to the prayer- chamber above the chhajja.The four line text is executed in fairly good *Naksh* characters in relief amidst floral borders, on a slab measuring about 2m.by 55 cm. The text is fairly well preserved, and Fuhrer must have been misinformed to affirm that 'a few characters of the second and the whole third lines are completely defaced.' "
>
> (Ibid.p.60)

Dr. Z.A. Desai's Translation of the third inscription being Plate XVII (c) reads as follows:-

> "1. In the name of Allah, the Beneficent, the Merciful. And in Him is trust.
> 2. In the name of One who is Wise, Great (and) Creator of all the universe (and) is spaceless. After His praise, blessings be upon the Chosen one (i.e. the Prophet), who is the head of prophets and best in the world. The *qalandar*-like (i.e. truthful) Babur has become celebrated (lit. a story) in the world, since (in his time) the world has achieved prosperity.

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> 3. (He is) such (an emperor) as has embraced (i.e. conquered) all the seven climes of the world in the manner of the sky. In his court, there was a magnificent noble, named Mir Baqi the second Asaf, Councilor of his government and administrator of his kingdom, who is the founder of this mosque and fort-wall.
> 4. O God, may he live for ever in this world, with fortune and life and crown and throne! The Time of the building is this auspicious date, of which the indication is nine hundred (and) thirty five (A.H. 935=1528-29 A.D.).
>
> Completed was this praise of God, of Prophet and king. May Allah illumine his proof! Written by the weak writer and humble creature, Fathu'llah Muhammad Ghori."

(Ibid.p.60-61)

**17.** Dr. Z.A. Desai informs that Fuhrer's reading does not appear to be free from mistakes. But he does not specify the mistakes committed by Fuhrer in his reading of the texts and translations thereof. From the scrutiny of Dr Desai's translation it appears that Dr. Desai in 4th line has added "*and*" between '*Mir'* and '*Khan'* and "*Baqi"* after '*Khan'*. So he has converted '*Mir Khan'* into '*Mir Khan Baqi'*. And in the 3rd line he has added "*of God*" after '*this lasting house*' to make it a mosque. He has neither given any rational explanation for his said conversion of '*Mir Khan'* into '*Mir Baqi'* nor He has exhibited as to how the Fuhrer's translation is different from the original text.

**18.** Dr. Z.A. Desai In his detailed discussion on all inscriptions of Babur's regime writes an introduction that a rough draft of an article of his predecessor Maulivi M. Asuraf Hussain

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who retired in 1953 was found amongst sundry papers in his office with a note that it might be published after revision by his successor. Consequently, he claims, that he has published these inscriptions with translation after extensive revision and editing, but nowhere has he mentioned that which portions of the reading of these inscriptions are his own revision and editing and on what ground these revisions have been made. About inscriptions at Ayodhya he writes that there are three inscriptions in the Babari Mosque out of which the two were completely destroyed by the Hindu rioters in 1934 A.D. However, he managed to secure an ink-stampage of one of them from Sayyid Badru'l - Hasan of Fyzabad. He writes that the present inscription restored by the Muslims Community "is also slightly different from the original owing perhaps to the incompetence of restorers in deciphering it properly." When Dr. Desai himself admits that the restored inscription is slightly different from the original, then his claim that the restored inscription fixed on Baburi mosque in or after 1934 is the dextrously rebuilt of the original one alleged to be fixed on since the days of Babur becomes meaningless and un-trustworthy. . In fact, none of the Inscriptions was fixed on the Disputed Structure which has all along been sacred place of the Hindus known as Sri Ramajanmasthan Temple.

**19.** Dr. Desai informs that he has based his translation on the

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inscription of Fuhrer, although he says that Fuhrer must have been misinformed to affirm that; “few corrections of the second and the whole third line completely defaced”. Even if it is supposed that some words in the 2nd line and the whole third line are defaced, there is not much impact in the meaning of the text of the inscription. But here we do find that Dr. Desai has extensively changed the meaning of the translated passage. It is quite different from what Fuhrer had translated. Fuhrer had written that it is in ten lines, above the entrance door of the Masjid. He has made its translation in ten separate lines. Dr. Desai has considerably changed the meaning of the text without pinpointing how Fuhrer’s translation was wrong. Since beginning and the end of the text are the same and the inscription is said to be the same and there is no major variance in Fuhrer’s English translation from the Persian text, Dr. Desai’s translation appears to be arbitrary. He has changed the date of the inscription 930 H. (1523 A.D.) to 935A.H. without assigning any reason. In Dr. Desai’s translation the name of Mir Baqi the second Asfaq appears where as in the original Persian text Mir Baqi’s name does not appear at all. Then Babar is called a *Qalandar* in this inscription which is not found in Fuhrer’s translation. After 4th line Dr. Desai does not follow the line system and at the end he mentions Fathu’llah Muhammad Ghori as the humble writer of this inscription.

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His name figures in the Fuhrer's translation too. He goes on expanding how Babar was called *Qalandar* but he does not explain how the changes have taken place in the inscription which was not in the text read by Fuhrer.

**20.** In the above mentioned Inscriptions the Emperor's name Zahiru'd-Din Muhammad Babur Badshah Ghazi which has been recorded almost in all other available Inscription of his period, is missing from which it appears that the forgers of later days were not familiar with the correct name of the said Emperor.

In the Inscription, dated A.H. 933 i.e. 1526-27 A.D. found on the wall of a well from Fatehpur Sikri being Plate No. XV(a) in its 1st line his name has been recorded as follows:

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"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Epigraphia Indica Arabic & Persian Supplement 1964 and 1965 at page-51)

In the Inscription of A.H. 934 i.e. 1527-28 A.D. found on a mosque from Panipat being Plate No. XVI(b) in its 1st line his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Ibid.p. 55)

In the Inscription dated A.H. 934 i.e. 1527-28 A.D. found on a mosque from Rohatak being Plate No. XVI(a) in its 2nd line his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Ibid.p. 56-7)

In the Inscription dated A.H. 934 i.e. 1528 A.D. found on a mosque from Rohtak being Plate No. XVII(a) in its 1st line his name has been recorded as follows:

"His Majesty Babur Badshah Ghazi"

(Ibid.p. 57)

In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a

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mosque from Palam(Delhi) being Plate No. XVIII(a) in its 1st and 2nd lines his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Ibid.p. 62)

In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a mosque from Pilakhna being Plate No. XVIII(c) in its 3rd line his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Ghazi"

(Ibid.p. 64)

In the Inscription dated A.H. 936 i.e. 1529 A.D. found on a mosque from Maham being Plate No. XIX(a) in its 1st and 2nd lines his name has been recorded as follows:

"Zahiru'd-Din Muhammad Badshah Ghazi"

(Ibid.p. 65)

**21.** It is not uncommon for ruffians to fix old Inscriptions on newly built and / or converted mosques. 'Epigraphia Indica Arabic & Persian Supplement 1964 and 1965' at its pages 55 and 56 records that two Inscriptions dated 1934 fixed on two mosques at Rohtak did not belong to those mosques but have been fixed thereon. relevant extracts from said book read as follows:

> "Among the historical buildings, two mosques, viz., Masjid-i-Khurd in the Fort[2] and Rajputon-ki-Masjid, a new mosque in the city area, bear inscriptions of the time of Babar. The one on the Masjid-i-Khurd consists of three lines inscribed on a tablet measuring 53 by 23cm. Which is fixed over the central archway outside[3]. The slab is badly damaged and considerable portion of the text has peeled off. It is, therefore, not possible to decipher it completely, but this much is certain that it refers to the construction of a mosque in the reign of ahiru'd-Din Muhammad Babur by one Qadi Hammad. If the Tughluq inscription occurring on the outer archway is *in situ*, this epigraph may not belong to this mosque."
>
> (Ibid.p.56)

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> "The other epigraph of Babur in Rohtak is from the Rajputon-ki-Masjid. Fixed over its central arch, the tablet, measuring 1.1 m. By 21 cm., does not belong to the mosque, but it was rather intended as the tombstone of Masnad-i-'Ali Firuz Khan. It is inscribed with two lines of Persian which are slightly affected by the weathering of the stone. The text records A.H. 934 (1528 A.D.) as the date of the construction of the tomb of Masnad-i-Ali Firuz Khan, son of Masnad-i-Ali Ahmed Khan and grandson of Masnad-i-Ali Jamal Khan and refers itself to the reign of Babur. The style of writing is ordinary Naskh. I have read it as follows:-
>
> TRANSALATION
>
> (1) Completed was in the reign of His Majesty Babur Badshah Ghazi, may Allah perpetuate his kingdom and sovereignity, this noble edifice, (viz.) the tomb of His Excellency Masnad-i-Ali[3] Firuz Khan, son of Masnad-i-Ali Ahmad Khan, son of Masnad-i-Ali Jamal Khan, the deceased, all of them, on the 10th of the month of Rabiu'l-Akhar, year (A.H.) four and thirty and nine hundred (10th Rabi'II A.H. 934 = 3rd January 1528 A.D.).
>
> (Ibid. P. 57)

**22.** In Epigraphia Indica Arabic & Persian Supplement 1964 and 1965' at its pages 19 and 20 S.A. Rahim reports that at Fathabad near Chanderi in Guna district of Madhya Pradesh, stands the partially ruined palace known as Kushk-Mahal and Inscrption fixed thereon are not dated back to its construction but have been affixed thereon from time to time either by the visitors or by the Governors thereof. Relevant extracts from his said reprt read as follows:

> " It would not be, however, wholly correct to say that the Kushk-Mahal does not bear any inscription. There are about a score of places on the walls enclosing the stair-cases, referred to above, which bear short inscriptions. The rubbings of some of these were found in the bundles of old estampages which were transferred to our office, from the

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Office of the Government Epigraphist for India, Ootacamund, South India, who in his turn seems to have received them quite some time back from the Archaeological Department of the erstwhile Gwalior state. I prepared fresh rubbings of these records when I toured some places in Madhya Pradesh, including Chanderi, in November 1962. Of these, some are mere repetitions of the same text and as such have been excluded from this purview. The remaining four inscriptions are edited here for the first time.

These inscriptions raise an important question, as to whether they are contemporary with the building or not. They do not appear to be so, because they are not inscribed on tablets set up on the walls, nor are they found incised on prominent places on the monument. A building of such magnificence would have had, if at all it was so planned, an inscription of proportionate prominence. This does not rule out the possibility, however, of the existence of an epigraph on the monument, for it is possible that it had one and may have disappeared since. Moreover, the texts of the inscriptions under study are also vague on this point, for they do not make any explicit reference to the palace-building or its construction. In view of these facts, it appears more likely that these records are either visitors' etchings or some sort of mementos which the governors, the palace-guards or some other officials might have desired to leave on the stone.

Fortunately, one of these four records is dated, and since the same penmanship is employed in the other three records, they can also be safely taken as having been inscribed at about the same time or at short intervals. Their language is Persian and style of writing cursive *Naskh*. The wear and tear of time has affected the stone, resulting into partial obliteration of some of the letters, particularly in the first inscription.

The contents of these four epigraphs classify them into two groups: one, of the first inscription, and the other of the remaining three. The first refers itself to the governorship(amal) of Khan-i-A'zam Sharaf Khan Sultani and the superintendence (*shahnagi*) of one person whose name is not very legible; it seems to be Raja, (son of) Shams, (son of) Fath. The name of the writer which is also not clear, appears

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> to be Shiv Sing(?) Gulhar. This inscription is dated 1489-90.
>
> The three records of the other group refer, between themselves, to the governorship of Malik Mallu Sultani and superintendence of Sarkhail Shariqi Mulki and quote Gulhar Jit(?) Dev, as the scribe. They are undated and hence, it is difficult to state positively if they are earlier than the above dated inscription or not."
>
> (Ibid. P.19-20)

**In view of the submissions of Shri P.N. Mishra, it transpires that even after the conquest, the Ramjanamsthan Temple could not be demolished, even if demolished, the erection of Babri Mosque is illegal and against the tenets of Islam. Accordingly, the disputed site cannot be deemed to be a mosque. He has further submitted that there is no reliable evidence that it was constructed by Babur or Mir Baqi. Accordingly Ramjanamsthan Temple even under the Islamic law shall retain its existence, which is not vanished by any illegal action of Aurangzeb, Babur or any ruler. No valid waqf can also be created. It is further submitted that since there was no Islamic Mosque, accordingly question of offering prayers does not arise and even if the prayer was offered, it is immaterial.**

Thus in view of the arguments of Shri P.N. Mishra, the building cannot be deemed to almighty. It cannot be used for offering prayers. It has no status of a mosque and the old status of RamJanamsthan Temple cannot be vanished by the rulers. It is unwarranted under the Mohammedan law as Hindus were paying

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Jazia.

Sri Hari Shanker Jain, Advocate, appearing on behalf of Hindu Maha Sabha, defendant no.10 has made following submissions:-

1- It is a unique case in which a court of law is required to decide a historical issue relating to about 500 years back for which there can be no direct evidence and parties have to depend on historical books, Gazetteer and other old testaments within the meaning of Section 57(13) Part 1st of the Indian Evidence Act.

2- It is a case in which the Hon'ble Court has not only to decide the Lis between the two parties but also the issue as to whether the action of an invader and the attack made upon the motherland by the Army of Islam led by Babur, King of Fargana, a Islamic country, in 1526-1530 act done by him trampling the cultural heritage of India by partly destroying the temple at Shree Ram Janma Bhoomi and constructing a structure at the same very place, to show the might of Islam, can continue after the enforcement of the Constitution on 26th January, 1950 by virtue of Article 13(1) of the Constitution of India and as such

3- Whether every action done, order passed, civil or judicial in pre- independent era encroaching upon the Right to Religion guaranteed by Article 25 and 26 of the Constitution of India has become non- est, inoperative and void ?

4- The crux of the matter in all the suits is that as to whether

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the structure at the place in question was constructed at the site of a sacred place worshipped by Hindus as Ram Janam Asthan over which a temple existed?

5- It is a historical belief that Lord Vishnu took incarnation as Lord Rama in Treta Yuga i.e more than 8 lac years ago in the palace of Raja Dashrath at Ayodhya and who ruled for more than eleven thousand years. Lord Rama is being worshipped as Bhagwan by believers of Sanatan Dharma commonly known as Hindus from Kashmir to Kanyakumari and Atak to Cuttak and they pay homage to the Janam Bhoomi place at Ayodhya where a big palace of Lord Dashratha once existed. A temple at the said place was also constructed and from time to time on account of deterioration of the building structure by weather and natural decay, by Hindu rulers and lastly renovated by Raja Chandra Dev of Gaharwar Dynasty between 1114 to 1154.

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6- It is relevant to mention that King Vikramaditya in the year 1090 came to Ayodhya and performed rituals and puja at Ram Janama Bhoomi in the temple existing there on (Hans Bakker Vol . . . page. . . . )

7- In Valmiki Ramayana and all the Shastras and Puranas, last being the Skanda Purana (Khanda 10, Ayodhya Mahatma, written before 13th century )

8- The birth place of Lord Ram at Ayodhya, is being worshipped and rituals are performed there continuously since time immemorial.

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9- There is mention in the Sikh Literature that Shree Guru Nanakdev Ji came to Ayodhya in 1505 bathed at River Saryu and had darshan in the temple at Shree Ram Janam Bhoomi.

10- All the above facts historically prove of fatcs establish that the belief of Hindus relating to Shree Ram Janam Bhoomi, at the place in question is continuing from ages much before Babur came to India and the place in question has been a place of religious importance and antiquity for the Hindus and devotees of Lord Shri Ram continuously and such religious belief, performance of rituals Pooja and Arti of the Asthan and the idol of Ram in the Temple has become part and parcel of Hindu religious faith.

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11- The archeological evidence is important in the matter. In this regard Shre Hari Vishnu Shila Lekh found at the spot after demolition of the structure on 6th December 1992 establishes that there existed Shree Hari Vishnu Temple at the place in question constructed in 12th century by Raja Chandra Dev of Gaharwar Dynasty. The fact that Raja Chandra Dev ruled Ayodhya from 1104-1155 is also proved by the book entitled, 'the Early History of India' by Vincent A. Smith filed and relied upon by the plaintiffs (paper no. 324- C 1 Volume 26 at Page. 91)

12- A translation of the inscription of Vishnu Hari Temple has been placed on record ( Paper no. 307- C 1 volume 29 Page 29-41) and paper no. 254 C 1 to 254 Volume 32 page 74 to 113.

13- The Hon'ble Court directed Archeological Survey of India to excavate and to submit a report by virtue of powers vested under

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Order 26 Rule 10 A of CPC. Report has been submitted by ASI and Hon'ble Court has not directed to call for another report, and as such said Report has become the part of record as scientific evidence for placing reliance thereon.

14- The report of ASI clearly established that the disputed structure was raised on the existing wall of temple and no new foundation had been raised. A large material showing the existence of temple has been found and that there existed a big structure. In this regard, the conclusion derived by the ASI is referred to.

15- There is another clinching evidence to establish that the structure in question (partly) was raised destroying a Hindu Temple largely employing the materials of the demolished structure. It is evident from 14 black Kasauti Pillars pictures which are available in the album of white and Black photographs submitted by Director, UP State Archeology in two albums who was directed to take photographs and get videography of the existing structure.

16- Those albums contain the pictures of Kasauti Pillars where Hindu God and Goddess were engraved and those pillars cannot be found in any Mosque. Apart from these pillars the Varah Devta is clearly seen in the outer wall of the structure. In the southern side Singh Dwar is visible. These photos have been pointed out to the Hon'ble Court during course of arguments and in video film displayed before the Hon'ble Court on 27th July 2010.

17- In different Gazetteers the facts have been mentioned by

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Authors on the basis of the clinching evidence and story of damage / demolition of a Temple at the site of Janamsthan and construction of the disputed structure as narrated by the public on the basis of information derived by them from their ancestors and that the said place i.e. the Asthan is believed sacred by Hindus who have been worshiping the temple and place from ages. (Paper No. 132 – C1 to 62 Vol. 29 Page 43-167)

18- It is remarkable to mention that plaintiffs have relied upon the facts mentioned in EPIGRAPHIA INDICA published under the authority of Archeological Survey of India in 1965 edited by Superintendent Dr. Z. A. Desai, wherein it has been clearly mentioned that a mosque was constructed at the birth place of in question, during the reign of Babur and that alleged inscription at the structure was misplaced during 1934 riots and its copy was obtain from Maullavi M. Ashraf Hussain while the one again placed in the structure is a different inscription. (Paper no. 198 C 2 to 123 volume 30 page 107 to 117.

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**Annexure-IV**
**William Finch**
**Page-13**

19- It is relevant to point out that from the travelers account of William Finch and Trifen Thaler, the description of Ayodhya relating to Pooja at the birthplace written by Abul Fazl in Ain-I–Akbari Volume 2 and 3. The Gazateer of 1854 and subsequent gazateers as well as the report A. Fuhrer 1891, marked as ex- j – 24 volume 35 at page 341 to 351. There is a clear mention that there existed Rama temple at the place in question. From the Gazateers

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report as well as from the Judgment of Civil Judge in Suit no. 61/ 280 of 1885 it is clear that Hindus were performing Pujas in the inner courtyard and after riot in 1855 a railing was put, and Muslims were allowed to perform Namaz as well. But there is no evidence that the Hindus did not continue to worship the idols inside the inner courtyard. The Muslims tried to enter upon the inner courtyard in the year 1934 and riot took place in which the Domes were damaged and were rebuilt by the Britishers giving outlook of a Mosque. There is no evidence that after riots, the structure was handed over to Muslims by the Government. The Hindus continued in possession and pooja was being performed in the inner courtyard and also on chabutara. The pilgrims and devotees continued to worship and perform ritual of all the sacred places at the Asthan.

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20- It is remarkable to mention that the building in question cannot be termed as mosque in any way. On the pillars, images of Hindu God and Goddess are visible, at the entrance small ‘aala’ for worship of the deity was there, in the northern side Singh Dwar was there and the outer was the image of Varah is very much visible. Apart from all these evidences, one more remarkable thing is that there is parikrama marg round the structure which is found in a Temple. After Darshan of the ‘Idol’, the ‘Charans’ and Sita Rasoi’, devotees were taking parikrama of the Temple continuously much before the rule of Babur. The Panchkosi and Chaudah Kosi parikrama of the Asthan are being performed from ages. On Ram Naumi day, the birth place of Lord Ram devotees in lacs were collecting to perform Pooja and other rituals much

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before from Babur invaded and continued till date.

21- It is noteworthy that in all the Government and Revenue Record Janamsathan or Temple have been mentioned. Even the Muslims in their applications have referred the place as Janam asthan. In 1858, Mohd. Asgar, the alleged Mutwalli had confirmed that Hindus collect and perform puja there from ages.

22- It is remarkable that all the Muslim historian, writers, intellectuals etc have continuously maintained that Babur constructed a Mosque after demolishing the birthplace temple at the site in question. For the first time, Mohd. Ayub Advocate, in his statement under Order 10 CPC asserted that Mosque was constructed under the orders of Babur at a barren land.

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23- It is noteworthy that Mohd. Ayub Advocate could not give said statement on the basis of his knowledge as he had not seen the events of 1528 and he has not disclosed his source of knowledge.

24- In Suit No. 29 of 1945, UP Shia Wakf Board Vs. U.P. Sunni Wakf Board which is being relied upon by the plaintiffs, there is a finding that the Mosque in question was constructed after demolishing a Temple at the Birthplace of Lord Ram. The Muslims have also not filed any appeal against the said finding. Therefore, there is estoppels against the Muslims on the issue and they cannot assert that the alleged Mosque in question after demolishing the Temple at the Ram Janam Asthan was constructed on a barren land.

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25- From a reading of Babur Nama, it is crystal clear that he hated Hindus and Idol worshippers and he took a vow to break their Idols in pieces.

26- Therefore, a clear mens rea is established and Babur's hatred came true when under his order temple at the place in question was destroyed partly to humiliate the Idol Worshippers and show the victory of Army of Islam over Pagans( Kafirs).

27- It is relevant to point out that Muslim Plaintiffs have asserted that from the time of Babur till British Rule they were being paid Nankar grant. In this regard it is to point out that there was no proof that any grant was ever given by any ruler before 1860 in the name of alleged Baburi Mosque. It is for the first time that Britishers allured the Muslim by financial grant of Rupees 302 and 6 annas on the condition that they will be loyal to the Britishers and give military service whenever required. The grant was given for a Mosque existed at Mauja Sehenava and not for any Mosque at Mauja Kot Ramchandar. Mauja Sehenava is 5 kilometers away from Mauja Kot Ramchandar.

There is no proof that any Wakf was ever created or the Mosque was on a Wakf property. No Wakf can be created over the site of a Hindu temple or Hindu place or at the Asthan of Hindu worship. It is immaterial as to whether Muslim law permits such a construction of a Mosque and the defendant Hindu Maha Sabha does not rely on Muslim law at all. In regard to Hindu places of worship, Muslim law cannot be applied and Hindu Law will apply

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and prevail, which lays down that once deity's property, if always a deity's property and even King cannot take it. Even if under Muslim law the construction in question could be recognized as mosque, the defendant does not place reliance on that analogy to take benefit of foreign law which would be shameful and derogatory.

He has further submitted that on the basis of archaeological evidence and remains which were found after the demolition of the old structure suggests that after demolition of the temple the mosque was constructed by the debris of the old temple.

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1. The most clinching evidence is epigraphical, i.e., documents inscribed on stone. It is the inscription of that very king in whose reign the Hindu temple at Rama Janmabhumi was built, King Govinda Chandra. It is, therefore, contemporary documentary evidence which is incontrovertible hence it should be fully relied upon in establishing the historical fact of the existence of a pre-Babari Masjid Hindu temple at Rama Janmabhumi.

2. It is a 20-line lekha (inscription or document) engraved on a rectangular phalaka (slab or tablet) of buff sandstone (Shila) . It measures about 5 fts. In length and 2.25 fts. In width. The language of the inscription is Sanskrit. The text is largely composed in beautiful verses;

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only some portions are in prose. The script is Nagari written in the 11th-12thcentury A.D. style. This is fully established by palaeography or "the science of old writings'.

3. That inscription, in the absence of proper professional estampages, which the court must immediately arrange from the Archaeological Survey of India, has understandably as yet not been fully deciphered by palaeographists and epigraphists. Nevertheless, substantial portions have been deciphered from the available estampages, photographs, colour slides and a video-film prepared by Dr. S.P. Gupta jointly with Dr. Sudha Malaiyya on 13th Dece. 1992, which prove beyond an iota of doubt that here at Rama Janmabhumi there did exist from at least the early 12 th century A.D. a Hindu temple. The inscription and its deciphered portions are given in Appendix –I. Here we are quoting only the relevant portions to bring home the single point that as early as the first half of the 12th century A.D. a magnificent and imposing Hindu temple,dedicated to Lord Vishnu-Hari, was constructed here during the reign of the most powerfull ruler of this region, King Chandra Deva of the Gahadval Dynasty ruling from Kannauj, an ancient city of the R. Ganga, from where even the king Harsha had ruled in the 7th century A.D.

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4. The inscription has not been read fully due to the non-availability of good impressions, but what has so far been deciphered in more than enough to conclude the erection of a Vaishnava shrine there during this period. The record was evidently put up on a wall of the shrine to mark its completion and installation of the divine image. Line 15 of this inscription tells us that a beautiful temple of Vishnu-Hari built with heaps of stone (sila-samphati-grahais) and beautified with a golden spire (hiranya-kalasa- sri-sundaram) unparalleled by any other temple erected by earlier kings (purvvair-apy-akritam kritam nripatibhir) was constructed. This wonderful temple (aty-adbhutam)was built in the temple-city (vibudh-alayani) of Ayodhya and Saketa were closely connected, Saketa being the district wherein Ayodhya was located. The two names are used as synonymous in classical Sanskrit literature, and it is likely that they represent the twin cities of Ayodhya and Faizabad. Towards the end it also refers to God Vishnu as destroying kind Bali (in Vamana incarnation) and the ten headed (Dasanana, i.e. Ravapa) and alludes to the serious fear from the west (**paschatya-bhiti**). It also contains the expression Janmabhumi. It was composed by the poet Ayushyachandra, son of Alhana. Perhaps he was also a ruling chief and as royal poet he was said to have excelled even Sahasanka and

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Sudraka and is credited with the excavation of tanks, wells as well as stepped wells. We come across a reference to king Govindachandra, who appears to be identical with the homonymous Gahadavala king, as well as to strong ruling chief named Sallakshana twice. This Sallakshana cannot be dfinitely identified as the whole inscription has not yet been deciphered. He could have been a Gahadavala feudatory or the well-known Chandella king of that name who ruled towards the close of the eleventh and the beginning of the twelfth century A.D. while certain points in connection with the interpretation of the inscription are yet to be settled, and can only be settled when good impressions are made available, the fact is finally established that at the disputed site there existed an eleventh-twelfth century Vaishnava temple before the erection of the 'Babari masque.'

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5. In this prashasti (citation) the king says that he came to Ayodhya, which is located in the Saket Mandala (District), and built a sundara mandiram (most beautiful temple) of shila (stone). It was possibly done in place of an old temple which had by then become weathered. He topped the Shikhara (spire) of the temple with kalasha (pinnacle) made of hiranya (Gold). He dedicated the

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temple to Lord Vishnu-Hari who was none else but the one who had humbled the pride of **Bali-raja** (the trivikram form of Vishnu) and also dushta Dashanana (wicked Ravana). This he did when the foreigners (the Muslims) were avalanching from the West (Paschchatya) and creating fear (bhiti) but he had successfully thwarted it with the valour of his own arm (Bahudalanama).

6. The date of the reigning king Govinda Chandra of the Gahadval dynasty of Kannauj is bracketed between 1114 A.D. and 1154 A.D.

7. It is most significant to note that the king not only built the temple but also completed it because the kalasha or pinnacle is established on the top of the Shikhara or spire only when the temple is finally ready in all respects and the kumbhabhisheka performed. Then only the deity in the garbhagriha (sanctum sanctorum) gets consecrated and is ready to receive daily offering and worship. In this case the main deity was Lord Vishnu –Hari. Evidently, the inscribed tablet was fixed in the walls of the temple of Vishnu- Hari at the time of the consecration of the deity and the inaugural worship held to commemorate the event.

8. No, greater proof is required to establish the fact that here at Rama Janmabhumi a magnificient Vaishnava temple was in fact built sometime between 1114 AD. And

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1154 A.D., i.e. during the first half of the 12th century A.D. and dedicated to Lord Vishnu-Hari who had humbled the pride of many, including Ravana. (Incidently, Rama and Rama alone had humbled the pride of Ravana; hence in a sense it was not only a Vishnu temple but also Rama temple, as Rama was one of the various incarnations of Vishnu.)The event of erecting the temple had taken place around 400 years prior to the building of the 'Babari Masjid': the temple was built in early 12th century while the 'mosque' was built in early 16th century. For the historians the evidence of the inscription is full, final and incontrovertible.

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9. It may also be noted that even earlier to it there existed a temple at this very site which had become dilapidated due to the ravages of time which had weathered the stones of the temple. This is borne out from the details of the inscription as well as the actual art and architectural remains discovered on 6th Dec. 199: Hence, the building of the 12th Century Hindu temple was not a one-time act but an act in an on-going process. (Reference: Rama Janmabhumi, Ayodhya: New Archaeological Discoveries, Historians Forum, New Delhi, 1992).

10. Fortunately, this contemporary documentary evidence, in the form of Hari-Vishnu temple inscription,

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engraved on a stone tablet, is further supported by two more inscriptions engraved on a stone pillar found within the debris of the Babari Masjid on the 6th Dec. 12992 . One of these stone inscriptions (Shila-lekha), the upper one, is in eight lines, while the other, the lower one, is in two lines. Though the inscriptions are so very fragmentary that no coherent account could so far be made out from their reading. Still two things are absolutely clear: one , that the inscriptions relate to Hindu Gods and Hindu Kings ( there is a genealogical reference) and second, that palaeographically the script is to be placed in 12 th century A.D., may be in the mid to lat 12 th Century A.D. Thus, these inscriptions are around 50 years later in date than the Vishnu-Hari temple inscription.

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11. It, therefore, follows, that the activities connected with the structures did not cease by the middle of the 12th century A.D, these were continuing beyond it.

12. This otherwise most clinching evidence of epigraphical records is also fully supported by the actual remains of the temples, rightly claimed to have been built here by the kings during the 12th century A.D. and also earlier to it, possibly 10th and 11th centuries A.D., and may be even earlier to this ‘earlier’ date for which also

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there is some solid evidence in the form of objects of art and ions of the Kushana Period, 1st -3rd century A.D.

**THE ARCHITECTURAL REMAINS OF THE PRE-BABARI HINDU TEMPLES; ART AND ARCHITECTUAL EVIDENCE**

1. There are several pieces of architectural members of the pre-1528-29 A.D. Hindu temples which once stood at Rama Janmabhumi. We may start with the internal evidence of the structure of the so-called Babari Masjid which stood at the site from 1528-29 A.D. till the afternoon of the 6th Dec. 1992. The evidence is in the form of a number of beautifully carved monolithic pillars of black colour with bluish hue. These were at the ends of the piers of the domes and also on the entrance of the 'masjid'. On all counts, these are non-Islamic because they show images of Hindu gods and goddesses. Thus, these pillars must have formed part of a temple of the pre-Babari Masjid period. The relevant details are as follows: (i) Within the then disputed structure of the so-called Babari Masjid there were as many as 14 pillars of black stone popularly called'kasauti' but geologically speaking, schistose of the slate varity, a sedimentary rock, the nearest deposits of which are located in hilly tracts of Garhwal- Kumaonregion of Uttar Pradesh. All of

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them were used a architectural members in the body fabric of the 'Babari Mosque". (ii)

One of the black stone pillars, fixed on the northern side of the main entrance, carved under the central dome, was found inscribed with the letter "Si", written prominently in typical Nagari script which is stylistically datable to 11-12th century A.D., sdme as the script of the Vishnu-Hari temple inscription mentioned in Section-I.

(iii) There are two similar pillars found fixed upside down in a grave-yard located nearly a furlong away from Janmabhumi. The grave near which these are still found existing is alleged to be of the Muslim saint, Musa Ashikan who is supposed to be patron of Mir Baqi.

There are a couple of similar other black stone pillars, still standing in the cantonment area at Faizabad, some 8 to 10 Km. away from Ayodhya.

(iv) Each pillar, which nearly 11 to 12 inches square at the base, but eight faceted in the centre and four faceted below it, is shown emerging out of a sacred water-pitcher, called **purna-kumbha** or **purna-ghata**, or simply **kalasha.** It is exclusively a Hindu sacred motif since it relates to the Vedic concept of Water Cosmology. (Reference: "'Ashokan' Pillar: A Reassessment of the

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Evidence" pt.IV Symbolism, Burlington Magazine 1976, by John Irwin).

(v) Each purna-ghata is shown carried on the shoulders of four yakshas, sitting on knees and pressing the hands on the ground in the front. Each one is located at one of the four corners of the square base of the pillar, representing one cardinal direction. According to Sadhanamala, an old Sanskrit text on Hindu Inconography, each human settlement had at least one yaksha, as the guardian deity; he had a consort also, called yakshi, Reference: yaksha by Ananda K. Coomaraswami) (vi) The pillars are further embellished with male (Ganas), female (deva-kanyas), floral ( kamala), faunal (hamsa) and geometric motifs ( diamond), typical of the Hindu iconography, repeatedly found in all Hindu temples. (Reference: Art of India and Indonesia Ananda Kentish Coomaraswami).

**PILLAR–BASES; The Remains In The Excavated Trenches**

2. From 1975 through 1980 professor B.B. Lal, a former Director General, Archaeological Survey of India, excavated at fourteen different places in ayodhya on behalf of the Archaeological Survey of India. In one of his trenches, laid immediately on the south of the

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boundary wall of the then disputed structure, he found six of the several pillar-bases arranged in two parallel rows. These were built of burnt-bricks mixed with blocks of stone. It was logically surmised by the excavators that these may have been those very 'bases' on which some of the block stone pillars of the original temple stood while **in situ.**

3. After a close examination of the plans and sections of this site, it may further be noted, even three other eminent archaeologists—Prof. K.V. Raman, Head of the Ancient History and Archaeology Department, Madras University, Dr. Y.D. Sharma and Dr. K.M. Srivastava—formerly Directors, Archaeological Survey of India, have come to the same conclusion. The have observed that the foundation-trenches of the pillars, the layers found against the pillar-bases, the various lime-floors, the debris, and the floor sealing the pillar-bases as well as the material found in the debris overlying the sealin-floor establish beyond any doubt that the pillar-bases were raised in the 11th-12th century A.D. Incidentally, as noted earlier, one of the pillars on the main entrance of the disputed structure also bears an inscription in Nagari characters of the 11th -12 century A.D. Thus, the pillar-bases belonged to the period 11th-12th century A.D. further, the dating of the destruction of the temple, early

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16th century, is based upon two unquestionable pieces of evidence: (i) the material found in the deposit lying buried in a pit immediately below the sealing floor and in the debris lying immediately above the sealing floor. There are a number of glazed ware pieces in both the deposits.

**DOOR-JAMB OF BLACK STONE**

4. There is a door-jamb or dvara – shakha of black stone kept in the court-yard of a comparatively new building called now 'janmasthana. The door- jamb may have been fixed at the entrance of the garbha-griha of the original Hindu temple. It shows two parallel mouldings, one of which is purely decorative as it consists of meandering creepers. The second mouldings is very significant because it is divided into several rectangular panels, set one above the other, each depicting a Hindu deity. The lower –most depicts the image of Dvarapala, or door-keeper, standing in tribhanga poses under a arched canopy. The devarapala is wearing a karanda mukuta on the head and a vanamala in the neck. In Hindu inconography, when both of them occur together on the body of a deity, the deity is necessarily to be Vaishnavite in origin. The entrance of the canopy is like a trefoiled

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arch with three semi-circular mouldings based on the principle of oversailing courses, named “corbelied arch”. This ornamental arch rests on two pillars, emerging out of purna-ghatas and beautifully decorated with a number of mouldings on the top. The panel above the devarapala shows a female deity standing in an arched gateway. Her posture is also in tribhanga. The panel above this also shows a female deity standing in tribhanga pose. The next panel shows the mother goddess standing in the forntal pose under a canopy. The 4th panel depicts a gana or a young dwarfish male dancing under a canopy. The top-most shows the beautiful image of salabhanjika, holding a branch of the blossoming tree. It may be mentioned in this context that the dvarapala is holding a shula, or a spear, in his left hand. It establishes the fact that he is a guardian deity, holding a weapon to protect the main deity of the garbha-griha from all evil-doera. The right hand, on the other hand, is held in vyakhyana mudra, i.e. in a pose which is adopted by a deity when he delivers a sermon to the visitors. It should be borne in mind that the deity is standing on a full blown lotus, as was customary with all the deities during this period. It is, therefore, absolutely clear that the temple to which the dvara-shakha originally belonged was dedicated to Vishnu or an incarnation of Vishnu, most probably Rama, both are

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essentially one and the same.

**MORE ARCHAEOLOGICAL DISCOVERIES OF ART AND ARCHITECTURAL OBJECTS FROM A 12TH CENTUR A.D. HINDU TEMPLE—JUNE 1992**

5. We are now on almost sure grounds that the 12th century Hari-Vishnu temple constructed here during the reign of King Govinda Chandra was destroyed, according to the tradition recorded in various Indian and foreign accounts, in the early 16th century, in all probability by Babur's men. The parts of this temple which could be gainfully re-used in the structure of the 'Baburi Masque' were in fact re-used, such as the black stone pillars in the piers, some carved blocks of stone in the walls and at least one long piece of stone with lotus carvings in the vitana, i.e., as a lintel. However, the parts which could not be used, because of their unmanageable shapes, such as the crescent shaped amalakas with corrugated periphery, or otherwise, were cast-away and dumped in a pit nearby. These details of the discovery and some of the anitiquarian remains may be recounted as under.

6. ON THE 18TH OF JUNE 1992, when the ground near the Rama Janmabhumi was being leveled, a most startling archaeological discovery was made at Ayodhya. At a depth of about 12 feet from the ground level near the Ramajanma Bhumi temple, towards the south and beyond

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the fencing, a big hoard of beautifully carved buff sandstone pieces was located in a large pit dug down below the old top level. The location of the pit is shown in Appendix II & III.

7. A careful study by a group of eight eminent archaeologists and historians found that all these objects are architectural members of a Hindu temple- complex of the 12th century A.D.

8. The group comprised Dr. Y.D Sharma, former Deputy Director General, Archaeological Survey of India, Dr. K.M. Srivastava, former Director, Archaeological Survey of India, Dr. S.P Gupta, former Director, Allahabad Museum, PROF. K.P. Nautiyal, Vice-Chancellor, Avadh University and former Head of the Ancient History and Archeology Department, Garhwal University, Prof. B.R. Grover, former Director, Indian Council of Historical Research, Shri Devenra Swarup Agrawal and Dr. Sardindu Mukherji of the Delhi University and Dr. (Mrs.) Sudha Malaiya of Bhopal.

9. The temple: The experts, who visited the site on behalf of the academic organization, “The Historians’ Forum”, on the 2nd and 3rd of July 1992, are unanimously of the view that the temple, to which these fragments

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belong, is of the developed Nagara style of ancient temple architecture which was current in northern India during the later part of the early medieval period, i.e. the period after 900 A.D. and before 1200 A.D. The temples of this style are characterized by a distinctly imposing shikhara, which is a tall and tapering spire over the garbha-griha, or sanctum sanctorum, which houses the main deity.

10. The Shikhara Amalaka: The developed Shikhara is like a mountain with several tiers of subsidiary Shikharas, rising one above the other and projecting partially from the main Shikhara. The Shikharas are crowned with a very distinctive circular piece of stone, called amalaka, which is shaped like a cogged wheel, with bead-like mouldings along the periphery. It is so very typical of the temples of northern India that no one in the world who knows even a little about the Hindu temples can cast any doubt about its position in the temple structure. There are two examples of half- amalakas, in the present hoard of objects, evidently used on the top of the subsidiary Shikharas, called Shikhara of karmas, i.e. fring spires.

11. The Shikhara Jala : The second most significant find is the curvilinear part of the jala mouldings present on the Shikharas. It is beautifully decorated with scrolls. It also

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belongs exclusively to the north Indian temples of the period after 900 A.D. since the technique of its carving involves the method of scooping out the areas around the floral elements so that the art-motifs are formed with surface absolutely plain. It is called 'Stencil' technique.

12. The Capital: The third most noteworthy sculptured piece of stone in this collection is a rectangular capital of a pillar with beautiful mouldings in the form of highly stylized lotus petals arranged as narrow parallel strips carved in low relief around the capital.

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13. The Cornice: The fourth example of stone sculptures belongs to the most characteristic members of the Nagara style of temples – it is called Chhadya, and in Hindi Chhajja, sun-shade, where the straight wall over the high plinth meets the base of the Shikhara. It is carved and shaped like rectangular Mangalore tiles to serve not only as a sun-shade but also allow the rain water to run off quickly and protect the structure. It is a corner-stone of the cornice.

14. Floral freize: There is one frieze of continuous leaf-molding which decorates one of the top lines of the high plinth of the temple.

15. Door-jamb: There is one example of a door-jamb or

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dvara-shakha of the main entrance of the temple. It is decorated with a meandering floral design, carved in 'Stencil' style.

16. Images of Vihnu's Incarnations: There is also a fragment of a steel embellished with the most significant sculptures of a number of Vaishnavite gods, viz. a Chakrapurusha, i.e. a youthful male figure standing gracefully at an angle (tribhanga) and holding vertically in the palm of the right hand the characteristic wheel or chakra of Vishnu.

17. Another image is that of Parashurama, sitting cross-legged and holding a battle-axe in the left hand. Below him is the image of Balarama, the elder brother of Krishna, with a canopy of serpent-hoods and having a wine-cup in his hand. Still below him is the image of mother Goddess (matri-devi), the bestower of all good luck.

18. Shiva-Parvati: Besides the above, there are several other images. One is of Shiva –Parvati, also called Uma-Maheshvara. It was found from a shallow mound called Nala, located some 200 metres away from the site of the above hoard of art and architectural pieces. Though Shiva's head is now lost, his hand holding a trishula, trident, is fully intact. Similarly, although Parvati's face is not extant, her hand from behind Shiva's neck is found resting on his right shoulder in

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an embracing position. Stylistically, it is also datable to the 11th century.

19. Terracotta Figurines: Art objects of burnt clay belonging to the earlier periods, such as the Kushana ( Ist-erd century) have also found. These images to various Hindu gods and goddesses.

**SOME ANTIQUITIES DISCOVERED ON 6TH Dec. 1992**

20. It is gathered, that more than 250 objects, many of them belonging to ancient temples, were collected by the Kar Sevaks from the debris of Rama Janmabhumi-Babari Masjid Complex on the 6th Dec. 1992 and bodily shifted to a place called Rama Katha Kunj, hardly 200 mts. from the complex. The Rama Katha Kunj has a small semi-permanent building with about half-a-dozen rooms constructed by the VHP for their own use. Some of these rooms were just the store-rooms, practically closed quarters with very poor light and ventilation. These objects of stone and metal were locked by the U.P. Govt. in a couple of these 'store rooms', sometime in the third or fourth week of December 1992, where they are still lying threatened in terms of their physical condition—we apprehend that unless these are immediately shifted to the properly ventilated and lighted galleries of a public museum, where constant vigil is generally kept on the preservation and

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Conservation of the Exhibits, these invaluable objects of our national heritage may get damaged sooner than we can imagine. It is proposed that these objects are shifted, housed and displayed along with forty and odd number of objects collected in June 1992 and presented at the Ram katha Museum, Ayodhya, functioning under the direct control of the dept. of Culture, Govt. of Uttar Pradesh. But this is besides the point, even though in a sense very vital for the nation.

**Inscriptions**

(1) A stone-tablet Vishnu-Hari Temple Inscription of 20 line text composed in Sanskrit language and written in Nagari Script of 11qth -12th century style. It is securely dated in the first half of the 12th century A.D.

(2) An eight line fragmentary inscription on a stone pillar, composed in Sanskrit language and written in Nagari script of 11th -12th century A.D. It is datable to mid-to late 12th century A.D.

(3) A two –line fragmentary Sanskrit inscription engraved on a stone pillar in Nagari Script. It is datable to mid-12th century A.D.

**Images**

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(4) A standing image of Vishnu wearing a long vanamala. Highly weathered. Engraved on dvara-shakha or door-jamb. Datable to 10th century A.D.

(5) A head of Shiva Bhairava with tall jata-juta hair-do. Covering the head, wide open eyes and two protruding teeth. Datable to the early 12th century A.D.

(6) A severely damaged image of standing deity intribhanga pose, possibly Ganesha with a rishi (?), seen from the back, under a narrative panel raised and supported by the yaksha. Datable to early 12th century.

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(7) A long frieze of garland-bearer couples (vidyadharas). Datable to early 12th Century.

(8) A fragmentary frieze of vidyadharas. Datable to early 12th Century.

**Architectural Pieces**

(9) Another dvara-shakha(door-Jamb)with four parallel vertical friezes showing floral motifs. Datable to 10th century Vishnu image.

(10) A top-stone of the Jala decoration of the Shikhara. Showing floral designs. Cut in stencil

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technique. Datable to 12th century.

(11) A large fragment of the ceiling, bluish dark stone, showing meandering creepers with two human figures, arranged in concentric rectangles. Datable to 12th century.

(12) A section of frieze showing flowers and leaves interconnected roundels, with upper and lower borders of closely placed beads, the bottom has running us. The deeply cut crevices are found: indifferently filled with chunam. It is a most telling and convincing evidence of the fact that the stones like this were fixed in the walls of the 'mosque' with sculptured face turned inside the core of the wall. Datable to 12th century.

(13) Some half –a-dozen pillars of buff sandstone with curved brackets. Datable to 12th century.

(14) Three amalaka, each on these had topped the karma Shikhara or corner spires of the temple. Datable to 11th-12th century.

**Persian Inscription**

(15) There is a large fragment of the Persian inscription which was once fixed on the top of the main entrance of the central domed chamber. Datable to early 16th century.

(16) Central piece of the ceiling of the dome

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decorated with fully opened flower and iron chain. Datable to 16th century.

(17) Avitana stone or lintel, once found fixed on the main entrance of the 'mosque'. It bears lotus motifs of Hindu sacred symbols. Datable to 11th-12th century.

**PIECES OF ARCHAEOLOGICAL EVIDENCE IN FAVOUR OF HINDU TEMPLE EXISTING AT RAMA JANMA-BHUMI PRIOR TO THE CONSTRUCTION 'BABARI MASJID'**

Like various other sources of history, archeology may also play a very important role in decision-making process aimed at solving the question whether: a Hindu Temple, or else, a Hindu religious structure, - existed at the place called ' Rama Janmabhumi- Babari Masjid complex' prior to the building of the so-called Babari Masjid. Archeology has to offer at least 43 pieces of evidence to prove that yes, there did exist at Rama Janmabhumi a magnificent Hindu temple since at least the 12th century A.D., i.e. around 400 years prior to the construction of the so-called Babari Masjid in the 16th century A.D.

**THE INSCRIPTIONS**

1) The Vishnu-Hari Temple stone inscription composed. In Sanskrit and written in 11-12th century

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Nagari script. It clearly mentions the construction of a Hindu temple at Ayodhya during the reign of Govind Chandra Deva (1114-1154 A.D) of the Gahadval dynasty.

2) Two fragmentary inscriptions on a pillar— Sanskrit Language and also 11th-12th century A.D. script.

3) Letter 'Si', of the Nagari script of 11th-12th century engraved on a black stone pillar.

4) There were 14 black stone pillars fixed in the body-structure of the so-called 'Babari Masjid', each bearing images of Hindu gods and goddesses besides various sacred faunal, floral and geometric motifs which are absolutely non-Islamic. There are two more similar black stone pillars, fixed upside.

5) The Kamlaa flower on the pillars as well the lintel stone and the chhadya stones.

6) The Kalpadruma or meandering creeper on the door –jamb and on lata moulding of the shikhara of the temple.

7) The Malas of flowers and gems on the pillars

8) The Karanda mukta on the head of the dvarapela.

9) The vanamala on the body of the dvarapala.

10) The Yajnopavita on the body of Chakrapursha.

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11) The Chakra of Vishnu in the hands of the Chakrapursha.

12) The Parashurama image.

13) The Vishnu image on a door-jamb.

14) The image of Siva-B hairava.

15) The Hansa on lotus depicted on a pillar fixed in the disputed structure.

16) The vidyadharas or flying gandhara couples in frizes.

17) The Pipal leaf in a temple frieze.

18) Standing Ganesha with attendants.

**THE ARCHITECTURAL FRAMGMENTS OF VAISHNA: VA TEMPLE OF 11TH CENTURY NAGARA STYLE.**

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19) The karma Amalakas.

20) The Jala stones.

21) The Chhabya stones.

22) The Lata Stones.

23) The Dvara –shakhe with three decorated parallel mouldings.

24) The ceiling stone decorated with meandering creepers.

25) The running frieze with flowers arranged in round less.

26) The buff sandstone Stambhas of a Hindu temple.

27) The Bhitti mouldings of a Hindu temple.

**THE PLINTH STONES**

28) The Adhisthana stone of a Hindu temple on which ran below the eastern boundary wall of the so-called 'Babari

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Mosque'.

Sri Jain submitted that the evidence on revenue record belies the version of the plaintiffs that the mosque was not constructed after demolition of the temple. Thus, according to Sri Jain even from revenue record and other materials, it can be presumed that certain interpolations were made in the record and the place was known as Janma Sthan for the reasons that Lord Rama took birth and the temple was erected but the same was demolished and Babri Mosque was erected over it. In this regard his submissions are as under:

**Evidence from the Revenue Record; Record of Right :**

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1. The first Report of Settlement of the Land Revenue of Fyzabad District by K. F. Mitchell (vide paragraphs 618-19, 666-669,while tracing the past history of Janmasthan/'Baburi Masjid' in Kot Ram Chander/Ayodhya, confirms the fact that Babar came to Ayodhya in 1528 AD and halted here for a week during which he destroyed the Janmasthan Temple and on its site built a mosque using largely the materials of the old structure. This must have occurred about the time of Babur's expedition to Bihar. The author of the Settlement Report further adds that according to Scyder's Memoirs of Babar, the emperor encamped about 5 or 6 miles from Ayodhya and stayed for a week, setting the surrounding county, though it was remarkable that his

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doings at Ayodhya were wanting in his Memoirs (Babar-nama).

2. As the settlement Report as a book of reference is admissible under the law, i.e., under the Evidence Act, its validity is unreliable. In the Regular Suit No.29 of 1945 over the Waqf issue between the Shia Central Board of Waqf, U.P. Versus Sunni Central Board of Waqf, U.P., in his judgment dated 30.03.1946, Akhtar Ahsan Naqvi, Civil Judge, Faizabad maintained that the Gazetteer of the District or the Settlement Report as books of reference were admissible under Section 57 of the Evidence Act.

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3. The revenue records relating to village Ramkot, Haveli Awadh, District Faizabad, are extremely significant and clarify the factual proprietary position of Janmastahan Vs. Baburi Masjid. As per land revenue procedure, they offer details of the numbered plots ( Khasras) of entire village Ramkot in respect of nature of land rights, their topographical position, the nature of the soil along with the area of each plot with compete further details, whether inhabited with abadi (population) or a graveyard or arable land growing particular crops along with fruit bearing trees, if any, and paying land rent or treated as Muafi ( exempted from rent payment), the wells, tanks, gardens, paths (roads),

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Shiwalas (temples) graveyards and mosques, etc. In fact, the records comprise various categories of revenue documents, i.e., survey, bandobust (settlement), kishtwar khasra, khasra abadi, misl hadbast, khewats, Khasra Khataunis and mps, etc., right from 1861 AD. Till 1991092 A.D. All these records are available at the District record Office (Mahafaz Khana/ Tehsil Office/Nazul Office, Faizabad.

4. The plots of land traditionally associated with Janmastahan complex is shown mostly as settled with abadi (population) and constructions thereupon.

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5. The first Regular Settlement Report (1861 ) of Kot Ram Chandra, appended by two maps, is the most comprehensive document relating to the Janmastahan is covered under khasra No. 163 with 9 sub-plots ( goshas, from alf to sin , i.e., 'a' to 'I') with total area of 5 bighas and 4 biswas. However, under column No.16 of kaifiyat, it is stated that in the area of Janmastahan there is one pacca well, trees whose number is recorded in khasra abadi and some graveyard (gabaristan).

6. For each of the 9 sub-plots, the area has been recorded. Of the total 5 bighas, 4 biswas area of Janmastahan (vide khasra No.163 ) complex, 4 bighas, 13 biswas are owned by the Nazul Department (Sarkar Bahadur Nazul) as superior

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malik and Hindus Mahants as subordinate proprietors (malikan-i-matahi), whereas 11 biswas owned by Hindu mahand are put under the Mahal of Azhar Hussain, etc. ( the lambardars). Unlike the detailed description of the sub-plots of the other khasra Nos., the 1861 settlement does not show any specific sub-plot/sub-plots which were under mahal azhar Hussain and muafi (exempted from payment of the revenue)have been put only at the top in the relevant columns along with Sarkar Nazul, which is misleading and apparently an interpolation effected at a later stage. However, the position is partly clarified by Khatauni No.1(attested by Mohammad Akbar, darogha nazul dated 25th September, 1878) which under the heading of column 2(name of thok patti) puts khasra no. 163 M in muafi (taraf haqiqat muafi), the habitated (abadi) area of 11 biswas under the jurisdiction of Azhar Hussain, etc. , the superior owner (malik or haqdar vide Column4) . Here too, the specific No./Nos. of the sub-plots of khasra no.163 are not mentioned. However, later on, the position is absolutely clarified in the 1301 F/1893 AD settlement when the same sub-plot is shown under khasra No. 163/3 in the mahal jurisdiction ( thok Patti ) and superior ownership of Nazar Hussain and Tahir Hussain (the descendants of Azhar Hussain as (Maliks) along with Mehta Balram Das as subordinate owner (malik matahit). All the same, the 1301

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F/1893 AD settlement does not put this sub-plot (No.163/3 ) under the category of muafi and merely shows it being a non- nazul land under the mahal of Nazar Hussain, etc. Most significantly, the map of 1893 settlement shows Khasra No.163/3 to the east and outside the boundary wall of the Ram Janmabhoomi/ 'baburi Masjid' covered by khasra plots nos. 163/1 & 163/2. as such, clearly, the sub-plot no.163M recorded in the khatauni No.1 dated 1878 AD as muafi in mahal Azhar Hussain has nothing to do with the land associated with Ram Janmbhoomi/Chabutra/'Baburi masjid', which are separately shown under Nazul and subordinate ownership of the Hindu Mahants.

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7. To the north of the present Ram Janmabhoomi-erstwhile 'Baburi Masjid' and the walled compound (ahata), lay the inhabited (abadi) area covered by a structure still known as Janmasthan. In fact, all through the centuries, right till the late 19th century, the latter structure comprised only a couple of sub-plots of Janmasthan and formed a part and parcel of the entire Janmasthan complex and the road dividing the two structures, i.e., Ram Janmabhoomi / erstwhile "Baburi Mosque" and the present day misnumbered Janmasthan was constructed in the late 19th century during the British rule. This is well established by the revenue records. A careful study and comparison of the

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1861 settlement map of the mauza (village)Ram Chandar with the 1893 settlement map of the said village fully bears out this fact whereas in the 1861 settlement map, the sub-plots of the northern portion of the Janmasthan complex (denoted by the present day so-called Janmasthan ) are contiquous to the southern plots comprising the Ram Janmabhoomi/erstwhile 'Mosque' structure alongwith the walled boundary, in the 1893 settlement map, the former northern portion of Janmasthan (vide khasra no. 163/5, also named abadi Sita Rasoi) is distinctly separated from the latter portion of Ram Janmabhoomi/ erstwhile 'mosque' structure, etc., (vide khasra nos. 163/1 and 163/2) by a regular road (khasra no.163/X) which runs from the border of the Ayodhya city and Hanuman Garhi temple in the east of the village towards the Janmasthan and after dividing the latter complex proceeds towards the Jalanpur village in the west. As this has become a permanent topographical feature, this is equally reflected in the 1936-37 settlement map, operative till date, wherein the road comprising (khasra no.158) divides the Ram Janmbhoomi /erstwhile 'Baburi Masjid' vide (khasra nos. 159 and 160) from the present day misnomered Janmasthan (vide Khasra No.146). As a matter of fact, the khasra kishtwar data of the 1861 settlement gives specific area as well as digical geographical directions for each sub-plot in the Janmasthan complex

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which comprised the areas of both the portions, i.e., The Ram Janmabhoomi/erstwhile 'Baburi Masjid' and the present day misnomered Janmasthan.

8. As district from the Khasra Kishtwar in the Khasra abadi parts of Nos. 431-456, Makan ( complex) Nos. 92 -93 ( as recorded corresponding tono163 of the former) show abadi (population) in this area. The khasra hadbast of 1861 settlement (No.152) also mentions only makan Janmasthan (mansion of Janmasthan). Apart from it, the khasra abadi shows that the inhabitants of Janmasthan (sakna Janmasthan) also owned other plots/sub-plots (vide khasra Nos. 203, 206,214) or owned musli (taproot) and imli (tamarind) trees in the other plots (vide khasra Nos. 451-52)of the village. This shows that the Janmasthan complex was fairly inhabited and that the mahants/bairagis of Janmasthan, with a network of land-ownership in the village, had a sound financial and social status. None of the khasra abadi Nos., as mentioned above, parallel to the abadi Janmasthan of Khasra kishtwar No.163, does mention the existence of any 'mosque', though in the kaifiyat, they do mention the prevalence of pacca graveyard (qabarqah pukhta), a few imli (tamarind), musli (taproot) trees and makana (houses), etc., on the campus. Even khasra abadi No. 444, conjectured and identified by the amended khasra Nazul record of 1931

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being an equivalent to a sub-plot of khasra kishtwar No.163 M of 1861 settlement comprising the Janmasthan, in its kaifiyat describes only ahata pukhta (pacca campus) and two trees (neem and ghauz)in possession of a Thakur of the Village. It no where mentions the existence of a 'mosque'.

9. Quit significantly, the hadbast map appended to the Settlement Report (1861) as well as the abadi map of Kot Ram Chander (1866) show only Janmasthan in the abadi Janmasthan complex plot no.163. They do not indicate any 'mosque' therein.

10. Later on at the back of a duplicate of Khasra Kiehtwar map, Muhamad Akbar, darogha of nazul lands, dealing with heissue of rights of the land owners (Malikan) vis-à-vis tenants (muzarian)of the village and also the question whether there was nazul waqf attached to the pacca mosque built by the Emperor Babur and situated on Janmasthan, recorded on 25th September, 1878 A.D. categorically that (in the village Ramkot) there was no nazul land/house/garden assigned to Mir Mhammad Asghar (Khattib/Muazzan) for an expenditure on the said mosque. However, he further records, that the latter (Muhammad Asghar) had been granted some cultivable land/garden worth Rupees three hundred and two only (Rs.302/) in the villages of Bhuaipur and Sholepur. Apparently, this noting was done by the

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darogha nazul in 1878 A.D. as Muhammad Asghar, etc., had already been given conditional land grant by the British Government in 1870, along with malkiyat( Proprietary) rights in land, subject to the rendering of the police and military service.

11. It may be observed that in the absence of the original 1861 settlement hadbast, the recording of a 'mosque' at the back of a duplicate settlement map as late as 1878A.D. by a darogha of the Nazul lands is of peripheral nature, especially when the map itself does not comprise any indication of a 'mosque' there upon. Even though the physical existence of an extraneous structure believed to be 'mosque' built by the Mughal Emperor Babur at the Janmasthan site was undeniable, most significantly, the revenue settlement maps of 1861, 1893 and 1936-37 A.D. do not bear any indicate only the Janmasthan at the site.

12. In the original document of the settlement report of 1861 AD. Available at the District Record Office (Muhafaz Khana)/Tehsil Office, Faizabad, interpolations/additions have been effected in certain columns of the Khasra Kishtwar folios. In the District Record Office document, under column No.2 to the original reading of abadi Janmasthan, the words 'and juma masjid' have been added so as to read 'abadi Janmasthan and juma masjid' under

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column No.3, to the words ‘taraf nazul’ , the words ‘and muafi’ have been added so as to read and under column No.4, to the words Sarkar Bahadur, ‘ and Azhar Hussain’ have been added.

13. The above alterations’ additions are confirmed by the fact that in the Tehsil Office copy of 1861 settlement, though under column No.2, the words’and jama masjid’have been added to the original words ‘abadi janmasthan’in a very crude manner, the Tehsil copy does not carry any interpolation of ‘and muafi’/’and Azhar Hussain’ under column Nos. 3 & 4 respectively as done in the case of the District Record Office copy Moreover, the second settlement report of Ramkot dated 1301 F / 1893 -94 even though for Janmasthan, carries the same khasra kishtwar No.163 which due to clubbing of the sub-plots is divided into 5 sub-plots instead of 9 as earlier in the case of 1861 settlement, it does not record the name of ‘jama masjid’, nor does it put ‘muafti, under the relevant column nos., which have been shown only under Sarkar Bahadur Nazul. However, in su-plot no.1 163 /3 with an area of 11 biswas, Azhar Hussain and Tahir Hussain have been put as mahaldars wereas Mehta Balram Das has been recorded as subordinate owner (malik matahit), All the same, the word ‘muafi’ does not occur even in this column no.

14. In the 1301 F/1893 AD. settlement, the khasra No. of

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Janmasthan, i.e., 163 remains the same as earlier in the 1861 settlement, though due to clubbing, the number of the sub-plots is reduced from 9 to 5. In the Khasra kishtwar (vide Basta No.132), further endorsed by the Khatauni (vide Form 15), the area of each sub-plot is recorded. As earlier in the 1861 settlement, the total area of the Janmasthan complex is 5 bighas and 4 biswas, of which 4 bighas and 13 biswas is under nazul whereas 11 biswas (vide 163/3) are shown in the mahal of Nazar Hussain and Tahir Hussain (the lambardars). But unlike the 1878 Khatauni (as noted earlier0, the 1893 settlement records do not show it in muafi. As per Khasra bandobast and Khatauni documents, the portion of the Janmasthan area i.e., (the proper 'Ram Janmabhoomi'/ 'Babari Masjid' land ) being under mahal nazul Sarkar, comprises two khasra Nos., i.e, 163/1 and 163/2, with an area of 2 bighas -14 biswas and 2 biswas respectively. These are shown under habitation (abadi) and are vested in the subordinate ownership and occupation of the Hindu Mahants Raghuar Das, Gopal Das and Thaurdwara Sita Ram. Khasra No.163/4 with an area of 7 biswas covers the road which separates the Khasra Nos. 163/1-2, i.e., ('Ram Janmabhoomi'/ 'Baburi Majid') of the Janmasthan area from the northern portion of the complex with Khasra No.163/5, named as abadi Stia Rasoi. The latter portion with an area of 1 bigha-10biswas, also being under nazul is vested in the

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subordinate ownership of Mahant Kalyan Das. The detailed lists provided in the 1893 settlement records in respect of mosques, waqf, graveyards (qabaristan) and mutations, etc., do not put any of the sub-plots, i.e., 163/1 to 1635 of the Janmasthan complex with either of these categories.

15. The kishtwar map of Kot Ram Chander, Pargana Haveli Awadh, Tehsil and District Faizabad, dated 1894-95 A.D. prepared after the 1893 settlement slightly varies in respect of the division of the janmasthan khasra No.163. It shows all the sub-plots 163/1-5 under habitation (abadi). The road which divides the Khasra Nos. 163/1-2 of Janmasthan from the northern wing with khasra No.163/5 (abadi Sita Rasoi) is shown as Khasra No. nill, i.e., 163/X, whereas khasra no. 163/4 of the 1893 settlement has been shown as a sub-plot with habitation (abadi) to the east of khasra No.163/3. It seems that this redistribution of the Janmasthan sub-plots was effect in the aftermath of the 893 settlement.

16. The above map is significant in many a respect. In its list of depicted symbols, it does not cover the symbol of a Shiwala (temple ) or a mosque. But it does denote the symbols of abadi, road, graveyards (qabaristan), pacca well, nature of land (i.e., parti qadim ) and non-payment of lagan, etc. As such, it shows khasra no.163/1 (i.e., the site of 'Ram Janamabhoomi'/ 'Baburi Masjid') with habitation (abadi)

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and a pacca well in then north-eastern direction. The sub–plot no.163/4 has shown with symbols of abadi, orchard (bagh) without the payment of rent (lagan). The sub-plot No. 163/5 (abadi Sita Rasoi) to the north of the dividing road comprises the symbols of abadi along with 3 pacca wells and a portion of self – cultivated land (khud kasht).

17. Above all, most significantly, there is no symbol of a graveyard (Qabaristan) in any of the sub-plots of Khasra No. 163 of the Janmasthan complex, though, there are symbols of graveyards in the neighbouring plots, i.e., Khasra Nos. 161,158, 56-57, etc. Even though earlier in the Khasra kishtwar No.163 of the 1861 settlement relating to Janmasthan, the column(No.16) of the general remarks (kaifiyat) as well as the khasra abadi Nos. 444, 452 of the same settlement do mention about the existence of graveyard (gabargah) in the complex of Janmasthan, it is well confirmed by the above map that by 1894-95 A.d., there is no graveyard inany of the sub-plots of Janmasthan complex, Later on, this position is reiterated by the 1344 F/1936-37 AD. Settlement report and the map appended to it.

18. As distinct for above revenue records, the Nazu department of the District Faizabad d(U.P.) also prepared its own amended Khasra records of the abadi settlements, (tarmimi

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khasra abadi)in 1931 A.D. In these revised Khasras of village Ramkot, both 'masjid' and chbutra indicating the temple at Janmasthan have been recorded in Khasra No.583. The 'mosque' has been shown in waqf under column 'Name of the present possessor' (Nam Hal Qabiz). At the same time Mahant Charan Das in 1931 and thereafter Mahant Raghunath Das (1941) have been declared under –proprietor (Malik Matahit) of the entire plot. Moreover, in these Khasra records, Arazi No.586 with an area of 11 biswas, 16 biswanis and 16 kachwanis (11-16-16) being in abadi is shown as graveyard (a pacca qabaristan known as Ganj Shahid)and assigned in waqf (waqf ahad Shahi ).

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19. A note of caution is necessary with regard to the alleged Khasra and map maintained by the Nazul department in the Faizabad Collect-orate which is relied upon by the plaintiffs of Suit No.12 of 1961 (now O.O.S. 4 of 1989 before the Lucknow Bench of the Allahabad High Court), Sunni Central Board of Waqf and others Vs Gopal Singh Visharad and others. The map maintained by the Nazul Department is not authenticated, nor prepared under any law, nor is it according to any ascertainable scale. The survey made on the basis of the Khasra abadi and that map of the Nazul department at the instance of the Plaintiffs in that Suit has been rejected by the High Court's Full Bench which is trying

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the case and a fresh survey has been ordered on the basis of revenue records in order to ascertain the exact situation of the land involved in that Suit. It is noticeable that the plot numbers given in the plaint of that Suit are based on the said khasra abadi of the Nazul department. There is no Fard Mutabigat comparative table between the plot numbers given in the khasra abadi of the Nazul department and the Khasra abadi maintained by the revenue Department of the Government.

20. In fact, the purpose of the Nazul (Municipal) survey and the map prepared in 1931 A.D. was to identify the encroachments made on the Nazul property. Such a survey may cannot take precedence over the regularly conducted revenue settlement operations and the maps prepared thereupon, especially when the title to land is involved. In its order dated 10.1.1990, the High Court directed the Board of Revenue, U.P. Sate, to survey the site and submit report accordingly with the assistance of the Municipal records and such other records which it considered to be useful and in its further order dated 23.5.1990 directed it to execute the commission and locate the plots with reference to documents on record only. The commissioner, Shri J.P. Srivastava, appointed by the Board of Revenue for the purpose, submitted his report on 25.07.1990 wherein he had located

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the disputed property with reference to the Nazul map of 1931, even though he conceded that the Nazul map and the settlement maps were on different scales and that it was not possible to juxtapose the two maps and prepare Fard Mutabiqat and correspond the Nazul. Khasra numbers with the settlement khasra numbers. Thereupon, the Hon'ble court passed another order directing the commissioner to submit supplementary report surveying and locating the property with reference to settlement maps of 1861 and 1937 A.D. The commissioner submitted his supplementary report dated 8.2.1991.

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21. In fact, the Commissioner instead of surveying the land of his own had just accepted the fresh map supplied by the Plaintiff, which in matters of details offered a completely inaccurate position in respect of Janmasthan/'Baburi Mosque', graveyards, the shilanyas site and various other plots. Such an act on the part of the commissioner for having accepted the Plaintiff's map and adopting it as his own official map for submission to the court was characterized by the latter as "wholly unwarranted".

22. Having gone through the pros and cons of the entire case, the Hon'ble Court in its Judgment on B.B.91, even though it refrained from calling the commissioner's report as 'motivated', described it as "absurd". It refused to accept the

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commissioner's view that correct map and report about kot Ram Chandra were possible only in reference to Nazul map and that the settlement maps were not correctly prepared. In its judgment, it refused to keep the report of the commissioner on record in the pending case.

23. As per procedure of the revenue settlement, the khasra Numbers in respect of kishtwar, khewat and khata khataunis often undergo a change due to alteration, addition and clubbing for adjustment with the neighboring plots from one revenue settlement to another. At times, a change in Numbers is effected even during the interregnum of the two settlement operations. However, they are all duly recorded in the Comparative tables of the Khasra Numbers (Fard Mutabiqat) appended in the ensuring settlement report as well as in the relevant Khewat and Khata Khatuani numbers. The khasra kishtwar, khewat and khata khataunis adopted in the 1344 F/1936-37 A.D. continue to be in vogue in the latest revenue operations 1989 -92 A.D. However, the mutations effected during the interregnum have been recorded in the relevant revenue documents.

24. According to the 1344F/1936-37A.D. settlement the Janmasthan complex plots have been recorded in the khasra kishtwar under nos.159, some portions of 160, 158 (road), 146 and 147 R [i.e., R( ) portion of 147] and the area in

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respect of each plot/sub-plot has been provided. The major portion of the Janmasthan complex falls under khasra nos. 159 (declared banjar – the site of Ram Janmabhoomi / 'Baburi masjid'), 146 and 147 R(Abadi Sita Rasoi, across the road in the North), while some portion is included in Khasra no.160. The Khasra no.158, also forming a part of the area of the Janmasthan complex is recorded as a road (which divides the Khasra Nos. 159 and 160 in the south from 146 and 147 R in the north respectively).

25. As per khewat record the khasra no.159 with an area of 13 biswas is declared banjar land under Nazul vide Khata no.1; no. Khewat Matahitdaran (5a) 20 and Khata Khatauni 58/2. While the superior ownership rests with the Nazul, the subordinate ownership (matahitdar) is vested with 'Shri Dhanush Dhari Ji Bhagwan Virajman Mandir Bara Astah, Mohalla Ramkot, Shahar Ayodhya' through the basarbkari of Mehta Raghubar Prasad, disciple of ram Manohar Sahu, Bairagi, resident of the above temple. The khasra no.146 with an ara of 1 bigha, 6 biswas, 7 biswanis (1-6-7) vide khata No.I, No. Khewat (5a) 32, no. Khata Khatauni 70/1 is under abadi. Here too, the superior ownership is with Nazul and subordinate ownership is vested with Har Har Das, Ram Sarn Das, Matahitdar, the resident of jamasthan. The Khewat No.160 (a) with an area of 3 biswas, 13 biswanis (0-3-13)

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being under Nazul vide Nazul Khata No.1, No. Khewat 51(21), No. Khata Khatauni 59/1 is vested in the subordinate ownership of the Hindu mahants /bairagis.

26. As regards the Khatauni documents the position of the khasra nos. 159 and 160 (a) is reiterated as already noted in the khasra kishtwar and khata Khatauni. Khasra No.159 vide khata no.1, khata Khatauni no.58/2, being under mahal Nazul with an area of 13 biswas of banjar is put under the subordinate ownership (malik matahit ) of who besides khasra no.159 also owns other Plots (i.e. , and 199 which are not a part of Janmasthan). The Khasra no. 160 (b) is also under mahal Nazul with an area of 1 bigha, 12 biswas.

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27. In the Khatauni documents, the jurisdiction of Mahal Azhar Hussain has been shown separately. Of the Janmasthan complex, Khasra No.158 vide Khata Khewat No.2, khata Khatauni no.15 comprising an area of 4 biswas has been shown as a Path (road which divides khasra No.159 in the south from khasra No.160 in the north). To this Path, 3 biswas and 9 biswansi (0-3-9) have been added from non-Janmasthan complex khasra no. 155/2 vide khata No.1, Khata Khatauni No.4, making a total of 7 biswas and 9 biswansi ( 0-7-9) for the Path which has been put under mahal Azhar Hussain. At the same time, some portions of the Janmasthan complex under abadi without rent (lagan) under

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khasra no.160 vide Nos. 160 (Jim), khata khewat no.2 , Khata Khatauni no.19/1 with an area of 7 biswas, 3 biswansi (0-7-3) in the subordinate ownership of Rameshwar Das, disciple Gopal Das; Khasra No.160(d) vide khata khewat No.1, Khata Khatauni No.8/1 under abadi with an area of 3 biswas, 17 biswanis (0-3-17)under the subordinate ownership of Raghubar Das exempted from rent (lagan) and No.160 M vide Khata No.2, Khata Khatauni No.14 under abadi and an area of kaacha village bigha, i.e. , 1 bigha, 6 biswas and 7 biswansi (1-6-7).

28. In the 1344 F/1936-37A.D. settlement report, of the khasra nos. of kishtwar, khewat and khata Khatauni associated with the Janmasthan complex in the mahals of Nazul and Azhar Hussain as detailed above, there is no area in any of the plots/sub-plots, which has been shown as graveyard (qabaristan) or in waqf.

29. The map of khasra kishtwar of the village Ramkot dated 1344-F/1937 AD of the settlement depicts the territorial boundaries of the khasra plots of the village alongwith symbols of various categories, viz., banjar, abadi, roads, temple (mandir), graveyards (qabaristan ) and pacca wells, etc. Of the khasra plot nos. of the Janmasthan complex, No.159 has a symbol of banjar land; no.160 has symbols of abadi and a temple in the north-east of the plot (shaksi

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temple) along with a well to its east; no.158, a pacca road; no.146 (abadi Sita Rasoi), abadi along with a temple in the north-west and two wells ; no.147 (R) , mostly with a symbol of banjar land In none of the plots /sub-plots of the Janmasthan complex, there is any symbol of a graveyard (qabaristan), even though symbols of graveyards have been shown in the other and neighborly khasra plot nos., i.e., 172,173,168, and 169, etc.

30. In view of the position as available from the above mentioned original records of the 1344 F/1936-37 settlement of the village Ramkot, the Nazul record s of 1931 AD which have altogether different khasra Nos. of the Plots, unaccompanied by any table of equivalent khasra Nos. (Fard utabigat) are absolutely unauthentic with regard to waqf land vide khasra no. 583 and qabristan land vide khasra no.586 and other khasra nos. which have been considered to be a part of the Janmasthan complex. As already noted, even the second revised Report of the Survey Commissioner was rejected by the Hon'ble High Court of Allahabad, Lucknow Bench on 8.8.1991.

31. In view of the position as available from the above mentioned original records of the 1344 F/1936-37 settlement of village Ramkot, the Nazul records of 1931 AD which have altogether different khasara Nos. of the plots,

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unaccompanied by any table of equivalent khasara Nos. (Fard Mutabiqat) are absolutely unauthentic with regard to waqf land vide khasra no. 583 and qabristan land vide khasara no. 586 and other khasara Nos. which have been considered to be a part of the janmasthan complex. As already noted, even the second revised Report of the Survey Commissioner was rejected by the Hon'ble High Court of Allahabad, Lucknow Bench on 8.8.1991.

32. Since the 1344F/1936-37 settlement, the annual revenue records of the village Ramkot pertaining to khewat and jamabandi, i.e. khata Khatauni have been maintained in the Tehsil Office/ District Record Office, Faizabad for all the years till date. For all the khasara plots of the janamasthan complex, the position stand the sane as in the last settlement, excepting that the entries of the names of the succeeding mahants as subordinate owners have been made in the relevant documents. The site on which the shilanyas was performed in November / December, 1989 falls under khasra no. 160, the major portion of which is under mahal Nazul Sarkar Ala. The khasara No. 160 being a large part measuring 5 bighas and 13 biswas, covers both Janmasthan and non – janamasthan areas and falls both under mahal Nazul and mahal Azahar Hussain. In this khasara no. related khata khewat and khata Khatauni Nos., apart from Nazul

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(government) owning 3 bighas and 13 biswas, There are three other subordinate owners (malikan-i-mayahit) i.e., Sita Ram Sharan owning 3 biswas and 13 biswanis , Awadh Behari owning 11 biswas, 7 biswanis (1-6-7) respectively. The sub –plot of Sita Ram Sharan vide khata khewat no. 23 and khata Khatauni no. 54/1 falls under mahal Nazul. The sub plot of Ishtiaq Hussain vide khasra no.160 R and khata Khatauni no. 9 is under mahal Azahar Hussain. Here too, the subordinate ownership is vested with Ishtiaq Hussain and no part of his sub- plot has been shown with any grave yard or muafi or waqf .

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**UNAUTHORISED INTERPOLATIONS IN REVENUE RECORDS**

**33.** In the settlement report of 1861 Ad, interpolations / additions have been effected in certain columns of the khata Kishtwar folios. In village Ramkot the total number of the khata Kishtwar is 167 and as per performa, there are 16 coloumns for each khasra. The first four columns records (i) the serial number, (11) Name of field (abadi, etc.), (iii) Name of thok/ patti (nature of subordinate agency for revenue collection), (iv) name, lineage and caste of the owner (Nam Wa Waldiyat Zat Malik) respectively. The serial number of Janmasthan is 163 with specific description under the columns followed by 9 sub-plots with required description under each column in the copy of the 1861 settlement report available at the District Record Office (muhafaz khana), Faizabad under column No. 2, to the original recording of abadi Janmasthan ; and ‘juma masjid’

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Have been added. Under Column No.3, to the words taraf Nazul, and Muafi have been added so as to read and under column No.4, to the wards Sarkar Baharur, ‘ and Azhar Hussain’ have been added

**Evidence for interpolations :**

(1) Under column 2, the words abadi Janmasthan are in thick handwriting. As there was no space below this for writing in a similar way, a small ‘wa’ ( ) has been put to the right of Janmasthan and ‘juma masjid’ has been put above towards the left of abadi. The very crude construction of the sentence shows the later insertions of the above words of wa (‘) and ‘juma masjid’.

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(2) In the 1861 settlement copy of the Tehsil office under column No. 2 abadi Janmasthan had been written in thick bold hand and no space was available for further addition in the manner done in the District record. So ‘wa jama masjid’ ( and jama masjid) have been inserted below it but for want of space appear before sub-plot 1, (goshalf) so as to disturb the entire symmetry of the entries made therein.

(3) The Tehsil office copy of 1861 settlement does not carry any incorporation of ‘and muafi’/’and Azhar Hussain under columns nos. 3 and 4 respectively as the case of the District Record Office copy.

(4) The second settlement of 1301 Fasli/1893-94 Ad in the khasra kishtwar record though carrying the same khasra no. 163, due to the clubbing, is divided into 5 sub-plots instead of 9 sub-plots as earlier in the 1861 settlement report. But it does not record the name of ‘jama masjid’, nor

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does it put ‘muafi’ under the relevant columns, which have been shown only under Sarkar Bahadur Nazul. However, in sub- plots No. 163/3 with an area of 11 biswas, Azahar Hussaqin and Tahir Hussain have been put as mahaldars where as Mehta Balram Das has been recorded as subordinate owner (malik matahit).

(5) In many a other khasra kishtwar Nos. of the 1861 settlement record of the District Record Office, e.g., 16,21,25,29,32 and 167 , there are clear instances of tampering, rubbing off the original entries and overwriting them with others. Ordinarily, such changes are never made in the official revenue records and even when any change has to be effected for the correction of an error, if any, the original words are distinctly struck off to be substituted by other words above it. But rubbing off is never done.

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(6) Another evidence for determining the fact as to whether it is a correction of an error by the scribe himself or a later interpolation/ alteration is the ink whether thick or medium or thin, as well as the variation in the handwriting of the letters / words, if any, In the 1986 settlement document of the District record Office, for Khasra Kishtwar No.163, for all the columns, quite thick black ink has been used and the handwriting is also uniform with the use of the same qualm (read pen) The thickness of the ink, words and style of writing is uniform. But for the words ‘wa Azhar Hussin’ (and Azhar Hussain) put below the words of ‘Sarkar Bahadur’ in column No.4 are absolutely dim in ink. Thereafter the description about all the other sub-plots (goshas ) is again writtenin thick black ink. At the same time, for all the foios/ Khasra Nos. following khasra No.163 are written in equally black thick ink and uniform handwriting excepting Khasra No.167 wherein again under

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column No.3, the words taraf Nazul are in thick ink board handwriting here as the additional words wa muafi (and muafi) are written in rather thin and dim ink. Similarly, under column No.4, the original words 'Sarkar Bahadur' are written in thick black ink but the words 'wa Azhar Hussain' have been added in dim ink. It is very clear that the words 'wa muafi' and 'wa Azhar Hussain' under column No.3 and 4 of the both the khasra Nos. 163 and 167 are later additions. All the same, the handwriting of the scribe who made these additions both the Nos. is the same, even though it is apparently quite different from that of the original writing.

He has further submitted that there was no Waqf associated with the Babri mosque. Accordingly, on the basis of waqf no right can accrue to the plaintiffs. His submissions are reproduced as under:-

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**NO WAQF ASSOCIATED WITH ' BABURI MASJID'**

In the Janmasthan complex as recorded in the 1st regular Settlement Report (1861 A.D.), there is no Plot/Sub –Plot which ahs been put as a waqf attached to ' Baburi Masjid'. At that time, Muhammad Asghar claimed himself to be khattib and muazzan ( vide his representation to the British Government , case No.884, Muhalla Kot Ram Chander, Ajodhya dated November 30, 1858 A.D.) of the structure named as ' Baburi Mosque' situated at Janmasthan. According to the Muslim claim, this monument was registered as 'Mosque' in 1860 AD. only, i.e., after the 1855 Hindu-Muslim riots and the tussle that followed. In his representation to the British Government, Mir Rajab Ali also designated himself as "Khattib Baburi Mosque' (vide Application No. 115, Muhalla Kot Ram Chander, Ajodhya

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dated November 01, 1860 AD.). All the same, in the Had Bast map appended to 1861 A.D. Settlement Report, the symbol of the 'Mosque' does not figure in the Janmasthan complex ( khasra Kishtwar No. 163/abadi Plot No., 431-56). As a matter of fact, both Muhammad Asghar and Mir Rajab Ali were residents of village Shahanwa (about three miles to the west of village kot Ram Chander/ ajodhya) and were petty zamindars/land holders/lambardars of village Shahanwa. The 1861 settlement Report of village Shahanwa (vide No. Had Bast 571, Village under Khaliasa (Government) and Mohammad Asghar, Mir Rajab Ali and Muhammad Afzal, etc., are shown as pattidars ( vide Exhibit No.'A'). Under the revenue system as inherited from the Mughal and Nawabi Governments, as pattidars /maliks/lambardars, etc., they were entitled to nankar (subsistence allowance) in the shape of nankar/muafi land in the same village. At the same time, they were land holders and their holdings, etc., are recorded in the Settlement Report. But, it is nowhere recorded that they enjoyed any nankar /muafi for the maintenance of the 'Mosque' khattibs and muazzans, etc. However, even though they could not furnish any documentary evidence to the British Government, they continued to claim that during the Nawabi period, their family had been getting the annual grant of Rs. 302/3/6 as nankar and muafi from the revenues of the village Shahanwa for its own maintenance and out of this income, they had been spending only a part of the amount for looking after some of the essential needs of the so-called 'Baburi Mosque' situated at Janmasthan, kot Ram Chander, Pargana Awadh, District Faizabad. After the first war of Independence in 1857 (mentioned as 'Mutiny' in the Report of the District Waqf Commissioner, Faizabad, dated 16.09.38), the British Government, apparently on political

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grounds because of the loyalty and services rendered by the land lord / pattidari family of the village Shahanwa, continued the above mentioned amount in cash but from 1863 -64 A.D. onwards, the British Government considered it expedient to commute this cash payment into a conditional (mashrut) muafi land grant-a process which was completed by 1870 A.D. when, as explained further, the revenue-free land grant along with superior proprietor rights was bestowed on Mohammad Asghar and Mohammad Afzal Ali in the villages of Sholapur and Bhaharanpur but not in kot Ram Chander were the Janmasthan 'Mosque' stood. As such, all previous orders regarding the family grant to Muhammad Asghar/ Muhamad Afzal Ali were superseded by the final order passed in 1870 under the authority of the Governor General in council, whereby a sanad for revenue – free land grant was issued by the Chief Commissioner Awadh. On representation from the family, a decree to this effect was also given by the revenue authorities and entries were made in the revenue records accordingly during the same year (1870).

Later on when in 1938 A. D., controversy arose about the nature of the title to the land granted by the British Government for the maintenance of the 'Mosque', Pir Mir Taqi, the khattib and muazzan while tracing the genealogy of his family claimed that the Mugal King Babur built this 'Mosque' situated on the site of Janmasthan and granted an annual amount of Rs. 60/- and some arable land in madad-i-maash in the village Shahanwa to Sayed Abdul Baqi appointed as khattib and muazzan for his subsistence and the maintenance of the 'Mosque'. Later on, after the fall of the Mughal Empire, during the Nawabi period, Nawab Saadat Ali Khan, king of Awadh increased the annual grant to Rs.

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302/3 as /6 pies. But as commented by the Waqf Commissioner, District Faizabad on 16.09.38, in this regard, no written accounts wee submitted by the khattib and muazzan family to the British Government for the continuation or bestowal of fresh grant for the same purpose.

It has already been observed that although Muhammad Asghar and Rajab Ali claimed to be direct descendants of Sayed Abdul Baqui, the first khattib and muazzan supposed to have been appointed by Babur, no reference of cash assignment or madad-imaash land on hereditary basis can be traced in the first regular Settlement of the Village Shahanwa in 1861 A.D. All the same, on repeated representations to the British Government by Muhammad Asghar and Rajab Ali, the British Government having discontinued the annual cash grant, granted afresh land in muafi in the village of Bhuraipur and Sholapur in 1870 A.D. Later on the sanad issued by the Chief Commissioner clarifies that the cash nankar of Rs. 302/3as/6 pies received by Rajab Ali and Muhammad Asghar as rent-free tenure in Village Shahanwa under the former Government (Nawabi Rule) was being maintained ( as muafi land in the village of Bhuraipur and Sholapur) under the authority of the Governor General-in- Council so long as the object for which the grant had been made was kept up on the conditions that the assignees would surrender all the (previous) sanads, title deeds, and other documents relative to the grant in question and above all, they and their successors would " strictly perform all the duties of land holders in matters of Police and any Military or Political Service that may be required of them by the Authorities … If any one of these conditions was broken by Rajub Ally or

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Mohammad Usgar or their successors the grant will be immediately resumed".

A serious controversy about the nature of the land grant in the village of Bhuraipur and Sholapur earlier given by the British Government to the assignees (khattib / muazzan) which was also in a way connected with the ' Baburi Mosque' at kot Ram Chander, Ajodhya arose in 938 A.D. The District Waqf Commissioner, Faizabad (Eligible– S.M.Omais) vide his decision dated 16.09.38 while interpreting the sanad earlier given by the British Government to the assigness (khattib / muazzan) maintained that even though the grant was conditional on the performance of duties of land holders in the matter of Police, Military or Political Service, etc, the object for which the grant was made was the maintenance of the 'Mosque'. He also stressed that the original object of the state grant of Emperor Babur and Nawab Saadat Ali Khan was also continued in the sanad by the British Government after the 'Mutiny', i.e., for the maintenance of the 'Mosque' and further that the nankar was to be enjoyed by the grantee for so long as the object of the grant, i.e., the 'Mosque', was in existence. In view of this, the Commissioner gave a ruling to the effect 'clearly then the grant to Mohd. Zaki must be regarded as waqf, the purpose of which is the maintenance of the religious building known as the 'Baburi Mosque'.

Muhammad Zaki, the (khattib /muazzan) ( also mutawalli in case of waqf) raised serious objections to the decision of the Commissioner, waqf Board. He maintained that the particular grant of land in Sholapur and Bhuraipur had been made by the British Government which was a non-Muslim body and hence the grant could not be taken as a muslim waqf. Moreover, as per sanad, it was conditional

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grant subject to the performance of military, police and other duties, etc., and in case of non-fulfillment of the latter services, the grant could not be regarded as a Kuslim waqf. He contended that after the annexation of Awadh, the British Government in lieu of cash nankar and madad-i-maash (as inherited from the Nawabi period ) granted land to Muhammad Asghar and Muhammad Afzal and in the first Regular Settlement (1861), it was entered in the latter's malkiyat (ownership). Thereafter, on February 03, 1870 AD., Muhammad Asghar and Muhammad Afzal got a decree in their favour whereby they were entered in the revenue records as superior proprietors and possessors in possession of the property ( malik-i-ala qabiz wa mutsarif jadaid) and since then, their descendants have continued with the same status. As such, the property falling in the category of superior proprietorship ( malkiyat-i-ala) did not fall in the definition of the Muslim waqf. He further contended even though, the descendants of Muhammad asghar, etc., had been bearing the expenses for the essential items of expenditure for the maintenance of the 'masjid Baburi', the family property was outside the jurisdiction of the Muslim waqf Act, No.12,1936 as the major amount of the income had been spent by them on their own subsistence as madad-i-maash, etc This had always been recorded in the khewat records as such.

Apart from the above arguments, Muhammad Zaki always maintained that Sayed Abdul Baqui, the First muazzan/khattib of the 'Mosque' appointed by Babur was a Shia and his descendants all through the ages, till date belong to the Shia sect and could not be coerced to accept the spurious contention that the 'Baburi Mosque' might be put under the control of the Sunni Waqf Board. This position

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was taken by the (khattib/muazzan) family before the District Waqf Commissioner, Faizabad (1941). However, the latter's Report (dated February 08,1941) simply reproduced and reiterated the position earlier taken by the District Waqf Commissioner in 1938 A.D. on the contrary, Muhammad Zaki and Malik Hussain, etc., the (khattib/muazzan) vide their Application dated 26th September, 1943 AD serial no.26, submitted to the Sunni Central Board of Waqf, U.P., Lucknow, took a clear stand that there was no waqf for their properties in the villages of Buharanpur and Sholepur with total annual income of Rs. 528/14 as (Rupees Five hundred Twenty Eight and Annas Forteen only, i.e., Rupees Three-hundred-fifty-one and Annas six (Rs. 351/6 as ) from the village of Bahoranpur and Rs. 177/8as (Rupees One-hundred, Seventy –Seven and annas eight) from Sholepur. They contended that earlier they had been bestowed grant (atiya) by Shahenshah Babur and Nawab Saadat Ali Khan and in the present case ( i.e. land/income from Baharanpur/Sholepur) they were strictly governed by the sanad nankar granted by the British Government. They further maintained that the khewatdara (i.e., the revenue authorities/ records) did not recognize this as waqf and that it had been recorded in the revenue records only as nankar muafi. Of course, in the past they had been looking after the white washing, lighting arrangements of the 'Mosque' and as well making payment of the salaries of the Muazzans/Imams, etc., Malik Hussain, s/o Syed Muhammad Zaki in his detailed letter No.5607 dated 20.11.43/22.11.43 in response to the Secretary, sunni Waqf Board 's communication vide no. 5272 dated 27 October, 1943, clarified his relation with the 'Baburi Masjid'. He categorically maintained (vide para 5) that there was neither any waqf for the 'masjid', nor there had ever been a

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Mutawalli for it. Further, that his family has had muafi land (in the villages of Buharanpur and Sholepur) and being the lambardar ( head ) of the property and being ( good) Muslims, it had been looking after the repair etc. of the same and that he, too, as lambardar had been discharging this obligation since 17 February, 1943 . He stated that the expenditure incurred in this regad was from his family property which was in muafi nankar and not in waqf (Vide paras 8-9 ) . In this letter, he also gave some details about the items of white washing , repair and floor carpet etc relating to the 'Masjid' and some expenditure incurred in this regard since October, 1941. ( Vide paras 2-3, 10-11). Not with standing all this, the legal tussle continued and in 1945 A.D. it was considered that the muazzan/khattib family ( At this time kalab Hussain, the brother of the deceased Muhammad Zaki)had been all through Shias, even though the prayers in the past had been offered both by the Shias and the Sunnis.

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It is equally important to note that during the 1930's of the 20th century, as per statement of Muhammad Zaki, the Muazzan / Khattib even though he was looking after some of the essential items of the maintenance of the 'Mosque'(i.e., whitewashing, lighting and flooring, etc.), from the income of the nankar /muafi grant held as malkiyat in perpetuity, he did not spend any money on the repairs of the 'Mosque'in the aftermath of the riot in Ayodhya in 1934 A.D. The Collectorate and the P.W.D. records of the District Faizabad bear out the fact that the entire expenditure for the repairs of the 'Mosque'was met by the District administration/PWD. Significantly, in the waqf records of the Sunni/ Shia Boards of waqf or the Collectorate/UP. Government Records, there is no mention

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of any Mutawalli or waqf from the income of which the structure of the ‘ Baburi Mosque’might have been rebuil valuable revenue free grant of land held by Muhammad Zaki etc. in the villages Burhanpur and Sholepur allegedly a attached for the maintenance and upkeep of the same.

An elementary knowledge of the Mugal agrarian system/ Nawahi phase and the British administration in India as we as well as as understanding of the nature of various categories of land grants for administrative purpose or to the religious institutions would clearly show that there has always been a basic difference between nankar (for personal maintenance) and waqf. In this regards, the contentions of the grantees, i.e. Muhammad Asghar, etc. 19th Century) and Mohd. Azkil Kalab Hussain/Malik Hussain, etc. have been absolutely correct and tenable that their properties in Shahanwa/Burhanpur/Sholepur could not be categorized as waqf. As such, they do not show any waqf relating to the alleged 'Baburi Masjid. Even in the Judicial records of the various suits pending before the Lucknow Bench of Allahabad High Court, there is no registration of any waqf having any connection with the alleged 'Baburi Masjid' as per records of the Sunni Central Waqf Board.

After the above mentioned enquiry by the District Waqf Commissioner, his report as prescribed under the U.P. Muslims Waqfs Act, 1936 along with the lists of the Shia Waqfs and Sunni Waqfs was forwarded by the U.P. Government to both the Shia Central Board of Waqfs and Sunni Central Board of Waqfs as each of the two Waqf Boards were to publish the report along with their respective lists in Official Gazette, under sub-section (1) of Section 5 of the Act. In the Shia –Sunni legal Tussle that followed, the Sunni Central Board of Waqf claimed that it was published

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as a Sunni ‘Mosque’ in the U.P. Gazette dated 26.02.1994, even though in reality, the particulars of the ‘ Baburi Mosque’ or the qabaristan ( qraveyard) attached to it, do not find any. Place in the list of Waqfs published in the Government Gazette dated 26.02.1944.

As the Shia Board Claimed it to be Shia Waqf, it filed a suit to get over the effect of the Waqf Commissioner report on the assumption that the ‘ Baburi Masjid’ had been notified to be a Sunni Waqf in the above mentioned Gazette notification dated 26.02.1944 under Section 5 (1) of the U.P.Muslim Waqf Act, 1936.

Thus confronted with a faith accompli of the Baburi Masjid having been included in the list of the Sunni Central Board of Waqf by the Chief Commissioner of Waqfs under section 4 of the U.P. Muslims waqf Act ( XIII of 1925 ) as well as by the Sunni Central Board of Waqf, U.P. and also assuming the fact that the same had been published in the Government Gazette dated 26.02.1944, the Shia Central Board of Waqf U.P., as Plaintiffs in the Regular Civil Suit No.29 of 1945, sought a declaration that the ‘Mosque’ was a Shia Waqf together with the idgah attached to it at Jaipa Nala, Ayodhya, and village Behrampur, Pargana Haveli and 20bighas odd land, known as sholepuri grove, in mahal Bharanapur, in Tehsil and District Faizabad. As a matter of fact, when face to face with the issue that under the law, the ‘Mosque’ had to be essentially attached with either of the Waqf Boards, i.e. Sunny/Shia, the Waqf Board in the plaint came upwith the contention that Sayid Abdul Baqt ( Mir Bagi), the builder of the mosque’, in 1528 AD, during the reign of the Mughal Empror Babur, was a Shia and that being the founder-waqf as well the first Mutawalli of the ‘Mosque’, followed since then by a lineage of successive

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Mutawallias till date (1945)with kalab Husain as the Mutawali in 1945 after the death (1944) of his brother Mohammad Zaki and as such, the 'Mosque' was a Shia waqf . Even though, as already stated, earlier Mohammad Zki/Kalab Husain in the official documents submitted to the office of the District / Commissioner of Waqf, had always maintained that there had been no Mutawalli shince the building of the mosque as they were mearly khatibs and muezzins looking after the 'Mosque' by meeting some of the incidental charges from the income of their personal proprietary lands in the village of Sholapuri and Behrampur which were not in waqf now under the compelling circumstances, with a view to tide over the technical, legal difficulty and to get the 'Mosque'legally declared as a Shia Waqf, it was contended for the first time that the cash nankar (Rs. 302/3 as /6 paisa) bestowed during the Nawabi period and the properties in Sholepur and Behranpur granted by the British Government , as revenue- free grants , confirmed by a decree in proprietary rights, revenue free now passed in favour of hereditary mutawallies who since then had been observing the terms of the grant and filing accounts before the S.D.O.

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It was also claimed by the plaintiffs i.e. the Shia Central Board of Waqf, that its mutawalli was entitled to the supervision of the 'Mosque' as it was Shia Waqf and that the Chief Commissioner of Waqf had not sent the list of Sunni Waqf to them even though the latter had included the 'Mosque' in its list supposed to have been based on the publication in the Gazette.

The Sunni Central Board of Waqf, in its defence statement asserted that the 'Mosque' was founded by Emperor Babur who was a Sunni and that its pheshhawar

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khatibs and muezzins had been of the same sect until much later on, one of the phes hawars / mutawallis in the pedigree list i.e. Mohamad Afzal became a convert to Shia during the closing peiod of the reign of the kings of Awadh, who were Shias. It was also asserted that the 'Mosque' had always been used by the sunnis of Ayodhya for saying their Friday prayer and the Idgah as noted above, was quite independent of the 'Mosque' and was similarly used by the Sunnis for their Id and Baqrid prayers.

In the continued litigation between the above two parties, the Court of the Civil Judge, Faizabad, which tried thecase as a preliminary issue, vide-judgment dated 21.04.1966 held that " no valid notification under Section 5(1) of U.P. Muslim Waqf Act No.XIII of 1936 was ever made" relating to the specific disputed property. As such, the judge made it clear that the allege notification of in 26.02.1994 did not specify the property in suit as waqf property and that it was of no legal effect. This finding became final between the two parties. Later on, in the case of Gulam Abbas V. State of U.P. ( vide AIR 1981 S C. 2196, pp. 2217-18, Paragraph 17,) in the case between the Shia and the Sunni Muslims, the Hon'ble Supreme Court of India also found the above mentioned notification of the U.P. Government dated 26.02.1944 to be " of doubtful validity and probative value," and held, it to be of no legal effect. As such, in view of the judgment of the Supreme Court, the said notification dated 26.02. 1944 was involved and that the suit No.29 of 1944 could not have been filed under Section 5(2) of the Waqf Act, with the result that the judgment in that case Date 30.03.1944 **IN THAT SUIT IS WITHOUT JURISDICTION** and the findings recorded therein with regard to the waqf issue are of no legal effect.

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The earliest regular Settlement of 1861 A.D. as well as the later reports confirm the fact that these had been prepared taking into consideration the past records of the Nawabi period as well. As a matter of fact, as per the original documents, the entire complex of Janmasthan is covered under khasra No.163 with 9 Plots, with total area of 5 bighas and 4 biswas. However, under column No.16 of Kaifiyat, it is stated that in the area of Janamasthan, there is one pacca well, three whose number is recorded in Kahasra abadi and Khana grave yard ( qabristhan). As district from the khasra kishtwar, in khasra abadi Nos. 431-456, (as recorded corresponding to No.163 of the former) shows abadi (Population) in this area. They do not mention the existence of any 'Mosque', though, in the kaifiyat they mention the prevalence of pacca graveyards imli threes and makans (houses ) etc. in the campus. For 4 bighas and 13 biswas, the superior ownership of the land has been declared in the name of Sarkar Bahadur Nazul ( Government), and vide Khatauni No. I, 1878 11 biswas have been shown a muafi under mahal Azahar Hussain. In the settlement of 1301 Fasli/1893 A.D, in the khasra kishtwar, the same khasra number (163) remains, though the entire area is shown under 5 plots instead of 9 as previously in the 1861 settlement report Both in the khata Khatauni/khewat the Hindu Mahants of Janmasthan have been shown with subordinate proprietay rights as malikan-i- matehit along with their respective shares. But later on these nos. undergo a change during the Fasli 1344/45 /1936-37 AD Settlement Report but the position of1861 persists even in later Settlements effected from time to time during the 19th and 20th centuries. It is also clear that the area on which the structure of the ' Baburi Masjid' stood is a part of the Janmasthan and under the subordinate ownership (malik

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mataiht ) of a Hindu Mahant.

This position was inherited by the early British administration from the earlier records of the Nawabi and the Mugal periods. However, in the Settlement Record of 1861 of the Mahafazkhana, certain later alternations have been made wherein the name of Jama Masjid and the word muafi has been inserted. In Plot No.163/1 the words JamaiMasjid , uafi and Azhar Hussain under coloumns No.2,3 and 4 respectively have been added. But the copies of the same document prepared during the same year available at the Tehsil office wherein only the word Jamai masjid has been added in column No.2 but not muafi and Azhar Hussain in column nos. 3 and 4 as against Muhafaz Khanna Report clearly prove that the later additions are interpolations, done perhaps during the past few decades of the controversy. This is also confirmed by the fact that the Khasra Kishtwar records of the second Revenue Settlement effected in the year 1301 Fasli (1893 A.D.) do not carry out such alternations or additions. These records still show the area on which 'Baburi Masjid' had been earlier constructed as forming a part of the Janmasthan complex and there is no mention of any 'Mosque' nor any land assigned to it in muafi. It is evident that interpolations in the settlement Report of 1861 of the District Record Office ( Muhafz Khanna), Faizabad have been done for a few other khasra kishtwar nos. as well. All this needs a through probe on scientific basis.

As already stated, according to the revenue Settlement effected in 1861 AD, the total area covered by khasra no.163 relating to Janmasthan has 9 distinct plots. There have been two more settlement operations since then. However, in the revenue settlements effected from time to time, the

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khasra/khewat/khata Khatauni Number as well as the nos. of plots undergo a change and there are also adjustments with the neighboring plots. But the table of equivalent past numbers and parts thereof along with the current (ha 1) numbers Fard Mutabaqat )is always appended and forms a part of the Settlement Report. In the latest revenue records of 1397-99 Fasli/1989-92, the erstwhile Janmasthan complex has been shown in four khasra Nos. , i.e., 159,160-,146, and 147. The major portion of the Janmasthan complex comprising Ram Janmabhoomi, the so-called Baburi Masjid as well as the new Janmasthan falls under Khasra Nos. 159,146 (vide khata Khewat No.35) and 147 R wherein the names of the Mahants alongwith the areas in their ownership have been recorded. Only some portion of the complex falls under No.160 which too is shown under mahal Nazul Sarkar. In brief , Janmabhoomi/ ‘ Baburi Masjid’ have been recorded under No.159 and 160. The entire khasra No.159 has been entred in the ownership of ‘ Shri Danesh Dhari Bhagwan Bara Asthan, Ajodhya’ whereas some portion falling in khasra no.160 has been recorded in the ownership of Sarkar Nazul. There is no muafi/waqf of any type associated with the ‘Mosque’.

The entire Revenue records dating from the first Settlement (1861 A.D.) have been examined. There is no record of any of ‘Baburi Masjid’ any where in the documents maintained by the Revenue Department of the Government of U.P. at the Collectorate and the Tahsil at Faizabad.

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As distinct from the above mentioned revenue records, the Nazul Department of the District Faizabad, (U.P.)also prepared its own amended Khasra records of the abadi settlements. ( tarmimi khasra abadi ) in 1931 AD. In these revise khasras of village Ramkot, both 'masjid' and chabutra indicating the temple aqt Janmasthan have been recorded in khasra no.583. The 'Mosque' has been shown in waqf under colun 'name of the present possessior' ( Nam Hal Qabij). At the same time, Mahant Charn Das in 1931 and thereafter Mahant Raghu Nath Das in 1941 have been declared under-proprietors (Telir mataht) of the entire plot. Moreover in these khasra records, arazi No.586 with an area of 11 biswas, 16 bishwansi and 16 Kachwanis ( 11-16-16) being in abadi is shown as grave yard ( a pecca qabaristan known as Gang Shahid ) and assigned inwaqf (waqf shad Shahi).

A note of caution is necessary with regard to the alleged khasra and map maintained by the Nazul department in the Faizabad Collectorate which is relied upon by the plaintiffs. The map maintained by the Nazul Department is not authenticated, nor prepard under any lay, department is not authenticated, nor prepared under any law, nor is it according to any ascertainable scale. The survey made on the basis of the khasra abadi and that map of the Nazul department at the instance of the Plaintiffs in that suit has beenrejected by the High Court's Full Bench which is trying the case and a fresh survey has been ordered on the basis of revenue records in order to ascertain the exact situation of the land involved in that suit. It is noticeable that the plot numbers given in the plaint of that suit are based on the said

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khasra abadi of the Nazul department. There no Fard Mutabigat comparative table between the plot numbers given in the khasra abadi of the Nazul department and the khasra abadi maintained by the Revenue Department of the Government.

In fact, the purpose of the Nazul (Municipal)survey and the map prepared in 1931 AD was to identify the encroachments made on the Nazul property. Such a survey map cannot take precedence over the regularly conducted revenue settlement operations and the maps prepared thereupon, especially when the title to land is involved. In its order dated 10.01.1990, the High Court directed the Board of Revenue, U.P. State, to survey the site and make report with the assistance of the municipal records and such other records which it considered to be useful and in its further order dated 23.5.1990 directed it to execute the commission and locate the plots with reference to documents on records only. The commissioner , Shri J.P. Srivastava, appointed by the board of revenue for the purpose, submitted his report on 25.07.1990 wherein he had located the disputed property with reference to the Nazul map of 1931, even though he conceded that the Nazul map and the settlement maps were on different scales and that it was not possible to juxtapose the two maps and prepared fard Mutabiqat and corresponde the Nazul khasra numbers with the settlement khasra numbers. Thereupon, the Hon'ble court passed another order directing the commissioner to submit supplementary report surveying and locating the property with reference to settlement maps of 1861 and 1937 A.D. The commissioner submitted his supplementary report dated 8.2.1991 appended by 14 Annexures, to which serious objections were made by the Defendants.

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In fact, the commissioner instead of surveying the land of his own had ‘ Baburi Mosque’ , grave yards, the shilanyas site and various other plots, Such an act on the part of the Commissioner for having accepted the Plaintiff’s map and adopting it as his own official map for submission to the court was characterized by the latter as ‘wholly unwarranted”.

Having gone through the pros and cons of the entire case, Hon’ble court in its judgment on 8.8.91, even though it refrained from calling the commissioner’s report as ‘motivate’, described it as “absurd”. It refused to accept the commissioner’s view that correct map and report about kot Ram Chandra were possible only in reference to Nazul map and that the Settlement maps were not correctly prepared. In its judgment, it refused to keep the report of the commissioner on record in the pending case.

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Shri H.S. Jain, Advocate has further argued that on the basis of material available on record, it can safely be presumed that there was construction prior to the erection of Babri Mosque. The Temple Janam Sthan was destroyed and it was converted into a mosque. It is further submitted that plaintiffs cannot take any advantage of two inscriptions found inside the mosque to establish that the mosque was not constructed at the site of Ram Janam Bhoomi temple after its demolition. His submissions are as under:-

Now, there were two inscriptions inside the mosque, which were first in a riot in 1934 and subsequently restored from some stamp age alleged to have been preserved. The one which was originally there on the southern side of the pulpit reads as under :

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By order of kind Babar whose justice is an edifice meeting the palace of the sky. (1)

This descending place of angels was built by the fortune-favoured noble Mir Baqi. (2)

The good will remain everlasting, and, when I utter the words; The good will remain everlasting', the year of its erection becomes manifest. (3) [1] For the expression, the good will remain everlasting, the Persain original is 'buwad khair baqi', which, rendered into cardinal numbers, comes to 935 A.H./1528 A.D., as under :

| | | |
|---|---|---|
| b | = | 2 |
| w | = | 6 |
| d | = | 4 |
| kh | = | 600 |
| I | = | 10 |
| r | = | 200 |
| b | = | 2 |
| a | = | 1 |
| q | = | 100 |
| i | = | 10 |
| Total | = | 935 |

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Muslim authors have invariably erred in dating the event as 923 or 930 A.H. instead of 935 A.H. The source of the error is a misreading of the date given above in the form of Arabic /Persian alphabets arranged into words, which are : b u w a d kh a i r b a q i . What they have done about it is to drop ' b u w a d'

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1. Ba- farm udah –I shah-I Babar ki 'adl-ash
Bina'I 'st ba kash-I gardun mulaqi (1)
Bina kardah Tn mahbal-I qudsiyan ra
Amir-I sa' adapt-nishan Mir –Baqt (2)
Buwad khayr baqt wa sai-T bndyash
Ayan shud chu guftain, buwad khari baqt (3)

And read only the rest, 'kh a i r b a q i' , which does give 923 A.H. Incidentally, the 'u' , 'a', 'a' , are, in Arabic / Paersain, diacritical marks, which are not counted.

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Well, the order constricted or reconstructed inscription reads as under:

In accordance of the wishes of the ruler of the world, Babar, this lasting house (of God), like the palace of the spheres, was founded by the fortune- favoured noble Mir Khan. (1-2)

May such a founder thereof ever remain, and such as king of the world and age. (3)

8. Sahifah-I Chihal Nasa ih-I Bahadurshahi (the Bahadurshahi Book of Forty Sermons). Besides stating, as well as see in the squel, on the basis of old records (Kutub-I sabiquah), that the Muslim rulers of the past used to demolish temples and break down idols at Ayodhya in pursuance of their policy of rooting out Infidelity and that Babar did replace the Rama temple by the Babari mosque, Mirza Jan, author of an Urdu work Hadiqah-I Shuhada and an active participant in the crescentade (Jihad)to recapture the Hanumangadhi from the Hindus, harks back to a Persian text entitled Sahifah-I Chihal Nasa'ih-I Bahadurshahi, ascribes it to the daughter (befi) of "Bahadurshah 'Alamgir" (full name Bahadurshah Shah-I Alam, here surnamed 'Alamgir either inadvertiently or on the basis of his being Aurangzib 'Alamgir's son", claims to have found a copy of the book made on 15th Shaban 1231 A.H./11th July 1816 AD in the library of Mirza Hydar Shukoh son of Mirza Sulayman Shukoh (son of Prince Dara Shukoh), and quotes from it verbatim (hub a-hu) a passage in original of some twelve lines setting out the twenty-fifty out of forty sermons, to the effect that, keeping the triumph of Islam in view, devout Muslim rulers should keep all idolaters in subjection to Islam,

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1. Ba-mansha'I Babar Khadiv-I jahan Basani ki ba kakh –I gardun inah (1)
Bina kardah in khanah-I payaddr
Amir –I saadat-nishan Mir Khan (2)
Bi-mandah hamishah chunin bani-ash chuan shahryar-I zami-o zaman (3)

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Brook no laxity in realization of fizyah, grant no exemption to Hindu Rajah-s from dancing attendance on Id days and from waiting on foot outside mosques till the end of prayer (namaz) and discourse (Khujbah), and ‘ keep in constant use for Friday and congregational prayer the mosques built up to strengthen Islam after demolishing the temples of the idolatrous Hindus situated at Mathura, Banaras, and Awadh etc., which the wretched infidels have, according to their faith, adjudged to be the birth-place of Kanhaiya in one case, Sita Rasol in another, and Hanuman’s abode in a third and claim that after conquest of Lanka Ramchandra established him there. And, as has been stressed, idol – worship must not continue publicly, nor must the sound of bell reach Muslim ears.[1] It would be pertinent to point out that, as will be borne out by others, too, in the sequel, the mosque became better known as Sita Ki Rasoi mosque, Mirza Jan does not mention the name of Bahadurshah’s daughter (Bahadurshah ‘Alamgir ki beti ), nor does he indicate the date of composition of her work. The king did have a daughter, Dahr Afroz Banu

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1. IBARATI NASIT. AT-I BISTO-O PANJUM AZ SAHIFAH-I CHIHAL NASA’IH-I BAHADURSHAHI KI BA-TARIKH-I PANZADAHAM SHA’BAN 1231 HIJRI NAQI. SHUDAH DAR KUTUBKHANAH-I MIRZA HAYDAR SHUKOH IBN MIRZA SULAYMAN SHUKOH DAKHIL SHUD AZ KITAB-I MADHKURAH NAQL KARDAH SHUD:

‘ Badshahan ulu ‘I ,-azm ra iazim ki …ghalabah-I aim-o Islam Malhaz dashtahhamahmushrikanra ma(i-I Islam daran , wa az akhdh-I jizyah ki bar kuffar-I fujjar ijra yaftah ast dar nah guzaran, wa jami’ rajgan ra az hukm-i-ihqar-I roz-I idayanwa piyadahistadah Mandan bairun-I masajid ki dar ma’ mutah-I khud-ha ba-farman-I badshahi sakhrah and ta inqida-i namaz-o khutbah mu ‘af nah darand. Wa mu’ahid –ha-i Munud waqi-i Mathura wa Bandras wa Awadh waghyrah ra ki kuffar-i nabakar ba-I khud-ha jai ia mawaldgah-I Kanhaiya wa maqam-i Sita wa makan-I ra gardrgarh-i Hanuan gardr dadah and wa mi – guyand ki bad fath-i Lanka Ramchandra Hanuman ra dar an ja nishanidsh ast mismar gashtah bara’i taqwiyyat-I islam dar zn ham ja masjid ta ‘mir shudah and, zn masjidiz az jum ‘ah –o jama’atkyui nah darand, chunan-ki qadghan ast ki rasm-I buipatasfi ba-i’ tan nah shawad wa sada-i naquas ba gosh-iaht–i

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Islam nah rasad."
Sahifah-I Chihal Nasa'ih-I Bahadushahi, quoted in Mirzaq Jan , Hadiquah-I Shuhada, p. 6

2. Kamalu'd Din Haydar Hasaniyy-u 'i Husayniyy, Qaysaru'i – Tawarikh, otherwise known as Tawarikh-i Awadh, Vol, II, p.117

Begum, who died at the age of forty at Kabul on January 25, 1703, But she is not likely to be the writer of the book, for the simple reason that the date of its composition cannot be supposed to be prior to 1707, when Aurangzib died and was succeeded by his son Bahadurshah. Had it been during Aurangzib's reign, the book would have been titled after the name of Aurangzib rather than of Bahadurshah. According to the Foreign Department Political Consultations, December 28, 1855, No. 450, the Prime Minister of Wajid 'Ali Shah 'referred to a book which existed in the King's library written in the reign of Bahadurshah about the year 1707 A.D. which contained an account of the masajid at Hanumangarhi[1]. The Persian text under examination des contain, inter alia, an account of the mosque built at Hanuman's abode (later named Hanumangadhi). In fact, while quoting the above passage from the work, Mirza Jan prefaces it with a special mention of that mosque thus; In short, these four mosques [Babari mosque, Ram Darbar mosque, fort mosque, and Hanumangadhi mosque] built by the rulers of the past were situated at Ayodhya like four pillars of the faith. And there is clear description thereof in the books of history, particularly (existence of) the Hanumangadhi mosque is established by a passage of the Shifah-I Shahi ( i.e. Sahifah-iChihal Nasa"ih-I Bahadurshahi), which Bahadurshah' Alamgir's daughter has written ( comprising ) forty sermons… [2] This creates a strong presumption in four of the view that it this book which the prime Minister had in mind. Thus, the date of composition of the work transpires to be 1707 A.D. It means that Bahadurshah had an elder daughter, too. Now, Mirza Jan is not the only medieval writer to refer to the work under

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consideration. While relating the tale of destruction of the Rama Temple, Mirza

1. G.D. Batnagar, Awadh under Wajid ‘Ali Shah, pp. 136-137
2. “Gharad yeh charoh masjiden banwaihu in sala ( in-i-madiyyah ki char arkan-i Imam ki (arah-Awadh meih waqi’ thin our kutub-I tawarikh mein taseih hai,khususan Hanuman Gadhi Ki Masjid Barat-I Sahifah-I Shahi se ki BahadurShah Alamgir ki beti ne chihal nasaa ih likhi hai.
   Mirza jan, P.6

Raja ‘Ali Beg Surur, whom we shall have occasion to notice in the sequel, hints at his sources including this work thus: ‘It has been dealt with in the books of history. And in the Sahifah-I Bahadurshahi it has come to be described in detail with reference to year and date. Whoever may choose may look into it. [1] The concluding sentence of the excerpt seems to suggest that the work referred to therein under a shortened title was easily available during the first half of the last century, may be in print.

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If the sahifah-I Chihal Nasaih-I Bahadurshahi is extant any where in print or in manuscript, it needs to be traced out and salvaged without loss of time. My personal attempt in this behalf, with the meager resources at my disposal, has not yet borne fruit and I had to make do with furnishing to VHP and through them to AIBMAC only the passage quoted from it by Mirza Jan. Mirza Hayda Shukoh’s library must have come into the hands of the British after the 1857turmoil and transferred to some other institution by them. It should not be so difficult for VHP to track it down.

There are over a dozen Urdu sources shedding light on the existence and demolition of the Rama Janmabhumi (Sita Rasoi) temple and erection of the disputed mosque on its site by Babar. Out of these I could lay my hands upon eleven, which are dealt

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with below:

9. Application dated November30,1858 , filed by Muhammad Asghar, Khatib & Mu'adhhin, 'Babari Masjid', for initiation of judicial proceedings against the 'Bairagiyan-I Janmasthan', calling the mosque 'masjid-I Janmasthan' and the courtyard near the arch and the pulpit within the boundary of the mosque 'maqum Janmasthan ka". The Bairagi-s had raised a platform in the courtyard which the applicant wanted dismantled. He mentions that the Janmasthan area had been lying unkempt/in disorder (parishan) for hundreds of years and that the Hindus carried on worship there (maqam Janmsthan ka sad-ha baras se parishan para rahta tha. Ahl-I Hunud puja karte the) [2] Well, if the mosque (once described by the applicant as 'masjid'I Babari') is the Janmasthan mosque, its courtyard is the Janmasthan, and the Hindus had all along been carrying on their worship (and all that it implies ) there, if can safely be presumed that there used to be some construction there as part of a ( Janmsthan) temple, which came partly to be destroyed and partly converted into the existing mosque. And the Hindus had no alternative to making do with the templeless courtyard. It is indeed unthinkable that they might have been carrying on.

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1. Mirza Raja b 'Ali Beg Surur, Fasanah-I ibrat, p. 121

2. Sayyid Sabahu 'd-Din 'Abdu'r-Rahman, babari Masjid, pp. 29-30.

Worship without a proper temple at such a sacred place and for such a long time.

10. Lachhmi Narain Sadr Qanungo, assisted by Munshi Mawlawiyy Hashim, Asrar-I Haqiqat, Lucknow, 1923, gives details about the replacement of the temple by the mosque.

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11. Muhammad Najmu 'I-Ghani Khan Rampuri, Tarikh-I Awadh, Lucknow, 1919, Vol, V, says: 'At Ajodhya, where there stood the temple of Rachandra Ji's Janmasthan, there is Sita Ji ki Rasoi adjacent to it, King Babar got a magnificent mosque built there, which is the Jami 'Masjid, in 933 A.H. under the patronage of Sayyid Musa' Ashiqan, the date of which is Khayr Baqi (923). Till date the mosque is called Masjid –I Sita Ki Rasoi. And that temple is extant by the side…. Babar got the mosque built after demolishing the Janmasthan, and used in his mosque the stone of the same Janmasthan, which was richly engraved, precious kasauft stone, and which survives even today.' [2]

12. Sayyid Kamalu 'd–din Haydar Hasani-u 'I-Husayni-I 'I-Mashhadi, Qaysar-u 't-Tawarikh, otherwise known as Tawarikh-I Awadh, Lucknow, 1896, Vol. II, locates the mosque in question in Sita Ki Rasoi Temple (jami' masjid jo Sita ki Rasoi mein hai) (p.111) as well as ' in the Janmasthan, namely the birthplace of Rama son of Rajah Dasaratha, adjacent to the house of the Rasoi of Sita wife of the said Rama '(masjid-I jami' bina-i Babar Badshah waqu' Janmasthan ya'ni Masqat-I ras-I Rama pisar-I rajah Dasraatha Mullasi-I makan-I Rasoi-I Sita wife of Ram –i madhkur ) and acknowledges that all the temples of Ayodhya were turned into mosques by the Sultan-s of the past (badshahan-I salf ne tqmami mu abid-I Hunud shahr-I Awadh mein jahan bade butkhane the masjid-I jami ' baja-I butkhanahi mukhtasar banwa kar mudhdhin our jarub-kash muqarrar farmaya). (p.117) [3]

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1. Lachmi Narain, assisted by Munshi Mawlawiyy Hashim, Asrar-i Haqatt.
2. Allamah Muhammad Najmu 'I –Ghani Khan Rampuri, Tarikh-I Awadh, Vol. V., pp. 200-201.
3. Sayyid Kamalu'd –Dins, II, pp.110 ff.

Here, it appears, some words are missing in print between 'Jami', and baja-i. Obviously, what is meant to be said is that the Sultan-s replaced big temples by jami' masjid-s and small by samal mosques. And this all is from a lega document dated July 1855 given by the author.

13. Haji Muhammad Hasan, Diya-I Akhtar, Lucknow, 1878, says: Sayyid Musa 'Ashiqan built a mosque after leveling down Rajah Ramachandra's palace and Sita's kitchen by order of Zhiru'd –Din Babar, king of Dihli, in 923 A.H., and king Mihiyy-u'd-Din Aurangzib 'Alamgir built another mosque at the same place. [1]

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14. Munshi Ram Sahai Tamanna, Afgalu't-Tawarikh, being the 2nd volume of his Ahsanu 't-Tawadrikh in three volumes, Lucknow, 1879, describes Babar's mosque as 'masjid-I Janmasthan' ( Baqi-mandgan ne masjid-I Awadh, Janmasthan mein panah ti). (p-110) [2]

15. Muraqqahi- Khusrawi, otherwise know as Tawarikh-i Awadh, by Shykh 'Azamat' Ali Kakorawi nami (1811-93), who happened to be an eye-witness to much that passed during kind Wajid 'Ali Shah's regime. The work was completed in 1869 but could see the light of day as late as 1986, short, however, of its section published separately and later, in 1987, under the title Amir 'Ali Shahid aur Ma'rakah-i Hanumangadhi, which alone is germane to our enquiry, and the opening paragraph of which is reproduced here in translation, omitting very few details: 'According to old records, it has been a religious rule with Muslim rulers, after the triumph of Sayyid Salar Mas'ud Ghazi, to build mosques, monasteries, and inns, spread islam, and put a stop to blasphemous practices (bid'at), whereeverthey found manifestation [of infidelity]. Accordingly, even as they cleared up Mathura, Bindraban, etc. from the rubbish of non-Islamic practices, the magnificent Babari Mosque (Masjid-I sarbaland-I Bahari) came up in 923 A.H. under the patronage of Sayyid Musd.

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1. Haji Muhammad hasan, Diya-I Akhtar, pp.38-39
2. Munshi Ram Sahi Tamanna, Afdalu 't-Tawarikh, being the second volume of his three –volume work, Ahsanu 'i-Tawarikh, p. 110.

Ashiqan in the Janmasthan temple (butkhane Janmasthan mein) in Faizabad–Awadh which was great place [of idol-worship] and the capital of Rama's father.' [1] Again: "Among the Hindus it was known as Sita Ki Rasoi.' [2]

16. Fasanah-I Ibrat, written by Mirza Raja'All Beg Surur (1787-1867) in 1860 circa but published first in 1884. It says that a glorious sky-high mosque was built up during king Babar's regime on the spot where Sita ki Rasoi tomb (?) is situated, in Awadh. During this Babri (dispensation0 the Hindus had noguts to be a match for the Muslims. [The mosque] was built in 923 A.H. under the patronage of Sayyid Mir-Ashiqan…There [on the Hanumangadhi ] Aurangzib constructed a mosque …The Bairagi-s

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effacted the mosqueand erected a temple in its place. Then they intruded into the 'Masjid-I Babari' where the Sita ki Rasoi' was situated.- [3] The author adds that 'formerly, its is shaykh' Ali Hazin's observation which held good' and quotes his Persian couplet:

Bi-bin karamat-I butkhanah-I mara ayshaykh!

Ki Chun kharab shwad khanah-I khuda gardad

Translation: O Shaykh! Witness the miracle of my house of idols: 'When despoiled, it becomes a house of God (i.e. a mosque):'Purporting to mean that formerly temples were demolished for construction of mosques, Surqr Iaments that 'ties have so changed that now the mosque was demolished for construction of a temple Ion the Hanumangadhi)-4

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17. A work in Persian, written presumably in early last century, by a Muslim saint Mawalayiyy " Abdu i-karim, who belonged to the line of Sayyid Mir Musa Ashiqan at whose instance/under whose patrongage Babar is said to have ordered replacement of the temple by the mosque. It was translated into Urdu and probably enlarged by Mawalayiyy' Abdu'I-Ghaffar

1. Shaykh Muhammad 'A Zamat 'Ali Kakorawi Nami, Amir 'Ali Shahid aur Ma'rakah-I Hanumangadhi , pp.9-10
2. Ibid, p. 10
3. Mirza Rajab'Ali Beg Surur, Fasanah-I Iorat, pp.121-122
4. Ibid. p. 122

Under the title Gumashta Hatat-I Ajodhya Ya 'ni Tarikh- Parinah-I Madinatu 'I –Awaliya, which saw the

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light of day at Ayodhya before 1932. [1] It was later published by the Nami Press, Lucknow in 1979 and 1981. The first edition –and I have not seen the 1979 edition –carried an account of how Babar decided and proceeded to demolish the Rama Temple and build the mosque on its site under the influence of Sayyid Musa 'Ashiqan. But the entire account is conspicuous by its absence in at least the 1981 edition. I possess a Xerox copy of the last, 1981 edition as well as page 40onlyof an earlier edition. This page contains a reference to the 'Koji-I Rajah Rama Chandra Ji ( Ramkot), 'makan-ipaida'ish' (birth-site), and bawarchikhanah rajah-imawsuf ka ( the said Raja's Kitchen), and adds: And now they call it Janmasthan and Rasoi-I Sita ji. Having demolished these structures, king Babar got a majestic mosque constructed. The reason for the construction of this mosque will follow in the sequel,' [2] The tragic tale of vandalism and its subsequent details promised here have been totally excluded from the 1981 edition. If not from the 1979 edition also, which, we have not been able to lay our hands on. The 1981 edition, too, however, contains certain relevant indications.According to it, for example, Babar came all the way from Kabul to Awadh in disguise, donning the garb of a faquir, Qalandar to be precise. Here he met Shah Jalal and Sayyid Musa 'Ashiqan and took some pledge before these saints in lieu of their blessings to conquer Hindustan. The pledge has not been spelled out here, but it has been made plain that it is in pursuance of this pledge (iqrar) that he got the mosque raised after conquering this country. [3] It is obvious that construction of just a mosque of normal size and shape is nothing compared with the conquest of India to secure which Babar had to undertake the arduous

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journey from Kabul to Ayodhya in disguise. We may,

1. Cp Avadh-Vasi Lala Sita Ram, Ayodhya ka Itihasa, p.3
2. Mawalwiyy'Abdu'I-Ghaffar, Gumgashtah Hatat-i-Ajodhya Ya ni-Tarikh-i Parinah-I madinatu ' I-Aliya, some older edition .
3. Ibid, Lucknow, 1981, pp. 61-62.

Therefore, take it for granted that demolition of the Rama temple did form part of the pledge.

The information contained in Mawlawiyy" Abdu 'I-Karim's book is so germane to our enquiry and so pregnant with implications that I consider it necessary to discuss its relevant text in full. The author says: 'when a boy, Sultan Babar, who belong the family of Timur, came from Kabul to the town of Awadh in disguise, donning the garb of an ascetic. Those days, the town of Awadh was under the Sutanate of Sikandar Lodi and the place was a (Second) Capital of the Sultanate. Sultan Babar paid a reverential visit to His Holiness Shah Jalal and Sire Musa' Ashiqan and solicited occult favour from them, so that the ancestral Sultanate of Hindustan might come into his hands thanks to the blessings of those saints. Prince Babnar took leave of those personages, went to Kabul, mustered an army, brought it to Hindustan, and fought with Sultan Sikandar Lodhi (sic) at the (battle) field of Panipat[1]. A little later the author adds: 'Accordingly, in fulfillment of the pledge kind Babar had taken before those saints, Babar appointed Mir Baqi to it and got a magnificent mosque constructed… [2] Here the pledge taken by Babar has not been specified. Avadh-Vasi Lala Sita Ram uses the original edition of the work, from which it appears that the latest, edition leaves out the saints' reaction to Babar's request, which is to this effect:

1. "Sultan Babar ki jo Amir Timur ki nasi se apne bachpan ke zamqnah meih khu fiyyah ( awr par libas tabdil kar ke

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faqiron ki (arah Kabul se – shahr-i Awadh mein qya. Us waqt shahr-i Awadh mein Sikander lodhi ki Saltanat thi our maqam saltanat ka ik sadr maum tha. Sultan Babar ne Shah jalal Sahib gadasah sirru-hu our Hadrat MusaAshiqan ki khidmat mein hadir ho kar ba(ini imdad ( alab ki, ki in buzurgoh ki du'a se abai Saltanat-I Hindustan un ke hath a –ja'i. Shahzadah Babar in ashab se ukhsat ho kar Kabul gaya our wahanfauj muhayya kar ke Hindustan ki taraf gye ourPanipat ke maqam par Sultan Sikandar Lodhi se Lade…" Gumgashtah Hatat-I Ajodhya Ya ni Tarkh-I Patnah-I Madinatu ''I Awaliya(Lucknow, 1981), p.61

2. Chunanche Babar badshah ne jo iqqrae un buzurgon ke rub a-ru kiya tha Mir Baqi ko us kam parmuqarrar farma kar ek alishan masjid…ta'mirkarai." ibid.p.62

The Faqir-s answered that they would bless him if he promised to build a mosque after demolishing the Janmasthan temple. Babar accepted the faqirs' offer and returned to his homeland.[1]

This anecdote lights up an unsuspected corner of Babar's career, not reflected in his memoirs. Yet it receives confirmation from 'Abdu 'llah's Tarikh-I Da'udi which contains a remarkable account of 'Babar Qalandar's meeting with Sultan Sikandar Lodi. Writes Abdu'Hah: In one of the histories it has come to notice that in those very days Babar Badshah, whose name was Babar Aalandar, came to Delhi adorning himself with the garb of an ascetic and entered the royal palace. One of the courtiers brought it to the royal ears that a qalandar from among sages is standing in the court feasting on the elegance of the sultan. Sultan Sikandar bade some of his courtiers bring him in. When Babar Qalandar emerged from the door, he immediately shook hands with the Sultan, by the Sultan taking his hand into his inferred the greatness of fortune in the Sultan's hand, and felt in his heart that the affluence of his Sutlanate was stillabundant. Sultan Sikandar asked him, "with what are faqir-s exalted?" Babar Qalandar said, "with Qalandar –hood." The Sultan uttered this couplet extempore (rather sardonically) :

Hazar nuktah-I barik-tar 'zi mu in –ja 'st

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Na har ki sar tarashad qalandari danad

(Translation: ‘ Here there are thousand finesses finer than the hair, Not everyone with shaven head knows qualandar-hood.) Babar Qalandar Glanced at the Sultan with the feeling of being humbled and uttere this couplet:

Nahar kasi ki kulah kaj nihad-o tund mashist
‘kulah-dari-o in-in sarwari danad
Translation:- Not everyone who puts on awry cap

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1. “ Faqiran ne uttara diya ki tum janmastha ke mindir ko tod kar masjid banwane ki pratigna karo to ham tumhare liye duea karain. Babar ne fqiran ki bat man our apne desh ko lout gaya. Awadh –Vasi lala Sita Ram, Ayodhya ka Itihasa. P.151

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And sits tight knows cap-wearing and the way of kingship.‘) [1] The Sultan was pleased at this and asked his courtiers to take due care of board and lodging of the faqir-s including Babar Qalandar, but the latter had left the very first day. The Sultan began tosqueeze his hands in repentance and remarked that Huma (a bird of paradise whose shadow makes one king) had fallen into his hand. [2]

It is interesting to note that Babar is one of the inscriptions of the Babari mosque already quoted by us:

Fasanah dar jahan Babar Qalandar

Daughter Gulbadan Begum, who remarks that the sobriquet was given to him by the people. [3] In fact , Babar hiself appears to be responsible for it, none else whould have dared to call him so . Abu I-Fadi quotes a quatrain of babar which reads as under : 4

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Darwishah ra ‘gar-cheh na az khwishanamLik az dil –o janmu taqid-I Ishanam Dur ast magu i shahi az darwishi Shah im wall bandah-I darwishinam.

1. Daryake az tarikh-ha ba –nazar dar amadah ki ham dar in roz-ho Babar badshah ki nqmash Babar Qalandar –I bud khud ra rb –libas –I qlandari arastah, ba Dihli amad wa ba-bargah-I Sultan (Sikandar Lodi) dor amad Iam’-I az muqarraban ba-ard rasanidand ki qalandar-i ahl-i ma’rifat ba –darbar tstadah ba nazzdrah –I jamt-I Sultan ast.Sultan Sikandar ba –muqarraban-iChand hukm farmudand ki ba-durun aqrand, Chun babar Qalandar az dar dar-qnad, fi ‘I-hal ba Sultan musafahah kard, ba mujarrad dast giriftan girant-I iqbal dar dast –I Sultan Sikandarpursid, ‘Daewishan ba cheh musharraf and?” Babar Qalandar guft, ‘Ba –qalandari.’ Sultan bar bqdih in bait khwand:
   Hazar, muktab –I bziktar ‘zi mu in ja st
   Nah har ki sar ba –larqshad qalandar-I danand
   Babar Qalandar az ru I ghayrat janib-I Sultan nigh numudah in bait khwand:
   Nah hark as-I ki kulah Raj nihad-o tund nashist
   Kulahdari-o in –i sarwari danad ‘Abdullah , Tarikh –I Dawudi, p. 63
2. Ibid., pp.63
3. Gulbadan Begum, Humayun Namah, 1903, P.12
4. Abu ‘I-Fadi, Akbar-Namah, Vol. I, Allahabad, N.D. P. 137

Translation: though I do not belong to the fraternity of darwish-es, yet I am their follower with heart and soul. Say not kinship is a far cry from darwish-hood. I am a king but yet a slave of darwish-es.’) It would be pertinent to point out that Firishtah accounts for Babar’s reputation as a qalandar thus: whatever the monarch had amassed over long years, (he) spent out in one sitting, (whereby) the reason of his repurtation as a qalandar became known to the world.’ (An-cheh badshahan ba –salha-I daraz andokhtah baudand dar yak majtis sarf numudah wajh-I shuhrat-I In –hadrat ba –qalandari malum-i qlamiyyan gashi.) [1]

Well, yet another version of how Babar wa led to destroy the

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Rama temple and erect the existing structure on its site is that he visited Musa'Ashiqan during his stay at Ayodhya in 1528 itself. The faqir asked him to demolish the temple and erect a mosque on its site. Babar was hesitant at first but succumbed to the faqir's wishes on pain of being cursed by the latter. [2]

18. Nizamu'd-Dawalah's statement in the awadh Akhbar, 1876 , confirming the temple demolition and erection of the mosque in its stead. Nizamu 'd-Dawlah, was the Kashmir ambassador to the court of Awadh, according to whom there did stand a temple of Maharajah Ramchandra's birth (Maharaja Ramchandra ke tawallud ka mandir), testified to byBabar Shah's constructing the mosque on the same site ( maqam-I tawallud ka thubut to ist jagah par Babar shah ke masjid bandne par bota hai), while according to the Hindus this sign of birth has been extant for lakhs of years and appear to be so ( jab-ki ba qawal Hunud ke lakhon baras ka yah nishan-i tawallud baqi hai aur ma'lum hota hai). [3]

19. Mirza jan, Hadiqah-I Shuhada, Lukcnow, 1856. 4 Mirza Jan was an eyewitness as well as active participant in the Crescentade (Jihad) led by Amir ' Ali Amehawi

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1. Tarikhi-I Firishtah, Nawalkishore Press, Lucknow, P 206
2. Avadh-Vasi Lala Sita Ram, Ayodhya ka Itihasa, p. 150
3. Gumgashtah Hatat-I Ajodhya etc. , p. 20
4. Mirza Jan, Hadiqah-I Shuhada, pp. 4-5

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During Wajid Ali Shah's regime in 1855 for recapture of Hanumangadhi ( a few hundred yards from the Babari mosque) from the Hindus. The fight spread to the Babari Mosque, which came into repossession of the Hindus for awhile, it seems, From a private letter of the Governor-General, Coonoor, October 6, 1855, it appears that the work was banned immediately at one of the 'most inflammatory pamphlets on the Mussulman side…being

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circulated throughout the country, notwithstanding the seizure of them wherever they can be found …under the Governor-General's ordinances. [1] Does it still lie in anyone's mouth to assert that the temple story is a creation of British with a view to setting Hindus and Muslims against each other?

Mirza Jan writes: From old records and the tradition it is gathered … that, after the triumph of Salar Mas'ud Ghazi, wherever in the territory of heaven –like Hindustan they found magnificent Hindu temples, the Muslim rulers of the pass constructed mosques, monasteries, and inns, greatly spread Mahammadanism by appointing mu'adhdhin-s (callers), teachers, care-takers, devastated the paraphernalia of idolatry and bell –ringing, gave grace and glamour to Islam, and vanquished the army of infidels. And this to such an extent that all over Hindustan no trace of infidelity was left besides Islam and no practice of idol-worship survived besides worship of God. And the few Hindus who remained safe from the hands of the Muslims became the slaves of Islam, began to pay kharaj, became sudbdued and dross of infidelity, they cleared up Faizabad and Awadh also from the filth of false belief, inasmuch as it is a great place of worship and was the capital of Rama's father. Here they broke the temples and left no stone-hearted idol intact. Where there was a big temple, there they got a big mosque constructed, and, where there was a small pavilion, there they erected a plain camp mosque/enclosure Accordingly, what a majestic mosque Babar Shah has got constructed in 923 AH. Under the patronage of Sayyid MusaAshiqan ! its date is " Khayr Baqi". [2] It is still known far and wide as the Sita ki Rasoi mosque. [3]

1. J.G.A. Baird, Private Letters of the Marquis of Dalhousir, Edinburgh, 1911. pa.357.
2. Mirza Jan, pp. 4-5
3. Ibid., p. 5

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Sri Jain has further submitted that there is historical backgrounds of continuous attack on temples of the Hindus and the Court can take judicial notice of this fact under Section 57 Rule 13. These are notorious facts of the history and they have to be admitted in toto. Apex Court in **AIR 1977 SC p. 1108 Onkar Nath and others Vs. The Delhi Administration para no.6 held as under:**

One of the points urged before us is whether the courts below were justified in taking judicial notice of the fact that on the date when the appellants delivered their speeches a railway strike was imminent and that such a strike was in fact launched on May 8, 1974. Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. Section 57 enumerates facts of which the Court "shall" take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in Section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are

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unquestionably within public knowledge. (see Taylor 11th edn. pp. 3-12; Wigmore Section 2571 footnote; Stephen's Digest, notes to Article 58; Whitley Stokes' Anglo-Indian Codes Vol. II p. 887). Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No Court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof. Accordingly, the Courts below were justified in assuming, without formal evidence, that the Railway strike was imminent on May 5, 1974 and that a strike paralyse the civic life of the Nation was undertaken by a section of workers on May 8, 1974."

Attack demolition and construction of Mosques and Madrsas in place of Temples and Religious Institutions had taken place for the last about 1100 years and is a part of Indian History from 712 A.D. In 712 A.D. Mohd. Bin Qasim an Invador from Iraq attacked Sindh. King Dahir was defeated and forceful conversion of Hindus into Muslims took place and various Hindu religious institutions were demolished. History makes it clear that foreign Muslim invaders demolished thousands of Hindu Temples.

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In 1000 A.D. Mahmood Gazanavi attacked India and defeated Raja Jaipal. In 1008 A.D., he won Kangra, in 1011 A.D., Thaneshwar and demolished a number of Hindu Temples including Chakra Swami Temple and a large number of Hindu idols were broken. In 1013 A.D. he also damaged Nandana, in 1016 A.D., Bulandshahr, Mathura and Kannuaj and demolished a number of Hindu Temples. He also demolished Som Nath Temple in 1025 A.D., and broken main idol in pieces and sent those pieces of Temple to be placed in foot stairs of Jama Maszid at Gazni. After Mahmood Gazni, Mohd. Gori also destructed Hindu Temples and Idols at Azmer and constructed Mosques and Madrsas in place of Hindu Temples. At Benaras, he demolished a large number of Temples and constructed Mosques in place of Temples. In 1194 A.D., Quttubuddin Aibak attacked Delhi. He demolished 27 Jain Temples at Delhi and constructed Qubbatul Islam Mosque. In 1196 A.D., he attacked Gujrat and in 1202 A.D., Kalinjar where he demolished a large number of Hindu Temples. Mohd. Bakhtiyar Khilji attacked Bihar in 1200 A.D. and demolished a large number of Buddhist Temples at Udantpur and Nadia (Bengal) in 1202 A.D. and demolished a large number of Buddhist Temples and constructed Mosques and other religious places of Muslims in places of Hindu Temples. After Qutubuddin Aibak, Shamsuddin Iltutmish attacked Malva in 1234 A.D. and Vidisha. He demolished a old Hindu Temple of Mahakal, destroyed statute of Vikrmajeet and took away Brass Idols of

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Hindu Gods and placed at the foot step of stairs of a Mosque at Old Delhi and asked the people to pass through these Idols of Hindu Gods. After Iltutmish, Balban ruled parts of India. He also attacked Hindus and Hindu Temples in 1254 A.D. In 1321 A.D. Jalaluddin Khilji attacked Fort of Ran Thambore and enroute he damaged and demolished several Hindu Temples. In 1292 A.D., his nephew Allauddin Khilji attacked Bhelsa and he too demolished a large number of Hindu Temples and thrown idols of Hindu Gods. He also proposed to make a Minar taller than the Qutubminar by using materials of demolished Hindu Temples. He also ordered his cousin Ulugh Khan to demolish reconstructed Somnath Temple of Gujrat, who also damaged and demolished a number of Hindu Temples. He also attacked Ujjain and demolished several Hindu Temples at Ujjain. Like wise, he attacked Malva and Chittaur (Rajasthan) where he demolished a large number of Hindu Temples. In 1360 A.D. Firozshah Tughlak another Muslim Sultan attacked and damaged Jagannathpuri Temple (Orissa) by broking idol of Bhagwan Jagannath and thrown at the foot stairs of Muslim Mosques and demolished Jwalamukhi Temple at Nagarkot, Kangra and damaged Temple's idol. Taimur attacked India in 1399 A.D. and started war against Hindus on religious basis. He demolished a large number of Hindu Temples. In 1392 A.D., Muzaffarshah, Governor of Gujrat demolished reconstructed Somnath Temple again and constructed a Mosque within the Temple, but after some time Hindus

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reconstructed same Temple. In 1401 A.D., Ahmad, grand son of Muzaffarshah, who took over as Governor of Gujrat appointed a Daroga (Inspector) for demolishing all Hindu Temples of Gujrat. In 1415 A.D., Ahmad attacked and demolished Sidhpur Temple (Rudra Mahalaya) and in its place he constructed a Mosque. From 1389 A.D. to 1431 A.D., Sikandar (Boot Shikan) attacked and demolished a large number of Hindu Temples and idols, who was known for his pleasure by breaking Idols of Hindus. Between 1389 A.D. to 1431 A.D., he demolished Temples of Martand, Vishnu, Ishan, Chakrvarti and Tripureshwar. There were no places in his Empire where his Mantri Suha had not demolished Hindu Temples. Babar, who established Moghul Empire, attacked India and demolished Ram Janma Bhumi Temple at Ayodhya and constructed a Mosque on the same place. After Babar, Humiaun ruled India. It is described in history that Chchatri Temple at Zehanabad was demolished by Humaun and in place of Temple a Mosque was constructed. During the period of Jehangir Sikh Guru Sri Arjun Singhjee was killed, Hindu Durg Temple of Kangra and cows were slaughtered in the Temple. Shahjehan got demolished about 76 Temples of Benaras in 1633 A.D. by ordering to demolish all the newly constructed Hindu Temples. Demolition of Hindu Temples by Aurangjeb is also well known to everyone. When he was only Prince, he demolished Chintamani Temple at Gujrat and in place of Temple he constructed Qubbatul Islam Mosque in 1645 A.D. In 1648 A.D., he sent Mir Jumla to Kooch

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Bihar, who demolished several Hindu Temples there and constructed Mosaues in place of Hindu Temples. In 1670 A.D., In Mathura, Krishna Janma Bhoomi Temple was demolished by Aurangjeb and a Mosque was constructed in place of Temple. Idols of Temple were placed at the stairs of Janhaara Mosque, Agra. Temple Ram Chandra in Soron, Devi Patan Temple of Gonda, Temples of Ujjain and all the Hindu Temples of Mednipur, Bengal Temples and Idols of Jodhpur were also broken and broken parts of Idols and the Temples were taken away to Delhi. He also demolished Hindu Temples and Idols at Udaipur in 1680 A.D., 62 Temples of Chittaurgarh, 66 Temples of Amber, Someshwar Temple of Mewar, Khanderao Temple of Satara. In 1690 A.D., he demolished Temples of Elora, Trayambakeshwar, Narsingpur, Pandarpur and Bijapur. In 1669 A.D. He also demolished several Hindu Temples at Tattha, Multan and Benaras including famous Kashi Vishwanath Temple at Benaras. Aurangjeb crossed all the limits of communalism and re-imposed Zazia Tax on Hindus if wanted to live as Hindus. Tipu Sultan also got converted Hindus and Christians into Muslims and demolished several Hindu Temples and other religious institutions.

Above facts have been taken from the Books of various Muslim Historians including Book “Tarikhen Yamini” written by Utabi, Historian and Secretary of Mahmood Gaznavi, from the Asarul Bilad of Muslim Historian of Zakaria Al-Qazwani, Muslim

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Historian Nizami and Muslim Historian Ibn Assar at the time of Mohd. Gori, Muslim Historian Hasan Nizami, from book Mutkhatat Tavarikh of Muslim Historian Budauini, Book written by Muslim invador Imad Jan Tuzuk Taimuri of Taimur, from the Auto Biography of Babar "Tuzuke Babri", from Zuvadutul-Tavarikh of Muslim Historian Shekh Nurul Haq, from Book Atharuye Sanadid written by Sir Syed Ahmad, from the Book Heroes of Islam of Prof. Fazal Ahmad, from the Book Badshahname of Muslim Historian Abdul Hamid Lahori, from the Book Voice to East Indies written by Barithailomeo, from the Book Bhasha Poshani of Historian Sardar K.M. Panikkar, from the Book of Bil Durent, from the Book Story of 'Islamic Imperialism in India' written by Historian Sri Sitaram Goyal, published by Voice of India. All aforesaid Historical Books are relied upon by Sri Purshottam in his Book 'Muslim Rajnitik Chintan Aur Akanchayen, published by Sumit Prakashan, Maushambagh, Sitapur Road, Lucknow and from other Books of History.

Thus, on the basis of the aforesaid submissions Mr Jain has pointed out that it was not for the first time that Babri Mosque was constructed after demolition of Ram Janm Sthan temple but prior to it thousands of Hindu temples were destroyed . He has referred the history from 712 A.D. and onwards to show that the temples were destroyed prior and afterwards of Ram Janmsthan

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temples by Muslims .

## FUNCTIONS OF THE RULES OF EVIDENCE

According to WHARTON the main function of the rules of evidence is to narrow down the matter which comes before the Court to the facts relating to those matters which have a logical probative value in determining the fact and to prevent giving judgments based on illogical conclusions or prejudice, and as an aid to the administration of justice.

## CLASSIFICATION OF EVIDENE

Broadly speaking, Evidence can be classified into (1) Direct and Indirect or circumstantial evidence.

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(2) Primary and Secondary Evidence

(3) Oral and Documentary Evidence

(4) Real Evidence

(5) Original and Hearsay Evidence

(6) Presumptive Evidence.

**(a) Direct Evidence.-** "By direct evidence is meant that the existence of a given thing or fact is proved either by its actual production, or by the testimony or admissible declaration of someone who has humself perceived it." [(vide Cement Corporation of India Vs. Purya, (2004) 8 SCC 270].

"Direct evidence is evidence which, if believed, establishes a fact in issue." [(vide Cement Corporation of India Vs. Purya, (2004) 8 SCC 270]

"Direct evidence is evidence which requires no mental

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process on the part of the tribunal of fact in order to draw the conclusion sought by the proponent of the evidence, other than acceptance of the evidence itself."

Direct evidence consists either of the testimony of the witness who perceived the fact or the production of the documents which constitute the fact which is in question. This direct evidence is sometimes called original evidence which arises from the personal knowledge of the witness. Direct evidence, if believed, proves the existence of a fact in issue without any inference of presumption.

*Pericipient Evidence.*- "The term direct evidence has a second meaning in the usage of many writers. The alternative term pericipient evidence not ony avoids any possibility of confusion, but is also more appropriate to describe the opposite of hearsay evidence.. Pericipent evidence is evidence of facts which a witness personally perceives using any of his senses."

**(b) Indirect or Circumstantial Evidence.-** Indirect Evidence otherwise known as circumstantial evidence is evidence that gives rise to a logical inference that such a fact does exist. Circumstantial evidence may be either conclusive or presumptive. It is conclusive when there is a connection between the principal fact and the evidentiary fact. It is presumptive where the fact rests on a greater or a less degree of probability. The effect of circumstantial evidence on consideration must be such as not to admit more than one solution, and must be inconsistent with any

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explanation that the fact is not true.

“By indirect or presumptive evidence is meant that other facts are thus proved, from which the existence of the given fact may be logically inferred.” [(vide Cement Corporation of India Vs. Purya, (2004) 8 SCC 270]

“Circumstantial evidence..... consists of evidence of circumstances, none of which speak directly to the facts in issue but from which those facts may be inferred. Feelings of animosity towards the victim, presence in the area of the attack, the victim's blood on the accused clothing- all these build up into a strong but inferential case.”

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'Circumstantial evidence'.... may be defined as any fact (sometimes called an 'evidentiary fact', 'factum probans' or 'fact relevant to the issue') from the existence of which the judge or jury may infer the existence of a fact in issue (sometimes called a 'principal fact' or '*factum probandum')*.

It is well to remember that in cases where evidence is of circumstantial nature, the circumstances from which the conclusion of the fact is to be drawn should in first instance be fully established, and all the facts so established should be consistent only with hypothesis of the guilt of the wrongdoer. Again, the circumstances should be of conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable

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ground for a conclusion consistent with the fact and must be such as to show that within all human probability the act must have been done by the person."

**ESSENTIAL INGREDIENTS TO PROVE A FACT BY CIRCUMSTANTIAL EVIDENCE ARE:**

(1) Circumstances from which conclusion is drawn should be fully proved.

(2) Circumstances should be conclusive.

(3) All facts so established should be consistent only with the hypothesis of a fact.

**CIRCUMSTANCES SHOULD EXCLUDE THE POSSIBILITY OF ACT OF A PERSON.**

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(1) the circumstances from which an inference of fact is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards the act of the person.

(3) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the act was committed by the person and none else; and;

(4) the circumstantial evidence in order to establish a fact must be complete and incapable of explanation of any other hypothesis than that of the fact.

Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every

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circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the person and it must be such as to show that within all human probability, the act must have been done by him.

Alfred Wills' "Wills' Circumstantial Evidence" (Chapter VI) certain rules as to evaluation of Circumstantial Evidence as under :

(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum;*

(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt;

(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt

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and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances (vide AIR 2003 SC 3601, State of Rajasthan V. Rajaram).

There is no difference between civil and criminal cases in the application of circumstantial evidence and their admissibility. Regarding the appreciation of circumstantial evidence in civil case, preponderance of probabilities should be looked at in deciding the cases.

It is function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest.

In cases where only circumstantial evidence is available at the outset, one considers the motive and opportunity to commit the act. If the evidence shows that he had a strong enough motive and opportunity to commit the act and the established circumstances on the record considered along with the explanation, if any, of the person exclude the reasonable possibility of anyone else being the real person then the chain of evidence can be considered to be so complete as to show that within all human probability, the act must have been committed by the person.

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"Circumstantial evidence in this context means a combination of facts creating a net-work through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt." BARON PARKE J in *Towell's* case observed "the circumstances may often be so clearly proved, so closely connected with it, or leading to one result in

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conclusion, that the mind may be as well convinced as if it were proved by eye-witnesses".

Parties have placed reliance over Gazetteers and certain other books. They can be admitted in evidence in view of Section 57 of Indian Evidence Act.

**Section 57- Facts of which court must take judicial notice.**

**2. Judicial notice: facts of which Courts may take judicial notice**

Judicial notice is the cognizance taken by the Court itself for certain matters which are so notorious or clearly established that evidence of their existence is deemed unnecessary. The Court is duty bound to find out the law and apply it to the facts of the case. (vide Mazhar Ali V. Hakimuddin, AIR 1965 Patna 489.

In the words of the Supreme Court in Onkar Nath v. Delhi Administration, AIR 1977 SC 1108, "Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. Section 57 enumerate facts of which the Court 'shall' take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the court shall take judicial notice of certain facts rather than judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the

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need and wisdom of accepting the existence of matters which are unquestionably within public knowledge.

Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. **No Court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof.**

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The list of facts mentioned in section 57 of the Evidence Act of which the Court can take judicial notice is not exhaustive and the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge.

**Rules of Hindu Law, Mohammadan Law, or custom to be judicially noticed.**

Where the Legislature has declared that the parties will be governed in certain matters by Hindu Law or Mohammadan Law,

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as the case may be, the rules of Hindu Law or Mohammadan Law on those matters will be judicially noticed by the Courts.

The personal law will be ascertained by reference to authoritative text books, judicial decisions and the opinions of persons well vested in those systems of law. These authorities are sufficient proof of the general Hindu Law prevailing over large tracts of country and populous communities. Any body living among them must be taken to fall under those general rules of law, unless he can show some valid local, tribal or family custom to the contrary. In order to bring a case under any rule of law laid down by recognized authority for Hindus generally, it is not necessary to give evidence of actual events to show that in point of fact the people subject to that general law regulate their lives by it. Special custom may be pleaded by way of exception, which it is proper to prove by evidence of what actually is done. There is one essential feature in the operation of customs which necessarily differentiates them from the operation of Acts of Legislature. In the case of laws enacted by the Legislature, Courts have to take judicial notice not only of the rules but also of those facts which are necessary for showing that they have the force of law, such facts consisting of the proceedings of the legislative body. In the case of customs, the facts showing that they have the force of law and that they govern the parties or the properties concerned include the fact that the alleged rules of conduct have been uniformly followed by the parties concerned of the community to

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which the parties belong. This fact is one of which the Courts cannot take judicial notice, unless it has been so often proved in the Courts as to make further proof unnecessary. Thus, the Courts may take judicial notice of a custom if it is generally prevalent among a certain class of people or is well established by long usage, *e.g.* a customary right of privacy prevailing in Oudh. When the existence of a custom is generally known and judicially recognized it is necessary to prove it by specific evidence. Where a custom is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom to be introduced into the law without the necessity of proof.

The privy Council in *Raja Rajendra Narain*v. *Kumar Ganganand*a, AIR 1925 PC 213: 1925 MWN 549: 89 IC 737, held that after the existence of a custom for some years has been proved by direct evidence, it can only, as a rule, be shown to be immemorial by hearsay evidence and it is for this reason that such an evidence is allowable as an explanation to the general rule. In *D.C. Bara Banki* v. *Receiver of the Estate of Choudhry*, AIR 1928 PC 202: 32 CWN 1120: 53 IA 303, it has been held that breach of a custom in a particular instance need not destroy it for all times. In *Effuah Amissah*v. *Effuah Krabah*, AIR 1936 PC 147: 162 IC 461: 44 MLW 73, it was held that material customs must be proved in the first instance by calling witness acquainted with them until a particular custom has, by frequent proof in the court, become so notorious that the courts take judicial notice of it. A custom cannot

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be extended by logical process. In *Saraswati*v. *Jagadambalal*, AIR 1953 SC 201, it has been held that oral evidence as to instances, which can be proved by documentary evidence, cannot be fairly relied upon to establish custom when no satisfactory explanation for withholding the best evidence is given. Custom cannot be established by analogy and it cannot be established by a *priori*method. *Uzagar Singh*v. *Mst. Jeo*, AIR 1959 SC 1041, laid down that the ordinary rule is that a custom, general or otherwise, has to be proved under section 57 of the Evidence Act. However, nothing need be proved of which the courts can take judicial notice. When a custom has been judicially recognised by the court then it passes into the law of the land as proof of it becomes unnecessary under section 57(1) of the Evidence Act.

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**List of facts enumerated in section 57 not exhaustive of the facts of which Courts may take judicial notice :**

The Maxim *expressio unius exclusio alterius*is often a valuable servant, but a dangerous master to follow in the construction of Statutes. The *exclusion is* often the result of inadvertence or accident and the maxim ought not to be applied when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice. This maxim is not applicable to section 57 of the Evidence Act, as it has been held that the list mentioned in the section is not exhaustive of the facts of which the Courts may take judicial notice. It is doubtful

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whether an absolutely complete list of the facts of which Courts can take judicial notice could be framed, as it is practically impossible to enumerate everything which is so notorious in itself or so distinctly recorded by public authority that it would be superfluous to prove it. The tendency of modem practice is to enlarge the field of judicial notice, and the penultimate paragraph of this section indicates both an approval of this practice as also the kinds of subjects of which judicial notice may be taken. The Indian case law and practice also appear to have proceeded on a liberal application of the power to take judicial notice. There is, however, this difference between the facts mentioned in section 57 and others which are not so mentioned but of which judicial notice may properly be taken; that, whereas the Court is bound to take judicial notice of the former, the Court has a discretion in the case of the latter, which it may or may not judicially notice, Matters directed by statute to be judicially noticed must be so noticed by the Courts; but beyond this, the Courts have a wide discretion and may notice much which they cannot be required to notice. Section 57 of the Evidence Act makes it obligatory on the part of the Court to take judicial notice of the facts mentioned in clause (1) to clause (13) of section 57. There is nothing in section 57 to indicate that a Court cannot take judicial notice of facts, which are not covered by clause (1) to clause (13) of section 57. Therefore, so far as the power of the Court to take judicial notice of the facts of the case is concerned, section 57 and section 114 of the Evidence Act confer

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two different kinds of powers. The distinction between section 57 and section 114 of the Evidence Act is this that if under section 57 of the Evidence Act, relevant fact is covered by one or more of the thirteen clauses of section 57, then the Court is under a legal obligation to take judicial notice of the fact subject to the conditions laid down in section 57 itself. On the other hand, section 114 of the Evidence Act does not make it obligatory on the part of the Court to take judicial notice of any fact, but empowers the Court to take judicial notice of all those facts, which the Court may presume to have happened regard being had to the common course of natural events, human conduct and public and private business in relation to the fact of the particular case.

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Thus, the Court may take judicial notice of any fact which, though not mentioned in section 57, is judicially notified by the English Courts, and of other facts which are notorious-*e.g.*, the ordinary course of nature, the standards of weight and measure, the public coin and currency, and its difference of value in early and modern times. That Ramayana is sacrosanct to Hindus, that Rama, Krishna, Brahma, Mahatma Gandhi, to wit only a few, are held in the highest esteem by them are matters of common knowledge and courts can take judicial notice thereof under clause 13 of section 57 of the Evidence Act.

Judicial notice may properly be taken of current events and notorious facts, *e.g.*, like a world-wide economic depression or a

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political movement *e.g.*, the "Quit India" campaign and the accompanying disturbances of August, 1942. Courts can take judicial notice of the anti-corruption propaganda carried on by a State Government. A Court can take judicial notice of facts transpiring in Court. A record of custom purporting to be prepared by a public officer is admissible under section 57 without proof that it was prepared by the officer by whom it purports to have been prepared. The extent to which, and the pictorial delineation of a scene are not matters of common knowledge but are matters for experts. Judicial notice may be taken of the fact that original telegrams are destroyed by the Telegraph Department after three months. The Court may take judicial notice of the rules of executive business of the Government. It may also take judicial notice of the fact that the Courts of Wards is much concerned with the welfare of its wards. A Court Martial may take judicial notice of any matter within the general Military knowledge of its members. The Court is justified in taking judicial notice of the practice with the banks of charging interest on the overdrawn amount.

Court can take judicial notice of the fact there is a flourishing colony of *satsangis*at Agra and there are centres in most of the big cities in U.P.

Facts of which judicial notice may be taken are not limited to those of the nature specifically mentioned in clauses (1) to (13)

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of this section. These are mentioned because, as regards them, the Court is given no discretion. They must be recognised by the Courts. As to others the Courts have a wide discretion and may notice many facts which they cannot be required to notice. Thus a Court can take judicial notice of "notorious fact," but the question whether a particular fact is a "notorious fact" may be a matter of opinion and somewhat controversial. The Court cannot smuggle into the evidence its own opinion of controversial situation distinguished as notorious facts. The Court must determine in each case, whether the fact is of such well-known and established character as to the proper subject of judicial notice. A proclamation of emergency is a matter of general information of which a Court can take Judicial notice. A matter of public history may be such a fact. Consequently, the rule of exclusion should not be applied in construing statutes, when the application of the rule is likely to lead to injustice.

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The list of facts mentioned in the Section 57, of which the Court can take judicial notice, is not exhaustive. Indeed, the purpose of the section is to provide that the Court shall take judicial notice of certain facts, rather than exhaust the category of facts of which the Court may, in appropriate cases, take judicial notice. Recognition of facts, without formal proof, is a matter of expediency, and no one has ever questioned the need and vision of accepting the existence of matters which are unquestionably within public knowledge (vide Onkarnath v. Delhi Administration, AIR

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1977 SC 1108).

STEPHEN in his DIGEST (7th Ed., Notes to XXVI to Article 58 at p. 179) has observed: "It may be doubted whether an absolutely complete list could be framed, as it is practically impossible to enumerate everything which is so notorious in itself, or so distinctly recorded by public authority that it would be superfluous to prove it".

The following are some instances where the court took judicial notice of facts which do not fall within clauses 1 to 13:-

The Supreme Court held that the court can take judicial notice of the fact that many of the industrial workers are illiterate; hence, where a previously prepared signed statement of a witness was read over to the workmen and they were asked to cross-examine the witness then and there, it amounted to non-compliance with the rules of natural justice (vide Keshoram Cotton Mills v. Gangadhar, AIR 1964 SC 708).

Judicial notice can be taken of the low expectation of life of hill tribes (vide Pati Soura v. State, ILR 1970 Cut 1165).

The Court can take judicial notice about: Communal disturbances or other disturbances in the country(vide Shivnath Rajram v. Union of India, AIR 1965 SC 1666).

Communal disturbances in 1947 after partition of India (vide Ishar Dass v. Smt. Chetni Bai (1970) 72 Punj LR17).

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**Reference to appropriate books and documents of reference:**

It frequently happens that it is necessary or proper for the Court to refer to sources of information concerning matters which have not been referred in the evidence, in which case it is its duty to reason to any source of information which in its nature is calculated to be trustworthy and helpful, always seeking first for that which is not appropriate. If a party asks the Court to take judicial notice of a matter of which judicial notice may properly be taken, the Court may refuse to take judicial notice unless the party produces any such book or document as the Court may consider necessary to enable it to do so. The Court itself may, without calling upon a party, refer to appropriate books and documents of reference. There is nothing to prevent the Court itself making an inquiry if it has only imperfect information, or none at all, on the subject; and the Courts have in several cases made, or caused to be made, such inquiries. The Court can take judicial notice only if unimpeachable books or documents are put before it or are otherwise accessible for its reference. Under the last paragraph of the section, the Court is given the discretion to refuse to take judicial notice of any fact, unless such person calling upon the Court to take any judicial notice to a fact produces any such book or document as it may be necessary to enable it to do so.

**Matters of public history, literature, science or art, of**

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**which judicial notice may be taken; reference to standard works (Section 57 Clause 13)**

The penultimate paragraph of this section does not say whether the Court may or may not take notice of any fact, nor does it say or mean that the Court shall or may take judicial notice of every matter which comes under the heads of description given there. It merely provides that when the Court does take judicial notice of the fact of which it is bound to take judicial notice under clauses 1 to 13, then it may refer to appropriate books of reference about that fact. Matters of history, literature, science and art are not mentioned in the section as matters of which the Court must take judicial notice, but, as pointed out elsewhere, the section is not exhaustive of the facts of which the Court may take judicial notice. The Court can take judicial notice, not of all matters of history, literature, science and art indiscriminately, but only of such matter of public history, literature, science and art as are of such a notoriety that they may be presumed as forming part of the common knowledge of every educated citizen. The Court can take judicial notice only of what may be regarded as notorious facts of public history; it cannot treat letters though 75 years old, without any sort of legal proof, as proof of where certain missionaries were residing and when they died. Before any judicial notice may be taken of any passages in books relating to an alleged tradition, something more than the mere existence of the passages has to be proved before the passages may be regarded as evidence of the

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existence of the tradition. It must be shown that the writer had some special knowledge of the alleged tradition. The existence of a national strike of coal-miners is a matter of public history. In *Farzand Ali*v. *Zafar Ali*, 46 IC 119, it was observed:

"We are inclined to think that the use of the historical works to establish title to the property cannot be justified on the strength of section 57 of the Indian Evidence Act. The question of title between the trustee of a mosque, though an old and historical institution, and a private person, cannot, in our opinion, be deemed to be a 'matter of public history' within the meaning of the said section."

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In *Mahant Shri Srinivas Ramanuj Das* v. *Surjanarayan Das*, AIR 1967 SC 256, it was observed:

"These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the 'Math' and its head. The Gazetteer can be consulted on matters of public history."

The question whether certain property is wakf or not is not a matter of public history, historical works on such matter cannot, therefore, be referred to. The fact that there has been a political agitation in the country; that certain persons have been deported in consequences of the part said to have been take by them in it, and that such agitation, conduct and deportation were the subject of debates in Parliament, and in a general way what was said in such

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debates and therefore became widely known to the alleged cause of deportation, are matters of public history; but the terms of a speech made by a person, who is not yet a historical personage, in the presence of persons who still exits, is not a matter of public history. A judge is entitled to take judicial notice of matters which have reached the Courts, *e.g.*, prosecutions for political crimes or the general trend of evidence adduced for the prosecution and defence in such case. Judicial notice may be taken of the fact that certain district in England had been attacked by aircraft; or that a district had been the scene of recent and frequent dacoities; or that the original records of a district destroyed during the Mutiny of 1857. In *Dorab Ali* v. *Abdul Aziz* the Privy Council was inclined to treat the fact that the Province of Oudh was not, when first annexed to British India, annexed to the Presidency of Fort William as a fact of which judicial notice could be taken under the Evidence Act. Judicial notice cannot be taken of land revenue reports which must be proved like any other document requiring proof. Judicial notice may be taken of proceedings in the Legislative Assembly, not of the truth of the facts asserted in the speeches but of the fact that such speeches were made. Vernacular histories which have never received any recognition, as historical works of value and reliability relating to matters of public or general interest nor have been referred to in any well-known historical work are inadmissible. Dictionaries may properly be referred to by the Court in order to ascertain not only the meaning

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of a word, but also the use to which the thing (if it be a thing) denoted by the word is commonly put. In order to determine the meaning of names and terms used in a particular religion the Court is entitled under section 57 to refer to works dealing with the history and beliefs of that religion. Judicial notice can be taken of economists' definitions but it should be done under exceptional circumstances and with proper safeguards.

Thurston's Castes and Tribes of Southern India cannot be considered to be a conclusive authority in regard to information collected by him.

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It may further be necessary to say that the opinion of Historians and Readers fall within the ambit of expert opinion.

In this case parties have placed reliance over the opinion of experts as well as of outstanding Writers of certain books including gazetteers. They fall within the ambit of expert evidence. Section 45 of Indian Evidence Act reads as under;

**Section 45 of the Indian Evidence Act**

As a general rule, the opinion of a witness on a question whether of fact or of law, is irrelevant. A witness has to state the facts which he has seen, heard or perceived, and not the conclusions which he has formed on observing or perceiving them. The function of drawing inferences from facts is judicial function and must be performed by the court. If a witness is permitted to state not only the facts which he has perceived but also the opinion

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which he has formed on perceiving them, it would amount to delegation of judicial functions to him and investing him with the attributes of a judge.

To this general rule, however, there are some important exceptions, which are enacted in this set of sections. When "the subject-matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it", or when "it so far partakes of the character of a science or art as to require a course of previous habit or study", the opinions of persons having special knowledge of the subject-matter of inquiry become relevant; for it is very difficult for the Court to form a correct opinion on a matter of this kind, without the assistance of such persons.

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**Matters for expert testimony; competency to depose as an expert**

Opinions of experts become relevant only when the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions. This section is, therefore, exhaustive of the matters on which expert testimony can be given, though the expression "science or art" would include almost all branches of human knowledge requiring special study, experience or training. So that a witness may be competent to depose as an expert, he must be shown to have made a special study of the subject or acquired a special experience

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therein. In such cases, the question is: "Is he *peritus*? Is he skilled? Has he adequate knowledge?" An expert is a person who has special knowledge and skill in the particular calling to which the inquiry relates. In law, and as applied to a witness, the term "expert" has a special significance, and no witness is permitted to express his opinion, unless he is an expert within the terms of section 45. The fact that the evidence of an expert was accepted in one case is no ground for accepting his evidence in every other case.

The term "expert" has a special significance and no witness is permitted to express his opinion unless he is an expert within the meaning of the term under section 45 Evidence Act. In each case, the Court has to decide whether a person said to be an expert, is really an expert taking into account his skill, study and experience. In many cases, persons having no educational qualification but having knowledge of high order have been treated to be experts. In *Baldev Raj* v. *Urmila Kumari*, AIR 1979 SC 879, opinion of a doctor who had not specialised in gynecology but had knowledge of high order of midwifery as an obstetrician, was accepted as an expert. Clearly, therefore, what is admissible is the opinion of such an expert in the field in which he or she has acquired special knowledge. Outside specialised field, the opinion of the expert would cease to be expert opinion and fall outside the purview of section 45 of the Evidence Act. In *Deeks* v. *Wells*, AIR 1933 PC 26, it was held that depositions of expert witnesses as to result of their

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opinions, and as to the effect of them, do not come within the domain of expert evidence at all. In *State* v. *Gaspar,*AIR 1971 Goa 3, opinion of Medical Officer as to mental condition of accused on a particular date on the basis of testimony of witnesses to acts of accused on that date, was not held as the expert opinion but his presumption. There can, however, be no dispute that an expert's evidence is a good evidence and cannot be rejected simply because it may not be decisive. In spite of it, the Court is not bound by the expert opinion though it is bound to consider the same along with other evidence and circumstances appearing in a particular case. In *Haji Mohd.* v. *State of West Bengal*, AIR 1959 SC 488, the Court held that in the circumstances of a case, the Court can refuse to place any reliance on the opinion of an expert which is unsupported by any reasons. As far as medical evidence is concerned, it has never been considered to be substantive evidence of the charge, but has been accepted as corroborative of the charge. It has been accepted since long that knowledge of medicine and human body is a matter of science and, hence, Courts have treated expert medical opinion with respect. In spite of it, a medical man cannot be allowed to give his opinion on matters, which are within the province of the Courts to decide.

In order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

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An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.

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**Opinions of authors in text books**

Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or place on higher pedestal than the opinion of an expert examined in court and the weight ordinarily to which

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it may be entitled to or deserves to be given.

**Opinion of the expert**.

The Madras High Court observed that even though there is no bar for the court to compare the admitted signatures with the disputed signatures to come to its conclusion it would be prudent to require assistance of the expert witness. In fact all the judgments cited by both the parties related to signatures and not thumb impressions. It cannot be disputed that thumb impressions would stand on a different footing, when compared to signatures and the variations, in thumb impression cannot be easily judged by naked eyes. The Court remanded the appeal back to the lower court for sending the documents for the opinion of the expert and thereupon take evidence if necessary only in the context of the opinion of the expert and record his findings thereon.

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**Court acting as an expert**

The opinion of the Court, itself untrained in medicine and without trained assistance, on questions of medicine is valueless. On questions of handwriting also, the practice of the Court itself acting as an expert has been disapproved. But there is nothing in the so-called science of finger prints which need deter a Court from applying its own magnifying glass or its own eyes and mind to the evidence and verifying the results submitted to it by the witnesses. In trial with the aid of jury, a question of handwriting or thumb-impression is entirely a matter for the jury.

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It is also a settled proposition of law that Gazette Notifications are also admissible u/ss.35,45 and 81 of Indian Evidence Act. The Hon'ble Apex Court in ***AIR 1995 SC 167, Bala Shanker Maha Shanker Bhattjee and others Versus Charity Commissioner, Gujarat State*** at para 22 held as under;

> "It is seen that the Gazette of the Bombay Presidency, Vol. III published in 1879 is admissible under Section 35 read with Section 81 of the Evidence Act, 1872. The Gazette is admissible being official record evidencing public affairs and the court may presume their contents as genuine. The statement contained therein can be taken into account to discover the historical material contained therein and the facts stated therein is evidence under Section 45 and the court may in conjunction with other evidence and circumstance take into consideration in adjudging the dispute in question though may not be treated as conclusive evidence."

**Annexure-IV**
**Gazetteers**
**Pages 34 to 128**

**Gazetteers** : Certain gazetteers have been relied upon by the parties. A gazetteer is a geographical dictionary or directory which provides important reference for information about places and place names including the map or a full atlas. This information is divided into various topics. Gazetteers of ancient Greece, China,

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Europe are also available. Of late in this country after arrival of the Britishers the gazetteers were introduced.

In this context it is necessary to mention that certain official gazetteers were published by East India Company and after independence by the Government of India. The official gazette is a Government Book and a publication in the official organ for the publication of Royal proclamation, Government orders, Regulations while the gazetteers is a geographical dictionary or the historic account or the general description of any place or the province, district and provincial gazetteers are quasi Government gazetteers giving important particulars respecting the district or province concerned. In this case parties have relied over gazetting official gazetteers. I have tried to explain the scope of all the 3 publications of the Government.

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Gazette generally means the official gazette published under the authority of Government. It is a publication of an official character which contains Government Notifications,list of public appointments and honours, legal notices etc. Official gazetteer is a Government Book. It is the official organ for the publication of royal proclamations, Government orders and regulations, Government circulars, rules bylaws and other public notices.

Needless to say that the Court can take judicial notice u/s 57 of the Gazette, official gazetteers, district and provincial gazetteers. District and Provincial gazetteers provides certain

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historic account also. The Court can take judicial notice of historic events vide AIR 1977 SC 1708.

Plaint averments have also to be appreciated while deciding the controversy. The plaintiffs have come out with a case that in the Town of Ayodhya Babri masjid was built by emperor Babur for the use of Muslims in general. As a place of worship and for performance of religious ceremonies and the land adjoining the mosque is the ancient graveyard of the Muslims who fought and died in the battle of Ayodhya between Babur and the previous ruler which are shown in the attached sketch map.

Learned counsel for the plaintiff has relied over certain extract of the books regarding nature of the building. Plaintiffs have filed Ext.82, extract of Memoirs of Babur by F.G.Talbot. Further reliance has been placed on on Ext.85 extract of Mughalkalin Bharat-Babur by S.Athar Abbas Rizvi. Further reliance has been placed on Ext.90, extract of Moghukalin Bharat. Plaintiffs have also relied upon extract of Memoirs of Babur by John Leyden, extract of Baburnama by John Leyden and John Erskine and extract of Baburnama by A.S.Beveridge. The plaintiffs have placed these documents to establish that Babur had camped near Ayodhya, but had not given any order for demolition of any temple and even on his return from the East, when he had called Mir Baqi at a place near Ayodhya, no such mention was made by Mir Baqi that any temple was demolished at Ayodhya or any

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mosque was constructed at the site of any such Temple while there is specific mention of the desecration of the nude parts of the idols of Urwa in Babarnama. Thus on the basis of these extracts the plaintiffs have pointed out that Babar never visited Ayodhya and the temple was not demolished at Ayodhya nor any mosque was constructed on the site of any such temple. Needless to say that the plaint averment is contrary to it where it has been specifically said that there was a battle between the then Ruler of Ayodhya and Babur and graves of Muslims who lost lives in the battle were buried in the adjoining graveyard. Thus the mosque has since the time of its construction been used by Muslims for offering prayers and graveyard has been used as a burial ground.

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Learned counsel for the plaintiffs has further relied over the extract of Epigraphia Indica, extract of Aine Akbari and extract of William Finch from the book Early Travels in India to show that there is no mention about the construction of Babri Mosque on the alleged site of temple by Babur and Mir Baqi.

Further reliance has been placed on Moghal India to show that there is nothing in the book to establish that the moque was constructed after demolition of any Hindu temple.

On behalf of the plaintiffs following papers were also filed to indicate that upto middle of 19th Century there was no such belief that Babri Masjid was constructed after demolition of any Hindu Temple and there was no mention of any such Ram Janam

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Bhumi temple in the books of history.

"313C/1/1-14 (Ext D-3) Extract of "British Paramountsey and Indian Renaissance, Part II", Vol. 10 by R.C.Majumdar."

198C-2/1-89(Ext.63/D-26) Book on "Ayodhya Archaeology After Demolition" by D.Mandal."

Plaintiffs have also placed reliance on serial nos. 40,41 and 42 to show that Babri Masjid was not constructed after demolition of Ram Temple. The explanation has also been furnished about "Ayodhya" by Hains Baker book in which it has been mentioned that Babri Masjid was constructed after demolition of Ram Temple only on account of the fact that author was influenced by the belief of local people prevalent in Ayodhya in 1986 and has relied over gazetteers written after 1865. It has further been urged that Ram Janambhoomi by Dr.Radhey Shyam Shukla and extract of Amir Ali book have no relevance because authors of these books were not at all Historians and these books are also not based on any source of history. As such their description is valueless.

Learned counsel for the plaintiffs has further relied over extract of certain gazetteers. Gazetteers of Walter Hamilton, 1815/1828 does not mention Ram Janam Bhoomi temple or destruction of a temple and erection of mosque by Aurangzeb after demolishing a temple and pillars in the Babri mosque were taken from Hindu building and probably these pillers were taken from the ruins of the palace. Edward Thorntone says that falsehood of

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the tradition is that the temple was constructed by Vikramaditya and it was demolished by Babar was proved by the inscription on the wall of the mosque, attributing the work to the conqueror Baber. Carnegi in his gazetteer for the first time evolve a theory of Janam Asthan temple and construction of Babri Masjid that too was based on no source of History and rather was based only on local belief. He himself admitted that it was locally affirmed that Emperor Babur built the mosque by demolishing Janan Asthan temple. In two places in Babri mosque the year it was built 935 H., corresponding with 1528 A.D. is carved in stone with inscription. This assertion goes to show that the Babri Masjid was constructed in the year 1528. It is further urged that Babri Masjid being constructed on the site of a temple after its demolition started from the gazetteer of 1870. The assertions in gazetteers of Carnegy were repeated in the reports of Millet, A.Fuhrer and H.R.Nevill. They are referred as Ext. 5 to 7, Ext.7,8,9,11, Ext.10,12 and 13.

In Ayodhya Ka Itihas writer mentions that on the basis of inscriptions Mir Baqi constructed the mosque. Ayodhya Ka Itihas Evam Puratatva Ext.O.O.S 5-3 is not a fare account but it deals with certain extract with surcharged atmosphere as he is deeply interested and involved in this case to support the claim of Hindus.

**RELEVANT FACTS CONTAINED IN GAZETTEERS ARE ADMISSIBLE EVIDENCE UNDER THE PROVISIONS OF THE INDIAN EVIDENCE ACT, 1872 AS SUCH THE**

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**FACTS RELIED ON FROM THE GAZETTEERS REFERRED EARLIER ARE ADMISSIBLE EVIDENCE:**

1. In AIR 1951 SC 288 (*Sukdeo Singh. v. Maharaja Bahadoor of Gidhaur)* the Hon'ble Supreme Court has held that the gazetteer is an official document of some value, as it is compiled by experienced official with great care after obtaining the facts from official records. Relevant paragraph 10 of the said judgment reads as follows:

> "10. In the case of Fulbati Kumari (supra), to which reference has been made, there was an extract quoted from the Bengal District Gazetteer, Vol. XVII at p. 168, which runs as follows:
> "About 1774 the lawless state of this tract led the British to place it in charge of Captain James Browne, who settled the estates with the ghatwals with two exceptions. These two exceptions were Dumri and Mahesri which were settled directly with the proprietors, the story being that the ghatwal tenure holders fled at the approach of Captain Browne their reputation as dacoits and brigands being too strong for them to face a Govt. officer without fear of the consequences. In the case of Dumri however, the Ghatwals finding that in their absence a settlement had been made of their tenure, returned and obtained a squad settling it with them under the Raja of Gidhaur. Of the estates settled with ghatwals only two are now held by their descendants, viz., Tilwa and Kewal. The others have passed into the hands of the Maharaja of Gidhaur, Chetru Rai, Akleswar Prasad and others of Rohini." '
> The statement in the District Gazetteer is not necessarily conclusive, but the Gazetteer is an official document of some value, as it is compiled by experienced officials with great care after obtaining the facts from official records. As Dawson-Miller C. J. has pointed out in Fulbati's (supra) case, there are a few inaccuracies in the latter part of the statement quoted above, but so far as the earlier part of it is concerned, it seems to derive considerable support from the documents to which reference has been

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made."

2. In AIR 1995 SC 167 (*Bala Shankar-Maha Shankar Bhattajee. v. Charity Commissioner, Gujrat )* the Hon'ble Supreme Court has held 'gazette' (*SIC*) 'gazetteer' is admissible under Section 35 read with Section 81 of the Indian Evidence Act, 1872 for being official record evidencing public affairs and the Court may presume their contents as genuine. The statements contained therein can be taken into account to discover the historical materials contained therein and facts stated therein is evidence under Section 45 and the Court may in conjunction with other evidence and circumstances take into consideration in adjudging the dispute in question. Relevant paragraph 22 of the said judgment reads as follows:

> "22. The contention of Sri Yogeshwar Prasad that the Asstt. Charity Commissioner has failed to prove that Kalika Mataji temple is a public trust; contrarily the evidence on records, namely the 'Will' of Bai Diwali, widow of N. Girijshankar, establishes that the temple and its properties were always treated as private properties. It would get fortified and gets corroborated by decrees in Civil Suit No. 439/1985, one of the legatees sought to annul the Will in Exhibits 10, 59 and the decree in that behalf. The Civil Suits Nos. 353/93, Ex. 24 and the Civil Suit No. 439 of 1885, Ex. 26 and the Civil Suits Nos. 904 of 1903 and 910 of 1903, Ex. 52 and Ex. 54, Civil Suit No. 912 of 1903, Ex. 55 would establish that the appellant's family had always treated the temple and the lands attached to temple as private properties. It has also been further contended that the entry into the temple was subject to permission and the devotees were not allowed to have Pooja, but have Darshan only. These circumstances have duly been taken into consideration by the District Judge while the High Court had not considered them in proper perspective. We find no force in the contention. It is seen that the

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Gazette of the Bombay Presidency, Vol. III published in 1879 is admissible under S. 35 read with S. 81 of the Evidence Act, 1872. The Gazette is admissible being official record evidencing public affairs and the Court may presume their contents as genuine. The statement contained therein can be taken into account to discover the historical material contained therein and the facts stated therein is evidence under S.45 and the Court may in conjunction with other evidence and circumstances take into consideration in adjudging the dispute in question, though may not be treated as conclusive evidence. The recitals in the Gazette do establish that Kalika Mataji is on the top of the hill. Mahakali temple and Bachra Mataji on the right and left to the Kalika Mataji. During Moughal rule another Syed Sadar Peer was also installed there, but Kalika Mataji was the chief temple. Hollies and Bills are the main worshipers. On full Moon of Chaitra (April) and dussehra ( in the month of October), large number of Hindus of all classes gather there and worship Kalika Mataji, Mahakali, etc. After the downfall of Moughal empire, Marathas took over and His Highness Scindia attached great importance to the temple. One of the devotees in 1700 offered silver doors. The British annexed the territory pursuant to the treaty between Her Majesty's Government of India and His Highness Scindia on the 12th December, 1860. A condition was imposed in the treaty for continued payment of fixed cash grants to all the temples from the Treasury and that British emperors accepted the condition. Regular cash grants of fixed sums were given to all the temples by Scindias and British rulers, as evidenced by Exhibits 27, 28, 29 and 30. The historical statement of noted historian, stated by the High Court, by name M.S. Commissionaria in his Vol. 1 of 1938 Edition corroborates the Gazette in the material particulars, which would establish that the temple was constructed on the top of the hill around 14th century and the people congregate in thousands and worship, as of right, to Kalika Mataji and other deities. R.N. Jogelkar's Alienation manual brought up in 1921 in the Chapter 5 Devasthana also corroborates the historical evidence. It is true that Bai Diwali in her Will, Ex. 22 treated the temple and the properties to be private property and bequeathed to her brother and the litigation ensured in that behalf. At that time, as rightly pointed out by the High Court, the concept of public trust and public temple was not very much in vogue. Therefore, the treatment meted out to

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these properties at that time is not conclusive. On the other hand the fixed cash grants given by the Rulers Scindias and the successor British emperors, the large endowment of lands given to Kalika Mataji temple by the devotees do indicate that the temple was treated as public temple. The appropriation of the income and the inter se disputes in that behalf are self serving evidence without any probative value. Admittedly, at no point of time, the character of the temple was an issue in any civil proceedings. All the lands gifted to the deity stand in the name of the deities, in particular large extent of agricultural lands belong to Kalika Mataji. The entries in Revenue records corroborated it . The Gazette and the historical evidence of the temple would show that the village is the pilgrimage centre. Situation of the temples on the top of the hill away from the village and worshipped by the people of Hindus at large congregated in the thousands without any let or hindrance and as of right, devotees are giving their offerings in large sums in discharge of their vows, do establish that it is a public temple. It is true that there is no proof of dedication to the public. It is seen that it was lost in antiquity and no documentary evidence in that behalf is available. Therefore, from the treatment meted out to the temple and aforesaid evidence in our considered view an irresistible inference would be drawn that the temple was dedicated to the Hindu public or a section thereof and the public treat the temple as public temple and worship thereat as of right. It is true that there is evidence on record to show that there was a board with inscription thereon that "no entry without permission" and that only Darshan was being had and inside pooja was not permitted. But that is only internal regulation arranged for the orderly Darshan and that is not a circumstance to go against the conclusion that it is a public temple. Enjoyment of the properties and non-interference by the public in the management are not sufficient to conclude that the temple is a private temple. It is found by the District Court and the High Court that the appellants are heredity priests and when the public found that they are in the management of the properties they obviously felt it not expedient to interfere with the management of the temples. It is seen that the High Court considered the evidence placed on record and has drawn the necessary conclusions and inferences from the proved facts that Kalika Mataji temple is a public temple. It is a finding of fact . As regard the

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> oral evidence the High Court rightly appreciated the evidence and it being a question of fact, we find no error in the assessment of the evidence by the High Court."

3. Be it mentioned herein that the 'gazette' is an official publication which contains government notifications, list of public appointments and honours legal notices etc. which are presumed to be genuine. While 'gazetteer' is a publication of official guarantee which contains geographical, historical, political, custom etc. of a particular District, State or Nation. The dictionary meaning of 'gazette' and 'gazetteer' as given in Mitra's Legal and Commercial Dictionary, 6th Edition, 2006 published by Eastern Law House on page 383 as follows:

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> **"Gazette.—**It is a publication of an official guarantee which contains government notifications, lists of public appointments and honours, legal notices, etc. which are presumed to be genuine.
>
> The official publication of news of all kinds, the government desires to make known to the public. [General Clauses Act, s.3(39)]
>
> **"Gazetteer.—**A dictionary which contains a historical account, or the general description of any place, district or province; a dictionary of geographical names."

4. In AIR 1986 SC 1272 (*Umaji Keshao Mishram. v. radhika Bai)* the Hon'ble Apex Court has held that 'gazetteer

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of Bombay Province' in 28 volumes published in 1982-84 under government orders; the 'gazetteer of Bombay city and island' in 3 volumes compiled under government orders and published in 1909; have been found source of much useful information. Relevant extract from paragraph 35 of the said judgment reads as follows:

> "35. It is, therefore, necessary to see the jurisdiction and powers which the High Court for the Province of Bombay possessed immediately prior to the commencement of the Constitution, namely, immediately before January 26, 1950, and to ascertain whether the powers specified in Articles 225, 226 and 227 of the Constitution formed part of its existing jurisdiction or were conferred for the first time upon that High Court when it became the High Court for the pre-Reorganization State of Bombay on the Constitution coming into force. This involves tracing in brief the origin and development of judicial institutions and administration of justice in the former Province of Bombay. Apart from the various Charters and Letters Patent granted by the British Crown and the Statutes passed by the British Parliament, much useful information in this regard can be gathered from other sources, particularly "The Imperial Gazetteer of India" published under the authority of the Secretary of State for India in Council; "Gazetteer of the Bombay Presidency" in twenty-eight volumes published in 1882-84 under Government orders; "The Gazetteer of Bombay City and Island" in three volumes compiled under Government orders and published in 1909; and books such as "The Administration of Justice in British India" by William H. Morley published in 1858, Herbert Cowell's Tagore Law Lectures entitled "History and Constitution of the Courts and Legislative Authorities in India" published in 1872, "Bombay in the Making Being Mostly a History of the Origin and Growth of Judicial Institutions in the Western Presidency, 1661-1726" by Phiroze B.M. Malabari published in 1910, "First Century of British Justice in India" by Sir Charles Fawcett (a former Judge of the Bombay High Court) published in 1934 under the patronage of the Secretary of State for India in Council, M. C.

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> Setalvad's Hamlyn Lecture on "The Common Law in India" published in 1960, "Famous Judges, Lawyers and Cases of Bombay A Judicial History of Bombay during the British Period" by P.B. Vacha published in 1962, "City of Gold The Biography of Bombay" by Gillian Tindall published in 1982, and "The East India Company's Sadar Courts 1801-1834" by Sir Orby Mootham (former Chief Justice of the Allahabad High Court) published in 1982. A judicial decision in which much valuable information can be found is the judgment of Westropp, J., who spoke for the Court in the case of Naoroji Beramji v. Henry Rogers (1866-67) 4 Bom HCR 1."

5. In AIR 1966 SC 1119 (*Shastri Yajnapurushdaji. v. Muldas Bhundardas Vaishya)* in respect of ceremony of initiation of the sect of *Satsangis* the Hon'ble High Court has quoted an extract from Gazetteer of the Bombay Province to judge their custom. Relevant paragraph 49 of the said judgment reads as follows:

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> "49. The Gazetteer of the Bombay Presidency has summarised the teachings embodied in the Shikshapatri in this way:-
> The book of precepts strictly prohibits the destruction of animal life; promiscuous intercourse with the other sex; use of animal food and intoxicant liquors and drugs on any occasion, suicide, theft and robbery; false accusation against a fellow-man; blasphemy; partaking of food with low caste people; caste pollution; company of atheists and heretics, and other practices which might counteract the effect of the founder's teachings (14)."
> (14) Gazetteer of the Bombay Presidency, Vol. IX, Part I, Gujrat Population, 1901, p. 537"
> It is interesting to notice how a person is initiated into the sect of Satsangis. The ceremony of initiation is thus described in the Gazetteer of the Bombay Presidency :-
> "The ceremony of initiation begins with the novice offering a palmful of water which he throws on the ground at the feet of the Acharaya saying: I give over to Swami Sahajanand my mind, body, wealth, and sins of (all) births, 'Man', tan, dhan, and janmana pap. He is then given the sacred formula 'Sri Krishna twam gatirmama'. Shri Krishna thou art my refuge. The

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> notice then pays at least half a rupee to the Acharya. Sometimes the Acharya delegates his authority to admit followers as candidates for regular discipleship, giving them the Panch Vartaman, formula forbidding lying, theft. Adultery, intoxication and animal food. But a perfect disciple can be made only after receiving the final formula from one of the two Acharyas. The distinguishing mark, which the disciple is then allowed to make on his forehead, is a vertical streak of Gopichandan clay or sandal with a round redpowder mark in the middle and a necklet of sweet basil beads (15)."
> (15) Gazetteer of the Bombay Presidency, Vol. IX, Part I, Gujrat Population, pp. 538-39"

6. In AIR 1968 SC 1413 (*Gopal Krishnaji Ketkar. v. Mohamed Haji Latif)* the Hon'ble Apex Court has quoted an extract from Gazetteer of Bombay Province in respect of tomb of a Muslim saint and Hindu Prince for its consideration of facts. Relevant paragraph 4 of the said judgment reads as follows:

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> "4. It is necessary at this stage to set out the origin and history of the Dargah. The Dargah has been in existence for over about 700 years. Its origin is lost in antiquity but the Gazetteer of the Bombay Presidency tells us that the tomb is that of a Muslim saint who came to India as an Arab missionary in the thirteenth century. According to tradition, there are two tombs in the Dargah in one of which is the dead body of a Hindu princess and in the other tomb the dead body of the Muslim saint. The fame of the saint was at its height when the English made their appearance at Kalyan in 1780. As they only stayed for two years, their departure in the year 1782 was ascribed to the power of the dead saint. The Peshwas were then in power in that region and after the departure of the English they sent a thanks offering under the charge of one Kashinath Pant Ketkar, a Kalyan Brahmin. It is said that the offering sent by the Peshwas was a pall of cloth of gold trimmed with pearl, and supported on silver pasta. The tomb was in disrepair and Kashinath started to repair it and according to tradition was miraculously assisted by the dead saint who, without

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> human aid, quarried and dressed the large blocks of stone which now cover the tomb. It appears that Kashinath was not content to repair the tomb. He also wanted to manage it and this led to a dispute with Kalyan Muslims who resented Brahmin management of a Muslim shrine. Matters came to a head in 1817 and the dispute came before the Collector who declared that the dead saint should settle the affair and that the only way of ascertaining the saint's wishes was by casting lots. This was done and three times the lot fell on the representative of Kashinath and so the matter ended and Kashinath's representative was proclaimed guardian of the tomb."

7. Be it mentioned herein that as it appears from the above referred three judgments being AIR 1986 SC 1272; AIR 1966 SC 1119 and AIR 1968 SC 1413; the Hon'ble Court in place and stead of 'Gazetteer of Bombay Province' has mentioned 'Gazette of Bombay Province'.

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8. In AIR 1967 SC 256 (*Mahant Shrinivas Ramanuj Das. v. Surjanarayn Das)* in paragraph 25 of the said judgment, the Hon'ble Supreme Court quoting with approval the facts from 'Puri Gazetteer' has held that the gazetteers can be consulted in matters of public history and statement in such gazetteer can be relied on as providing historical material, practice followed by Math and its head. Relevant paragraph Nos.25 and 26 of the said judgment read as follows:

> "25. The history of the Emar Math, according to the passage in the Puri Gazetteer, fits in with our finding. The High Court has relied on what has been stated in the Puri Gazetteer of O'Malley of 1908, at pp. 112-118. The relevant portion of the passage relied on is the following:
> "No account of Jagannath worship would be complete without some account of the Maths in Puri. Maths are monastic houses originally founded with the object of

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feeding travellers, beggars and ascetics of giving religious instruction to chelas or disciples, and generally of encouraging a religious life. The heads of these religious houses who are called Mahants or Mathadharis are elected from among the chelas and are assisted in the management of their properties by Adhikaris who may be described as their business managers. They are generally celibates but in certain Maths married men may hold the office.. Mahants are the gurus or spiritual guides of many people who present the Maths with presents of money and endowments in land. Thus the Sriramdas or Dakshinaparwa Math received rich endowments from the Mahrattas its abbot having been the guru of the Niahratta Governor While the Mahant of Emar Math in the eighteenth century who' had the reputation of being a very holy ascetic, similarly got large offerings frolic his followers. Both Saiva and Vaishava Maths exist in Puri. The lands of the latter are known as Amruta Manohi (literally nectar food), because they were given with the intention that the proceeds thereof should be spent in offering bhoga before Jagannath and that the Mahaprasad thus obtained should be distributed among pilgrims, beggars and ascetics; they are distinct from the Amruta Manohi lands of the Temple itself which are under the superintendence of the Raja. In 1848 Babu Brij Kishore Ghose roughly estimated the annual
income of 28 Maths from land alone at Rs. 1,45,400 and this income must have increased largely during the last sixty years.
There are over 70 Maths in Puri Town. The Chief Saiva Maths are located in the sandy tract near Swargadwar, viz., Sankaracharya Math with a fine Library of old manuscripts and Sabkarananda Math which has a branch at Bhubaneshwar. Most of the Maths are naturally Vaishnava. The richest of the latter are Emar, Sriramdasa and Raghavadasa the inmates of which are Ramats or followers of Ramananda."

26. It is urged for the appellant that what is stated in the Gazetteer cannot be treated as evidence. These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the Math and its head. The Gazetteer can be consulted on matters of public history."

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9. In AIR 1975 SC 706 (*State of Rajasthan. v. Sajjanlal Panjawat)* the Hon'ble Supreme Court of India has quoted with approval an extract from the Imperial Gazetteer of India in respect of famous giant temple. Relevant paragraph 12 of the said judgment reads as follows:

> "12. Apart from a copy of the fireman of Emperor Akbar produced by the respondents to show that Shri Rikhabdevji temple is a Swetamber Jain temple, the authenticity of which has been disputed by the State, there are other documents from which it appears indisputable even as was represented by the State and its predecessors that Shri Rikhabdevji temple is a Jain temple. Annexure-26 -The Imperial Gazetteer of India, Vol. XXI (New Edition 1908 pp. 168-169) describes it as "The famous Jain temple sacred to Adinath or Rakhabnath". It further states that it is annually visited by thousands of pilgrims from all parts of Rajputana and Gujarat, and that it is difficult to determine the age of this building, but three inscriptions mention that it was repaired in the fourteenth and fifteenth centuries. There can be no doubt that it is an ancient temple, though it is not possible to say when and by whom the idols were consecrated. We find as late as in 1958 that Annexure 30 - a Calendar printed and published by the Government of Rajasthan - has a photo of Shri Rikhabdevji temple under which there is a caption "UDAIPUR KE PAS RIKHABDEVJI KA PRASIDH JAIN MANDIR" i. e. famous Jain temple of Rikhabdevji near Udaipur. Annexure 17 is a notification issued by the Mewar Government on Chait Sukla 7 Monday 1982 corresponding to April 19, 1926 A.D. with the heading "Unique Angi Utsav in Shri Dhulevnagar". In it Shri Keshariyanathji Maharaj is described as a holy Jain Tirath which was managed previously by Udaipur Nagar Seth and Seth Jorawarmalji. We are not for the present concerned with the statement contained there in about the misappropriation of the money of the deity in Samvat Year 1934 But this document also shows that the State of Mewar describes it as a holy Jain Tirath. Annexures 2, 3, 4, 6, 7A, 7B and 7C show that some embezzlement of the temple funds was suspected in Samvat Year 1933 (about year 1875-76 AD.) as a

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result of which one Molvi Abdul Rehman Khan was deputed by the State of Udaipur to make enquiry and check the accounts. It appears that while this enquiry was - proceeding, one Bhandari Jawanji Khem Raj complained against that Molvi for forcibly breaking open the lock of the Bhandar and taking away the account books and other papers. In that connection he described the temple of Shri Rikhabdevji Maharaj as belonging to the Jain Sangh. Annexure 9 dated January 27. 1878, is a notification of the Government of Udaipur State for the information of the pilgrims and the devotees of Shri Rikhabdevji stating that Bhandaries were removed due to their mismanagement of the temple affairs and that a Committee consisting of five respectable Oswal Mahajans devotees of Shri Rikhabdevji, was appointed. Annexure 10 dated November 22, 1878, is a notice issued by the members of the Committee to dispel doubts about the action taken by the Ruler of the State in appointing a Committee for the management of the temple. It also mentions that- the management has been assigned to a Committee of five or seven big Sahukars who follow Jain religion and lead a religious life. Annexure 24 dated May 29, 1886, is a copy of the report made by Mehta Govind Singh Hakim Magra (an officer having both judicial and magisterial powers) to Mahkama Khas, Udaipur, on an application submitted by some Digamber Jains objecting to the raising of Dhawaja i.e. flag over the 'Jainalaya' by the Swetambar Jains. In that report it was stated that the temple was a Swetamber Jain temple. Annexure 21 dated July 19, 1907, shows that on a complaint that some people had allowed low caste people to perform Puja of Shri Rikhabdevji by taking some illegal gratification, the matter was referred by the officer of the Devasthan Bhandar to Jain Muni Paniyas Nem Kushalji as to what steps be taken for purification of the temple and the reply given by the said Muni. Annexure 28 dated Kartik Sudi 10 Samvat 1979 (1922 A D.) is a copy of the report of the Devasthan Department to Mahkama Khas, Udaipur State, stating that 'Naivedya' should not be offered to the deity Shri Rikhabdevji as neither the Committee no; the Jain Sangh nor the Acharyas of the Jain Sangh are in favour of it, and that the new practice of offering 'Naivedya' for the first time is uncalled for. On this report, the Mahkama Khas ordered that the Devasthan be informed that there is no necessity of offering 'Naivedya'. Annexure 29

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> dated Samvat 1889 (Sak 1759) (1833 A.D.) is a copy of inscriptions engraved on the main gate in which there is a reference to the performance of the ceremony of Dhwaja-Danda on the temple of Shri Rikhabdevji Maharaj. All these documents, there being no document to the contrary filed by the State of Rajasthan, clearly show that Shri Rikhabdevji temple is a Jain temple."

10. In AIR 1960 SC 148 (*Shubnath Deogam. v. Ram Narain Prasad)* the Hon'ble Apex Court has quoted with approval an extract from the District Gazetteer in respect of religious practices and sentiments of the *Adibasis*. Relevant paragraph 14 of the said judgment reads as follows:

> "14. It also appears from the district Gazetteer quoted in the judgment of the Tribunal that according to the belief of the 'Hos':
> "All the spirits if not by nature malignant - and they generally are malignant - require continual propitiation by means of sacrifices, the belief being that unless such offerings are made to them, they are a power for evil. Illness, for instance, is usually regarded as due to the influence of some Bonga; and the more serious and continued the disease, the greater the value of the animal that must be sacrificed. First, they sacrifice a fowl, and then if the offering does no good a goat. If a goat fails to procure relief, they increase the size of the sacrificial animal, immolating one after the other, a sheep, a calf, a cow and a buffalo to appease the ill will of the spirit.....".
> The facts stated in the District Gazetteer have been accepted by the Courts below as setting out correctly the religious practices and sentiments of the Adibasis."

11. In AIR 1959 SC 1073 (*State of Bihar. v. Bhabapritananda Ojha)* the Hon'ble Apex Court has extracted facts from the Bihar District Gazetteer placing the history of Shri Baidyanath temple. Relevant paragraphs 2 and 3 of the said judgment read as follows:

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"2. For the purposes of this appeal it will be necessary to refer to some earlier litigation about this temple. The history of this temple, it is not disputed, goes back to remote antiquity. According to Hindu tradition referred to in the Siva Purana and Padma Purana, extracts from which, with translations, are given by Dr. Rajendra Lal Mitra in his paper on the Temples of Deoghar (see Journal of the Asiatic Society of Bengal, Part 1, 1883, quoted in the Bihar District Gazetteer relating to Santal Parganas, 1938 edition pp. 373-376), the origin of the temple is traced to the Treta Yuga, which was the second age of the world by Hindu mythology. Side by side with Hindu tradition, there is a Santal tradition of the origin of the temple given by Sir William Hunter (see the Annals of Rural Bengal, p. 191; Statistical Account of Bengal Vol. XIV, p. 323). But these materials afford no evidence as to when and by whom the idol was established or the temple was built.

3. The temple sheltering the "lingam" and dedicated to Mahadeva stands in a stone-paved quadrangular courtyard. The courtyard contains eleven other temples, smaller in size and of less importance than that of Baidyanath. Pilgrims visit the temples in large numbers and make offerings of flowers and money in silver or gold; rich people offer horses, cattle, palaquins, gold ornaments and other valuables and sometimes, rent-free land in support of the daily worship. There is a high or chief priest (Sardar Panda) who it appears used to day a fixed rent to the Rajas of Birbhum during the Muhammadan regime, and the administration of the temple was then left entirely in the hands of the high priest. It may be here stated that about 300 families of "pandas", who belong to a branch of Maithil Brahmins, were attached to the temple and earned their livelihood by assisting pilgrims in performing the various ceremonies connected with the worship of the God. When the British rule began, it was decided to take over the management of the temple, and with this object an establishment of priests, collectors and watchmen was organised in 1787 at Government expense. The revenue soon fell off, as the chief priest beset the avenues to the temples with emissaries, who induced the pilgrims to make their offerings before approaching the shrine. (See the District Gazetteer, ibid, p. 383). In 1791 Government relinquished its claim to a share of the offerings and entrusted the management of the temple to the head priest on his

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> executing an agreement to keep the temples in repair and to perform all the usual ceremonies. This agreement was entered into by Ram Dutt the (ancestor of the present respondent), then high priest of the temple, and Mr. Keating who was then Collector of the district. According to Mr. Keating the income of the temple in 1791 consisted of the offerings of the proceeds of 32 villages and 108 bighas of land which he estimated at Rs. 2,000 a year; some years later the total income was estimated at Rs. 25,000 a year. Under the system introduced by the agreement of 1791, the mismanagement of the temple was a source of constant complaint; the temple and "ghats" were frequently out of repair and the high priest was charged with alienating villages from the temple and treating his situation as a means of enriching himself and his family. On the death of the high priest in 1820 a dispute over the succession arose between an uncle and a nephew. The nephew Nityanand was eventually appointed, but neglected to carry out the terms of his appointment. Finally, Nityanand was charged with malversation of the funds and the uncle Sarbanand was appointed in his stead in 1823. There was a faction which was opposed to Sarbanand's retention in office and asked for Government interference in the internal management of the temple. In 1835 Government declined all interference in the matter and the parties were left to have recourse to the established Courts of law. Sarbanand died in 1837 and Iswaranund Ojha, son of Sarbanand Ojha, was subsequently elected Sardar Panda. Iswaranund was succeeded by his grand-son, Sailajanund Ojha."

9. In AIR 1954 SC 575 (*Choote Khan. v. Mal Khan)* the Hon'ble Apex Court has relied and quoted facts from Gazetteer of Gurgaon District. Relevant paragraphs 4 and 6 of the said judgment reads as follows:

> "4. The parties are Meos and the land in dispute is situate in village Manota in Tehsil Ferozepore Jhirka in Gurgaon District. According to the Gazetteer of Gurgaon district (1910) the Meos owned nearly the whole of the Ferozepore Tehsil and various other villages in Gurgaon. They are divided into several sub-tribes, and these sub-tribes possess a strong feeling of unity and the power of corporate action. It

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was stated that
" in the Mutiny the members of each sub-division generally acted together and district officers are advised to keep themselves informed of the names and characters of the men, who from time to time possess considerable influence over their fellow-tribesmen." (P. 60).

6. It is common ground that the property was originally granted in 1822 A.D. to Dalmir by Nawab Ahmad Bakhsh Khan Rais of Ferozepore Jhirka. The grant is not in writing and there is no contemporaneous record which could throw any light on its terms. Dalmir claimed to be the sole grantee with full proprietary rights. A number of documents are attached to the Settlement record of 1963. They are important as showing how the property was dealt with by the Settlement authorities from time to time and the State of Revenue records. The earliest document on record appears to be an agreement dated September 28, 1861, which is incorporated in paragraph 18 of the Wazib -ul- arz of village Manota. It says that the tenure of the village is zamindary. Dalmir is entitled to profit and liable for loss in respect of the entire village. The other biswadars are owners of the produce of the land cultivated by them but they pay no revenue. This it is stated, is signed in token (P. 35: D. 11). This document is signed in token of verification by Dalmir Lamberdar, Dilmore, Alif Khan Biswadar, and Phusa Biswadar, who are described as proprietors. Phusa, we are told, is the alias of Chhinga.
There is a report of Mr. John Lawrence (later Lord Lawrence) Settlement Officer referred to in the Gazetteer which says that the arrangement then in vogue was that a few owners shared the profit and loss of the land Revenue and the others were exempted from responsibility. Manota was one of the few villages which continued to follow the system (P. 179)"

10. In AIR 1969 All 43 (*G.S. Chooramoni. v. State of Uttar Pradesh)* the Hon'ble Uttar Pradesh High Court has relied on a district gazetteer in respect of proprietary rights of the government lessees. Relevant paragraph 12 of the said

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judgment reads as follows:

> "12. In 1965 the State Government appears to have departed from the initial proclaimed purpose that the Thekedari Abolition Act was to apply to the nine districts mentioned by the Hon'ble Revenue Minister. By a notification No. 1683/ IC-340C-65, the State Government extended the provisions of the Act to the areas comprising the district of Naini Tal, with effect from June, 26, 1965. The same day by another notification no. 1688 (ii) IC-340C-65, the State Government ordered that under section 3 of the Thekedari Abolition Act, all leases in respect of Government Estate in 53 Mustajiri villages of the Tarai and Bhabar Government Estate, district Naini Tal, shall with effect from 1-7-1965 be determined. Mustajiri means zamindari. In these villages the Government lessees had proprietary rights (vide District Gazetteer Vol. 34, p. 128). Then, all leases in the Government Estates of 35 other villages in the Tarai and Bhabar area were determined by the impugned notification dated 30th June, 1966. These are non-mustajiri or kham villages, that is, directly managed; the rent being in cash, at Bighawar rate. For the petitioners it was contended that though the leases were terminated under the Thekedari Abolition Act, but the Zamindari Abolition Act has not been extended to the Government Estates in these 35 villages, I asked the learned counsel appearing for the State to verify this and make a statement. The hearing was adjourned to enable him to obtain instructions. Learned counsel then confirmed the fact stated for the petitioners."

11. In AIR 1983 MP 75 (*Ramdas. v. Vaishnudas)* the Hon'ble Madhya Pradesh High Court has relied on and quoted relevant facts from Madhya Pradesh District Gazetteer of Bilaspur District in respect of historicity and practices followed by Sheorinarayana Math. Relevant paragraph 5 of the said judgment reads as follows:

> "5. Before proceeding further, it is necessary to mention briefly the history of the Sheorinarayana Math. The Math is situated in the village

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Sheorinarayan, 62.04 kilometers from Bilaspur on the left bank of Mahanadi. It is an ancient Math and us a well-known place of pilgrimage. The entire Chhatisgarh area which includes the District of Bilaspur was ruled by the Kalchuri clan of Rajputs from the 9th century A.D. to the 18th century A.D. The capital of these rulers was at Ratanpur which is at short distance from Bilaspur. The Kalchuries of Ratanpur were all descendants of the Kalchuries of Chedi or Dehala with their capital at Tripuri near Jabalpur. Kalchuries belong to Haihaya race claiming descent from Kartavityarjuna of the Epic and the Puranic fame and are also referred to as Haihayas : (Madhya Pradesh District Gazetteer of Bilaspur District, pp. 56 to 66). The popular belief which is also adverted to in the plaint is that the temple of Narayana which is the principal temple of the Math was constructed during the reign of Jajalladeva II who ruled from 1165 A.D. to 1168 A.D. There are two stone inscriptions which are important for finding out as to when the temple of Narayana in the Math was built. The first inscription which is of the Kalchuri year 898 is incised on the pedestal of the statue of a male person in a small shrine in the courtyard of the temple of Narayana. The corresponding English date of this inscription is 9th Sept. 1146 A.D. The object of the inscription is to record that the statue is of a warrier named Sangramasimha the son of Balesimha and Ananadevi. The praise which is here lavished in the inscription is wholly conventional and has no historical importance: (See Corpus Inscriptionum Indicarum (Inscriptions of the Kalachuri-Chedi Era) Vol. IV, Pt. II, pp. 582 to 584). The only thing of importance in this inscription is the date and the fact that it starts with an invocation to 'Shiv'. The second inscription is of the Kalchuri or Chedi year 919. The stone which bears this inscription is built in the temple of Chandrachudeavars which stands in close vicinity to that of Narayana temple. The date of the inscription is not available but the year corresponds to 1167-68 A. D. The inscription belongs to the reign of Jajalladeva II of the Kalchuri Dynasty of Ratanpur. The immediate object of the inscription is to record the donation of the village Chincheli by Amanadeva, a descendant of a collateral branch of the Kalchuri Dynasty for the purpose of defraying the expenses of worship of God Chandrachude and the erection of a temple of Durga in front of the shrine. The inscription is, however, historically important as it furnishes an

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account of the collateral Dynasty of Ratanpur. This inscription also begins with an invocation to Shiv: (Inscriptions of the Kalachuri Chedi Era Pt. II, pp. 519 to 527). It is generally believed that the temple of Narayana was constructed during the same period to which the above inscriptions belong. There is some controversy as to whether the idol in this temple is of Vishnu or Shiva. It is stated in the Archaeological Survey of India Report, Vol. VII, p. 196 that the deity in the temple is Shaivic and not Vaishanavic. The same thing is repeated in the Madhya Pradesh District Gazetteer of Bilaspur District at p. 524. The Survey Report which states that the idol is of Shiv was made by J.D. Beglar, who was Assistant to Major-General A. Cunningham, Director General, Archaeological Survey of India. The inference drawn by Beglar on this point does not appear to be correct. The idol is a figure in a sitting posture and not Shivalingum. The very fact that the idol has been worshipped as Narayana or Vishnu for ages proves that it is of Vishnu and not of Shiv. Probably, the Beglar's report was influenced by the fact that the stone inscriptions which we have referred to above begin with an invocation to Shiva and the Kalchuri Rulers in whose reign the Shrine was founded were also of Saivic faith. In our opinion, however, the correct position is stated by Dr. Mirashi in his introduction to Vol. IV of Corpus Inscriptionum Indicarum (Inscriptions of the Kalachuri-Chedi Era Pt. I, pp. xxiii, cxv, cli and clxiii) that though Saivism was the predominant cult in Dakshina Kosala i.e. Chattisgarh, but Vaishnavism also was prevalent and that the old temple at Sheorinarayan is of Vishnu and was erected by a collateral branch of the royal family of Ratanpur. This is also the view of a modern author as Kalchuri Rulers and their descendants: (See Kalchuri Naresh Aur Unke Vanshaj (1982) p. 33 by Dr. Ram Kumar Singh). The parties have also accepted this position before us."

12. In AIR 1996 Himachal Pradesh 102 (*Kashmiru. v. Sh. Doud)* the Hon'ble Himachal Pradesh High Court has quoted and relied on the gazetteer of dthe Chamba State in respect of customary form of marriage "*Jhanjrara marriage"*. Relevant paragraph 11 of the said judgment reads as follows:

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> “11. It has come in the evidence examined by the parties before the trial Court that plaintiff married Smt. Jugni by way of "Jhanjrara' marriage which is customary form of marriage. Otherwise also, this customary type of Jhanjrara marriage has been recognised to be a customary marriage prevalent in Chamba District as is evident from the book titled Gazetteer of the Chamba State, Part A-1904, page 126, wherein form of marriages have been described as under :
> "Among all castes three kinds of marriages are in vogue : (i) regular (byah); (ii) jhanjrara and (iii) jhind phuk or man-marzi. Regular marriage involves betrothal (mangni) and the orthodox phera and the chhe-chap are essential. In a Jhanjrara the bride puts on ornaments, especially the nose-ring (nath), a red string to bind her hair (dori), and a bodice (choli). In both forms of customary marriage the worship of the family god or of a lamp is essential. The Jhanjrara rite is customary in the remarriage of a widow or of a woman divorced by her former husband, it is called choli-dori. especially in the Sadar and Brahmaur Wizarats and sargudhi in Churah. "

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13. Section 35 of the Evidence Act, 1872 says, inter alia, that an entry in any public or other official book stating a fact in issue or relevant fact and made by a public servant in discharge of his official duty is itself a relevant fact. As such, the facts that the Hindus were continuously worshipping in the alleged Babri mosque which was erected over the Ramjanamsthan temple is itself a relevant evidence as recorded in the gazetteers relied by this defendant. The said Section 35 of the Evidence Act, 1872 reads as follows.

> **“35. Relevancy of entry in public record, made in performance of duty.**—An entry in any public or other official book, register or record [or an electronic record] [1], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of

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a duty specially enjoined by the law of the country in which such book, register or record [or an electronic record] [2] is kept, is itself a relevant fact."

14. That Section 45 of the Evidence Act, 1872 makes opinions of the experts, inter alia, in assistance or law are in question as of entity of hand writings or finger impression are relevant facts and admissible evidence.

" **45. Opinions of experts.**—When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting [1][or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [2][or in questions as to identity of handwriting] [3][or finger impressions] are relevant facts.
Such persons are called experts.

*Illustrations*

(*a*) The question is, whether the death of *A* was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which *A* is supposed to have died, are relevant.

(*b*) The question is, whether *A*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by *A* commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by *A*. Another document is produced which is proved or admitted to have been written by *A*.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant."

15. Section 57 of the Evidence Act, 1872, inter alia, says that the Court shall take judicial notice of all laws, public acts, public festivals, fasts and holidays notified in the official gazette as also on all matters of public history, literature, science or arts, the Court may resort for its aid to appropriate books or documents of reference if the Court is called upon by any

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person to take judicial notice of any fact. As this defendant has already prayed for taking judicial notices of the books containing present laws of the Hindus and Muslims, others books, historical books, gazetteers etc. and this Hon'ble High Court has allowed the said prayer, the facts stated in those books are admissible as evidence under the relevant provisions of the aforesaid Section. Section 57 of the Evidence Act, 1872 reads as follows:

> " **57. Facts of which Court must take judicial notice.**—The Court shall take judicial notice of the following facts:
>
> [1][(1) All laws in force in the territory of India;]
>
> (2) All public Acts passed or hereafter to be passed by Parliament [2][of the United Kingdom], and all local and personal Acts directed by Parliament [3][of the United Kingdom] to be judicially noticed;
>
> (3) Articles of War for [4][the Indian] Army, [5][Navy or Air Force];
>
> [6][(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the State;]
>
> (5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;
>
> (6) All seals of which English Courts take judicial notice: the seals of all the [7][Courts in [8][India]] and of all Courts out of [9][India] established by the authority of [10][the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by [11][the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in [12][India];
>
> (7) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any [13][State], if the fact of their

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appointment to such office is notified in [14][any official Gazette];

(8) The existence, title, and national flag of every State or Sovereign recognized by [15][the Government of India]:

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette;

(10) The territories under the dominion of [16][the Government of India];

(11) The commencement, continuance and termination of hostilities between [17][the Government of India] and any other State or body of persons;

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;

(13) The rule of the road [18][on land or at sea].

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so."`

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16. Section 81 of the Evidence Act, 1872, inter alia, says that the Court shall presume the genuineness of any official gazette, or the government gazette and of every document purporting to be a document directed by any law. Said Section 81 of the Evidence Act, 1872 reads as follows:

> "**81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.—** The Court shall presume the genuineness of every document purporting to be the London Gazette or [1][any Official Gazette, or the Government Gazette] of any colony, dependency or possession of the British

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> Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament [2][of the United Kingdom] printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody."

17. In AIR 1931 PC 212 (*Devasthanam Madura. v. Ali Khan Sahib)* on its page 215, the Privy Council extracted the facts from Madura Gazetteer in respect of Tirupparankundram temple and also held that though there is a general presumption that waste land are the property of the crown, but it is not applicable where alleged waste is, at all found, physically within a temple. Relevant extracts from pages 214 to 216 of the said judgment read as follows:

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> Their main criticism of the Subordinate Judge is that "he refused to draw the proper presumption from the admitted facts of the case," and that this vitiates his consideration of all the evidence. The presumption which they draw is that the unoccupied portions of the hill belong to Government, and they appear to base this upon historical grounds.
>
> It is necessary therefore to trace shortly the fortunes of the temple in the 17th and 18th centuries, for which the authorities relied on are principally the "Madura Gazetteer," and Nelson's "Manual of the Madura Country," a compilation of great interest which has frequently been cited before this Board.
>
> There appears to be no doubt that under the Nayakkan Kings of Madura the seven temples in and in the immediate neighbourhood of the capital were endowed with large revenues derived from a number of villages. The temples were known as the Hafta Devasthanam, and included the Tirupparankundram Temple. It seems probable that this endowment was due mainly to the generosity of Tirumala, a famous member of that dynasty who reigned from 1623 to 1659. During the century and a half that followed the history of Madura is a confused record of internecine warfare, in which the incursions of Mahomedan, Mysorean and Mahratta invaders played the largest

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part, and these were succeeded by the gradual, but by no means peaceful, penetration of the East India Company. During those troublous times the Hafta Devasthanam lands seem to have disappeared piecemeal. What remained of them when Chanda Sahib, nominally representing the Nawab of Arcot, established himself in Madura in 1738 were then confiscated. His domination was interrupted by another invasion of the Mahrattas, who probably restored a portion of the old endowments. They again were ousted by the Nizam in 1744, and the temples fared no better than before. Then followed the intervention of the East India Company. Madura was eventually subdued by their troops under Mahomed Yusuf Khan, who in due course established himself as ruler. In 1763 he was beseiged in Madura by the Company's army, and after a memorable defence was betrayed and executed.

Thenceforward Madura seems to have come gradually under the Company's control, and after the fall of Seringapatam the civil and military administration of the district was formally made over, as part of the Garnatic, to the British under Lord Clive's treaty with Azim-ul-Dowlah of 31st July 1801 (Aitchison's Treaties, Edn. 4, X. 57).

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Mahomed Yusuf Khan (above referred to), who was apparently a Hindu by birth, re-established the endowment of the temples by a money grant, possibly derived from the revenues of the confiscated villages but the villages themselves were not restored.

This was the position when Mr. Hurdis, who was already in charge of the adjoining district of Dindigul, became the first British Collector of Madura, and carried out an elaborate survey and settlement of the country. He was in considerable doubt as to the course that should be adopted with regard to the Hafta Devasthanam lands. The Board of Directors ordered their restoration to the temples, but for some unexplained reason this order was never carried out, a tasdik or annual allowance in money being paid in lieu thereof to each of the temples. The Tirupparankundram tasdik, according to Nelson's account, was a sum of Rs. 2,651-8-3.

Their Lordships will now return to the matter with which the present appeal is immediately concerned. The question is whether any presumption should be drawn from the confiscation of the endowed villages as to the proprietary rights in the waste land situate within the 'ghiri veedhi' and forming part of the

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'malaiprakaram.' It is admitted that the village of Tirupparankundram, in which the temple is situated, was part of this endowment.

The Subordinate Judge thought that there was nothing in the long story, which their Lordships have attempted to summarize in the preceding pages, to suggest that the temple had over been ousted from its possession of the hill. The High Court, on the other hand, took the view that the hill being part of the village, it must be presumed to have been confiscated with the village, and to have become in 1801 Government property.

The conclusion to which their Lordships have come is that the Subordinate Judge was right. There is no trace in the historical works to which they have been referred of any interference by the Mahomedan invaders with the sacred hill or the immediate surroundings of the temple. They and the other predatory forces which established themselves from time to time in Madura, no doubt seized the revenue-producing lands which formed the joint endowment of all the temples, and these must have included the cultivated and assessed lands within the 'ghiri veedhi,' but there seems to be no suggestion that the Tirupparankundram

Temple or any of its adjuncts passed at any time into secular hands. It was probably during some interval of Mahomedan domination that the mosque and some Mahomedan houses were built (though the Mahomedans themselves ascribe the mosque to a much earlier period), but this was an infliction which the Hindu occupants of the hill might well have been forced to put up with ; it is, their Lordships think, no evidence of their expropriation from the remainder.

But the more relevant period to consider is that following the cession of sovereignty in 1801. The only rights which the temple can assert against the respondent are rights which the East India Company granted to them or allowed them to retain : see Secy. of State v. Bai Rajbai (1), and their Lordships think the evidence shows that the temple was left after 1801 in undisturbed possession of all that it now claims. Indeed, the policy of the Directors seems to have been rather to restore to the temples what they had been deprived of in the long years of anarchy which had preceded British rule, than to mulct them of any remnant that was left. It is, in their Lordships' view, hardly, conceivable that the East India Company would have wished, for no gain to themselves, to

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appropriate what was plainly the 'prakaram' of an ancient temple studded with shrines, 'inandapams' and other accessories to the worship of its devotees. Nor is there in the reports of Mr. Hurdis, or of any of his successors, which are summarized in the Nelson Manual, any hint of such a policy or of any claim by Government to rights over the hill.

(1)
AIR 1915 PC 59=30 IC 303=42 IA 229=39 Bom. 625(PC).
Their Lordships do not doubt that there is a general presumption that waste lands are the property of the Crown, but they think that it is not applicable to the facts of the present case where the alleged waste is, at all events physically, within a temple enclosure. They see no reason to disagree with the Subordinate Judge's discussion of the authorities on this question. Nor do they think that any assistance can be derived, under the circumstances of this case, from the provisions of the Madras Land Encroachment Act 3 of 1905, on which the respondent has relied.

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**Annexure-V**
**Twenty lines Inscription engraved on a slab**
**Page 45-59**

**On 6.12.1992 the disputed structure was demolished and the inscription and several pieces of architectural remains were found. They are the most clinching evidence. Epigraphical documents are considered to be the most valuable evidence. In a 20 line inscription engraved on a slab or tablet it transpires that it measures about 5' in length and 2.25' in width. The language of inscription is Sanskrit. The text is shortly composed. The script in Nagri, written in 11 and 12th century AD style. It reveals to an impression that there was a reign of king Govind Chandra, Ram Janam Bhumi temple was built.**

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**The English translation of 20 line inscription by Dr. K.V.Ramesh reads as under :--**

**"Line 1....Obeisance to [Lord]Siva.....**

**Line 1-2,verse 1.[This line is nearly totally erased. But there is enough space for a verse in a lengthy metre such as Sardlavikriditam]**

**Lines 1-2,verse 2....of the physique of [Lord] Trivikrama.....by His height containing within His body the sixteen doctrines (or maha-vidyas).....in Whose palm He holds the universe like (holding) the Moon, whose kulagiri (in the case of Bharata-versa, one of the seven great mountain ranges, viz, Mahendra Malaya, Sahya, Suktimat,Rksa,Vindhya and Pariyatra) whose falling rocks (while striking one another) create noise had, out of wanton arogance.....**

**Lines 2-3,verse 3, The illustrious Bhargava 9 i.e.Parasurama).....an ornament of the earth.....like insects.....with firm hands apraised.....having increased, events brought into existence, barren faces.....**

Lines 3-4, verse 4. during the violent dance of the Lord of (the goddess) Gandi (I.e.Lord Siva), from the rocking head-jewel....genuine reputations which emanated from the opening in the skull-shaped spherical half of the universe..In that family heroestook their birth, who were determined to resurrect the warrior clan which had been rendered weak by the wars waged by Bhargava (Parasurama)(against them).

Lines 4-5,verse 5. Noble was that very family which was the birth place of valour which had successfully removed the sufferings of the other (Ksatriya clans) in which Mame, the abode of thousands of perfect and extremely valorous deeds and who was the utmost favourite of the world.

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Line 5,verse 6. That very Son of the Sun (i.e. Karna), Mame, the unequalled hero of the world, uttered everyday the words "may ! Have no mercy on (my) body, may I not hanker for material wealth, may I be diligently disinterested in sensual temptations.....

Lines 5-6, verse 7. The thorny trees, like the sensuous villains, repeatedly wrote (i.e.scratched) on the skins of the breasts and hips and loins of the womenfolk of the tribal villages of the plains and hills who had taken refuge in the thickets as a result of the destruction of their abodes in sportive wars waged by him.

Lines 6-7, verse 8, His fame alone having pervaded till then the heavens, the high-minded [Mame], wishing to go to the heavens in person and reside there in that wonderful world, he bequeathed his entire realm along with all the wealth to his son Sollaksana just as the Sun-god had bequeated all his lustre to the Fire-god.

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Line 7,verse 9. As a result of some unknown power of the gift of that realm, which had no bounds and was other-worldly, a super-human valour manifested itself in Saliaksana; it was indeed an earthly exception.

Lines 7-8, verse 10. The sword was at the tip of his fingers, his hand was verily the great army, his fame, like sumptuously cooked delicacies, were ever palatable; even without a kingdom to rule, these personal instruments enabled him to spread extensively an empire sans worries.

Line 8,verse 11. He who was for long intervals enjoying himself on battle-fields, bore on his head his ruthless aword, which was quick to end the lives (of his enemies).

Lines 8-9,verse 12. Within the serene sorroundings of the Malaya mountain, on the banks of the heavenly Ganges, at the entrances of the cave-dwellings of the Himalayas, in the caverns in which the hunter tribes dweli, the accomplished

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womenfolk gaily sing (literally, read) the strings of his eulogy composed for the first time by the semi-divine beings moving about in the skies.

Lines 10-11,verse 13. On the advice tendered by the elders, in the terrains of the Himalayas, in the pristine pure regions of the Malaya (mountains), in the lands along with banks of the heavenly Ganges as well as in other regions the semi-divine unmarried girls, with intent to gain husbands, ever offer worship to the hands of the satiating images sculped in his (i.e. Sallaksana's) likeness.

Lines 10-11,verse14. He who is to be offered oblations by the beautiful for the realization of their desires.....himself by the worlds.....in whose abode, which is pleasing with wealth and happiness, hi is sung about the multitudes of celestial singers.

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Lines 11-12,verse 15. The people look upon as a phenomenon the fact that, Sallaksana, who was, through good fortune, enjoying the genuine company of the damsels of the heavens, had happily begotten a son who, by appearance, was no different from his father.

Lines 11-12, verse 16 [That son] Alhana, who was the beloved of the good people, is like pointed saw to the war-mongers. He retrieved the splendour of the habitually fickle-minded Goddess of wealth by means of fair and persuasive means.

Line 12,verse 17, He was indeed extraordinary and whenever he confronted (his foes the heap of their) arrogance, accumulated over a protracted period, melted away. The garb of good deeds and bad deeds (worn by them) slipped away by his mere looks.

Line 13,verse18, He was the destroyer of (his enemies' manliness, and made those who were afraid efferminate, as against the belief among the people, his eminence for

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dwarfed that of the lofty mountains.

Lines 13-14,verse 19, His nephew (literally brother's son), the widely celebrated Meghasuta, the illustrious one, who superceded Anayacandra, he earned the lordship of Saketa-mandala through the grace of his elder, the Lord of the earth, Govindacandra.

Line 14,verse 20. Not only did he, who was powerful, put an end to the arrogant warriors who were dancing in unrestrained frenzy in the battles constantly fought by him, but he also gave (to his people) an excellent army which was replete with (soldiers comparable to) the wish-fulfilling trees.

Lines 14-15, verse 21. By him, who was mediating in his mind on the earliest means of quickly jumping across the ocean of worldly attachments, was erected this beautiful temple of (The god) Visnu-Hari, [on a scale] never before done by the preceding kings, compactly formed [i.e. built] with rows and lofty stones which had been sculped out.

Lines 15-16, verse 22. The position of Alhana, whose tireless shoulders were like safety latches for the stability of the king Govindacandra's empire, was subsequently occupied by his younger (son?) Ayusyacandra.

Line 16,verse 23, Great poets dared not compare him with Sahasanka and Sudraka; out of sheer fear none save the God of Love dared draw the bow-string in his presence.

Line 17,verse 24. By him, who was of good conduct, and abhorred strife, while residing at Ayodhya, which had towering abodes, intellectuals and temples, Saketa-Mandala was endowed with thousands of walls, reservoirs, aims-houses, tanks.

Line 17-18, verse 25. The young damsels, who were as attractive as the female musk-deer and does, while they rested on the cool surfaces of the Himalayan rocks, sang

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about his (i.e.,Ayusyacandra's) fame.

Line 18, verse 26. Whose bodily splendour, which was ever characterised by glowing eyes, was at all times pleasant with gentle feelings, was a source of salvation for the good just as (the holy pilgrimage centre) Kasi is.

Lines 18-19, verse 27. Separating [the flesh and blood of the demon] Hiranyakasipu from his skeleton, subduing [the demon] Bana in battle, tearing asunder the arms of the [demon-Jking Bali, and performing many valorous deeds, having killed the evil Ten-headed [demon Ravana].....

Lines 19-20, verse 28. And now, the fierce arms of the ruler.....annihilates even the fear caused by the westerns (i.e., the Islamic invaders from the west). The brilliance of the mighty great ones....east and west....

Line 20, verse 29, Because of the subjects' effective acts of merit, the king being famous in the world.....the illustrious Ayusyacandra....."

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Besides this there are other inscriptions engraved on stones. They are related to 12th century A.D. The clinching evidence of epigraphical record prepared by Rakesh Tewari OPW-14 contains a list of 265 artifacts. After seeing the list it transpires that remains of old Hindu temple were used in construction of mosque. Sri Rakesh Tewari was cross examined. There is not even an iota of evidence to suggest that he had not collected the remains of the disputed structure and prepared inventory containing 265 artifacts. Consequently on the basis of epigraphical evidence it transpires that ornamental pictures, images, parts of the old temple and other religious articles used in the temple were found from the debris of the demolished structure. In view of the inscription referred to

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above it is established that there was temple prior to the construction of Babri Mosque. The beautiful verses in Sanskrit leave no room for doubt that the script was prepared in 11th and 12th century A.D. It is covered in the old writings. It establishes the historical fact of existence of pre-Babri Masjid Hindu temple. There is nothing on record to contradict the same.

**Annexure-IV**
**Gazetteers**
**Page 34 to 128**

At the cost of repetition I may refer that Carnegy at volume 20 in O.O.S.5-49 in the year 1870 mentioned that after demolition of Janam Sthan Temple Babri Mosque was constructed in the year 1528. Thereafter Millet, H.R.Nevil. E.B.Joshi in gazetteers at Ext. O.O.S.5-7,5-8,5-9,5-11 & 5-13 acknowledged the view taken by Carnegy and took a view that after the demolition of the temple at Janam Asthan, Babri Mosque was constructed. Alexandar Connigham in O.O.S.5-6 has also mentioned that very heart of the city stand Janam Asthan or birth place temple of Ram. The Encyclopedia of India of Eastern and Southern Asia by Surgeon General Edward Balfour (1885) at page 56 also refers about the

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**Annexure-IV**
**Ayodhya by Hans Bakker**
**Pages 14 to 33**

moque. Lastly **Hans Bakker in the celebrity book of Ayodhya** at page 46 took view that the original location of Janam Asthan is

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comparatively certain since it seems to be attested by the location of the mosque built by Babur, in the building of which materials of a previous Hindu temple were used and are still visible. The mosque is built by general consciousness to occupy the site of the Janam Asthan. In this context it may be clarified that gazetteers are official documents and the Hon'ble Apex Court has relied upon them. They are admissible u/ss.35, 45 and 81 of the Indian Evidence Act. The statement contained in the gazetteers can be taken into account to discover the historical matter contained therein and the facts stated there is evidence u/s 45 and the Court may in continuation with another evidence and circumstance take into consideration the material referred in the gazetteer vide AIR 1995 SC 167 Bala Shanker Bhattjjee & Others Versus Charity Commissioner, Gujrat State.

I have already referred the submissions of other Advocates who claim that alleged inscription is false, fabricated and forged and it should not be relied upon. In this context I would like to refer Baburnama by A.S.Beweridge who has dealt this inscription at appendix U at page 27. He has obtained the inscription from Deputy Commissioner, Faizabad. The inscription inside the mosque reveals that “By the command of the Emperor Babur, Mir Baqi built this alighting-place of angels”. After considering the entire inscription Beweridge took the view and concluded that “inscription is incomplete”

It is not disputed between the parties that original suit

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no.29/1945 was filed by Shia Central Waqf Board against Sunni Central Board of Waqf and the learned Civil Judge had the opportunity to see the inscription on the mosque. He has relied upon gazetteers of settlement report and took a view that when no direct evidence is available then the material in the gazetteer which was compiled after spot inspection assumes great importance. According to the Civil Judge the inscription on the pulpit shows that it was built in 923H while gazetteer show that the mosque was built in 935H. Thus the Civil Judge disbelieved the inscription.

Besides Beveridge even the Civil Judge who visited the site on 26.05.1946 instead of one found two inscriptions, one refers 923 H i.e. 1516-17 AD, another refers 935 H i.e. 1528-29 AD. Deputy Commissioner provided the copy of one inscription to Beveridge. Consequently the plaintiffs are unable to prove before this Court as to what happened with the earlier inscription of showing the date of construction as 923H referred in the judgment. As regards the 2nd inscription Beveridge found it incomplete. Thus with all certainty it can be said that inscription is not reliable and on the basis of inscription plaintiffs are unable to establish that Babri Mosque was constructed in the year 1528 A.D. but on historical account it is established that the mosque was constructed after demolishing the temple. Consequently during the regime of Babur the mosque was constructed under his command after demolishing the temple against the tenets of Islam by Mir Baqi.

I have already referred the arguments advanced by Sri Hari

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Shanker Jain Advocate. He has pointed out the circumstances which leads to an inescapable conclusion that the temple was destroyed and remains of the temple were re-used in the construction of the mosque. This view gets strength from the Gazetteers as well as from circumstantial evidence, referred to above. In this regard I find recovery of 265 artifacts fully establish that damaged parts of the old Hindu temple in the form of building material were reused in the construction of the mosque against the tenets of Islam.

I have already recorded the findings of issue no. 1-b. A.S.I. report has also confirmed that the disputed building was constructed on the site of old Hindu temple. Statement of O.P.W. 14 Dr Rakesh Tiwari, who prepared the inventory, if read along with A.S.I. report , then the total outcome is that old temple was demolished and at the site disputed structure was constructed .

265 inscriptions found on 6.12.1992 after demolition of the disputed structure along with other architectural remains leave no room for doubt that the inscription is written in the script of Dev Nagri of 11th and 12 century. I have also referred English translation of 20 line inscription of Dr. K.B. Ramesh. The aforesaid circumstantial evidence supported by other epigraphical documents are the most valuable evidence which fully corroborate the version of Hindus and belies the version of Muslim that the mosque was not constructed, after demolishing any temple. On the basis of circumstantial evidence, historical accounts, gazetteers

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and other epigraphical documents, it is established that after demolishing the temple the disputed structure was constructed as a mosque and even pillars of the old temple were re-used which contained the images of Hindu Gods and Goddesses against the tenets of Islam. Thus, the circumstantial evidence totally contradicts the assertion of Muslims. I have already referred the oral evidence, adduced by the parties in Annexure No.5. I conclude that the oral evidence led by Muslims is not trustworthy. Thus the circumstantial evidence conclusively establish the claim of Hindus about the destruction of old temple and construction of Babri Mosque at the site of the temple which is corroborated by the expert evidence of A.S.I.

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As regards revenue entries, the plaintiffs cannot get any advantage for the reasons that there are lot of interpolations. I agree with the analysis of Sri Hari Shanker Jain Advocate.

I have referred in detail that on the basis of revenue records also and other documents, it can conclusively be said that Janmsthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the plaintiffs.



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## ISSUE NO. 12

**Whether idols and objects of worship were placed inside the building in the night intervening 22nd and 23rd December, 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?**

## FINDINGS

Plaintiffs claim that idol and object of worship were placed inside the building, i.e. disputed structure in the intervening night of 22/23 rd December, 1949 and they were not in existence there since before. The plaintiffs have further submitted that the disputed structure was used as a mosque to offer prayers by Muslims . Oral evidence has been adduced by Muslims. In O.O.S.No. 5 of 1989 the plaintiff nos. 1 and 2 , the deities as juridical persons through next friend, plaintiff no. 3 assert that in the intervening night of 22/23 rd December, 1949 , the deities were shifted in the disputed structure. The evidence was led on behalf of the plaintiffs of O.O.S.No. 5 of 1989 to this effect. On behalf of defendant no. 3 it is submitted that the deities continued to exist and they were not installed as alleged by the plaintiff in para no. 11 of the plaint.

Thus,on the basis of evidence available on record, it transpires that right from the report of Vakil Commissioner in O.S.No. 61/280 of 1985 and also O.S.No. 2/ 1950 (O.O.S. 1 of 1989) it is established that inside the disputed structure no idol was found by Vakil Commissioner even in the year 1950. Thus,

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the contention of defendant no. 3 that the deities continued to exist is incorrect. The plaintiffs have proved that idols and object of worship were installed in the building in the intervening night of 22/23rd December, 1949. The effect of installation will be considered while considering the finding on other issues .

Issue No. 12 is decided accordingly.

## ISSUES NO. 2, 4, 10, 15 & 28

**2. Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?**

**4. Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants?**

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**10. Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?**

**15. Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?**

**28. "Whether the defendant No. 3 has ever been in possession of the disputed site and the plaintiffs were never in its possession?"**

## FINDINGS

These issues are inter related and can conveniently be disposed of at one place. It has been claimed by the plaintiffs that they have perfected their rights by their adverse possession as alleged in the plaint as they are in possession of the property in suit from 1528 continuously, openly and to the knowledge of the defendants and Hindus in general. It has further been alleged that

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defendant no.3 was never in possession of the disputed site. On behalf of Hindus, it is urged that Hindus have perfected their rights by adverse possession as they are in continuous possession. Muslims further claim that they were dispossessed from the property in suit in 1949.

On behalf of the plaintiffs reliance has been placed on following documents:-

**01 –** Ext. A 3 (Vol. 6 Page 33) - original sanad granted by the Chief Commissioner of Awadh in favour of Rajjab Ali and Mohd. Asghar, the certified copy of which is filed as Exit. 1 in O.O.S. No. 4 of 1989 (Vol. 10 P. 27)-showing the cash Nankargrant of Rs. 302-3-6 for maintenance of the grant so long as the object for which the grant has been made is kept intact.

**02 –** Ext. A 10 (Vol. 6 Page 153-155) - certified copy of the Extract of Register Tahqiqat Mafi bearing orders dated 13-3-1860 and 29-6-1860 etc. referring to Babar Shah Badshah Dehli in column No. 6 and providing for continuance of the grant.

**03 –** Ext. A 11 (Vol. 6 Page 163-165) – certified copy of the Extract of Register Mafiat bearing Government Order dated 29-6-1860 specifically mentioning that the holder (who was an office bearer of Masjid) possessed a duly attested copy of a decree showing that Rs. 302-3-6 were granted by Nawab Asifuddaula and also providing that

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**the grant may be continued so long as the Masjid is kept up** and the Mohamdans conduct themselves properly. The said document gives the name of grantor as **Babar Shah Emperor of Delhi** and the name of grantee was given as "Maulvi of Masjid Babri." Another copy of this Register has been filed as Ext. 2 in O.O.S. No. 4. of 1989 (Vol. 10 P. 31) in column 9 of which it is specifically mentioned that **this grant is said to have been made for the expenses of Masjid Babri situated in Ayodhya**.

**04 –** Ext. A 12 (Vol. 6 P. 167-169) copy of Register No. 6 (Jeem) regarding Mafi and bearing inspection note dated 9-7-1892 stating about inspection of the Mosque by the officer concerned.

**05 -** Ext. 3 (Vol. 10 P. 33) copy of Register No. (Jeem)- register Mafi of Mauza Bahoranpur Pargana Haveli Awadh, Tahsil and District Faizabad mentioning in Column 16 about the **inspection of the Mosque which was found not in good order and also mentioning that Mohd. Asghar had been given to understand to carry out the repairs as soon as possible**. This inspection note was dated 27-9-1902. In column 17 of the said document it was also mentioned that the site was inspected by the officers concerned on different occasions.

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**Annexure-V**
**Pages 194-202**

**06** – **Ext. A-21** (Vol. 7 P. 233-235) - copy of Khasra of Mauza Ramkot regarding 1277 Fasli, part of Misil Haqqiyat Bandobast Sabiq decided on 22-8-1871 by Hakim (हाकिम) Bandobast showing plot No. 163 of the first settlement measuring 5 Bigha 4 Biswa as **Abadi Masjid**. A copy of this very document has been filed as Exibit 9 in O.O.S. No. 4. of 1989 (Vol. 10 P. 45)

**07** – Ext. A 14 (Vol. 7, P. 181) - copy of letter of Secretary, Chief Commissioner of Awadh to the Commissioner Faizabad Division dated 25-8-1863 mentioning that the Governor General has sanctioned Chief Commissioner proposal for the commutation of the cash **payment of Rs. 302-3-6 granted for the support of the Janam Asthan Mosque** to the grant of rent free land near Ayodhya (Vol. 7 P. 181)

**08 –** Ext. A-15 (Vol. 7, P. 183) - copy of letter of the Financial Commissioner Oudh dated 5/6 September, **regarding Janam Asthan Mosque in Ayodhya** approving selection of land made by the officiating Deputy Commissioner of Faizabad.

**09** – Ext. A-16 (Vol. 7, P. 185-191) - copy of ordersheet of the court of Mr. B. Carnegy, Deputy Commissioner,

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Faizabad dated 31-8-63 **regarding grant of Mafi Nazool land (with income of Rs. 302-3-6) to Masjid Janam Asthan**.

**10** – Ext. 7 (Vol. 10, P. 41)-copy of ordersheet of the Deputy Commissioner, Faizabad dated 13-9-1865 regarding the approval of **land selected for Masjid Janam Asthan**.

**11** - Exibit A-17 (Vol. 7, P. 193-197) - copy of ordersheet of the court of Mr. B. Carnegy, Deputy Commissioner, Faizabad dated 13-9-1865 regarding approval of the **grant of land for Masjid Janam Asthan** and for delivery possession of the same.

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**Annexure-V**
**Pages 177-189**

**12** – Ext. A-18 (Vol. 7, P. 199– 205)-copy of sanad from Extra Assistant Commissioner dated 30 October, 1865 with endorsement dated 5-12-1865 regarding **allotment of land for khateeb Masjid Janam Asthan**.

**13** – Ext. A-6 (Vol. 10 P. 39) copy of ordersheet of the Deputy Commissioner, Faizabad dated 13-9-1867 regarding the **land granted for Masjid Janam Asthan**.

**14** – Ext. A-19 (Vol. 7 P. 207-213) copy of order / decree of the Settlement Officer dated 3-2-1870 regarding the settlement of land of Sholapur and Bahoranpur in lieu of cash grant of Rs. 302-2-6 paid annually from the Imperial

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Revenue **for the support of Janam Asthan Mosque in Ayodhya**.

**15** – Ext. A-20 (Vol. 7, P. 231) - copy of order, regarding the settlement, dated 22-8-1871 pertaining to the land of graveyard and Imli trees situated in front of the Babri Mosque and Janam Asthan holding that the trees belong to Mohd. Asghar etc. (plaintiffs) and further holding that graveyard land could not belong to any one. Ext. 8 (Vol. 10 P. 43) is the copy of the judgment and order dated 22-8-1871 of the same case.

**16** – Ext. 4 (Vol. 10 P. 35) is the certified copy of the map of the First Settlement showing symbol of Mosque in plot No. 163 of the first settlement.

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**17** – Ext. 10 (Vol. 10 P. 47) is the copy of Khasra Abadi of Mauza kot Ram Chand showing **entry of Masjid Pukhta against plot No. 163**.

**18**. Ext. 49 (Vol. 11 P. 271-281 and 283-329) is the copy of Tarmeemi Khasra of 1931 showing **entry of Nazul plot No. 583 as "Masjid Waqf Ahde Shahi." A**nother copy of the same Khasra has been filed as Ext 52 (Vol. 12 P. 351) which was filed as paper No. 65-A2 / 2, 3. Entry of the name of Mahant Raghunath Das as per order dated 26-2-1941 is only in respect of Chabutra Janam Asthan. This Khasra of Nazool has been relied upon as Soochi 18 to the affidavit of DW 3/20 and it has

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been referred in his statement also at Page 11 (para 52) and on pages 16, 36 and 50. Another Khasra extract of plot No. 588 of this very year (Nazool) has been filed by Defendant No. 3 as Ext. A-11 (Vol. 14, P. 69) showing Sumitra Bhawan.

**19** – Ext. 50 (Vol. 11 P. 331) copy of kishtwar map of 1931.

**Plaintiffs' documents showing the possession of Muslims regarding the disputed structure:-**

**01** – Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey (S.I.) dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.

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**02** – Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

**03 -** Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1958 regarding Nishan by Nihang Faqir.

**04 -** Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey dated 1-12-1858 against Nihang Sikh for installing Nishan.

**05** – Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.

**06** – Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey

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(S.I.) dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989**).**

**07** – Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.

**08** – Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.

**09** – Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.

**10** - Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.

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**Annexure-V**
**Pages 190-193**

**11** – Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.

**12** – Ext. 30 (Vol. 5 P. 107-116-A,B.C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).

**13** – Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.

**14** – Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.

**15** – Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No.

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1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)

**16** – Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.

**Documents relating to suit of 1885:**

**Annexure-V**
**Ext. A-22**
**Pages 110-112A**

**01**. Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61 / 280 of 1885 filed by Mahant Raghubar Das (also filed **as Ext. A-22**) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)

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**02**. Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.

**Annexure-V**
**Ext. A-24**
**Pages 203-206**

**03**. Ext.15 (Vol. 10, P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as **Ext. A-24** and A-25 in OOS 1/89-Volume 7, P. 271-281).

**Annexure-V**
**Ext. A-26**
**Pages 118-124**

**04**. Ext.16 (Vol. 10 P. 79-85) Copy of Judgement of Pt. Shri Kishan, Sub-Judge, dated 24-12-1885 (Also filed as

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**Ext. A-26** in OOS 1/89-Vol. 7, P. 283-301)

**05**. Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgement of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323)

**06**. Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)

**07**. Order of Judicial Commissioner passed in Second Appeal (summoned by the Court).

**Documents relating to the repairs of the disputed structure:**

**01** - Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

**02** - Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for **cleaning of disputed structure from 14-5-1934 and for use of the same for religious services**.

**03** - Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

**04** - Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his **bill regarding repairs of disputed structure**.

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**05** - Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

**06** - Exhibit A-44 (Vol. 8 P. 461-465) Copy of **Estimate of Tahawwar Khan dated 15-4-1935 regarding repairs of the disputed structure**.

**07** - Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

**08** - Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding **Bills of repairs of the disputed structure**.

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**09** - Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding **Bills of repair of disputed structure and houses.**

**10** - Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 **regarding the repairs of the disputed structure**.

**11** - Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding **payment of Rs. 6825/12/- for repairs of disputed structure**.

**12** - Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque.

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**Plaintiffs' documents showing admission of the Mahant of Nirmohi Akhara about the existence of Masjid and recognition of the same as the Mosque:-**

**01** - Exhibit A-4 (Vol. 14 Page 15) Copy of order dated 4-6-1942 deciding the R.S. No. 95 of 1941 (Mahant Ram Charan Das Vs. Raghunath Das) in terms of compromise.

**02** - Exhibit A-5 (Vol. 14 P. 17-29) Copy of Decree of R.S. No. 95 of 1941 dated 6-7-1942 with the compromise terms **admitting Mosque in Item No. 2 (P. 37/38**)

**03** - Exhibit A-6 (Vol. 14 P. 31-44) Copy of report of Pleader – Commissioner dated 18-4-1942 filed in Rs. 95 of 1941 (See P. 37/38- Item No. 2)

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**Masjid and its user by Muslims available on the record of case u/s 145 Cr.P.C.:-**

**01** - (Vol. 2 Page251-252) Original FIR dated 23-12-1949 lodged by Ramdeo Dubey at 7 p.m. (also filed as Ext. 51 in O.O.S. No. 4 / 89 – See Vol. 12 P. 337-338).

**02** - (Vol. 1 P. 29) Attachment order dated 29-12-1949.

**03** - (Vol. 1, P.45) Application of local Muslims dated 6-1-1950 for friday Prayers.

**04** - (Vol. 2 P. 211) Written Statement of Salar Mohd. and Mohd Hashim dated 2-7-1950.

**05** - (Vol. 2 P. 215-219) Written Statement of Anisurrahman asserting possession of Muslims since 1528.

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**Documents showing the Control and management of the disputed structure by Muslims.**

**01** - Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

**02** - Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. **regarding disputed structure**.

**03** - Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 **regarding disputed structure.**

**04** - Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar **regarding disputed structure**.

**05** - Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding disputed structure .

**06** - Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for sanction to file suit u/s 92 CPC. regarding **disputed structure.**

**07** - Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding **disputed structure**.

**08** - Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by

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Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghafoor, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)

**09** - Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

**10** - Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf.

(copy filed as Ext. 21, in OOS 4 / 89 – Vol. 10, P. 117 - 123)

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**11** - Ext. A-5 (Vol. 6, P. 45-48) Order of Distt. Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

**12** - Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

**13** - Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

**14**. Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943 regarding management of mosque.

**15** - Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of

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Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414)

**16** - Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for

1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

**17** - Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

**Annexure-V**
**Ext. A-63**
**Pages 140-143**

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**18** - **Ext. A-63** (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

**Annexure-V**
**Ext. A-64**
**Pages 144-148**

**19** - Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

**20** - Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

**21** - Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

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**22 -** Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB

**23 -** Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

**24 -** Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Plaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

**Annexure-V**
**Ext. A-42**
**Pages 128-139**

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**25 -** Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgement of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115).

Plaintiffs have relied on Ext. 62, Ext. 45 and Ext. 89 of O.O.S. No. 5 of 1989 to show that Muslims were in possession over the property and pillar bases are also visible in the documents marked as Ext.D-17, Ext.D-18, Ext.19, Ext.D-19 and Ext.D-10. As the king was the owner of all soil and vacant land automatically belonged to sovereign and it is submitted that Mosque was erected on a vacant land which belonged to Emperor Babar. Mir Baqi as Babar's representative constructed the mosque. The Muslims, by virtue of their long exclusive and continuous

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possession perfected their title by their adverse possession and right, title or interest of temple of the Hindu public, if any, have extinguished.

On behalf of plaintiffs, following witnesses have also been produced to show the title and possession of Muslims over the property in suit:-

**Annexure-V**
**Oral Evidence**
**Pages 240-281**

(i) PW-1 (Mohd. Hashim), resident of Ayodhya, aged about 75 years

(ii) PW-2 (Haji Mahboob Ahmad) resident of Ayodhya, aged about 58 years (also examined as DW 6/1-1 regarding Excavation details)

(iii) PW-3 (Farooq Ahmad), resident of Ayodhya, aged about 90 years

(iv) PW-4 (Mohd. Yaseen) resident of Ayodhya, aged about 66 years

(v) PW-5 (Abdul Rahman), resident of Maghlasi, Faizabad, aged about 71 years.

(vi) PW-6 (Mohd. Yunus Siddiqi, Advocate), resident of Faizabad, aged about 63 years

(vii) PW-7 (Hashmatullah Ansari), resident of Ayodhya, aged about 65 years

(viii) PW-8 (Abdul Azeez), resident of Shahjahanpur,

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Faizabad, aged about 70 years

(ix) PW-9 (Syed Akhlaq Ahmad), resident of Ayodhya, aged about 60 years.

(x) PW-14 (Jaleel Ahmad), resident of Faizabad city, aged about 78 years

(xi) PW-21 (Dr. Mohd. Hashim Qidwai), (Ex. Member of Parliament, Rajya Sabha) resident of Aligarh, aged about 80 years – offered prayers from December 1939 to May 1941 while residing with his father who was then posted as Dy. Collector in Faizabad.

(xii) PW-23 (Mohd. Qasim Ansari), resident of Ayodhya, aged about 74 years

(xiii) PW-25 (Sibte Mohd. Naqvi), resident of Akbarpur, then Distt. Faizabad, aged about 76 years.

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On behalf of Hindus following witnesses have been produced to show that prior to 23rd December, 1949 Hindus were worshipping inside the building:

(i)- OPW-1- Sri Param Hans Ramcharndra Das

(ii)- OPW-4 – Sri Harihar Prasad Tiwari

(iii)- OPW-5 – Sri Ramnath Misra @ Banarsi Panda

(iv)- OPW-6 – Sri Hausla Prasad Tripathi

(v)- OPW-7 – Sri Ram Surat Tiwari

(vi)- OPW-12 – Sri Kaushal Kishore Mishra

(vii)- OPW-13 – Sri Narad Saran

(viii)- DW1/2 – Sri Krishna Chandra Singh

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(ix)- DW1/3 – Sri Sahdeo Prasad Dubey

(x)- DW17/1 – Ramesh Chandra Triphati

(xi)- DW20/3 – Brahmachari Ramrakshanand

(xii)- DW3/1 – Sri Mahant Bhaskar Das (Plaintiff)

(xiii)- DW3/2 – Sri Rajaram Padey

(ixv)-DW3/3 – Sri Satya Narain Triphati

(xv)-DW3/4 – Sri Mahant Shiv Saran Das

(xvi)- DW3/5 – Sri Raghunath Prasad Pandey

(xvii)- DW3/7 – Sri Mahant Ramjidas Shastri

(xviii)-DW3/8 –Sri Pandit Shyam Sunder Mishra @ Barkaoo Maharaj

(ixx)- DW3/9 – Sri Ram Asrey Yadav

(xx)- DW3/10 - Sri Pateshwari Dutt Pandey

(xxi)- DW3/11 – Sri Bhanu Pratap Singh

(xxii)- DW3/12 – Sri Ram Achchaibar Pandey

(xxiii)- DW3/13 – Sri Mahant Ram Subhagdas Shastri

(xxiv)- DW3/14 – Sri Ramanandacharya Swami Haryacharya

(xxv)- DW/3/15 – Sri Narendra Bhadur Singh

(xxvi)- DW3/16 – Sri Shiv Bheek Singh

(xxvii)- DW3/17 – Sri Mata Badal Tiwari

(xxviii)- DW3/18 – Sri Mahant Banshidhar Das @ Uriya Baba

(xxix)- DW3/19 – Sri Ram Milan Singh

(xxx)- DW3/20 – Sri Mahant Rajaramchandracharya

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(i) – OPW-16 – Sri Jagadguru Ramananda Charya Swami Ram Bhadracharya

(ii) – DW 2/1-3 – Sri Mahant Dr. Ram Vilas DasVedanti

(iii) – DW 3/14 - Sri Ramanandacharya Swami Haryacharya

(iv) – DW20/2 – Swami Awimukteshwara Nand Saraswati

**Following documents show that the Hindus/defendants had absolute control over the disputed property:**

**Annexure-V**
**Exts. 15 to 23**
**Pages 60-80**

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1. Exhibit 15- Deputy Commissioner's report dated 14.5. . 5.1877.

2. Exhibit 16- Commissioner's order dated 13.12.1877 in Misc. Appeal No. 56 Mohd. Asgar Vs. Khem Das.

A combined reading of both the documents shows that a new doorway was opened for access of pilgrims to Janma Asthn as existing door was not enough. The Deputy Commissioner mentioned in his order that new door was opened in the wall of Janm Sthan. The appeal was dismissed by the Commissioner . Ext. 15 further shows that idols were placed on the platform.

3. Ext. 18- Application dated 2.11.1883 by Sayyed Mohammad Asghar against Raghubar Das in which Mohd. Asghar claimed right to repair and whitewash the wall near the

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gate.

4. Ext. 19- Application dated 28.11.1858 by S.O. Shhetal Dubey that A Nihang Sikh Faquir installed Nishan and was performing Hom and Puja inside the disputed structure( inner court yard) with the help of 25 Sikh.

5. Ext 20- Application dated 30.11. 1858 by Md. Salim , a Azan giver against Nihang Siikh that he had installed Nisan, performed Hom and Puja installed idol, wrote ' Ram Ram' on the walls at at various places of Masjid.

6. Ext 21 – report dated 1.12.1858 of Sheetal Dubey specifying that Nihang Sikh proclaimed the place of inner courtyard as place belonging to Nirankar and constructed a Chabutra, lighted fire inside the mosque.

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7. **Ext. 22-** Report dated 6.12. 1858 of Shhetal Dubey for appearance of Nihang Sikh.

8. **Ext. 23-** Application **dated 9.4. 1860 by Mohd. Isha** with reference to the report of S.O. Sheetal Dubey regarding the possession of Nihang Sikh and requesting the Government to give Patta of the land in suit, but the decision was deferred as Mohd. Isha said that he would not take patta.

**Annexure-V**
**Ext. 24**
**Pages 81 to 83**

9. Ext.24 plaint dated 20.10.1882 that Raghubar Das malafidely gave Theka for Rs.30/- stating that the property in

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dispute is owned by him for keeping stalls of flowers and Batasa in the fair of Kartik and Ram Naumi.

**Annexure-V**
**Ext. 27**
**Pages 91-93**

10. **Ext. 27-** The order dated 22.1.1884 of Assistant Commissioner regarding Janm Sthan through which Raghubar Das was advised that he should not repair door of Masjid and Mohammad Asgar was advised not to lock the outer door.

**Annexure-V**
**Ext. 29**
**Pages 94-97**

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11. **Ext 29-** the order dated 12.10.1866 through which Case No. 223 was ordered to be consigned in the Record Room.

**Annexure-V**
**Ext. 31**
**Pages105-108**

12. **Ext 31- Application dated 5.11.1861 by Mohd. Rajjab Ali** against Nihang Sikh that he had constructed a Chabutra and erected Nisan and blows Sankh at the time of giving Azan.The relief was claimed that Nihang Sikh be prohibited. This paper shows that till 5.11.1861 Nihang Sikh had full control over the inner Court yard against which the first report was lodged on 28.11. 1858 vide Ext 19. There is nothing on record to show that as

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and when Nihang Sikh was removed from the inner court yard in accordance with law.

**Annexure-V**
**Ext. 32**
**Page 109**

13. Ext. 32 is settlement map of village Ram Kot for 1344-45 F. corresponding to 1937 A.D. which shows that a road from Hanumangarhi to Janmstahn was constructed and the disputed structure was shown as a temple with abadi. Hindu claimed that after 1934 riots Muslims were dispossessed and the authorities mentioned the place as a temple an open land was shown as Parti without construction.

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**Annexure-V**
**Ext. A-25**
**Pages 116-117**

14. Ext. A-25- Court Commissioner Gopal Sahay prepared and submitted site plan( Ext. A 25) dated 6.12.1885 in which outer courtyard was shown to be in exclusive possession of Hindus. He has not recorded that inner court yard was in exclusive possession of Muslims. On the other hand, he has shown Chabutra and Chhappar belonging to Hindus. Ext. A 25 further reveals that Chhappar situated towards north of main entrance gate was used as residence of Chelas of Mahant Raghubar Das. The map was sent by Mahant Raghubar Das and Asgar stating that wall does not belong to any body. It reveals that the property in suit suit was

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used by Hindus and Mahant Raghubar Das and Muslims had no control over it.

**Annexure-V**
**Ext. A-26**
**Pages 118-124**

15. Ext. A 26 the judgement dated 12.4. 1885 of Sub Judge in O.S.No.61/280/1885 which confirms the Chabutra and control of Hindus over the land.

**Annexure-V**
**Ext. A-27**
**Pages 125-127**

16. Ext A-27 is judgment dated 18.3.1886 of the District Judge in Civil Appeal No.27/85 which shows that the mosque was built on the land known as birth spot of Lord Ram. The Chabutra was also there to indicate that the birth place of Lord Ram was in the vicinity. The direction was given that Hindus may worship in the outer court yard and Muslims may worship in the inner court yard, but the plaintiffs have failed to show that they had full control over the inner court yard.

17. Following papers indicate the birth place of Lord Ram at the disputed site:

1. Gazetteer of 1854,
2. Gazetteer of 1877,
3. Gazetteer of 1880,
4. Gazetteer of 1888

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5. Gazetteer of 1891

6. Gazetteer of 1901

7. Encyclopedia of Britannica

Sri H.S. Jain, learned counsel for Hindus has argued that from the Gazetteers and from the judgment of Sub-Judge in Suit No. 61/280 of 1985, it is clear that Hindus were doing Pooja in the inner Courtyard and a railing was built up in the year 1855. Thus, there is no evidence to this effect that Hindus were deprived of worship the idols inside the inner courtyard. In the year 1934, the riot took place in which substantial portion of the disputed structure was damaged and it was repaired by the Britishers giving look of mosque. There is also no evidence that the structure was handed over to Muslims by the Government. There is nothing on record to show that Hindus were deprived of possession and they were refrained from performing the Pooja in the inner courtyard and also Chabutra. It further transpires that after Darshan of Idol Charan and Sita Rasoi, devotees on Ramanavami used to perform the Pooja and other rituals.

Sri H.S.Jain, Advocate, has further submitted that in all the Government and Revenue records Janma Sthan temple has been mentioned. Even the Muslims in their application has referred the place of Janma Asthan in 1858, Mohd. Asgar confirmed that Sikh Nihang entered in the inner courtyard and performed pooja. Thus, it is further submitted that in Original Suit No.29 of 1945, U.P. Shia Wakf Board vs. Sunni Waqf Board, there is a finding that

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mosque was constructed after demolishing the temple at the birth place of Lord Rama. It is further submitted that Nankar was paid by Britishers to Muslims as a financial grant for a mosque existed at Mauja Sehenava and not for the Mosque at Mauja Kot Ramchander. Muslims have failed to point out that the mosque was constructed on the waqf property. As regards Revenue Record Sri H.S. Jain has argued that the records do not establish the claim **of the plaintiffs**. His submissions are as under:-

1. The first Report of Settlement of the Land Revenue of Fyzabad District by K. F. Mitchell (vide paragraphs 618-19, 666-669,while tracing the past history of Janmasthan/'Baburi Masjid' in Kot Ram Chander/Ayodhya, confirms the fact that Babar came to Ayodhya in 1528 AD and halted here for a week during which he destroyed the Janmasthan Temple and on its site built a mosque using largely the materials of the old structure. This must have occurred about the time of Babur's expedition to Bihar. The author of the Settlement Report further adds that according to Scyder's Memoirs of Babar, the emperor encamped about 5 or 6 miles from Ayodhya and stayed for a week, setting the surrounding courty, though it was remarkable that his doings at Ayodhya were wanting in his Memoirs (Babar-nama).

2. The settlement Report as a book of reference is admissible under the law, i.e., under the Evidence Act. In the Regular Suit No.29 of 1945 over the Waqf issue between the Shia Central Board of Waq, U.P. Versus Sunni Central Board of Waqf, U.P., in his judgment dated 30.03.1946, Akhtar Ahsan Naqvi, Civil Judge, Faizabad

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maintained that the Gazetteer of the District or the Settlement Report as books of reference were admissible under Section 57 of the Evidence Act.

**Annexure-V**
**Ext. A-30, A-37 to A-40**
**Pages 207-220**

3. The revenue records relating to village Ramkot, Haveli Awadh, District Faizabad, are extremely significant and clarify the factual proprietary position of Janmastahan Vs. Baburi Masjid. As per land revenue procedure, they offer details of the numbered plots ( **Khasras**) **of entire village Ramkot in respect of nature of land rights,** their topographical position, the nature of the soil alongwith the area of each plot with compete further details, whether inhabited with abadi (population) or a graveyard or arable land growing particular crops along with fruit bearing trees, if any, and paying land rent or treated as Muafi ( exempted from rent payment), the wells, tanks, gardens, paths (roads), Shiwalas (temples) graveyards and mosques, etc. In fact, the records comprise various categories of revenue documents, i.e., survey, bandobust (settlement), kishtwar khasra, khasra abadi, misl hadbast, khewats, Khasra Khataunis and mps, etc., right from 1861 AD. Till 1991092 A.D. All these records are available at the District record Office (Mahafaz Khana/ Tehsil Office/Nazul Office, Faizabad.

4. The plots of land traditionally associated with Janmastahan complex is shown mostly as settled with abadi (population) and constructions thereupon.

5. The first Regular Settlement Report (1861 ) of Kot Ram Chandra, appended by two maps, is the most comprehensive

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document relating to the Janmastahan is covered under khasra No. 163 with 9 sub-plots with total area of 5 bighas and 4 biswas. However, under column No.16 of kaifiyat, it is stated that in the area of Janmastahan there is one pacca well, trees whose number is recorded in khasra abadi and some graveyard (Kabaristan).

6. For each of the 9 sub-plots, the area has been recorded. Of the total 5 bighas, 4 biswas area of Janmastahan (vide khasra No.163 ) complex, 4 bighas, 13 biswas are owned by the Nazul Department (Sarkar Bahadur Nazul) as superior malik and Hindus Mahants as subordinate proprietors (malikan-i-matahi), whereas 11 biswas owned by Hindu mahant are put under the Mahal of Azhar Hussain, etc. ( the lambardars). Unlike the detailed description of the sub-plots of the other khasra Nos., the 1861 settlement does not show any specific sub-plot/sub-plots which were under mahal azhar Hussain and muafi (exempted from payment of the revenue)have been put onlyat the top in the relevant columns along with Sarkar Nazul, which is misleading and apparently an interpolation effected at a later stage. However, the position is partly clarified by Khatauni No.1(attested by Mohammad Akbar, darogha nazul dated 25th September, 1878) which under the heading of column 2(name of thok patti) puts khasra no. 163 M in muafi (taraf haqiqat muafi), the habitated (abadi) area of 11 biswas under the jurisdiction of Azhar Hussain, etc. , the superior owner (malik or haqdar vide Column4) . Here too, the specific No./Nos. of the sub-plots of khasra no.163 are not mentioned. However, later on, the position is absolutely clarified in the 1301 F/1893 AD settlement when the same sub-plot is shown under khasra No. 163/3 in the mahal jurisdiction ( thok Patti ) and superior ownership of Nazar

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Hussain and Tahir Hussain (the descendants of Azhar Hussain as (Maliks) alongwith Mehta Balram Das as subordinate owner (malik matahit). All the same, the 1301 F/1893 AD settlement does not put this sub-plot (No.163/3 ) under the category of muafi and merely shows it being a non- nazul land under the mahal of Nazar Hussain, etc. Most significantly, the map of 1893 settlement shows Khasra No.163/3 to the east and outside the boundary wall of the Ram Janmabhoomi/ 'Baburi Masjid' covered by khasra plots nos. 163/1 & 163/2. as such, clearly, the sub-plot no.163M recorded in the khatauni No.1 dated 1878 AD as muafi in mahal Azhar Hussain has nothing to do with the land associated with Ram Janmbhoomi/Chabutra/'Baburi masjid', which are separately shown under Nazul and subordinate ownership of the Hindu Mahants.

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7. To the north of the present Ram Janmabhoomi-erstwhile 'Baburi Masjid' and the walled compound (ahata), lay the inhabited (abadi) area covered by a structure still known as Janmasthan. In fact, all through the centuries, right till the late 19th century, the latter structure comprised only a couple of sub-plots of Janmasthan and formed a part and parcel of the entire Janmasthan complex and the road dividing the two structures, i.e., Ram Janmabhoomi / erstwhile "Baburi Mosque" and the present day misnumbered Janmasthan was constructed in the late 19th century during the British rule. This is well established by the revenue records. A careful study and comparison of the 1861 settlement map of the mauza (village)Ram Chandar with the 1893 settlement map of the said village fully bears out this fact whereas in the 1861 settlement map, the sub-plots of the northern portion of the Janmasthan complex

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(denoted by the present day so-called Janmasthan ) are contiquous to the southern plots comprising the Ram Janmabhoomi/erstwhile 'Mosque' structure alongwith the walled boundary, in the 1893 settlement map, the former northern portion of Janmasthan (vide khasra no. 163/5, also named abadi Sita Rasoi) is distinctly separated from the latter portion of Ram Janmabhoomi/ erstwhile 'mosque' structure, etc., (vide khasra nos. 163/1 and 163/2) by a regular road (khasra no.163/X) which runs from the border of the Ayodhya city and Hanuman Garhi temple in the east of the village towards the Janmasthan and after dividing the latter complex proceeds towards the Jalanpur village in the west. As this has become a permanent topographical feature, this is equally reflected in the 1936-37 settlement map, operative till date, wherein the road comprising (khasra no.158) divides the Ram Janmbhoomi /erstwhile 'Baburi Masjid' vide (khasra nos. 159 and 160) from the present day misnomered Janmasthan (vide Khasra No.146). As a matter of fact, the khasra kishtwar data of the 1861 settlement gives specific area as well as digical geographical directions for each sub-plot in the Janmasthan complex which comprised the areas of both the portions, i.e., The Ram Janmabhoomi/erstwhile 'Baburi Masjid' and the present day misnomered Janmasthan.

8. As distinct from the Khasra Kishtwar in the Khasra abadi parts of Nos. 431-456, Makan ( complex) Nos. 92 -93 ( as recorded corresponding tono163 of the former) show abadi (population) in this area. The khasra bandobast of 1861 settlement (No.152) also mentions only makan Janmasthan (mansion of Janmasthan). Apart from it, the khasra abadi shows that the inhabitants of Janmasthan (sakna Janmasthan) also owned other plots/sub-plots (vide khasra

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Nos. 203, 206,214) or owned musli (taproot) and imli (tamarind) trees in the other plots (vide khasra Nos. 451-52)of the village. This shows that the Janmasthan complex was fairly inhabited and that the mahants/bairagis of Janmasthan, with a network of land-ownership in the village, had a sound financial and social status. None of the khasra abadi Nos., as mentioned above, parallel to the abadi Janmasthan of Khasra kishtwar No.163, does mention the existence of any 'mosque', though in the kaifiyat, they do mention the prevalence of pacca graveyard (qabarqah pukhta), a few imli (tamarind), musli (taproot) trees and makana (houses), etc., on the campus. Even khasra abadi No. 444, conjectured and identified by the amended khasra Nazul record of 1931 being an equivalent to a sub-plot of khasra kishtwar No.163 M of 1861 settlement comprising the Janmasthan, in its kaifiyat describes only ahata pukhta (pacca campus) and two trees (neem and ghauz)in possession of a Thakur of the Village. It no where mentions the existence of a 'mosque'.

9. Quite significantly, the bandobast map appended to the Settlement Report (1861) as well as the abadi map of Kot Ram Chander (1866) show only Janmasthan in the abadi Janmasthan complex plot no.163. They do not indicate any 'mosque' therein.

10. Later on at the back of a duplicate of Khasra Kistwar map, Muhamad Akbar, darogha of nazul lands, dealing with this issue of rights of the land owners (Malikan) vis-à-vis tenants (muzarian)of the village and also the question whether there was nazul waqf attached to the pacca mosque built by the Emperor Babur and situated on Janmasthan, recorded on 25th September, 1878 A.D. categorically that (in the village

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Ramkot) there was no nazul land/house/garden assigned to Mir Mhammad Asghar (Khattib/Muazzan) for an expenditure on the said mosque. However, he further records, that the latter (Muhammad Asghar) had been granted some cultivable land/garden worth Rupees three hundred and two only (Rs.302/) in the villages of Bahoranpur and Sholapur. Apparently, this noting was done by the darogha nazul in 1878 A.D. as Muhammad Asghar, etc., had already been given conditional land grant by the British Government in 1870, along with malkiyat( Proprietary) rights in land, subject to the rendering of the police and military service.

11. It may be observed that in the absence of the original 1861 settlement bandobast, the recording of a 'mosque' at the back of a duplicate settlement map as late as 1878A.D. by a darogha of the Nazul lands is of peripheral nature, especially when the map itself does not comprise any indication of a 'mosque' there upon. Even though the physical existence of an extraneous structure believed to be 'mosque' built by the Mughal Emperor Babur at the Janmasthan site was unreliable as most significantly, the revenue settlement maps of 1861, 1893 and 1936-37 A.D. indicate only the Janmasthan at the site.

**Annexure-V**
**Report of expert**
**Pages 221-239**

12. In the original document of the settlement report of 1861 AD. Available at the District Record Office (Muhafaz Khana)/Tehsil Office, Faizabad, **interpolations**/additions have been effected in certain columns of the Khasra Kishtwar folios. In the District Record Office document, under column No.2 to the original reading of abadi

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Janmasthan, the words ‘and juma masjid’ have been added so as to read ‘abadi Janmasthan and juma masjid’ under column No.3, to the words ‘taraf nazul’, the words ‘and muafi’ have been added so as to read and under column No.4, to the words Sarkar Bahadur, ‘ and Azhar Hussain’ have been added.

13. The above alterations’ additions are confirmed by the fact that in the Tehsil Office copy of 1861 settlement, though under column No.2, the words 'jama masjid’ have been added to the original word ‘abadi janmasthan’in a very crude manner, the Tehsil copy does not carry any interpolation of ‘and muafi’/’and Azhar Hussain’ under column Nos. 3 & 4 respectively as done in the case of the District Record Office copy Moreover, the second settlement report of Ramkot dated 1301 F / 1893 -94 even though for Janmasthan, carries the same khasra kishtwar No.163 which due to clubbing of the sub-plots is divided into 5 sub-plots instead of 9 as earlier in the case of 1861 settlement, it does not record the name of ‘jama masjid’, nor does it put ‘muafti, under the relevant column nos., which have been shown only under Sarkar Bahadur Nazul. However, in su-plot no.1 163 /3 with an area of 11 biswas, azhar Hussain and Tahir Hussain have been put as mahaldars whereas Mahant Balram Das has been recorded as subordinate owner (malik matahat), All the same, the word ‘muafi’ does not occur even in this column no.

14. In the 1301 F/1893 AD. settlement, the khasra No. of Janmasthan, i.e., 163 remains the same as earlier in the 1861 settlement, though due to clubbing, the number of the sub-plots is reduced from 9 to 5. In the Khasra kishtwar (vide Basta No.132), further endorsed by the Khatauni (vide Form

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15), the area of each sub-plot is recorded. As earlier in the 1861 settlement, the total area of the Janmasthan complex is 5 bighas and 4 biswas, of which 4 bighas and 13 biswas is under nazul whereas 11 biswas (vide 163/3) are shown in the mahal of Nazar Hussain and Tahir Hussain (the lambardars). But unlike the 1878 Khatauni (as noted earlier, the 1893 settlement records do not show it in muafi. As per Khasra bandobast and Khatauni documents, the portion of the Janmasthan area i.e., (the proper 'Ram Janmabhoomi'/ 'Babari Masjid' land ) being under mahal nazul Sarkar, comprises two khasra Nos., i.e, 163/1 and 163/2, with an area of 2 bighas -14 biswas and 2 biswas respectively. These are shown under habitation (abadi) and are vested in the subordinate ownership and occupation of the Hindu Mahants Raghuar Das, Gopal Das and Thaurdwara Sita Ram. Khasra No.163/4 with an area of 7 biswas covers the road which separates the Khasra Nos. 163/1-2, i.e., ('Ram Janmabhoomi'/ 'Baburi Majid') of the Janmasthan area from the northern portion of the complex with Khasra No.163/5, named as abadi Stia Rasoi. The latter portion with an area of 1 bigha-10biswas, also being under nazul is vested in the subordinate ownership of Mahant Kalyan Das. The detailed lists provided in the 1893 settlement records in respect of mosques, waqf, graveyards (qabaristan) and mutations, etc., do not put any of the sub-plots, i.e., 163/1 to 1635 of the Janmasthan complex with either of these categories.

15. The kishtwar map of Kot Ram Chander, Pargana Haveli Awadh, Tehsil and District Faizabad, dated 1894-95 A.D. prepared after the 1893 settlement slightly varies in respect of the division of the janmasthan khasra No.163. It shows all the sub-plots 163/1-5 under habitation (abadi). The road

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which divides the Khasra Nos. 163/1-2 of Janmasthan from the northern wing with khasra No.163/5 (abadi Sita Rasoi) is shown as Khasra No.nill, i.e., 163/X, whereas khasra no. 163/4 of the 1893 settlement has been shown as a sub-plot with habitation (abadi) to the east of khasra No.163/3. It seems that this redistribution of the Janmasthan sub-plots was effect in the aftermath of the 893 settlement.

16. The above map is significant in many a respect. In its list of depicted symbols, it does not cover the symbol of a Shiwala (temple ) or a mosque. But it does denote the symbols of abadi, road, graveyards (qabaristan), pacca well, nature of land (i.e., parti qadim ) and non-payment of lagan, etc. As such, it shows khasra no.163/1 (i.e., the site of 'Ram Janamabhoomi'/ 'Baburi Masjid') with habitation (abadi) and a pacca well in then north-eastern direction. The sub–plot no.163/4 has shown with symbols of abadi, orchard (bagh) without the payment of rent (lagan). The sub-plot No. 163/5 (abadi Sita Rasoi) to the north of the dividing road comprises the symbols of abadi along with 3 pacca wells and a portion of self – cultivated land (khud kasht).

17. Above all, most significantly, there is no symbol of a graveyard (Qabristan) in any of the sub-plots of Khasra No. 163 of the Janmasthan complex, though, there are symbols of graveyards in the neighbouring plots, i.e., Khasra Nos. 161,158, 56-57, etc. Athough earlier in the Khasra kishtwar No.163 of the 1861 settlement relating to Janmasthan, the column(No.16) of the general remarks (kaifiyat) as well as the khasra abadi Nos. 444, 452 of the same settlement do mention about the existence of graveyard (gabargah) in the complex of Janmasthan, it is well confirmed by the above map that by 1894-95 A.d., there is no graveyard inany of the

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sub-plots of Janmasthan complex, Later on, this position is reiterated by the 1344 F/1936-37 AD. Settlement report and the map appended to it.

18. As distinct from the above revenue records, the Nazul department of the District Faizabad d(U.P.) also prepared its own amended Khasra records of the abadi settlements, (tarmimi khasra abadi)in 1931 A.D. In these revised Khasras of village Ramkot, both 'masjid' and chbutra indicating the temple at Janmasthan have been recorded in Khasra No.583. The 'mosque' has been shown in waqf under column 'Name of the present possessor' (Nam Hal Qabiz). At the same time Mahant Charan Das in 1931 and thereafter Mahant Raghunath Das (1941) have been declared under – proprietore (Malik Matahit) of the entire plot. Moreover, in these Khasra records, Arazi No.586 with an area of 11 biswas, 16 biswanis and 16 kachwanis (11-16-16) being in abadi is shown as graveyard (a pacca qabaristan known as Ganj Shahid)and assigned in waqf (waqf ahad Shahi ).

19. A note of caution is necessary with regard to the alleged Khasra and map maintained by the Nazul department in the Faizabad Collectorate which is relied upon by the plaintiffs of Suit No.12 of 1961 (now o.O.S. 4 of 1989 before the Lucknow Bench of the Allahabad High Court), Sunni Central Board of Waqf and others Vs Gopal Singh Visharad and others. The map maintained by the Nazul Department is not authenticated, nor prepared under any law, nor is it according to any ascertainable sacale. The survey made on the basis of the Khasra abadi and that map of the Nazul department at the instance of the Plaintiffs in that Suit has been rejected by the High Court's Full Bench which is trying the case and a fresh survey has been ordered on the basis of

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revenue records in order to ascertain the exact situation of the land involved in that Suit. It is noticeable that the plot numbers given in the plaint of that Suit are based on the said khasra abadi of the Nazul department. There is no Fard Mutabigat comparative table between the plot numbers given in the khasra abadi of the Nazul department and the Khasra abadi maintained by the revenue Department of the Government.

20. In fact, the purpose of the Nazul (Municipal) survey and the map prepared in 1931 A.D. was to identify the encroachments made on the Nazul property. Such a survey may cannot take precedence over the regularly conducted revenue settlement operations and the maps prepared thereupon, especially when the title to land is involved. In its order dated 10.1.1990, the High Court directed the Board of Revenue, U.P. Sate, to survey the site and submit report accordingly with the assistance of the Municipal records and such other records which it considered to be useful and in its further order dated 23.5.1990 directed it to execute the commission and locate the plots with reference to documents on record only. The commissioner, Shri J.P. Srivastava, appointed by the Board of Revenue for the purpose, submitted his report on 25.07.1990 wherein he had located the disputed property with reference to the Nazul map of 1931, even though he conceded that the Nazul map and the settlement maps were on different scales and that it was not possible to juxtapose the two maps and prepare Fard Mutabiqat and correspond the Nazul. Khasra numbers with the settlement khasra numbers. Thereupon, the Hon'ble court passed another order directing the commissioner to submit supplementary report surveying and locating the property with reference to settlement maps of 1861 and

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1937 A.D. The commissioner submitted his supplementary report dated 8.2.1991.

21. In fact, the Commissioner instead of surveying the land with his own official map had just accepted the fresh map supplied **by the Plaintiffs,** which in matters of details offered a completely inaccurate position in respect of Janmasthan/'Baburi Mosque', graveyards, the shilanyas site and various other plots. Such an act on the part of the commissioner for having accepted the Plaintiff's map and adopting it as his own official map for submission to the court was characterized by the latter as "wholly unwarranted".

22. Having gone through the pros and cons of the entire case, the Hon'ble Court in its Judgment on B.B.91, even though it refrained from calling the commissioner's report as 'motivated', described it as "absurd". It refused to accept the commissioner's view that correct map and report about kot Ram Chandra were possible only in reference to Nazul map and that the settlement maps were not correctly prepared. In its judgment, it refused to keep the report of the commissioner on record in the pending. Case.

23. As per procedure of the revenue settlement, the khasra Numbers in respect of kishtwar, khewat and khata khataunis often undergo a change due to alteration, addition and clubbing for adjustment with the neighboring plots from one revenue settlement to another. At times, a change in Numbers is effected even during the interregnum of the two settlement operations. However, they are all duly recorded in the Comparative tables of the Khasra Numbers (Fard Mutabiqat) appended in the ensuing settlement report as

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well as in the relevant Khewat and Khata Khatuani numbers. The khasra kishtwar, khewat and khata khataunis adopted in the 1344 F/1936-37 A.D. contine to be in vogue in the latest revenue operations 1989 -92 A.D. However, the utations effected during the interregnum have been recorded in the relevant revenue documents.

24. According to the 1344F/1936-37A.D. settlement the Janmasthan complex plots have been recorded in the khasra kishtwar under nos.159, some portions of 160, 158 (road), 146 and 147 R [i.e., portion of 147] and the area in respect of each plot/sub-plot has been provided. The major portion of the Janmasthan complex falls under khasra nos. 159 (declared banjar – the site of Ram Janmabhoomi / 'Baburi masjid'), 146 and 147 R(Abadi Sita Rasoi, across the road in the North), while some portion is included in Khasra no.160. The Khasra no.158, also forming a part of the area of the Janmasthan complex is recorded as a road (which divides the Khasra Nos. 159 and 160 in the south from 146 and 147 R in the north respectively).

25. As per khewat record the khasra no.159 with an area of 13 biswas is declared banjar land under Nazul vide Khata no.1; no. Khewat Matahitdaran (5a) 20 and Khata Khatauni 58/2. While the superior ownership rests with the Nazul, the subordinate ownership (matahitdar) is vested with 'Shri Dhanush Dhari Ji Bhagwan Virajman Mandir Bara Astah, Mohalla Ramkot, Shahar Ayodhya' through the basarbkari of Mehta Raghubar Prasad, disciple of ram Manohar Sahu, Bairagi, resident of the above temple. The khasra no.146 with an ara of 1 bigha, 6 biswas, 7 biswanis (1-6-7) vide khata No.I, No. Khewat (5a) 32, no. Khata Khatauni 70/1 is under abadi. Here too, the superior ownership is with Nazul

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and subordinate ownership is vested with Har Har Das, Ram Sarn Das, Matahitdar, the resident of jamasthan. The Khewat No.160 (a) with an area of 3 biswas, 13 biswanis (0-3-13) being under Nazul vide Nazul Khata No.1, No. Khewat 51(21), No. Khata Khatauni 59/1 is vested in the subordinate ownership of the Hindu mahants /bairagis.

26. As regards the Khatauni documents the position of the khasra nos. 159 and 160 (a) is riterated as already noted in the khasra kishtwar and khata Khatauni. Khasra No.159 vide khata no.1, khata Khatauni no.58/2, being under mahal Nazul with an area of 13 biswas of banjar is put under the subordinate ownership (malik matahit ) of who besides khasra no.159 also owns other Plots (i.e. , and 199 which are not a part of Janmasthan). The Khasra no. 160 (b) is also under mahal Nazul with an area of 1 bigha, 12 biswas.

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27. In the Khatauni documents, the jurisdiction of Mahal Azhar Hussain has been shown separately. Of the Janmasthan complex, Khasra No.158 vide Khata Khewat No.2, khata Khatauni no.15 comprising an area of 4 biswas has been shown as a Path (road which divides khasra No.159 in the south from khasra No.160 in the north). To this Path, 3 biswas and 9 biswansi (0-3-9) have been added from non-Janmasthan complex khasra no. 155/2 vide khata No.1, Khata Khatauni No.4, making a total of 7 biswas and 9 biswansi ( 0-7-9) for the Path which has been put under mahal Azhar Hussain. At the same time, some portions of the Janmasthan complex under abadi without rent (lagan) under khasra no.160 vide Nos. 160 (Jim), khata khewat no.2 , Khata Khatauni no.19/1 with an area of 7 biswas, 3 biswansi (0-7-3) in the subordinate ownership of Rameshwar Das, disciple Gopal Das; Khasra No.160(d) vide khata khewat

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No.1, Khata Khatauni No.8/1 under abadi with an area of 3 biswas, 17 biswanis (0-3-17)under the subordinate ownership of Raghubar Das exempted from rent (lagan) and No.160 M vide Khata No.2, Khata Khatauni No.14 under abadi and an area of kaacha village bigha, i.e. , 1 bigha, 6 biswas and 7 biswansi (1-6-7).

28. In the 1344 F/1936-37A.D. settlement report, of the khasra nos. of kishtwar, khewat and khata Khatauni associated with the Janmasthan complex in the mahals of Nazul and Azhar Hussain as detailed above, there is no area in any of the plots/sub-plots, which has been shown as graveyard (qabaristan) or in waqf.

29. The map of khasra kishtwar of the village Ramkot dated 1344-F/1937 AD of the settlement depicts the territorial boundaries of the khasra plots of the village alongwith symbols of various categories, viz., banjar, abadi, roads, temple (mandir), graveyards (qabaristan ) and pacca wells, etc. Of the khasra plot nos. of the Janmasthan complex, No.159 has a symbol of banjar land; no.160 has symbols of abadi and a temple in the north-east of the plot (shaksi temple) along with a well to its east; no.158, a pacca road; no.146 (abadi Sita Rasoi), abadi along with a temple in the north-west and two wells ; no.147 (R) , mostly with a symbol of banjar land In none of the plots /sub-plots of the Janmasthan complex, there is any symbol of a graveyard (qabaristan), even though symbols of graveyards have been shown in the other and neighborly khasra plot nos., i.e., 172,173,168, and 169, etc.

30. In view of the position as available from the above mentioned original records of the 1344 F/1936-37 settlement

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of the village Ramkot, the Nazul record s of 1931 AD which have altogether different khasra Nos. of the Plots, unaccompanied by any table of equivalent khasra Nos. (Fard Mutabiquat) are absolutely unauthentic with regard to waqf land vide khasra no. 583 and qabristan land vide khasra no.586 and other khasra nos. which have been considered to be a part of the Janmasthan complex. As already noted, even the second revised Report of the Survey Commissioner was rejected by the Hon'ble High Court of Allahabad, Lucknow Bench on 8.8.1991.

31. Since the 1344F/1936-37 settlement, the annual revenue records of the village Ramkot pertaining to khewat and jamabandi, i.e. khata Khatauni have been maintained in the Tehsil Office/ District Record Office, Faizabad for all the years till date. For all the khasara plots of the janamasthan complex, the position stand the same as in the last settlement, excepting that the entries of the names of the succeeding mahants as subordinate owners have been made in the relevant documents. The site on which the shilanyas was performed in November / December, 1989 falls under khasra no. 160, the major portion of which is under mahal Nazul Sarkar Aala. The khasara No. 160 being a large part measuring 5 bighas and 13 biswas, covers both Janmasthan and non – janamasthan areas and falls both under mahal Nazul and mahal Azahar Hussain. In this khasara no. related khata khewat and khata Khatauni Nos., apart from Nazul (government) owning 3 bighas and 13 biswas, there are three other subordinate owners (malikan-i-mayahit) i.e., Sita Ram Sharan owning 3 biswas and 13 biswanis , Awadh Behari owning 11 biswas, 7 biswanis (1-6-7) respectively. The sub – plot of Sita Ram Sharan vide khata khewat no. 23 and khata Khatauni no. 54/1 falls under mahal Nazul. The sub plot of

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Ishtiaq Hussain vide khasra no.160 R and khata Khatauni no. 9 is under mahal Azahar Hussain. Here too, the subordinate ownership is vested with Ishtiaq Hussain and no part of his sub- plot has been shown with any grave yard or muafi or waqf .

32. In the settlement report of 1861 Ad, interpolations / additions have been effected in certain columns of the khata Kishtwar folios. In village Ramkot the total number of the khata Kishtwar is 167 and as per proforma, there are 16 coloumns for each khasra. The first four columns records (i) the serial number, (11) Name of field (abadi, etc.), (iii) Name of thok/ patti (nature of subordinate agency for revenue collection), (iv) name, lineage and caste of the owner (Nam Wa Waldiyat Zat Malik) respectively. The serial number of Janmasthan is 163 with specific description under the columns followed by 9 sub-plots with required description under each column in the copy of the 1861 settlement report available at the District Record Office (muhafaz khana), Faizabad under column No. 2, to the original recording of abadi Janmasthan ; and 'juma masjid' Have been added. Under Column No.3, to the words taraf Nazul , and Muafi have been added so as to read and under column No.4, to the wards Sarkar Baharur, ' and Azhar Hussain' have been added

**Evidence for interpolations :**

**Annexure-V**
**Report of expert regarding interpolation**
**Pages 221-239**

(1) Under column 2, the words abadi Janmasthan are in thick handwriting. As there was no space below this for writing in a similar way, a small 'wa' ( )

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has been put to the right of Janmasthan and 'juma masjid' has been put above towards the left of abadi. The very crude construction of the sentence shows the later insertions of the above words of wa (') and 'juma masjid'.

(2) In the 1861 settlement copy of the Tehsil office under column No. 2 abadi Janmasthan had been written in thick bold hand and no space was available for further addition in the manner done in the District record. So 'wa jama masjid' ( and jama masjid) have been inserted below it but for want of space appear before sub-plot 1, (goshalf) so as to disturb the entire symmetry of the entries made therein.

(3) The Tehsil office copy of 1861 settlement does not carry any incorporation of 'and muafi'/'and Azhar Hussain under columns nos. 3 and 4 respectively as the case of the District Recoed Office copy.

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(4) The second settlement of 1301 Fasli/1893-94 Ad in the khasra kishtwar record though carrying the same khasra no. 163, due to the clubbing, is divided into 5 sub-plots instead of 9 sub-plots as earlier in the 1861 settlement report. But it does not record the name of 'jama masjid', nor does it put 'muafi' under the relevant columns, which have been shown only under Sarkar Bahadur Nazul. However, in sub- plots No. 163/3 with an area of 11 biswas, Azahar Hussaqin and Tahir Hussain have been put as mahaldars where as Mehta Balram Das has been recorded as subordinate owner (malik matahit).

(5) In many a other khasra kishtwar Nos. of the

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1861 settlement record of the District Record Office, e.g., 16,21,25,29,32 and 167 , there are clear instances of tampering, rubbing off the original entries and overwriting them with others. Ordinarily, such changes are never made in the official revenue records and even when any change has to be effected for the correction of an error, if any, the original words are distinctly struck off to be substituted by other words above it. But rubbing off is never done.

(6) Another evidence for determining the fact as to whether it is a correction of an error by the scribe himself or a later interpolation/ alteration is the ink whether thick or medium or thin, as well as the variation in the handwriting of the letters / words, if any, In the 1986 settlement document of the District record Office, for Khasra Kishtwar No.163, for all the columns, quite thick black ink has been used and the handwriting is also uniform with the use of the same qualm (read pen) The thickness of the ink, words and style of writing is uniform. But for the words 'wa Azhar Hussin' (and Azhar Hussain) put below the words of 'Sarkar Bahadur' in column No.4 are absolutely dim in ink. Thereafter the description about all the other sub-plots (goshas ) is again writtenin thick black ink. At the same time, for all the Khasra Nos. following khasra No.163 are written in equally black thick ink and uniform handwriting excepting Khasra No.167 wherein again under column No.3, the words taraf Nazul are in thick ink bold handwriting here as the additional words wa muafi (and muafi) are written in rather thin and dim ink. Similarly, under column No.4, the original words 'Sarkar Bahadur' are written in thick black ink but the words 'wa Azhar Hussain' have been added in dim ink. It is very clear that the words 'wa muafi' and 'wa Azhar Hussain' under column No.3 and

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4 of the both the khasra Nos. 163 and 167 are later additions. All the same, the handwriting of the scribe who made these additions both the Nos. is the same, even though it is apparently quite different from that of the original writing.

**NO WAQF ASSOCIATED WITH ‘ BABURI MASJID’**

In the Janmasthan complex as recorded in the 1st regular Settlement Report (1861 A.D.), there is no Plot/Sub –Plot which has been put as a waqf attached to ‘ Baburi Masjid’. At that time, Muhammad Asghar claimed himself to be khattib and muazzan ( vide his representation to the British Government , case No.884, Muhalla Kot Ram Chander, Ajodhya dated November 30, 1858 A.D.) of the structure named as ‘ Baburi Mosque’ situated at Janmasthan. According to the Muslim's claim, this monument was registered as ‘Mosque’ in 1860 AD. only, i.e., after the 1855 Hindu-Muslim riots and the tussle that followed. In his representation to the British Government, Mir Rajab Ali also designated himself as “Khattib Baburi Mosque’ (vide Application No. 115, Muhalla Kot Ram Chander, Ajodhya dated November 01, 1860 AD.). All the same, in the Had Bast map appended to 1861 A.D. Settlement Report, the symbol of the ‘Mosque’ does not figure in the Janmasthan complex ( khasra Kishtwar No. 163/abadi Plot No., 431-56). As a matter of fact, both Muhammad Asghar and Mir Rajab Ali were residents of village Shahanwa (about three miles to the west of village kot Ram Chander/ ajodhya) and were petty zamindars/land holders/lambardars of village Shahanwa. The 1861 settlement Report of village Shahanwa (vide No. Had Bast 571, Village under Khaliasa (Government) and Mohammad Asghar, Mir Rajab Ali and

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Muhammad Afzal, etc., are shown as pattidars ( vide Exhibit No.'A'). Under the revenue system as inherited from the Mughal and Nawabi Governments, as pattidars /maliks/lambardars, etc., they were entitled to nankar (subsistence allowance) in the shape of nankar/muafi land in the same village. At the same time, they were land holders and their holdings, etc., are recorded in the Settlement Report. But, it is nowhere recorded that they enjoyed any nankar /muafi for the maintenance of the 'Mosque' khattibs and muazzans, etc. However, even though they could not furnish any documentary evidence to the British Government, they continued to claim that during the Nawabi period, their family had been getting the annual grant of Rs. 302/3/6 as nankar and muafi from the revenues of the village Shahanwa for its own maintenance and out of this income, they had been spending only a part of the amount for looking after some of the essential needs of the so-called 'Baburi Mosque' situated at Janmasthan, kot Ram Chander, Pargana Awadh, District Faizabad. After the first war of Independence in 1857 (mentioned as 'Mutiny' in the Report of the District Waqf Commissioner, Faizabad, dated 16.09.38), the British Government, apparently on political grounds because of the loyalty and services rendered by the land lord / pattidari family of the village Shahanwa, continued the above mentioned amount in cash but from 1863 -64 A.D. onwards, the British Government considered it expedient to commute this cash payment into a conditional (mashrut) muafi land grant-a process which was completed by 1870 A.D. when, as explained further, the revenue-free land grant along with superior proprietor rights was bestowed on Mohammad Asghar and Mohammad Afzal Ali in the villages of Sholapur and Bhaharanpur but not in kot Ram Chander where the

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Janmasthan 'Mosque' stood. As such, all previous orders regarding the family grant to Muhammad Asghar/ Muhamad Afzal Ali were superseded by the final order passed in 1870 under the authority of the Governor General in council, whereby a sanad for revenue –free land grant was issued by the Chief Commissioner Awadh. On representation from the family, a decree to this effect was also given by the revenue authorities and entries were made in the revenue records accordingly auring the same year (1870).

Later on when in 1938 A. D., controversy arose about the nature of the title to the land granted by the British Government for the maintenance of the 'Mosque', Pir Mir Taqi, the khattib and muazzan while tracing the genealogy of his family claimed that the Mugal King Babur built this 'Mosque' situated on the site of Janmasthan and granted an annual amount of Rs. 60/- and some arable land in madad-i-maash in the village Shahanwa to Sayed Abdul Baqi appointed as khattib and muazzan for his subsistence and the maintenance of the 'Mosque'. Later on, after the fall of the Mughal Empire, during the Nawabi period, Nawab Saadat Ali Khan, king of Awadh increased the annual grant to Rs. 302/3 as /6 pies. But as commented by the Waqf Commissioner, District Faizabad on 16.09.38, in this regard, no written accounts wee submitted by the khattib and muazzan family to the British Government for the continuation or bestowal of fresh grant for the same purpose.

It has already been observed that although Muhammad Asghar and Rajab Ali claimed to be direct descendants of Sayed Abdul Baqui, the first khattib and muazzan supposed to have been appointed by Babur, no

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reference of cash assignment or madad-imaash land on hereditary basis can be traced in the first regular Settlement of the Village Shahanwa in 1861 A.D. All the same, on repeated representations to the British Government by Muhammad Asghar and Rajab Ali, the British Government having discontinued the annual cash grant, granted afresh land in muafi in the village of Bhuraipur and Sholapur in 1870 A.D. Later on the sanad issued by the Chief Commissioner clarifies that the cash nankar of Rs. 302/3as/6 pies received by Rajab Ali and Muhammad Asghar as rent-free tenure in Village Shahanwa under the former Government (Nawabi Rule) was being maintained ( as muafi land in the village of Bhuraipur and Sholapur) under the authority of the Governor General-in- Council so long as the object for which the grant had been made was kept up on the conditions that the assignees would surrender all the (previous) sanads, title deeds, and other documents relative to the grant in question and above all, they and their successors would " strictly perform all the duties of land holders in matters of Police and any Military or Political Service that may be required of them by the Authorities … If any one of these conditions was broken by Rajub Ally or Mohammad Usgar or their successors the grant will be immediately resumed".

A serious controversy about the nature of the land grant in the village of Bahorampur and Sholapur earlier given by the British Government to the assignees (khattib / muazzan) which was also in a way connected with the ' Baburi Mosque' at kot Ram Chander, Ajodhya arose in 938 A.D. The District Waqf Commissioner, Faizabad (Eligible–S.M.Omais) vide his decision dated 16.09.38 while interpreting the sanad earlier given by the British

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Government to the assigness (khattib / muazzan) maintained that even though the grant was conditional on the performance of duties of land holders in the matter of Police, Military or Political Service, etc., the object for which the grant was made was the maintenance of the 'Mosque'. He also stressed that the original object of the state grant of Emperor Babur and Nawab Saadat Ali Khan was also continued in the sanad by the British Government after the 'Mutiny', i.e., for the maintenance of the 'Mosque' and further that the nankar was to be enjoyed by the grantee for so long as the object of the grant, i.e., the 'Mosque', was in existence. In view of this, the Commissioner gave a ruling to the effect 'clearly then the grant to Mohd. Zaki must be regarded as waqf, the purpose of which is the maintenance of the religious building known as the 'Baburi Mosque'.

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Muhammad Zaki, the (khattib /muazzan) ( also mutawalli in case of waqf) raised serious objections to the decision of the Commissioner, waqf Board. He maintained that the particular grant of land in Sholapur and Bhuraipur had been made by the British Government which was a non-Muslim body and hence the grant could not be taken as a muslim waqf. Moreover, as per sanad, it was conditional grant subject to the performance of military, police and other duties, etc., and in case of non-fulfillment of the latter services, the grant could not be regarded as a Kuslim waqf. He contended that after the annexation of Awadh, the British Government in lieu of cash nankar and madad-i-maash (as inherited from the Nawabi period ) granted land to Muhammad Asghar and Muhammad Afzal and in the first Regular Settlement (1861), it was entered in the latter's malkiyat_(ownership). Thereafter, on February 03, 1870

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AD., Muhammad Asghar and Muhammad Afzal got a decree in their favour whereby they were entered in the revenue records as superior proprietors and possessors in possession of the property ( malik-i-ala qabiz wa mutsarif jadaid) and since then, their descendants have continued with the same status. As such, the property falling in the category of superior proprietorship ( malkiyat-i-ala) did not fall in the definition of the Muslim waqf. He further contended even though, the descendants of Muhammad Asghar, etc., had been bearing the expenses for the essential items of expenditure for the maintenance of the 'masjid Baburi', the family property was outside the jurisdiction of the Muslim waqf Act, No.12,1936 as the major amount of the income had been spent by them on their own subsistence as madad-i-maash, etc This had always been recorded in the khewat records as such.

Apart from the above arguments, Muhammad Zaki always maintained that Sayed Abdul Baqui, the First muazzan/khattib of the 'Mosque' appointed by Babur was a Shia and his descendants all through the ages, till date belong to the Shia sect and could not be coerced to accept the spurious contention that the 'Baburi Mosque' might be put under the control of the Sunni Waqf Board. This position was taken by the (khattib/muazzan) family before the District Waqf Commissioner, Faizabad (1941). However, the latter's Report (dated February 08,1941) simply reproduced and reiterated the position earlier taken by the District Waqf Commissioner in 1938 A.D. on the contrary, Muhammad Zaki and Malik Hussain, etc., the (khattib/muazzan) vide their Application dated 26th September, 1943 AD serial no.26, submitted to the Sunni Central Board of Waqf, U.P., Lucknow, took a clear stand that there was no waqf for their properties in the villages of

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Buharanpur and Sholepur with total annual income of Rs. 528/14 as (Rupees Five hundred Twenty Eight and Annas Forteen only, i.e., Rupees Three-hundred-fifty-one and Annas six (Rs. 351/6 as ) from the village of Bahoranpur and Rs. 177/8as (Rupees One-hundred, Seventy –Seven and annas eight) from Sholepur. They contended that earlier they had been bestowed grant (atiya) by Shahenshah Babur and Nawab Saadat Ali Khan and in the present case ( i.e. land/income from Baharanpur/Sholepur) they were strictly

**Annexure-V**
**Nakal Sanad**
**Pages 152-176**

governed by the sanad nankar granted by the British Government. They further maintained that the khewatdara (i.e., the revenue authorities/ records) did not recognize this as waqf and that it had been recorded in the revenue records only as nankar muafi. Of course, in the past they had been looking after the white washing, lighting arrangements of the 'Mosque' and as well making payment of the salaries of the Muazzans/Imams, etc., Malik Hussain, s/o Syed Muhammad Zaki in his detailed letter No.5607 dated 20.11.43/22.11.43 in response to the Secretary, sunni Waqf Board 's communication vide no. 5272 dated 27 October, 1943, clarified his relation with the 'Baburi Masjid'. He categorically maintained (vide para 5) that there was neither any waqf for the 'masjid', nor there had ever been a Mutawalli for it. Further, that his family has had muafi land (in the villages of Buharanpur and Sholepur) and being the lambardar ( head ) of the property and being ( good) Muslims, it had been looking after the repair etc. of the same and that he, too, as lambardar had been discharging this obligation since 17 February, 1943 . He stated that the expenditure incurred in this regard was from his family

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property which was in muafi nankar and not in waqf (Vide paras 8-9 ) . In this letter, he also gave some details about the items of white washing , repair and floor carpet etc relating to the 'Masjid' and some expenditure incurred in this regard since October, 1941. ( Vide paras 2-3, 10-11). Not with standing all this, the legal tussle continued and in 1945 A.D. it was considered that the muazzan/khattib family ( At this time kalab Hussain, the brother of the deceased Muhammad Zaki)had been all through Shias, even though the prayers in the past had been offered both by the Shias and the Sunnis.

It is equally important to note that during the 1930's of the 20th century, as per statement of Muhammad Zaki, the Muazzan / Khattib even though he was looking after some of the essential items of the maintenance of the 'Mosque'(i.e., whitewashing, lighting and flooring, etc.), from the income of the nankar /muafi grant held as malkiyat in perpetuity, he did not spend any money on the repairs of the 'Mosque'in the aftermath of the riot in Ayodhya in 1934 A.D. The Collectorate and the P.W.D. records of the District Faizabad bear out the fact that the entire expenditure for the repairs of the 'Mosque'was met by the District administration/PWD. Significantly, in the waqf records of the Sunni/ Shia Boards of waqf or the Collectorate/UP. Government Records, there is no mention of any Mutawalli or waqf from the income of which the structure of the ' Baburi Mosque'might have been rebuilt valuable revenue free grant of land held by Muhammad Zaki etc. in the villages Burhanpur and Sholepur allegedly a attached for the maintenance and upkeep of the same.

An elementary knowledge of theMugal agrarian

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system/ Nawahi phase and the British administration in India as well as an understanding of the nature of various categories of land grants for administrative purpose or to the religious institutions would clearly show that there has always been a basic difference between nankar ( for personal maintenance) and waqf. In this regards, the contentions of the grantees, i.e. Muhammad Asghar, etc. 19th Century) and Mohd. Azkil Kalab Hussain/ Malik Hussain, etc. have been absolutely correct and tenable that their properties in Shahanwa/Burharanpur/Sholepur could not be categorized as waqf. As such, they do not show any waqf relating to the alleged 'Baburi Masjid'. Even in the Judicial records of the various suits pending before the Lucknow bench of Allahabad HighCourt, there is no registration of any waqf having any connection with the alleged' Baburi Masjid' as per records of the Sunni Central waqf Board.

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After the above mentioned enquiry by the District Waqf Commissioner, his report as prescribed under the U.P. Muslims Waqfs Act, 1936 along with the lists of the Shia Waqfs and Sunni Waqfs was forwarded by the U.P. Government to both the Shia Central Board of Waqfs and Sunni Central Board of Waqfs as each of the two Waqf Boards were to publish the report along with their respective lists in Official Gazette, under sub-section (1) of Section 5 of the Act. In the Shia –Sunni legal Tussle that followed, the Sunni Central Board of Waqf claimed that it was published as a Sunni 'Mosque' in the U.P. Gazette dated 26.02.1994, even though in reality, the particulars of the ' Baburi Mosque' or the qabaristan ( qraveyard) attached to it, do not find any. Place in the list of Waqfs published in the Government Gazette dated 26.02.1944.

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As the Shia Board Claimed it to be Shia Waqf, it filed a suit to get over the effect of the Waqf Commissioner report on theassumption that the ‘ Baburi Masjid’ had been notified to be a sunni Waqf in the above mentioned Gazette notification dated 26.02.1944 under Section 5 (1) of the U.P.Muslim Waqf Act, 1936.

Thus confronted with a faith accompli of the Baburi Masjid having been included in the list of the Sunni Cental Board of Waqf by the Chief Commissioner of Waqfs under section 4 of the U.P. Muslims waqf Act ( XIII of 1925 ) as well as by the Sunni Central Board of Waqf, U.P. and also assuming the fact that the same had been published in the Government Gazette dated 26.02.1944, the Shia Central Board of Waqf U.P., as Plaintiffs in the Regular Civil Suit No.29 of 1945, sought a declaration that the ‘Mosque’ was a Shia Waqf together with the idgah attached to it at Jaipa Nala, Ayodhya, and village Behrampur, Pargana Haveli and 20bighas odd land, known as Sholepuri grove, in mahal Bharanapur, in Tehsil and District Faizabad. As a matter of fact, when face to face with the issue that under the law, the ‘Mosque’ had to be essentially attached with either of the Waqf Boards, i.e. Sunny/Shia, the Waqf Board in the plaint came upwith the contention that Sayid Abdul Baqt ( Mir Baqi), the builder of the mosque’, in 1528 AD, during the reign of the Mughal Empror Babur, was a Shia and that being the founder-waqf as well the first Mutawalli of the ‘Mosque’, followed since then by a lineage of successive Mutawallias till date (1945)with kalab Husain as the Mutawali in 1945 after the death (1944) of his brother Mohammad Zaki and as such, the ‘Mosque’ was a Shia waqf . Even though, as already stated, earlier Mohammad Zaki/Kalab Husain in the official documents submitted to

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the office of the District / Commissioner of Waqf, had always maintained that there had been no Mutawalli since the building of the mosque as they were mearly khatibs and muezzins looking after the 'Mosque' by meeting some of the incidental charges from the income of their personal proprietary lands in the village of Sholapuri and Bahoranpur which were not in waqf now under the compelling circumstances, with a view to tide over the technical, legal difficulty and to get the 'Mosque'legally declared as a Shia Waqf, it was contended for the first time that the cash nankar (Rs. 302/3 as /6 paisa) bestowed during the Nawabi period and the properties in Sholepur and Bahoranpur granted by the British Government , as revenue- free grants , confirmed by a decree in proprietary rights, revenue free now passed in favour of hereditary mutawallies who since then had been observing the terms of the grant and filing accounts before the S.D.O.

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It was also claimed by the plaintiffs i.e. the Shia Central Board of Waqf, that its mutawalli was entitled to the supervision of the 'Mosque' as it was Shia Waqf and that the Chief Commissioner of Waqf had not sent the list of Sunni Waqf to them even though the latter had included the 'Mosque' in its list supposed to have been based on the publication in the Gazzette.

The Sunni Central Board of Waqf, in its defence statement asserted that the 'Mosque' was founded by Emperor Babur who was a Sunni and that its khatibs and muezzins had been of the same sect until much later on, one of the mutawallis in the pedigree list i.e. Mohamad Afzal became a convert to Shia during the closing peiod of the reign of the kings of Awadh, who were Shias. It was also

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asserted that the 'Mosque' had always been used by the sunnis of Ayodhya for saying their Friday prayer and the Idgah as noted above, was quite independent of the 'Mosque' and was similarly used by the Sunnis for their Id and Baqrid prayers.

In the continued litigation between the above two parties, the Court of the Civil Judge, Faizabad, which tried thecase as a preliminary issue, vide-judgment dated 21.04.1966 held that " no valid notification under Section 5(1) of U.P. Muslim Waqf Act No.XIII of 1936 was ever made" relating to the specific disputed property. As such, the judge made it clear that the allege notification of 26.02.1994 did not specify the property in suit as waqf property and that it was of no legal effect. This finding became final between the two parties. Later on, in the case of Gulam Abbas V. State of U.P. ( vide AIR 1981 S C. 2196, pp. 2217-18, Paragraph 17,) in the case between the Shia and the Sunni Muslims, the Hon'ble Supreme Court of India also found the above mentioned notification of the U.P. Government dated 26.02.1944 to be " of doubtful validity and probative value," and held, it to be of no legal effect. As such, in view of the judgment of the Supreme Court, the said notification dated 26.02. 1944 was involved and that the suit No.29 of 1944 could not have been filed under Section 5(2) of the Waqf Act, with the result that the judgment in that case Date 30.03.1944 **IN THAT SUIT IS WITHOUT JURISDICTION** and the findings recorded therein with regard to the waqf issue are of no legal effect. The earliest regular Settlement of 1861 A.D. as well as the later reports confirm the fact that these had been prepared taking into consideration the past records of the Nawabi period as well. As a matter of fact, as per the original

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documents, the entire complex of Janmasthan is covered under khasra No.163 with 9 Plots, with total area of 5 bighas and 4 biswas. However, under column No.16 of Kaifiyat, it is stated that in the area of Janamasthan, there is one pacca well, whose number is recorded in Kahasra abadi and grave yard ( qabristhan). As distinct from the khasra kishtwar, in khasra abadi Nos. 431-456, (as recorded corresponding to No.163 of the former) shows abadi (Population) in this area. They do not mention the existence of any 'Mosque', though, in the kaifiyat they mention the prevalence of pacca graveyards Imli trees and makans (houses ) etc. in the campus. For 4 bighas and 13 biswas, the superior ownership of the land has been declared in the name of Sarkar Bahadur Nazul ( Government), and vide Khatauni No. I, 1878 11 biswas have been shown a muafi under mahal Azahar Hussain. In the settlement of 1301 Fasli/1893 A.D, in the khasra kishtwar, the same khasra number (163) remains, though the entire area is shown under 5 plots instead of 9 as previously in the 1861 settlement report Both in the khata Khatauni/khewat the Hindu Mahants of Janmasthan have been shown with subordinate proprietay rights as malikan-i- matehit along with their respective shares. But later on these nos. undergo a change during the Fasli 1344/45 /1936-37 AD Settlement Report but the position of1861 persists even in later Settlements effected from time to time during the 19th and 20th centuries. It is also clear that the area on which the structure of the ' Baburi Masjid' stood is a part of the Janmasthan and under the subordinate ownership (malik mataiht ) of a Hindu Mahant. This position was inherited by the early British administration from the earlier records of the Nawabi and the Mugal periods. However, in the Settlement Record of 1861 of the Muhafijkhana, certain

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later alternations have been made wherein the name of Jama Masjid and the word muafi has been inserted. In Plot No.163/1 the words Jama Masjid , uafi and Azhar Hussain under coloumns No.2,3 and 4 respectively have been added. But the copies of the same document prepared during the same year available at the Tehsil office wherein only the word Jamai masjid has been added in column No.2 but not muafi and Azhar Hussain in column nos. 3 and 4 as against Muhafiz Khana Report clearly prove that the later additions are interpolations, done perhaps during the past few decades of the controversy. This is also confirmed by the fact that the Khasra Kishtwar records of the second Revenue Settlement effected in the year 1301 Fasli (1893 A.D.) do not carry out such alternations or additions. These records still show the area on which 'Baburi Masjid' had been earlier constructed as forming a part of the Janmasthan complex and there is no mention of any 'Mosque' nor any land assigned to it in muafi. It is evident that interpolations in the settlement Report of 1861 of the District Record Office ( Muhafz Khanna), Faizabad have been donefor a few other khasra kishtwar nos. as well. All this needs a through probe on scientific basis.

As already stated, according to the revenue Settlement effected in 1861 AD, the total area covered by khasra no.163 relating to Janmasthan has 9 distinct plots. There have been two more settlement operations since then. However, in the revenue settlements effected from time to time, the khasra/khewat/khata Khatauni Number as well as the nos. of plots undergo a change and there are also adjustments with the neighboring plots. But the table of equivalent past numbers and parts thereof along with the current numbers Fard Mutabaqat )is always appended and

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forms part of the Settlement Report. In the latest revenue records of 1397-99 Fasli/1989-92, the erstwhile Janmasthan complex has been shown in four khasra Nos. , i.e., 159,160-,146, and 147. The major portion of the Janmasthan complex comprising Ram Janmabhoomi, the so-called Baburi Masjid as well as the new Janmasthan falls under Khasra Nos. 159,146 (vide khata Khewat No.35) and 147 R wherein the names of the Mahants alongwith the areas in their ownership have been recorded. Only some portion of the complex falls under No.160 which too is shown under mahal Nazul Sarkar. In brief , Janmabhoomi/ ‘ Baburi Masjid’ have been recorded under No.159 and 160. The entire khasra No.159 has been entred in the ownership of ‘ Shri Dhanus Dhari Bhagwan Bara Asthan, Ajodhya’ whereas some portion falling in khasra no.160 has been recorded in theownership of Sarkar Nazul. There is no muafi/waqf of any type associated with the ‘Mosque’.

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The entire Revenue records dating from the first Settlement (1861 A.D.) have been examined. There is no record of any of ‘Baburi Masjid’ any where in the documents maintained by the Revenue Department of the Government of U.P. at the Collectorate and the Tehsil at Faizabad.

**ADVERSE POSSESSION**

Plaintiffs have claimed that even by adverse possession they have right to retain the property. Refuting the aforesaid documents Sri Ravi Shanker Prasad, Senior Advocate has submitted before this Court that adverse possession of debutter's property is not permissible in Hindu Law for following reasons:.

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**Adverse possession of Debutter property is impermissible in Hindu Law :**

1. From the holy scriptures that are foundation of the Hindu Law it is crystal clear that in respect of the property of learned Brahmin versed in Vedas, minor, women and Kings rule of adverse possession is not applicable according to Hindu Law, as also that a King cannot acquire title over the property of his subject by way of adverse possession. According to the Hindu Law, land or temple dedicated to deities were always gifted to the Deities through such Brahmins who were well versed in Vedas and Agamas by making them Sebaits. The rule of adverse possession was not applicable in respect of the properties of the Gods, Brahmins well versed in Vedas, Deities, Kings, women and minors. As such prior to passing of the Limitation Act by the British Government according to Hindu law the sacred shrine of *Sri Ramajanamasthan* was not liable be extinguished by way of adverse possession as the for time being in force i.e. Law of *Shar* also did not recognise adverse possession.

2. The Holy Scripture Sri Manusmriti XI.20 & XI.26 lays down law that the property of the Gods cannot be taken by dispossessing its custodian and who, seizes the property of the Gods, or the property of Brahmanas, lives, in the other world, upon the leavings of vultures. The oldest and most

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Authoritative of the commentators of Manu, Medhatithi explaining the said verses says that 'Property of the gods' is the name given to all that belongs to such men of the three higher castes as are disposed to perform sacrifices. 'Property of the Brahmana' is the name that is applied to the belongings of even such Brahmanas as are not disposed to perform sacrifices. English translation of the said verse 11.26 as well as Medhatithi's commentary thereon from page nos. 357-358 from Manusmriti Vol-7 translated by Ganganath Jha and published by Motilal Banarasidass Publishers Private Limited, Delhi 2nd Edn. 1999 reads as follows:

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> "The property of persons given to perform sacrifices the Learned regard as ' the property of the Gods;' while the properties of those who do not perform sacrifices is described as ' the property of Demons.'
>
> ( Manusmriti-11.20)
>
> Bhasya.
>
> This also is a declamatory declaration in support of the teaching that ' no property shall be taken from men possessed of good qualities, but there is no harm if it is taken from those devoid of qualities.'
>
> ( Commentary on Manusmriti-11.20)

> "The sinful man who, through covetousness, seizes the property of the Gods, or the property of Brahmanas, lives, in the other world, upon the leavings of vultures"
>
> ( Manusmriti-11.26)
>
> Bhasya.
>
> *'Property of the gods'* is the name given to all that belongs to such men of the three higher castes as are disposed to perform sacrifices. *'Property of the Brahmana'* is the name that is applied to the belongings of even such Brahmanas as are not disposed to perform sacrifices.

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It is in this sense that the verse may be construed:
As a matter of fact however Verse 20 above, which says –
The property of those disposed to perform sacrifices the wise call the *'property of the gods' etc.'* – is purely declamatory, and not meant to provide the definition of technical terms; like such terms as 'theft' and the like. For this reason we proceed to explain it differently.
That wealth which has been set apart as to be spent for the gods, in the performance of sacrifices and other such acts, is *'the property of the gods'* ; as direct *ownership* is not possible for the gods. In fact the gods never make use of any property, by their own wish; nor are they found to be actually taking care of any property; and it is where all this is found that property is said in ordinary life to belong to a person. Hence the name *'property of the gods'* must apply to that which has been set apart as to be used on behalf of the gods,- with such formula as 'this is no longer mine, it is the god's.' And this can refer to only what has been enjoined as to be offered to Agni and other deities at the *Darsha-purnamasa* and other sacrifices; and it is merely on the basis of the custom of cultured people that it can be applied, only figuratively, to what is offered at sacrifices to Durga and other deities (which latter are not enjoined in the Veda).
"In the ordinary world, it is property dedicated to the four-armed and other images in temples that is called 'the property of the gods;' and it is only right that in the interpretation of scriptures we should accept that that meaning of a word in which it is used in ordinary parlance."

( Commentary on Manusmriti-11.26)

3. The Holy Scripture Sri Brihashpati Smriti (compiled in the book 'Ashtadas Smriti', 1st Edition, 1891 revised and enlarged Edn. 1990 published by Nag Prakasahak, Delhi) says that who confiscate the land endowed by him or others the confiscator of land taking birth as a worm being roasted in stool of dogs along with his manes for sixty thousand years; and the confiscator (of a grant), or he who assents (to

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an act of confiscation), shall dwell in same but one hell. Brahmins' property is such a poison which kills sons and grandsons of the confiscator. Confiscation of the Debutter Property causes destruction of soul and clan. Who did not inform the King about such usurpation of land, he invites sin of killing of Brahmin and the King who did not prevent usurpation of land in spite of being informed by the Brahmin, he is known as assassinator of Brahmins. Relevant slokes numbers 25, 26, 28, 29, 46, 52, 67 and 68 of the said book read as follows:

पृथोर्यदोर्दिलीपस्य नृगस्य नहुषस्य च।
अन्येषाञ्च नरेन्द्राणां पुनरन्या भविष्यति ॥२५॥

पृथु, यदु, दिलीप, नृग, नहुष और (भूमि का दान करने वाले) अन्य राजा फिर से अन्य पृथ्वी को प्राप्त हो जाएंगे ।

बहुभिर्वसुधा दत्ता राजभिः सगरादिभिः ।
यस्य यस्य यथा भूमिस्तस्य तस्य तथा फलम् ॥२६॥

सगर आदि बहुत से राजाओं के द्वारा पृथिवी का दान किया गया है। जिस-जिस ने जैसी भूमि दान में दी थी उसे उसका वैसा ही फल प्राप्त हुआ।

स्वदत्तां परदत्तां वा यो हरेच्च वसुन्धराम् ।
श्वविष्ठायां क्रिमिर्भूत्वा पितृभिः सह पच्यते ॥२८॥

जो अपने द्वारा दान की हुई अथवा दूसरे के द्वारा दान की हुई भूमि को छीनता है, वह कुत्ते की विष्ठा में कीड़ा होकर पितरों सहित पकाया जाता है।

आक्षेप्ता चानुमन्ता च तमेव नरकं व्रजेत् ।
भूमिदो भूमिहर्त्ता च नापरं पुण्यपापयोः ।
ऊर्द्ध्वाधो वाऽवतिष्ठेत यावदाभूतसंप्लवम् ॥२९॥

छीनने वाला और छीनने की अनुमति देने वाला दोनों एक ही नरक में जाते हैं अन्य में नहीं। भूमि का दान करने वाला और भूमि छीनने वाला दोनों अपने पुण्य और पाप के हेतु क्रमशः ऊपर (स्वर्ग में) और नीचे (नरक में) सृष्टि के प्रलय तक निवास करते हैं।

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न विषं विषमित्याहुर्ब्रह्मस्वं विषमुच्यते ।
विषमेकाकिनं हन्ति ब्रह्मस्वं पुत्रपौत्रकम् ॥४६॥

विष को विष नहीं कहते, ब्राह्मण का धन विष कहा जाता है। विष तो एक (खाने वाले) को ही मारता है, ब्राह्मण का धन पुत्र और पौत्र को भी मार देता है।

ब्रह्मस्वेन तु यत् सौख्यं देवस्वेन तु या रतिः ।
तद्धनं कुलनाशाय भवत्यात्मविनाशनम् ॥५२॥

ब्राह्मण के धन से जो सुख मिलता है, देवों के धन से जो प्रसन्नता होती है, आत्मा का विनाश करने वाला वह धन कुल के नाश के लिये होता है।

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भूमिर्गावस्तथा दाराः प्रसह्य ह्रियन्ते यदा ।
न चाऽऽवेदयते यस्तु तमाहुर्ब्रह्मघातकम् ॥६७॥

जब भूमि, गौवों तथा स्त्रियों का बलात् हरण किया जाया है, और जो (प्रत्यक्षदर्शी) इसकी सूचना राजा को नहीं देता, उसे ब्रह्मघातक कहते हैं।

निवेदितस्त् राजा वै ब्राह्मणैर्मन्युपीडितैः ।
न निवारयते यस्तु तमाहुर्ब्रह्मघातकम् ॥६८॥

और जो राजा क्रोध में भड़के हुए ब्राह्मणों से सूचना पाकर (हरण करने वाले को) नहीं रोकता, उसे ब्रह्मघातक कहते हैं।

4. The Holy scripture Sri Brihashpati Smriti (contained in Vol.33 of the Sacred Books of the East titled as 'The Minor Law Books' edited by F. Max Muller & translated by Julius Jolly, 1st Edition, 1889 reprinted Edn. 1988 published by Motilal Banarsidass, Delhi)) in its Chapter-IX says that the wealth possessed by a son-in-law, a learned Brahmin, or by the King or his Ministers does not become legitimate

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property for them even after a lapse of a very long period. Even slight measure of possession of a grant keeps title alive. By way of possession no one acquires ownership over the property of a King or learned Brahmin or an idiot or infant. Translation of relevant slokes being nos.12, 13, 14, 18, 21, 22 and 30 read as follows:

> "12. Such wealth as is possessed by a son-in-law, a learned Brahman, or by the king or his ministers, does not become legitimate property for them after the lapse of a very long period even.
> 13. Forcible means must not be resorted to by the present occupant or his son, in maintaining possession of the property of an infant, or of a learned Brahman, or of that which has been legitimately inherited from a father,
> 14. Nor (in maintaining possession) of cattle, a woman, a slave, or other (property). This is a legal rule.
> 18. When a village, field, or garden is referred to in one and the same grant, they are (considered to be) possessed of all of them though possession be held of part of them only. (On the other hand) that title has no force which is not accompanied by a slight measure of possession even.
> 21. Female slaves can never be acquired by possession, without a written title; nor (does possession create ownership) in the case of property belonging to a king, or to a learned Brahman, or to an idiot, or infant.
> 22. It is not by mere force of possession that land becomes a man's property; a legitimate title also having been proved, it is converted into property by both (possession and title), but not otherwise.
> 30. He whose possession has passed through three lives and has been inherited from his ancestors cannot be deprived of it, unless a previous grant should be in existence (in which the same property has been granted to a different person by the king)."

5. The Holy Scripture Sri Shukraniti (translated by Dr. Jagdish Chandra Mishra and published by Chaukhamba Surbharati

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Prakashan, Varanasi, Edn. 1998) in its fourth chapter says that on the basis of adverse possession no one can acquire ownership over the mortgaged land, frontier land of a village, minor's property, pledge, women's property, King's property or the property of the Brahmin who recites Vedas (*Shrotriya)*. Sloke 225 of the said chapter along with its translation reads as follows:

**आधिः सीमा बालधनं निक्षेपोपनिधिस्तथा।**
**राजस्वं श्रोत्रियस्वं च न भोगेन प्रणश्यति॥ २२५॥**

**अन्वयः**—आधिः, सीमा, बालधनं, निक्षेपः तथा उपनिधिः, राजस्वं च श्रोत्रियस्वं भोगेन न प्रणश्यति॥ २२५॥

**व्याख्या**—आधिः = बन्धकधनम्, सीमा = ग्रामसीमा, बालधनम् = अवयस्कस्य शिशोः धनम्, निक्षेपः = न्यासः, तथा = तेनैव प्रकारेण, उपनिधिः = उपन्यस्तं वस्तु, राजस्वम् = नृपाधिपत्यम्, श्रोत्रियस्वम् = वेदपाठकस्य धनम्, भोगेन = उपभोगेन, न = नहि, प्रणश्यति = विनष्टो भवति॥ २२५॥

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6. The Holy Scripture Sri Naradasmriti (compiled in the book 'The Minor Law Books' edited by F. Max Muller & translated by Richard W. Lariviere, 1st Edition, 1889 reprinted Edn. 1988 published by Motilal Banarsidass, Delhi) lays down that a learned Brahmin's property, the King's property etc. are not lost through possession. The King should punish that sinner who has possession even for hundreds of years without title, as if he was a thief. The translation of the relevant sloke nos.73 and 76 read as follows:

> "73. A pledge, a boundary, the property of children, unsealed and sealed deposits, women, the king's property, and a learned brahmana's property are not

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lost through possession.

76. If there is possession but no title, in that case the absence of a title, not the possession, is conclusive."

7. The Holy Scripture Sri Manusmriti (with the Commentary of Medhatithi, translated by Ganganath Jha & published by Motilal Banarasi Dass Publishers Pvt. Ltd.) in its 8th chapter inter alia says that the property of a Vedic Scholar is not lost by adverse possession. Relevant sloke nos. 149 of the said chapter along with commentary of Medhatithi and its English translation read as follows:

"149. A pledge, a boundary, minor's property, a deposit, a property enjoyed by favour, women, king's property, and the property of a vedic scholar are not lost by adverse possession."

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8. The Holy Scripture Sri Yajnavalkya Smriti (with Mitakshara commentary and Hindi translation published by Chaukhambha Sanskrit Samsthan, Varanasi, Edn. 1994) in its chapter II lays down that the title of the property of *Shrotriya* i. e. the learned Brahmin versed in Veda as well as minor's property etc. cannot be lost by way of adverse possession, which is reproduced as follows:

आधिसोमोपनिक्षेपजडबालधनैर्विना ।
'तयोपनिधिराजस्त्रीश्रोत्रियाणां धनैरपि ॥ २५ ॥

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आधिश्च सीमा च उपनिक्षेपश्च आधिसीमोपनिक्षेपाः । जडश्च बालश्च जडबालौ, तयोर्धने जडबालधने; आधिसीमोपनिक्षेपाश्च जडबालधने च आधिसीमोपनिक्षेपजडबालधनानि तैर्विना । उपनिक्षेपो नाम रूपकसंख्यामदर्शनेन रक्षणार्थं परस्य हस्ते निहितं द्रव्यम् । यथाह नारदः—'स्वं द्रव्यं यत्र विश्रम्भान्निक्षिपत्यविशङ्कितः । निक्षेपो नाम तत्प्रोक्तं व्यवहारपदं बुधैः ॥' इति उपनिधानमुपनिधिः । आध्यादिषु पश्यतोऽभुवतोऽपि भूमेर्विंशतेरूर्ध्वं धनस्य च दशम्बो वर्षेभ्य ऊर्ध्वमप्युपचयहानिर्न भवति; पुरुषापराधस्य तथाविधत्वाभावात् , उपेक्षाकारणस्य तत्र तत्र संभवात् । तथा हि—आधेरायिरुपाधिकृत भोग इत्युपेक्षायामपि न पुरुषापराधः । सीम्नश्चिरकृतमुपाङ्गारादिचिह्नैः सुसाध्यत्वादुपेक्षा संभवति; उपनिक्षेपोपनिध्योर्मुद्रादेः प्रतिषिद्धत्वात्, प्रतिषेधातिक्रमोपभोगे च सोदयफललाभादुपेक्षोपपत्तिः । जडबालकयोर्जडत्वाद्बालत्वादुपेक्षा युक्तैव; राज्ञो बहुकार्यव्याकुलत्वात् , क्षीणमज्ञानादज्ञानत्वाच्च । श्रोत्रियस्याध्ययनाध्यापनतदर्थविचारानुष्ठानव्याकुलत्वादुपेक्षा युक्तैव । तस्मादाध्यादिषु सर्वत्रोपेक्षाकारणसंभवात्समक्षभोगे निराक्रोशे च न कदाचिदपि फलहानिः॥२५॥

भाषा—आधि ( बन्धक ), सीमा, उपनिक्षेप, जड ( मन्दबुद्धि ), बालक का धन, उपनिधि, राजधन, क्षीणधन, श्रोत्रिय का धन दूसरे द्वारा दस या बीस वर्ष तक भोगे जाने पर भी अपने स्वामी के अधिकार से हीन नहीं होते हैं ॥ २५ ॥

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9. The aforesaid rule of non applicability of rule of adverse possession in respect of Debutter property was all along being complied by Hindu Kings which is very much apparent from various inscriptions of the Kings of ancient and medieval periods. Bitragunta grant of Samgama II of Saka-Samvat 1278 (4th plate, verse nos.36 – 39), Torkhede copper plate grant of Govindraja of Saka-Samvat 735 (3rd plate, line nos.43 to 48) and Chicacole Plates of Gunarnava's son Devendravarman of the year 183 (2nd and 3rd Plates, line nos.19 – 23) with slight variation reproduce the sloke nos.25, 26, 28 & 29 of the Holy scripture Brihaspatismriti. Transliteration and translation of the

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**Original Sanskrit Text** of the Line Nos. 43 to 48 of the Torkhede copper plate grant of the time of Govindaraja of Gujrat of Saka-Samvat 735 corresponding to 813 AD. reads as follows:

> "43. Chchhiddra-nyayen=adya vijaya-saptamyam-udak-atisarggena pratipade-tah [1*] yata-
> 44. s=tato=sya na kaischid=vyasedhe pravarttitavyam=agami-bhaddra-nripati-bhir=apy=anitya
> 45. ny(ny)=aisvaryyany=asthirain manushyam samanyan=cha bhumi-dana-phalam tad-apaharana-papam
> 46. ch=avagachchhadbhir=ayam=asmad-dayo=numamtavyah paripalayitavyas=cha [1*]
> 47 Bahubhir=vvasudha bhukta rajabhih Sagar-adibhih yasya yasya jada
> 48 Shashtim varsha-sahasraji svargge tishthati bhumi-dah schschetta ch= annmanta cha tany=eva narake vased=iti [II*]"

**English translation whereof reads as follows:**

> "(L.43.) "Wherefore, no one should behave so as to restrain this grant. And this, Our gift, should be assented to, and preserved by, future benevolent kings; understanding that riches are not everlasting, (and) that man's estate is uncertain, and that the reward of a grant of land belongs in common (both to him who makes it, and to him who continues it), and understanding also the sin of confiscation it.
> (L.46.) "And it has been said by the great sages- The earth has been enjoyed by many kings, commencing with Sagara; whosoever at any time possesses the earth, to him belongs, at that time, the reward (of the grant that is now made, if he continues it)! The giver of land abides in heaves for sixty thousand years; (but) the confiscator (of a grant), or he who assents (to an act of confiscation), shall dwell for the same number of years in hell!"
> (Epigraphia Indica vol-III p.56, 57, & 58)

10. In *Vishwajit Yajna* King was to donate/gift everything of which he was owner, but he had no right to donate/gift lands of his subjects as well as common land such as

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Roads, Streets, water reservoirs, forest, mountains , temples etc. as he is not owner of the those lands and, in lieu of giving protection to his subjects king was entitled to collect only certain part of produce of his subject's lands; it is considered dictum of Jaminiya-Mimamsa-Bhashyam (6.7.1-3) of Sabarswami with Hindi explanation of Yudhisthir Mimamsak published by Ramlal Kapoor Trust, Haryana 1986 Edn. read with Adhwar Mimamsa-Kutuhalvritti *Dwitiya Bhag* on (6.7.1-3) published by Lalbahadur Shastri Rashtriya Sanskrit Vidyapeetham, Delhi 1969-77 Edn. and Marxvad aur ramrajya of Sri Swami Karpatriji Maharaj 1st published in 1957 and 7th Edn. V.S. 2046 equivalent to 1989 A.D. Relevant extracts from the aforesaid books are given hereunder.

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*Jaminiya-Mimamsa Sutra* 6.7.1 and *Bhashyam* (Commentary) of Sabarswami reads as follows:

Yudhisthir Mimamsak's Hindi explanation of the aforesaid commentary reads as follows:

Jaminiya-Mimamsa Sutra 6.7.3 and Bhashyam (Commentary) of Sabarswami reads as follows:

- न भूमिः स्यात् सर्वान् मत्यविशिष्टत्वात् ॥३॥ (उ०)

न भूमिर्देयेति। कुतः ? क्षेत्राणामीशितारो मनुष्या दृश्यन्ते, न कृत्स्नस्य पृथिवीगोलकस्येति। आह। य इदानीं सार्वभौमः स तर्हि दास्यति। सोऽपि नेति ब्रूमः। कुतः ? यावता भोगेन सार्वभौमो भूमेरीष्टे, तावताऽन्योऽपि। न तत्र कश्चिद्विशेषः। सार्वभौमस्य त्वेतदधिकं, यदसौ पृथिव्यां संभूतानां व्रीह्यादीनां रक्षणेन निर्विष्टस्य कस्यचिद्भागस्येष्टे, न भूमेः, तस्मिन्निर्विष्टाश्च ये मनुष्यास्तैरन्यत् सर्वप्राणिनां धारणचंक्रमणादि यद्भूमिकृतं, तत्रेशित्वं प्रति न कश्चिद् विशेषः। तस्मान्न भूमिर्देया ॥३॥ विश्वजिति भूमेरदेयत्वाधिकरणम् ॥३॥

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Yudhisthir Mimamsak's Hindi explanation of the aforesaid commentary reads as follows:

सूत्रार्थः—(भूमिः) भूमि देय (न) नहीं (स्यात्) होवे, (सर्वान् प्रति) सब के प्रति (अविशिष्टत्वात्) सामान्य होने से (=सब की साझी होने से)।

व्याख्या—भूमि देय नहीं है। किस हेतु से? खेतों के स्वामी मनुष्य देखे जाते हैं। सम्पूर्ण पृथिवीगोलक के नहीं [देखे जाते हैं]। (आक्षेप) जो सार्वभौम [राजा] है वह देगा (=भूमि का दान करेगा)। (समाधान) वह भी नहीं देगा, ऐसा हम कहते हैं। किस हेतु से? जितने भोग से सार्वभौम राजा भूमि का स्वामी होता है उतने से अन्य भी स्वामी होता है। उसमें कुछ विशेष नहीं है। सार्वभौम राजा का यह अधिक है, जो यह पृथिवी में उत्पन्न हुए व्रीहि आदि के रक्षण से प्राप्त किसी भाग का स्वामी होता है, उसमें रहने वाले जो मनुष्य हैं उनसे, सब प्राणियों के धारण गमन आदि जो अन्य भूमिकृत [व्यापार है] उसमें स्वामित्व के प्रति कोई विशेष नहीं है। इससे भूमि देय नहीं है।

Yudhisthir Mimamsak's Hindi explanation of *Kutuhal Vritti* on *Jaminiya-Mimamsa Sutra* 6.7.3 reads as follows:

विशेष—कुतूहलवृत्ति में लिखा है—भूमि गोपथ (=पगदण्डी) राजपथ (=सड़क) जलाशय, वन, पर्वत आदि से युक्त होती है। इस प्रकार की भूमि पर किसी का स्वामित्व नहीं होता है, [राजा का कार्य केवल] कण्टक उद्धरणमात्र है। उस भूमि से (अथवा—कण्टकोद्धरण से) उत्पन्नफल का ग्रहण ही राजा का भूमि के प्रति स्वामित्व है। गोपथ आदि में साधारण होने से ॥३॥

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*Original Text of the Kutuhal Vritti* on *Jaminiya-Mimamsa Sutra* 6.7.3 reads as follows:

**न भूमिस्स्यात् सर्वान्प्रत्यविशिष्टत्वात् ॥ ३ ॥**

(भूमिर्न देया स्यात्, तस्यास्सर्वान् प्रत्यविशिष्टत्वात्।) भूमिर्हि गोपथराजपथराजजलाशयवनपर्वतादियुक्ता। तादृश्याश्च न कस्यापि स्वामित्वम्, किन्तु कण्टकोद्धरणमात्रम्। राज्ञः तदुत्पन्नफलादानं हि भूमिं प्रति स्वामित्वम्। न हि गोपथादौ स्वामित्वमस्ति, गोपथादेस्साधारणत्वात्। अतो महापृथिवी न देया, किन्तु वास्तुक्षेत्रादिकमेवेति ॥

*Explaination of Sri Swami Karpatriji Maharaj on Jaminiya-Mimamsa Sutra* 6.7.3 in his book 'Marxvad Aur Ramrajya" reads as follows:

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'न भूमिर्देया स्यात् सर्वान् प्रत्यविशिष्टत्वात् ।' (मीमांसादर्श० ६ । ७ । २ । ६)

अर्थात् राजमार्ग, चत्वर, देवादि स्थानसहित अखण्डभूमिका दान नहीं हो सकता; क्योंकि वह सबकी है। यद्यपि यहां कुछ लोगोंने इसी आधारपर यह भी सिद्ध किया है कि भूमि किसी व्यक्तिकी नहीं होती, किंतु वह समाजकी होती है, इसीसे उसका दान नहीं हो सकता, किंतु पूर्वापर देखनेसे यह गलत सिद्ध होता है। उसका अभिप्राय इतना ही है कि चत्वर, राजमार्गादिसहित भूमिका दान नहीं हो सकता, क्योंकि हो सकता है कि प्रतिग्रहीता राजमार्गमें ही खेत, उद्यान बनावे और दूसरोंको चलनेसे रोके। अतः अखण्ड भूमण्डलका दान नहीं हो सकता। हां, देवस्थान, चत्वर, राजमार्गादि छोड़कर समस्त

भूमिका दान शतपथ, ऐतरेय आदिमें स्पष्ट वर्णित है।

11. The Satpath Brahman commands that King cannot gift or donate the land of the Brahmins as to the sacrificial fee, from which it is crystal clear that the Debutter property which was all along being held by the Brahmin sebait for service worship of Deities for and on behalf of the Deities was not within the proprietorship of the King. The relevant extract from the Satpath Brahman XIII.6.2.18 translated by Julius Eggeling, Edited by F. Maxmuller and published by Motilal Banarsidass Publishers Pvt. Ltd., Delhi, reprinted Edn. 2002 of 1st Edn. 1900 being volume 44 of the series Sacred Books from the East reads as follows:

> "18. Now as to the sacrificial fees. What there is towards the middle of the kingdom other than the land and the property of the Brahma*n*a, but including the men, of that the eastern quarter belongs to the Hot*ri*, the southern to the Brahman, the western to the Adhvaryu, and the northern to the Udgat*ri*; and the Hot*ri*kas share this along with them."
>
> *Satpath Brahman XIII.6.2.18 Ibid p. 412*

It means land and property of Brahmins which includes

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debutter property can not be gifted by the King as it is alwas under the ownership of almighty or revenue free but revenue of the land and tax on the properties of other three Varnas was within the purview of the King's gift.

12. The Holy Scripture Sri Bandhayana Dharmasutra (1.18.1,14,15,16) Says that King is entitled for 1/6th taxes for protecting His subjects. Tax should not be oppressive. The King can not appropriate property of Brahmin even he has disappeared. Here according to interpretation of Manu by Medhatithi, the property of Brahmin means property given to the Brahmin for performing service and worship of deities. From this provision it is crystal clear that in respect of Debutter Property according to Hindu Law provision of Adverse Possession or Doctrine of Escheat were not applicable. Sutra nos. 1,14,15 & 16 of 18th *Khanda's Pratham Prashna* of Sri Baudhayan Dharm Sutra from page 233 of the book "DHARMSUTRAS The Law Codes of Apastamba, Gautama, Baudhayana, and Vasistha" annotated and translated by Patrick Olivelle reprinted edn.2003 published by Motilal Banarasidass Publishers Pvt. Ltd. read as follows:

> "Receiving one sixth as taxes, a king should protect his subjects."
> (BAUDHAYANA DHARMASUTRA 1.18.1)
>
> "The duty on goods imported by sea is 10 per cent plus a choice piece of merchandise."

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(BAUDHAYANA DHARMASUTRA 1.18.14)

"He should assess an equitable tax also on other types of merchandise corresponding to their value, a tax that would not be oppressive."
(BAUDHAYANA DHARMASUTRA 1.18.15)

"When the owner has disappeared, the king should look after his estate for one year, after which he may appropriate it, so long as it does not belong to a Brahmin."

(BAUDHAYANA DHARMASUTRA 1.18.16)

13. The Holy Sacred Scripture Sri Mahabharata lays down that it is duty of the King to protect the people. King should realize 6th part as tax and act in such a way that his subjects may not feel the pressure of want. The King who does not act in accordance with the scripture fails to earn wealth and religious merit. The King who thoughtfully oppresses his subject by levying taxes not sanctioned by the scriptures, is said to wrong his own-self. By protecting a kingdom properly and ruling it by the aid of judicious men a King may succeed in always obtaining much wealth. The King adopting virtuous behaviour should protect his subjects. Protection of the subject is the highest duty of the King, since compassion to all creatures and protecting them from injury is said to be the highest merit. The merit of the King earned by protecting his subjects rightly for a single day is such that he enjoys this reward for 10,000 years. After subjugating dominions of other King the King should say to

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all the people that "I am your King and shall always protect you." If the people accept him as their King, there need not be any fighting. Relevant extracts from page nos. 119-20,157-59 & 206 of Volume III of "The Mahabharata" of Sri Krishna-Dwaipayana Vyasa Translated into English prose from the Original Sanskrit Text by Kisari Mohan Ganguli 3rd Edn. 2004 Published by Munshiram Manoharlal Publishers Pvt. Ltd.

> "Bhishma said, 'Protection of the subject, O Yudhishthira, is the very cheese of kingly duties. The divine Vrihaspati does not applaud any other duty (so much as this one). The divine Kavi (Usanas) of large eyes and austere penances, the thousand-eyed Indra, and Manu the son of Prachetas, the divine Bhadrawaja, and the sage Gaurasiras, all devoted to Brahma and utterers of Brahma, have composed treatises on the duties of Kings. All of them praise the duty of protection, O foremost of virtuous persons in respect of kings. O thou of eyes like lotus leaves and of the hue of copper listen to the means by which protection may be secured."
>
> *Mahabharata: Shantiparv VIII.LVIII Ibid p.119-20*
>
> "With a sixth part upon fair calculation, of the yield of the soil as his tribute, with fines and forfeitures levied upon offenders, with the imposts, according to the scriptures, upon merchants and traders in return for the protection granted to them, a king should fill his treasury. Realising this just tribute and governing the kingdom properly the king should, with heedfulness, act in such a way that his subjects may not feel the pressure of want. Men become deeply devoted to that king who discharges the duty of protection properly, who is endued with liberality, who is steady in the observance of righteousness, who is vigilant, and who is free from lust and hate. Never

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desire to fill thy treasury by acting unrighteously or from covetousness. That king who does not act in accordance with the scriptures fails to earn wealth and religious merit.

*Mahabharata: Shantiparv VIII.LXXI Ibid p.157-58*

Persons conversant with duties regard that to be the highest merit of the king, when, engaged in protecting all creatures, the king displays compassion towards them. The in a king incurs by neglecting for a single day to protect hi subjects from fear a thousand year. The merit a king earns by protecting his subjects righteously for a single day is such that he enjoys its reward in heaven for ten thousand years. All those regions that are acquired by persons leading duly the Garhasthya, the Brahmacharya, and the Vanaprastha modes of life, are soon acquired by only protecting his subjects righteously. Do thou, O sor of Kunti, observe with great care this duty (of protection). Thou shalt then obtain the reward of righteousness and no grief and pain will be thine. Thou shalt, O son of pandu obtain great prosperity in heaven. Merit like this is impossible to be acquired by persons that are not kings."

*Mahabharata: Shantiparv VIII.LXXI Ibid p.158-59*

"Yudhishthira said, 'If a Kshatriya desires to subjugate another Kshatriya in battle, how should the former act in the matter of that victory? Questioned by me, do thou answer it.'

"Bhishma said, 'the king or without an army at his back, entering the dominions of the king he would subjugate, should say unto all the people. 'I am your king. I shall always protect you. Give me the just tribute or encounter me in battel.' If the people accept him for their king, there need not be any fighting. If without being Kshatriyas by birth, they show signs of hostility, they should then, observant as they are of practices not laid down for them. be sought to be restrained by every means. People of the other orders do take up arms (for resisting the invader) if they behold the Kshatriya unarmed for fight, incapable of protecting himself, and making too much of the

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enemy."(ibid p.-63)
*Mahabharata: Shantiparv VIII.XCV Ibid p.206*

14. In the book 'Travels of Fah-Hian and Sung-Yun from China to India (400 AD and 518 AD) translated by Samuel Beal, and published by Low Price Publication, Delhi, reprinted Edn. 2005 of the 1st Edn. 1869 Fah-Hian writes that the King were giving grants to Idol Temples with instruction to future Kings to maintain said endowment. Relevant extract from page 55 of the said book reads as follows:

> "From the time of Buddha's Nirvana, the kings and nobles of all these countries began to erect Viharas for the priesthood, and to endow them with lands, gardens, houses, and also men and oxen to cultivate them. The Records of these endowments, being engraved on sheets of copper have been handed down from one king to another, so that no one has dared to deprive them of possession, and they continue to this day to enjoy their proper Revenue."

(*Ibid.* p.55)

15. Ibn Battuta writes that in the city of Dinawar, there was a vast temple in which a thousand Brahmins and Yogis and others were engaged in service of the idol and revenue of the city was endowed to the idol. Relevant extract from page 260 of the book 'Ibn Battuta's travels in Asia and Africa 1325-1354, translated by H.A.R. Gibb, reprint Edn. 2007, published by Low Price Publications, Delhi 1st Edn.1929 from reads as follows:

> "We travelled thence to Dinawar, a large town on the coast, inhabited by merchants. In this town there is an idol, known as Dinawar, in a vast temple, in which there are about

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> a thousand Brahmans and Yogis, and about five hundred women, daughters of the infidels, who sing and dance every night in front of the idol. The city and all its revenues form an endowment belonging to the idol, from which all who live in the temple and who visit it are supplied with food. The idol itself is of gold, about a man's height, and in the place of its eyes it has two great rubies, which, as I was told, shine at night like lamps."
>
> *'Ibn Battuta's travels in Asia and Africa p.260*

16. History of Kings of Kashmir Rajtarigini of Kalhana written in 1148 A.D. records that King Chandrapid did not forcefully acquire land of a leather worker for completion of Tribhuvanasvamin's temple and when the said leather worker put condition that if the King would go to his house and ask for handing over said land, only then he would give land to the King; the judicious King complied with said condition and after purchasing said land the King consecrated the image of Kesava as Tribhuvanasvamin. From which instance it is clear that neither Hindu Kings were owners of the land of the subject people nor there was scriptural sanction to erect Temple on forcefully acquired others' land. Relevant extracts from page 123 of the Rajtarigini, written by Kalhana in the year 1148 translated into English by Ranjit Sitaram Pandit, and published by Sahitya Akademi reprint 1990, 1st published in 1935) read as follows:

> **"**By that king, who showed the way of justice, was established legal procedure, free from laxity as the sun wards off the Mandehas from his diurnal course.
> If the brake is applied to this narrative in the recital of

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his virtues, it is in order to check prolixity but not because so much only was available.

When he began the construction of the temple of Tribhuvanasvamin, a certain leather worker would not give up his hut which was on the suitable site.

Though he had been constantly promised money by the officials in charge of the new construction he, who was in the grip of his native obstinacy, did not brook the laying down of the measuring line.

Thereupon they approached the lord of the earth and reported this matter, he, however, held them to be at fault but not that tanner.

He exclaimed, “Fie on their lack of foresight that they should, without first having asked him, have entered upon the new construction.”

Stop the construction or build somewhere else; by seizing the land of another who would tarnish an act of piety!

If we ourselves, who are the judges of what is right and unright, enforce procedure which is unlawful who should tread the path which is according to law.

While the king was speaking in this wise, a messenger sent by the cabinet of ministers on behalf of that shoemaker arrived and prayed.

He wishes to see the liege-lord but he says, “If it is not the correct thing for me to enter the hall of audience then let this be during the hour of the vestibule session.

The next day he was given an audience by the king outside and was asked, “ why art thou the sole hindrance in our work of piety.

If that house appeals to thee as charming them thou mayst apply for one better than that or in the alternative for a large sum of money” thus it was put to him.

Thereupon to the king who remained silent the tanner, who was as it were endeavouring to gauge the measure of his probity the lines of rays from his gleaming teeth, prayed.

‘O King! For what I am about to submit which is straight from the heart, you should not be prejudiced since you are the judge in this matter.

I am not less than a dog nor is the king greater than Ramchandra; why then do the councilors to-day get agitated, as it were, at this private talk between the two of us?”

In the mundane existence the body of the being, which has had its birth, is a fragile armour and is fastened with only to claps called the instinct of self

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and the possessory instinct.
As in the case of Your Highness who is resplendent with bracelets, armlets, necklaces and the like we, too, who own nothing are proud of our own body.
Just as much as this palace, joyous with the gleaming stucco, is to your Majesty, the cottage, where the window is made of the mouth of an earthen pot is to me.
Since my birth this little cottage has been the witness, like a mother, of both happiness and unhappiness; I could not bear to see it today leveled to the ground.
The distress of mankind at the seizure of their dwelling-house, either an immortal fallen from the Vimana or a king deposed from sovereignty is capable of describing it.
Notwithstanding this, if after coming to my dwelling Your Majesty were to ask for it, yielding to the rule of good manners it would be the proper thing for me to give it.'
When he had given the reply in this way, the king after going to his place purchased the cottage with money; there is no pride for those who are seekers after bliss.
And the leather worker spoke to him at that place with hands folded hollow, "O King! Yielding to another under the compelling influence of the Law is proper on your part.
As in the past that of Pandu's son by Dharma in the form of a dog, so by me who am an Untouchable has been tested today the righteousness in your case.
Hail to you! Long may you live to exhibit such a series of upright acts according to law ift to be relied upon by the law-officers."
In this manner the King, whose conduct was stainless, sanctified the land by the consecration of the image of Kesava as Tribhuvanasvamin."

*(Rajtarangini.4.53-78 Ibid. p.121-123)*

He has further invited the attention of this Court that since the birth place of the deity if there is destruction of image it makes no difference because Janam Asthan shall be treated to be an idol and it is the juristic entity. He has further submitted that idol will be supposed to be the minor accordingly there cannot be any

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adverse possession against a minor i.e a deity. He has further argued that Janam Asthan absolutely is a religious place and the dedication is complete and in case of a Dev Asthan temple properties dedicated for religious uses are called a debutters property which means belonging to the deity. Deity is a perpetual minor and accordingly no adverse possession can be claimed against deity i.e. against Ram Janam Sthan in accordance with the Hindu jurisprudence and present legal jurisprudence. He has further submitted that an idol i.e. the birth place is a juridical person. Worshipers of an idol are its beneficiary. He has further submitted that persons who go for the purpose of devotion and prayers to Janam Sthan according to Hindu law and religion have a greater and deeper interest in Janam Sthan i.e. a deity and more than servant who serves there for pecuniary purposes like Shebait. Accordingly there cannot be any adverse possession against the deity as claimed by the plaintiff. On the contrary, the worshipers of idol who are provided with opportunity for acquiring spiritual benefits by worshiping at the Janam Sthan are real beneficiary and they have every right to protect the property of the deity. Idol is regarded as the owner of the endowed property and the real beneficiary the worshipers of the idol who have acquired spiritual benefits can pray that even after removal or replacement of idol or even after the damage of the property belonging to idol no adverse possession can be claimed against it.

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Sri Ravi Shankar Prasad has further argued that the plaintiffs at para 11 of the plaint have claimed their title by adverse possession which is not permissible in law for two reasons;

(i) Birth place i.e. Sthan Ram Janam Bhoomi is itself a deity. There cannot be any adverse possession against a juridical person as it is not a property.

(ii) For claiming adverse possession it is necessary for the person to name the original owner of the property in this case.

Sri Ravi Shanker Prasad has further submitted that since Ram Janam Bhoomi, is a deity and has not been arrayed as party, the suit is bad for non-joinder of the necessary party. Secondly the plaintiffs have not referred in the plaint as to who is the original owner of the property. Thus the suit is liable to be dismissed on this ground alone.

The concept of adverse possession is based on the facts of dispossession of owner and gaining of legal possession by the dispossessor and negligence on the part of the owner to seek remedial action within a prescribed time. The elements of adverse possession are that the possession is actual, open, notorious, exclusive, hostile, under cover of claim or right and continuous and uninterrupted for the statutory period. In this case the plaintiffs have not furnished any detail as to how their adverse possession based on the fact of dispossession of the owner. Plaintiffs' have not mentioned as to who is the real owner of the property. It has also

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not been pleaded that the possession of the plaintiff is open, notorious, exclusive and hostile to the true owner. Plaintiffs have not claimed the property under the colour of the title and at present the property is not in the actual use and possession of the plaintiffs. On the contrary, it has been urged from the side of the defendants that the property in suit was never in exclusive use of the plaintiffs. Plaintiffs have not furnished the details as to who is the real owner. It has nowhere been mentioned in the plaint as and when the true owner was dispossessed and plaintiff occupied the property exclusively keeping out others and used it as if it was his own. There is no evidence worth the name that the plaintiff remained in possession without challenge or permission from the lawful owner. Here the defendants claimed that charitable religious institutions which is a deity cannot remain under the possession of the plaintiffs and cannot be termed as adverse possession. It is not the case of the plaintiffs that they entered and used the land without the permission of the true owner. Thus, according to the plaintiffs, they are not civil trespassers on the property and have taken the property by evicting the true owner. In this context, it transpires that the property in suit is said to be a Nazul property which belongs to the State and now the plaintiffs claimed their dispossession from the property from 1949. Adverse possession is sometimes called squatter's rights. If the squatter abandons the property or is removed from the property even after a long possession, he loses the benefit of that possession. If he

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retakes the possession then he has to remain in the property for a full period through which he can acquire any right over the same. In this case it is admitted to the plaintiffs that they have been ousted from the property in suit in the year 1949 and thereafter the property in suit was demolished in 1992 and they had no control over the property. Consequently, plaintiffs have failed to substantiate the right of adverse possession over the land which is entered in Revenue record as Government land. The plaint averment implies that someone else is the owner of the property. Revenue record reveals that the Government is the owner of the property. Plaintiffs claim adverse possession against the Government even without remaining in possession over the property in suit. Thus through the provisions of limitation Act also dispossession cannot be cured and they cannot be to have perfected adverse possession against the Government. Mere possession for a long time does not mature into adverse possession. Defendants too claimed that they have perfected their rights by adverse possession. They have also not denied that the title belongs to the Government and the Central Government has acquired the property. Hindus claim that since the possession for religious purposes shall be deemed to be the possession of a deity and right from the very beginning the deity was holding the property, accordingly they have the right to retain the property. Thus they have come with two pleas;

(i) The deity is the owner of the property which is minor and

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it cannot be ousted from the sacred place by the defendants.

(ii) The defendants cannot be the real owner of the property and claimed adverse possession against the land which was basically sovereign land.

Needless to say that Ayodhya and Ramkot belong to emperor Dashrath who was a sovereign King. Thereafter the property passed in the hands of charitable trust and remained under the control of the temple, the same was destroyed and without any formal sanction under the law by way of possession by dispossessing Hindu the plaintiff claim adverse possession. **Thus, to my mind the plaintiffs have failed to prove adverse possession.**

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Sri P.N. Mishra, Adv. has vehemently argued that as the disputed land is Nazul Land and the plaintiffs have failed to produce any registered lease deed, they cannot claim any relief based on title for following reasons:-

1. Oudh was annexed on 13th February, 1856 before the summary settlement could be completed, mutiny broke out in Lucknow on 30th May, 1857, and the authority of the British Government come to a standstill, the entire records so far prepared were destroyed. After the furies of the mutiny were over and the British Government was able to re-control the Province, Lord Canning, issued a proclamation on 15th March, 1859, confiscating all proprietary rights in the soil of the Province.

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2. The disputed land has been recorded as Nazul land which term has been elaborately dealt with in (1998) 1 UPLBEC 114 (*Satya Narain Kapoor v. State of U.p. & Ors.)* by the Hon'ble High Court Allahabad and which has been appreciated by the Hon'ble Supreme Court of India in (2004) 8 SCC 630 (*State of U.P. v. Satya Narain Kapoor).* In the above mentioned judgment the Hon'ble Allahabad High Court has held that the making of grants on lands which are possessed by the State is guided by the Government Grants Act, 1895. Relevant paragraph 36 of the said judgment reads as follows:

> "**36**. For this purpose the meaning of nazul needs to be understood. What does nazul means as a concept? The making of grants on lands which are possessed by the State, whether the Union or the Provincial Government or even the Railway administration is guided by a legislation originally known as the Crown Grants Act, 1895, subsequently, the nomenclature was changed to be known as Government Grants Act, 1895. This is originally a central legislation. It has been applicable to this State when it was known as North Western provinces, Late United Provinces and today as Uttar Pradesh. It is also applicable with the amendment so made by the State legislature from time to time."

3. Section 2 of the Government Grants Act, 1895 says that Transfer of Property Act, 1882 will not apply to the government grants. The said Section 2 as reproduced in paragraph 37 of Satya Narain Kapoor v. State of U.P. & Ors. (*supra)* reads as follows:

> **2.**"**Transfer of Property Act, 1882 not to apply to Government Grants.—**Nothing in the Transfer of

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> Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made (by or on behalf of the Government) to, or in favour of, any person whomsoever, but every such grant and transfer shall be constructed and take effect as if the said Act had not been passed."

4. In AIR 1973 SUPREME COURT 2520 "State of U.P. v. Zahoor Ahmad" the Hon'ble Supreme Court held that the effect of Section 2 of the Government Grants Act, 1895 is that in the construction of an instrument governed by the Government Grants Act, the Court shall construe such grant irrespective of the provisions of the Transfer of Property Act. It does not mean that all the provisions of the Transfer of Property Act, are inapplicable. Relying on said judgment it is submitted that in respect of lease provisions contained in Ch.V of the Transfer of Property Act are applicable. Relevant paragraph 15 of the said judgment reads as follows:

> "15. In the present case the High Court correctly found on the facts that the respondent after the determination of the leave held over. Even if the Government Grants Act applied Section 116 of the Transfer of Property Act was not rendered inapplicable. The effect of Section 2 of the Government Grants Act is that in the construction of an instrument governed by the Government Grants Act the court shall construe such grant irrespective of the provisions of the Transfer of Property Act. It does not mean that all the provisions of the Transfer of Property Act are inapplicable. To illustrate, in the case of a grant under the Government Grants Act Section 14 of the Transfer of Property Act will not apply because Sec-tion 14 which provides what is known as the

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> rule against perpetuity will not apply by reason of the provisions in the Government Grants Act The grant shall be construed to take effect as if the Transfer of Property Act does not apply."

5. Section 107 of the Transfer of Property Act, 1882 says that a lease of immovable property from year to year or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. Relying on said provision of law, it is submitted that as no registered lease deed has been produced by the plaintiffs and in the government record the disputed land is recorded as nazul land inference can be drawn that after confiscation of the proprietary right of the holders in 1859 the government became superior proprietor of the disputed land and Sri Ramlala became tenant on hold. As the state government vide paragraph 1 of its written statement filed in the instant suit has given up its right by opting not to contest the suit, the status quo ante came into existence and the Lord of Universe Sri Ramlala became proprietor of the disputed land. Relevant paragraph 1 of the written statement of the state government are reproduced as follows:

> "1/ That the Govt. is not interested in the properties in dispute and as such the petitioners don't propose to contest the suit."
>
> (Extract from the written Statement of the State)

6. The Sri Ramjanamsthan sthandil i.e. vedi does not come within the definition of the property or land but is a juridical

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entity question of its confiscation by virtue of proclamation on 15th March, 1859 by Lord Canning whereby all proprietary rights in the soil of the Oudh province were confiscated, or its vesting into State by virtue of any Act of acquisition does not arise at all. Definition of the property as given in Section 3(26) of General Clauses Act, 1897, Section 3 of the Transfer of Property Act, 1882 and Section 2(6)(9) of the Registration Act, 1908 read as follows:

> **3.Definitions**.—In this Act, and in all General Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—
>
> …….
>
> (26) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;"
>
> (General Clauses Act, 1897)

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> **3.Interpretation clause**.—In this Act, unless there is something repugnant in the subject or context,—
>
> "immovable property" does not include standing timber, growing crops or grass;
>
> "instrument" means a non-testamentary instrument;
>
> "attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;
>
> "registered" means registered in any part of the territories to which this Act extends under the law for the time being in force regulating the registration of documents;

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"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

"a person is said to have notice" of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

*Explanation I.*—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (XVI of 1908) from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (XVI of 1908) and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to

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which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act.

*Explanation II*.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

*Explanation III*.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

(Transfer of Property Act, 1882)

**2. Definitions**.—In this Act, unless there is anything repugnant in the subject of context,—

……

(6) "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;

……

(9) "movable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property; and

(Registration Act, 1908)

7. In AIR 1976 SC 1485 (*Vishwa Vijay Bharat. V. Fakhrul Hassan)* the Hon'ble Apex Court has held that presumption of correctness can apply only to genuine entries in the revenue records not forged or fraudulent entries. Fraud and forged rob a document of its legal effect. Relying on said judgment it is submitted that as the entries in the revenue

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records relied on by the plaintiffs have been found forged, fabricated and interpolated in its scientific examination and analysis by Forensic Science Laboratory, U.P., Lucknow as such the revenue records in its present interpolated condition cannot be relied on but can be considered a piece of evidence in the light of the report of the Forensic Science Laboratory, U.P., wherefrom it becomes crystal clear that originally in revenue record also Sri Janamsthan was recorded not Jama Masjid. It is noteworthy that even in interpolated revenue record Babri Mosque did not find place. Relevant paragraph no.14 & 15 of the said judgment read as follows:

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> "14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.
>
> 15. In Amba Prasad v. Mahboob Ali Shah, (1964) 7 SCR 800 = (AIR 1965 SC 54), it was held by this Court that Section 20 of the U. P. Act 1 of 1951 does not require proof of actual possession and that its purpose is to eliminate inquiries into disputed possession by acceptance of the entries in the Khasra or Khatauni of 1356 Fasli. While commenting on this decision, this Court observed in Sonawati v. Sri Ram, (1968) 1 SCR 617, 620 = (AIR 1968SC 466, 468) that "the Civil Court in adjudging a claim of a person to the rights of an adhivasi is not called upon to make an enquiry whether the claimant was actually in possession of the land or held the right as an

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> occupant: cases of fraud apart, the entry in the record alone is relevant." We have supplied the emphasis in order to show that the normal presumption of correctness attaching to entries in the revenue record, which by law constitute evidence of a legal title, is displaced by proof of fraud."

Sri P.N. Mishra, Adv. has submitted that ingredients of adverse possession neither have been pleaded nor have been proved, plaintiffs can not be allowed to claim relief based on title under or through emperor Babur on one hand while on other hand seeking claim denying the title of said emperor moreover being inconsistent plea of adverse possession the instant suit is liable to be dismissed on following grounds:-

1. In **AIR 2009 SC 103 (*Hemaji Waghaji Jat. v. Bhikhabhai Khengarbhai Harijan & Ors.)*** the Hon'ble Supreme Court has held that a plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is important to clearly plead and establish all facts necessary to establish his adverse possession. Relying on said judgment of the Hon'ble

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Supreme Court it is submitted that in their plaints, the plaintiffs have not stated that on what date they came into possession, what was the nature of their possession, whether the factum of possession was known to the other party and how long their possession has continued and their possession was upon and undisturbed. In the instant case the plaintiffs having failed to plead the case of adverse possession and having miserably failed to establish title to the suit property, the suit for declaration and possession is not fit for being decreed on the ground of adverse possession. Relevant paragraph Nos.11, 15, 18, 32, 34 and 36 of the said judgment read as follows:

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> "11. We deem it appropriate to deal with some important cases decided by this court regarding the principle of adverse possession.
>
> 15. The facts of R. Chandevarappa and Others v. State of Karnataka and Others (1995) 6 SCC 309 are similar to the case at hand. In this case, this court observed as under :-
> "The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession

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would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

18. In Karnataka Board of Wakf v. Govt. of India (2004) 10 SCC 779 at para 11, this court observed as under :-

"In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

32. Reverting to the facts of this case, admittedly, the appellants at no stage had set up the case of adverse possession; there was no pleading to that effect, no issues were framed, but even then the trial court decreed the suit on the ground of adverse possession. The trial court judgment being erroneous and unsustainable was set aside by the first appellate court. Both the first appellate court and the High Court have categorically held that the appellant has

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> miserably failed to establish title to the suit land, therefore, he is not entitled to the ownership. We endorse the findings of the first appellate court upheld by the High Court.
>
> 34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally, taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.
>
> 36. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.

2. In **AIR 1935 PC 53 (*Ejas Ali Qidwai & Ors. v. The Special Manager, Court of Wards, Balarampur Estate & Ors.)*** the Hon'ble Privy Council held that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In the said judgment it has also been held that the expression 'ordinary law' under Section 23 of the Oudh Estates Act of 1869 includes such customs as may be

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found to exist. In the instant case, the plaintiffs have failed to take the plea and prove by unequivocal evidence that their possession was hostile to the real owner which amounted to a denial of real owner's title to the property claimed. Be it mentioned herein that as the plaintiffs have not disclosed in their plaint the name of the real owners, they have failed to satisfy the first ingredients of adverse possession. As such, the suit is liable to be dismissed on this score alone. Relevant paragraph from page 56C1 of the said judgment reads as follows:

> "Wazir Ali died, his son Hashmat Ali was an infant of tender years, and was unable to manage the estate. There was therefore an additional reason why Nawazish Ali, who satisfied the requirements of the family usage, should be entrusted with the management of the taluka. There can be little doubt that he obtained possession with the consent of all the persons interested in the estate, and his possession was, at its inception, merely permissive. It is not suggested that there was any subsequent change which converted it into adverse possession. The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. This onus the appellants have failed to discharge. Neither the entry of Nawazish Ali's name in the revenue records as the owner of the taluka, nor his possession thereof, could, in the circumstances of the case, affect the title of the person or persons who had the right to inherit it. The acquisition of title by adverse possession was the only point urged in support of the appellants' claim to a share in the villages constituting the taluka, and in their Lordships' opinion that issue has been rightly decided against them.
>
> Their Lordships have still to determine the question of succession to the villages which, though not forming part of the original taluka, were included in

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> the mortgage deeds. These villages were acquired by the holders of the taluka on various occasions, and it was argued that they, being non-talukdari property, descended on the death of Asghar Ali, not to Iqbal Ali alone, but to all the persons who were the heirs of the deceased according to the Mahomedan law. As laid down by the twenty-third section of the Oudh Estates Act, succession to such property is regulated by the ordinary law, but the expression "ordinary law" includes such custom as may be found to exist. Now, the Courts in India have concurred in holding that the custom of the devolution of non-talukdari property upon a single heir has been established, and their Lordships cap see no valid reason for dissenting from that conclusion. The second list framed under S. 8 of the Act contains a recital of the family custom by which the estate is inherited by a single heir, but this recital is conclusive evidence only as to the talukdari property. As regards the other property, it merely raises a presumption in favour of the existence of the custom, but the presumption can be rebutted. The appellants however did not offer any evidence to show that the descent of the property other than the taluka was regulated by a different rule. No distinction appears to have been made between the taluka and the other property in the matter of succession, and both of them were treated in the same manner."

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3. In A**IR 2008 SC 346 (*Anna Kili. v. A. Vedanayagam & Ors.)*** the Hon'ble Apex Court has held that in respect of adverse possession not only *animus possidendi* must be shown to exist but the same must be shown to exist at commencement of possession. The claimant must continue in said capacity for the period prescribed under Limitation Act and mere long possession for a period of more than 12 years without anything more would not ripe into title. In the instant suit, the plaintiffs have neither proved the existence of *animus possidendi* at commencement of their possession

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nor have they proved continuance of their possession in such capacity. The suit on the ground of adverse possession is liable to be dismissed. Be it mentioned herein that before the annexation of Oudh to British India of East India Company, the law of *Shar* was the law of the land and was in force and as *Shar* did not recognize adverse possession and limitation is alien to said law at least till 1856, they had no right to claim ownership on the basis of adverse possession. Be it mentioned herein that in paragraph 26 of the said judgment, the Hon'ble Supreme Court has held that the person who is claiming benefit of Article 142 or 144 of the Limitation Act, 1908, he is bound to prove his title as also possession within 12 years preceding the date of the institution of the suit. Relevant paragraphs 22 and 26 of the said judgment read as follows:

> "22. Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.

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> 26. We may also notice that this Court in M. Durai v. Muthu and Ors. [(2007) 3 SCC 114], noticed the changes brought about by Limitation Act, 1963, vis-a-vis, old Limitation Act, holding : 2007 AIR SCW 6248
>
> "The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-a-vis the Limitation Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."

4. In **AIR 2007 SC 1753 (*P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.)*** the Hon'ble Apex Court has held that adverse possession is a right which comes into play not just because someone looses his right to reclaim his property out of continuance and wilful negligence but also on the ground of possessor's positive intent to dispossess. As the right of property is not only a constitutional or statutory right but also a human right. It has also been held that intention to possession cannot be substituted for intention to dispossession which is essential to prove adverse possession. Thus, there must be intention to dispossess and it needs to be open and hostile enough to bring the same to the knowledge to give the owner an opportunity to object. Applying the said principle pronounced by the Hon'ble Supreme Court of India, in the instant case we find that the plaintiffs have neither pleaded nor have proved by evidence

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that they had intention to dispossess the real owner as name of the real owner itself does not find place in the four corner of the plaint. As such the said suit is liable to be dismissed. Relevant paragraphs 12 and 32 of the said judgment reads as follows:

> "12. This brings us to the issue of mental element in adverse possession cases-intention.
> 1. Positive Intention
> The aspect of positive intention is weakened in this case by the sale deeds dated 11.04.1934 and 5.07.1936. Intention is a mental element which is proved and disproved through positive acts. Existence of some events can go a long way to weaken the presumption of intention to dispossess which might have painstakingly grown out of long possession which otherwise would have sufficed in a standard adverse possession case. The fact of possession is important in more than one ways: firstly, due compliance on this count attracts limitation act and it also assists the court to unearth as the intention to dispossess.
> At this juncture, it would be in the fitness of circumstances to discuss intention to dispossess vis-a-vis intention to possess. This distinction can be marked very distinctively in the present circumstances.
> Importantly, intention to possess can not be substituted for intention to dispossess which is essential to prove adverse possession. The factum of possession in the instant case only goes on to objectively indicate intention to possess the land. As also has been noted by the High Court, if the appellant has purchased the land without the knowledge of earlier sale, then in that case the intention element is not of the variety and degree which is required for adverse possession to materialize.
> The High Court observed:
> "It is seen from the pleadings as well in evidence that the plaintiff came to know about the right of the defendants', only when disturbances were sought to be made to his possession."
>
> In similar circumstances, in the case of Thakur

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Kishan Singh (dead) v. Arvind Kumar [(1994) 6 SCC 591] this court held: 1994 AIR SCW 4082, Para 5

"As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licencee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession. Apart from it, the Appellate Court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse."

The present case is one of the few ones where even an unusually long undisturbed possession does not go on to prove the intention of the adverse possessor. This is a rare circumstance, which Clarke LJ in Lambeth London Borough Council v. Blackburn (2001) 82 P and CR 494, 504 refers to:

"I would not for my part think it appropriate to strain to hold that a trespasser who had established factual possession of the property for the necessary 12 years did not have the animus possidendi identified in the cases. I express that view for two reasons. The first is that the requirement that there be a sufficient manifestation of the intention provides protection for landowners and the second is that once it is held that the trespasser has factual possession it will very often be the case that he can establish the manifested intention. Indeed it is difficult to find a case in which there has been a clear finding of factual possession in which the claim to adverse possession has failed for lack of intention."

On intention, The Powell v. Macfarlane (1977) 38 P and CR (Property, Planning and Compensation Reports) 452-472 is quite illustrative and categorical, holding in the following terms:

"If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ('animus

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possidendi')."

.....

If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.

.....

In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner.

...

What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

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Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

While dealing with the aspect of intention in the Adverse possession law, it is important to understand its nuances from varied angles.

Intention implies knowledge on the part of adverse possessor. The case of Saroop Singh v. Banto and Others [(2005) 8 SCC 330] in that context held:

2005 AIR SCW 5314, Paras 27, 28

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"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak) 2004 AIR SCW 1704

30. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita, SCC para 21.)"

A peaceful, open and continuous possession as engraved in the maxim nec vi, nec clam, nec precario has been noticed by this Court in Karnataka Board of Wakf v. Government of India and Others [(2004) 10 SCC 779] in the following terms:

".....Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession....."

It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper owner of the property. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper

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owner.

In Narne Rama Murthy v. Ravula Somasundaram and Others [(2005) 6 SCC 614], this Court held:

"However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The suit filed almost immediately thereafter."

The test is, as has been held in the case of R. v. Oxfordshire County Council and Others, Ex Parte Sunningwell Parish Council [1999] 3 ALL ER 385; [1999] 3 WLR 160:

Bright v. Walker (1834) 1 Cr. M. and R. 211, 219, "openly and in the manner that a person rightfully entitled would have used it. . ." The presumption arises, as Fry J. said of prescription generally in Dalton v. Angus (1881) 6 App.Cas. 740, 773, from acquiescence.

The case concerned interpretation of section 22(1) of the Commons Registration Act 1965. Section 22(1) defined "town or village green" as including

".....land..... on which the inhabitants of any locality have indulged in [lawful] sports and pastimes as of right for not less than 20 years."

It was observed that the inhabitants' use of the land for sports and pastimes did not constitute the use "as of right". The belief that they had the right to do so was found to be lacking. The House held that they did not have to have a personal belief in their right to use the land. The court observed:

"the words 'as of right' import the absence of any of the three characteristics of compulsion, secrecy or licence 'nec vi, nec clam, nec precario', phraseology borrowed from the law of easements."

Later in the case of Beresford, R (on the application of) v. City of Sunderland [2003] 3 WLR 1306, [2004] 1 All ER 160 same test was referred to.

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Thus the test of nec vi, nec clam, nec precario i.e., "not by force, nor stealth, nor the license of the owner" has been an established notion in law relating to the whole range of similarly situated concepts such as easement, prescription, public dedication, limitation and adverse possession.
In Karnataka Wakf Board (Supra), the law was stated, thus:

"In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D N Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature 1993 AIR SCW 3606
1997 AIR SCW 2947 of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."
2. Inquiry into the particulars of Adverse Possession

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Inquiry into the starting point of adverse possession i.e. dates as to when the paper owner got dispossessed is an important aspect to be considered. In the instant case the starting point of adverse possession and other facts such as the manner in which the possession operationalized, nature of possession: whether open, continuous, uninterrupted or hostile possession - have not been disclosed. An observation has been made in this regard in S.M. Karim v. Mst. Bibi Sakina [AIR 1964 SC 1254]: Para 5

"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

Also mention as to the real owner of the property must be specifically made in an adverse possession claim.

In Karnataka Wakf Board (Supra), it is stated:

"Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. In P Periasami v. P Periathambi (1995 ) 6 SCC 523 this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with Mohan Lal v. Mirza Abdul Gaffar (1996 ) 1 SCC 639 that is similar to the case in hand, this Court held: 1996 AIR SCW 306, Para 4

"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the

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period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.""
3. New Paradigm to Limitation Act

The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession. The ingredients of adverse possession have succinctly been stated by this Court in S.M. Karim v. Mst. Bibi Sakina [AIR 1964 SC 1254] in the following terms: Para 5

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".....Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found....."
[See also M. Durai v. Madhu and Others 2007 (2) SCALE 309]

The aforementioned principle has been reiterated by this Court in Saroop Singh v. Banto and Others [(2005) 8 SCC 330] stating: 2005 AIR SCW 5314

"29. In terms of Article 65 the starting point of limitation does not commence from 2004 AIR SCW 1704 the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak)
30. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not

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adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita, SCC para 21.)"
In Mohammadbhai Kasambhai Sheikh and Others v. Abdulla Kasambhai Sheikh [(2004) 13 SCC 385], this Court held:
".....But as has been held in Mahomedally Tyebally v. Safiabai the heirs of Mohammedans (which the parties before us are) succeed to the estate in specific shares as tenants-in-common and a suit by an heir for his/her share was governed, as regards immovable property, by Article 144 of the Limitation Act, 1908. Article 144 of the Limitation Act, 1908 has been materially re-enacted as Article 65 of the Limitation Act, 1963 and provides that the suit for possession of immovable property or any interest therein based on title must be filed within a period of 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. Therefore, unless the defendant raises the defence of adverse possession to a claim for a share by an heir to ancestral property, he cannot also raise an issue relating to the limitation of the plaintiffs claim....."

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The question has been considered at some length recently in T. Anjanappa and Others v. Somalingappa and Another [(2006) 7 SCC 570], wherein it was opined : 2006 AIR SCW 4368

"The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable....."

[See also Des Raj and Ors. v. Bhagat Ram (Dead) by LRs. and Ors., 2007 (3) SCALE 371; Govindammal v. R. Perumal Chettiar and Ors., JT 2006 (10) SC 121 : (2006) 11 SCC 600] 2007 AIR SCW 1560 2006 AIR SCW 5794

32. Are we to say that it is a sale with doubtful

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> antecedents (1 acre 23 Guntas) sought to be perfected or completed through adverse possession? But that aspect of the matter is not under consideration herein. As has already been mentioned, adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and willful neglect but also on account of possessor's positive intent to dispossess. Therefore it is important to take into account before stripping somebody of his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the paper-owner of the property. This test forms the basis of decision in the instant case."

5. In 2006 AIR SCW 4368 (*T. Ajasnappa & Ors. v. Sonalingappa & Anr.)* the Hon'ble Supreme Court has held that adverse possession means hostile possession which is exclusively or impliedly in denial of title of true owner. Even if defendants claim adverse possession, they still have to prove who is true owner if they are not sure who is true owner, the question of their being in hostile possession and question of denial of title of true owner do not arise. Relying on said Judgment it is submitted that the plaintiffs are not sure who is true owner of the suit property and also that they have failed to prove who is true owner, and as such, the instant suit is liable to be dismissed. Relevant paragraph Nos.12 to 23 of the said judgment reads as follows:

> "12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

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13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner. (See Vidya Devi v. Prem Prakash and Ors. 1995 (4) SCC 496). 1995 AIR SCW 2808

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.

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15. "Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. (See Annasaheb v. B.B. Patil AIR 1995 SC 895 at 902). 1995 AIR SCW 709, Para 12

16. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not

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by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

17. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See Ward v. Carttar (1866) LR 1 Eq.29 ). Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See Rains v. Buxion, 1880 (14) Ch D 537).

18. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for

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by Section 15. Possession is not held to be adverse if it can be referred to a lawful title.

19. According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".

20. It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.

21. In Halsbury's 1953 Edition, Volume-I it has been stated as follows:
"At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterwards be reviewed either by re-entry or by subsequent acknowledgement. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him".

22. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile

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action.

23. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable. Therefore, the appeal which relates to OS 168/85 is allowed by setting aside the impugned judgment of the High Court to that extent. Equally, the High Court has proceeded on the basis that the plaintiff in OS.286/88 had established his plea of possession. The factual position does not appear to have been analysed by the High Court in the proper perspective. When the High Court was upsetting the findings recorded by the court below i.e. first appellate Court it would have been proper for the High Court to analyse the factual position in detail which has not been done. No reason has been indicated to show as to why it was differing from the factual findings recorded by it. The first appellate Court had categorically found that the appellants in the present appeals had proved possession three years prior to filing of the suit. This finding has not been upset. Therefore, the High Court was not justified in setting aside the first appellate Court's order. The appeal before this Court relating to O.S. 286 of 1988 also deserves to be allowed. Therefore, both the appeals are allowed but without any order as to costs."

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6. In AIR 2004 SC 3782 (*Amarendra Pratap Singh. v. Tej Bahadur Prajapati & Ors.)* the Hon'ble Supreme Court has held that a general law cannot defeat the provision of special law to the extent to which it was in conflict; else an effort has to be made at re-conciliating the two provisions of by homogeneous rules. As the wakfs are governed by the

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special law that is Muslim personal law and even the subsequent legislations in respect of wakf being United Provinces Muslim Wakf Act, 1936, the Wakf Act, 1954, the Uttar Pradesh Muslims Wakf Act, 1960 and the Wakf Act, 1995 recognizes the application of law of *Shar* and law of *Shar* does not recognize adverse possession in respect of creation of wakf, the plaintiffs cannot acquire title by adverse possession. Relevant paragraph 28 of the said judgment reads as follows:

> **"28.** The learned counsel for the respondents relied heavily on Para 7-D of the 1956 Regulations and upon two decisions of the Orissa High Court rendered by reference thereto namely Laxmi Gouda and others v. Dandasi Goura (deceased by LR) and others, AIR 1992 Ori 5 and Madhia Nayak v. Arjuna Pradhan and others, (1988) 65 Cuttack LT 360. We have carefully perused both the decisions. The question which arose for decision therein was the effect of amendment made in Para 7-D of the Regulations and given a retrospective operation with effect from a back date. The High Court has held that if adverse possession extending over a period of 12 years had already stood perfected into acquisition of title before the date of the amendment, then the amended provision could not be read so as to extend the period of 12 years of acquisition of title by adverse possession substituted as 30 years even if such date fell after 2-10-1973, the date with which the amendment commenced operating. The question which is arising for decision before us namely whether a non-tribal can at all commence prescribing acquisition of title of adverse possession over the land belonging to a tribal situated in a tribal area was neither raised before the High Court nor decided by it. A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the Judges, and inferring from it a proposition of law which the Judges have not specifically laid down in the pronouncement. Still we make it clear that the provisions of Para 7-D of the

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> Regulations are to be read in the light of the principle which we have laid down hereinabove. A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to Para 7-D of the Regulations read with Art. 65 and S. 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogenous reading."

7. In **AIR 1996 SC 112 (*Abubakar Abdul Inamdar & Ors. v. Harun Abdul Inamdar & Ors.)*** the Hon'ble Apex Court has held that no amount of proof by inducting municipal registered entries can substitute pleading which are foundation of the claim of a litigating party. Applying the said principle of law, it is submitted that as ingredients of adverse possession have not been pleaded in plaint by inducting entries in revenue records plea of adverse possession cannot be substantiated by the plaintiffs and no inference of adverse possession can be drawn thereon. Relevant paragraph 5 of the said judgment reads as follows:

> "5. With regard to the plea of adverse possession, the appellant having been successful in the two Courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single overt act on the basis of which it could be inferred or ascertained that from a particular point of time his possession became

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> hostile and notorious to the complete exclusion of other heirs, and his being in possession openly and hostilely. It is true that some evidence, basically of Municapal register entries, were inducted to prove the point but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court cought the appellant right at that point and drawing inference from the evidence produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The finding, as it appears to us, was rightly reversed by the High Court requiring no interference at our end."

8. In **AIR 1996 SC 869 (*Dr. Mahesh Chandra Sharma. v. Smt. Rajkumari Sharma & Ors.)*** the Hon'ble Apex Court has held that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish adverse possession. As the plaintiffs, in the instant case, have not clearly plead and establish all the facts necessary to establish their adverse possession, the instant suit is liable to be dismissed. Relevant paragraph 36 of the said judgment reads as follows:

> "36. In this connection, we may emphasise that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendants Nos. 2 to 5 as the case may, be is rejected."

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9. In **AIR 1987 SC 94 (*Hari Chand. v. Daulat Ram)*** the Hon'ble Apex Court has held that if the encroachment was not one new and the structure was in existence prior to acquiring title over the property, the decree on the basis of adverse possession cannot be granted in favour of the plaintiff. Applying that principle of law, it is submitted that as in the present case it has been proved by adducing scriptures and gazetteers etc. by this defendant that there were vedi and temple at the site of Ramjanmasthan even prior to Babur's acquisition of sovereignty over Delhi, Agra and Oudh, the plaintiffs are not entitled for the reliefs as prayed for in the instant suit. Relevant paragraph Nos.10 and 11 of the said judgment read as follows:

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> "10. On a consideration of these evidence it is quite clear that the disputed kachha wall and the khaprail over it are not new construction, but existed for over 28 years and the defendant has been living therein as has been deposed to by Ramji Lal vendor of the plaintiff who admitted in his evidence that the land in dispute and the adjoining kachha walls had been affected by salt and the chhappar over the portion shown in red was tiled roof constructed about 28 year back. This is also supported by the evidence of the defendant, D.W. 1, that the wall in dispute was in existence when the partition was effected i.e. 28 years before. On a consideration of these evidences the Trial Court rightly held that the defendant had not trespassed over the land in question nor he had constructed a new wall or khaprail. The trial court also considered the report 57C by the court Amin and held that the wall in question was not a recent construction but it appeared 25-30 years old in its present condition as (is) evident from the said report. The suit was therefore dismissed. The lower appellate court merely considered the partition deed and map Exts. 3/1 and 3/2 respectively and held that the

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disputed property fell to the share of the plaintiffs vendor and the correctness of the partition map was not challenged in the written statement. The court of appeal below also referred to Amin's map 47A which showed the encroached portion in red colour as failing within the share of plaintiffs vendor, and held that the defendant encroached on this portion of land marked in red colour, without at all considering the clear evidence of the defendant himself that the wall and the khaprail in question existed for the last 28 years and the defendant has been living there all along. P.W. 1 Ramji Lal himself also admitted that the wall existed for about 28 years as stated by the defendant and the kachha walls and the khaprail have been affected by salt. The lower appellate court though held that P.W. 1 Ramji Lal admitted in cross-examination that towards the north of the land in dispute was the khaprail covered room of Daulat Ram in which Daulat Ram lived, but this does not mean that the wall in dispute exists for the last any certain number of years, although it can be said that it is not a recent construction. Without considering the deposition of defendant No. 1 as well as the report of the Amin 57C the IInd Addl. Civil Judge, Agra wrongly held that the defendant failed to prove that the wall in dispute and the khaprail existed for the last more than 12 years before the suit. The Civil Judge further held on surmises as "may be that the wall and khaprail have not been raised in May, 1961 as is the plaintiffs case, but they are recent constructions." This decision of the court of appeal below is wholly incorrect being contrary to the evidences on record.

11. On a consideration of all the evidences on record it is clearly established that the alleged encroachment by construction of kuchha wall and khaprail over it are not recent constructions as alleged to have been made in May 1961. On the other hand, it is crystal clear from the evidences of Ramji Lal P.W. 1 and Daulat Ram D.W. 1 that the disputed wall with khaprail existed there in the disputed site for a long time, that is 28 years before and the wall and the khaprail have been affected by salt as deposed to by these two witnesses. Moreover the court Amin's report 57C also shows the said walls and khaprail to be 25-30 years old in its present condition. The High Court has clearly come to the finding that though the partition deed was executed by the parties yet there was no partition by metes and bounds. Moreover

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> there is no whisper in the plaint about the partition of the property in question between the co-sharers by metes and bounds nor there is any averment that the suit property fell to the share of plaintiffs vendor Ramji Lal and Ramji Lal was ever in possession of the disputed property since the date of partition till the date of sale to the plaintiff. The plaintiff has singularly failed to prove his case as pleaded in the plaint."

10. In **AIR 1947 PC 19 (*Smt. Bibhabati Devi. v. Rajmchandranarayan Roy & Ors.)*** the Hon'ble Privy Council has held that possession must be adverse to a living person and if any lady was possessing under a mistake as to her husband's death, she could not claim that by her possession she was asserting a right adverse to one whom she regarded as dead. Applying that principle of law, it is submitted that as the deity is not a living person, adverse possession against deity can be claimed only through its sebait and if any sebait did not take any step for recovery of possession of the property of the deity then, limitation runs from the date of death of said sebait so that new sebait may take step for recovery of the property of the deity. In the instant case, the plaintiffs have not pleaded the name of the sebait during whose tenure of sebaitship they dispossessed the deity from the property as also they have not pleaded the date of death of the said sebait for the purpose of counting the period of limitation and as such the instant suit is misconceived and liable to be dismissed. Relevant

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paragraph Nos.18 and 21 of the said judgment read as follows:

> “18. Their Lordships are of opinion that the statement and request made by this man was a fact within the meaning of Ss.3 and 59, Evidence Act, 1872, and that it is proved by the direct evidence of witnesses who heard it, within the meaning of S. 60; but it was not a relevant fact unless the learned Judge was entitled to make it a relevant fact by a presumption under the terms of S. 114. As regards the statement that the Kumar had just died, such a statement by itself would not justify any such presumption, as it might rest on mere rumour, but, in the opinion of their Lordships, the learned Judge was entitled to hold, in relation to the fact of the request for help to carry the body for cremation, that it was likely that the request was authorised by those in charge at Step Aside, having regard to "the common course of natural events, human conduct and public and private business", and therefore to presume the existence of such authority. Having made such presumption, the fact of such an authorised request thereby became a relevant fact, and the evidence of the Maitra group became admissible. Accordingly, this contention fails.
>
> 21. Finally, the appellant rests on Art. 144 and S. 28, Limitation Act, 1908. On the supposed death of the Second Kumar the appellant entered on her widow's estate in the undivided one-third share of the Bhowal estate, which belonged to her husband and she thereafter enjoyed it - after 1911, through the Court of Wards-for a period much exceeding the necessary twelve years and the question is whether her possession was adverse to her husband, he being in fact alive. Possession must be adverse to a living person, and, as she was possessing under a mistake as to his death, it is difficult to see how she can claim that by her possession she was asserting a right adverse to one whom she regarded as dead. The position of a widow as regards limitation is stated in 51 IA 17122 at p. 176, where Lord Dunedin, delivering the judgment, said,

22.('24)
11 AIR 1924 PC 121: 5 Lah 192: 51 IA 171: 80 IC 788 (PC), Lajwanti v. Safa Chand.

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> "It was then argued that the widows could only possess for themselves ; that the last widow Devi would then acquire a personal title; and that the respondents and not the plaintiffs were the heirs of Devi. This is quite to misunderstand the nature of the widow's possession. The Hindu, widow as often pointed out, is not a life renter but has a widow's estate-that is to say, a widow's estate in her deceased husband's estate. If possessing as a widow she possesses adversely to any one as to certain parcels she does not acquire the parcels as stridhan, but she makes them good to her husband's estate "
>
> Mr. Page, for the appellant, conceded that the appellant's possession could not be adverse to the reversioners, who would take as heirs of her husband, on the termination of her widow's estate. All that the appellant claimed to have prescribed was her interest in the estate as widow of the Second Kumar. It might well be argued that, according to the Hindu law, the wife is half of the husband, and that, on his death, she holds his estate as one-half of the husband, but their Lordships prefer to base their rejection of the appellant's contention on the broader ground that her possession was not adverse to a husband, whom she regarded as dead. Their Lordships cannot part with this case without expressing their deep indebtedness to counsel for their valuable assistance in a case of such unusual magnitude and complication, and, in particular, their gratitude and admiration for the untiring skill and breadth of mind with which Mr. Page has conducted his case. Their Lordships accordingly, are of opinion that the appeal fails and should be dismissed, and that the decision of the High Court should be affirmed, and they will so advise His Majesty. In the very special circumstances of this case, there will be no order as to costs of the appeal.

11. In **AIR 1942 PC 47 (*Raja Rajgan Maharaja. Jagjit Singh v. Raja Pratap Bahadur Singh)*** the Hon'ble Privy Council has held that under Section 23 of Oudh Land Revenue Act, 1876, the revenue officer had no power to determine questions of title and his duty was to determine the boundary on the basis of actual possession. It has also

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been held that it is for the plaintiffs to establish the title to the lands in suit held by the defendant's predecessor had been extinguished under Section 28 of the Limitation Act by the adverse possession of the plaintiff or their predecessor for appropriate statutory period of limitation, pleaded prior to the possession taken under attachment by the receiver appointed by the Magistrate. In the instant case, the plaintiffs have failed to establish their title to the land in suit in terms of the aforesaid judicial pronouncement of the Hon'ble Privy Council, the suit is liable to be dismissed. Relevant extracts from pages 48 and 49 of the said judgment reads as follows:

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> "It will be noted that the appellant's village Binjaha is not mentioned in either of these proceedings. The fourth stage is important as shewing the state of possession of the lands in suit at the date when the present suit was instituted on 26th January 1933. In the year 1931 there were two cases-Nos.39 and 41-under S. 145, Criminal PC, in the Court of the Magistrate of the First Class at Kheri, which involved the appellant and respondent in respect of the land now in dispute. In No. 39, on 4th May 1931, the Magistrate ordered the case to be filed as the parties had satisfied him that no breach of the peace need be apprehended. But Case No. 41 was commenced on a report by the Sub. Inspector of Police dated 14th October 1931, and on 24th October 1931, at the same time as he ordered the parties to attend the Court on 26th November, the Magistrate considering the case as one of emergency, ordered the plots referred to in the report to be attached pending his decision under S. 145, and appointed the Tahsildar, Tahsil Nighasan, District Kheri, as receiver. These plots appear to have been the three small plots, a suit for possession of which by the present appellant had been finally dismissed by the Chief Court by decree dated 26th November 1929. These three plots amounting to 1.30

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acre are included in the lands presently in suit. By two orders dated 7th November 1931, the Magistrate ordered the Tahsildar to take possession of the plots contained in a list attached to the first of these orders, and in addition to these plots, "if you find that there are any other plots in dispute, they should also be attached or taken possession of." It is common ground that the Tahsildar, acting under these orders, took possession of the lands presently in suit on 23rd February 1932, and that he was still in possession when the present suit was instituted on 26th January 1933. As the result of applications by the parties, who were agreed that, pending the decision of a civil Court, the lands should remain attached and that the proceedings should meantime be consigned to records, the lands to be released to the party who succeeded in the civil suit, the Magistrate made an order filing the case meantime dated 6th April 1932.

In the first place, their Lordships are clearly of opinion, contrary to the view of the Subordinate Judge, but in agreement with the view of the Chief Court, that it was for the appellant to establish that the title to the lands in suit held by the respondent's predecessor under the first settlement of 1865 had been extinguished under S. 28, Limitation Act, by the adverse possession of the appellant or his predecessors for the appropriate statutory period of limitation, completed prior to the possession taken under attachment on 23rd February 1932, by the Tahsildar, who thereafter held for the true owner. Their Lordships are further of opinion that the present suit, which was subsequently instituted, was rightly confined to a mere declaration of title, and was neither in form nor substance a suit for possession of immovable property.

In the second place, on the question of the errors of procedure of the Subordinate Judge in placing the burden of proving his possession within the limitation period on the respondent and ultimately refusing to allow the respondent to lead evidence in rebuttal of the appellant's evidence of adverse possession, it is enough to say that the appellant's counsel felt constrained to state that he could not defend the exclusion of evidence by the learned Judge, and that, if otherwise successful in his appeal, he should ask that the case should be remanded in order to give the respondent the opportunity which was so denied to him. The Chief Court held that the appellant had failed to prove adverse possession, and found it

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unnecessary to remand the case.
With regard to the statutory period of limitation, Art. 47 of the Act does not apply, as there has been no order for possession by the Magistrate under S. 145, Criminal P. C. As the suit is one for a declaration of title, it seems clear that Arts. 142 and 144 do not apply, and their Lordships agree with the Chief Court that the suit is governed by Art. 120. This leaves for consideration the main issue of proof of adverse possession by the appellant and his predecessors, and the appellant is at once faced by a difficulty which proved fatal to his success before the Chief Court, viz., that unless he can establish adverse possession of the lands in suit as a whole, he is unable, on the evidence, to establish such possession of identified portions of the lands in suit. Before their Lordships, the appellant's counsel conceded that, in order to succeed in the appeal, he must establish adverse possession of the lands in suit as a whole. He further conceded that his case on that point rested either (a) on the Habibullah decision of 1899, on which he succeeded before the Subordinate Judge, or (b) on the compromised proceedings under S. 145 in 1903. He conceded that neither the Habibullah decision nor the boundary proceedings in 1903 amounted to a judicial decision. The appellant maintained that the Habibullah decision, given under S. 23 of the Act of 1876, was good evidence of the state of possession at that time, and of the possession of the whole of the land in dispute by Kapurthala. He maintained that it must be assumed that Mr. Habibullah did his duty and that the decision was based on actual possession; under S. 35, Evidence Act, it was good evidence of the fact of possession. Unfortunately for this contention it appears on the face of the judgment that possession was only proved in respect of land under cultivation, and that the boundary line laid down by Mr. Habibullah was largely an arbitrary line, and, at least to that extent, was not based on actual possession by Kapurthala, and it is well established that adverse possession against an existing title g must be actual and cannot be constructive."

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12. In **AIR 1937 PC 69 (*Maharaja Sir Kesho Prasad Singh Bahadur. v. Bahuria Mt. Bhagjogna Kaur & Ors. )***

the Hon'ble Privy Council has held that mere receipt of rent

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by persons claiming adversely is not sufficient to warrant finding of adverse possession. The possession of persons or their predecessors-in-title claiming by adverse possession must have "all the qualities of adequacy, continuity and exclusiveness" necessary to displace the tile of the persons against whom they claim. As in the instant case neither the plaintiffs nor their predecessors-in-title had or have all the qualities of adequacy, continuity and exclusiveness, their suit based on adverse possession fails. Relevant extracts from page 78 of the said judgment reads as follows:

> "the mere fact that many years after the sale the Gangbarar maliks or persons deriving title from them are obtaining rent for the land is in itself very significant. Even in a locality exposed to diluvion by the action of the river this circumstance alone might be given considerable weight. But without sufficient proof to cover the intervening years it was most reasonably held by the learned Subordinate Judge to be insufficient. The circumstance that the Maharaja was not in possession or in receipt of rent is, it need hardly be said, insufficient under Art. 144 to warrant a finding of adverse possession on behalf of the respondents or their predecessors-in-title. Their Lordships are of opinion that on the materials produced it cannot be contended that the learned Subordinate Judge was obliged in law to find that the possession of the principal respondents had "all the qualities of adequacy, continuity and exclusiveness " (per Lord Shaw 126 CWN 66610at p. 673) necessary to displace the title of the Maharaja, and they think that no reason in law exists why his finding of fact in this respect should not be final."

13. In **AIR 1933 PC 75 (*Ram Charan Das. v. Nauraugi Lal)*** the Hon'ble Privy Council has held that an allocation by the Mahant of a Mutt in respect of property belonging to

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the Mutt even if it is not for legal necessity or benefit if Mutt is good and effective assailing as the mahant continue to be such and hence adverse possession of the lessee as agasinst the Mutt commences only when the Mahant, who has leased the property ceased to be Mahant by death or otherwise and not from the date of allocation. Relevant extracts from page 78 of the said judgment reads as follows:

> "This is a clear statement that a mahant is at liberty to dispose of the property of a mutt during the period of his life and that a grant purporting to be for a longer period is good to the extent of the mahant's life interest. Here again their Lordships think that the reference to life is upon the footing that the mahant continues during his life to hold that office. It will be observed that the statement is in no way confined to the grant of a lease, but covers the case of a purported out and out grant of the property. Whatever the intended duration of the attempted grant may be, it is good but good only for the limited period indicated. In view of these statements by the Board, their Lordships hold that in the present case the lease and the deed of sale of 13th February 1911 were good and effective so long as Rampat Das continued to be mahant and that therefore adverse possession only commenced when he died. The result is that the plaintiff's suit is not barred and the appeal succeeds. The decree of the High Court should be set aside with costs in that Court, and the decree of the Subordinate Judge restored. Their Lordships will humbly advise His Majesty accordingly. The respondents must pay the costs of this appeal."

14. In **AIR 1931 PC 162 (*Bhupendra Narayan Sinha Bahadur. v. Rajeswar Prasad Bhakat)*** the Hon'ble Privy Council has held that where a person without any colour of right wrongfully takes possession as a trespasser of the

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property of another in title which he may acquire by adverse possession will be strictly limited to what he had actually so possessed. As the schedule of the plaint does not contain a description of the property sufficient to identify it, in accordance with Order 7 Rule III of the Civil Procedure Code, and in view of admitted fact of possession of the Hindus at least in respect of Ramchabutra, a decree cannot be passed in their favour as prayed for. Relevant extracts from page 165 of the said judgment reads as follows:

> "Where a person without any colour of right wrongfully takes possession as a trespasser of the property of another, any title which he may acquire by adverse possession will be strictly limited to what he has actually so possessed."

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1. In AIR 1940 PC 116 (*Mosque known as Masjid Shahid Ganj & Ors. v. Shiromoni Gurdwara Prabandhak Committee, Amritshwar & Anr.)* the Hon'ble Privy Council has held that the rules of limitation which apply to a suit are the rules in force at the date of institution of the suit, limitation being a matter of procedure, the Limitation Act, 1908 applies to immovable made wakf. Relevant portion from page 121 of the said judgment reads as follows:

> "The rules of limitation which apply to a suit are the rules in force at the date of institution of the suit, limitation being a matter of procedure. It cannot be doubted that the Limitation Act of 1903 (*Sic* 1908) applies to immovables made wakf notwithstanding that the ownership in such property is said, in accordance with the doctrine of the two disciples, to be in God."

2. In AIR 1957 SC 314 (*P. Lakshmi Reddy. v. L. Lakshmi Reddy)* the Hon'ble Supreme Court has held that a receiver is an officer of Court and is not a particular agent of any party to the suit, notwithstanding that in law his possession is ultimately treated as a possession of the successful party on the termination of the suit. To treat such receiver as plaintiff's

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agent for the purpose of initiating adverse possession by the plaintiff, would be to impute wrong doing to the Court and its officers. The doctrine of receiver's possession being that of the successful party, cannot be pushed to the extent of enabling a person who was initially out of possession to claim the taking on of receiver's possession to his subsequent adverse possession. The commencement of adverse possession in favour of a person, implies that that person is in actual possession at the time, with a notorious hostile claim of exclusive title to repeal which, the true owner would be in a position to maintain an action. It would follow that whatever may be the animus intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with requisite animus. Relevant paragraph Nos.6 and 7of the said judgment read as follows:

> "6. The learned Attorney-General urges that prior possession of the Receiver pending the suit must be treated as possession on behalf of Hanimi Reddy with the animus of claiming sole and exclusive title disclosed in his plaint. In support of this contention he relies on the well-known legal principle that when a Court takes possession of properties through its Receiver, such Receiver's possession is that of all the parties to the action according to their titles. (See Kerr on Receivers (12th Edition) page 153). In Woodroffe on the Law relating to Receivers (4th Edition) at page 63 the legal position is stated as follows:
>
> "The Receiver being the officer of the Court from which he derives his appointment, his possession is exclusively the possession of the Court, the property being regarded as in the custody of the law, in gremio legis, for the benefit of whoever may be ultimately determined to be entitled thereto".
>
> But does this doctrine enable a person who was not previously in possession of the suit properties, to claim that the Receiver must be deemed to have taken possession adversely to the true owner, on this behalf, merely because he ultimately succeeds in getting a decree for possession against the defendant therein who was previously in possession without title? A Receiver is an officer of Court and is not a particular agent of any party to the suit, notwithstanding that in law his possession is ultimately treated as possession of the successful party on the termination of the suit. To treat such Receiver as plaintiffs agent for the purpose of initiating adverse possession by the plaintiff would be to impute wrong-doing to the Court

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and its officers. The doctrine of the Receiver's possession being that of the successful party cannot, in our opinion, be pushed to the extent of enabling a person who was initially out of possession to claim the tacking on of Receiver's possession to his subsequent adverse possession. The position may conceivably be different where the defendant in the suit was previously in adverse possession against the real owner and the Receiver has taken possession from him and restores it back to him on the successful termination of the suit in his favour. In such a case the question that would arise would be different, viz., whether the interim possession of the Receiver would be a discontinuance or abandonment of possession or interruption of the adverse possession. We are not concerned with it in this case and express no opinion on it.

7. The matter may be looked at from another point of view. It is well-settled that limitation cannot begin to run against a person unless at the time that person is legally in a position to vindicate his title by action. In Mitra's Tagort Law Lectures on Limitation and Prescription (6th Edition) Vol. I, Lecture VI, at Page 159, quoting from Angell on Limitation, this principle is stated in the following terms :

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"An adverse holding is an actual and exclusive appropriation of land commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim (arising from the acts and circumstances attending the appropriation), to hold the land against him(sic) who was in possession. (Angell, sections 390 and 398). It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession".

Consonant with this principle the commencement of adverse possession, in favour of a person, implies that that person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until site animus. In the leading case of Agency Company v. Short, (1888) 13 AC 793 (G) the Privy Council points out that there is discontinuance of adverse possession when possession has been abandoned and gives as the

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reason therefor, at page 798, as follows:

"There is no one against whom he (the rightful owner) can bring his action".

It is clearly implied therein that adverse possession cannot commence without actual possession which can furnish cause of action. This principle has been also explained in Dwijendra Narain Roy v. Joges Chandra De, AIR 1924 Cal 600 (H) at page 609 by Mookerjee, J. as follows:

"The substance of the matter is that time runs when the cause of action on accrues, an a cause of action accrues when there is in existence a person who can sue and another who can be used ..... The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief. The statute (of limitation) does not attach to the claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result".

In the present case, the co-heirs out of possession such as plaintiff and the second defendant were not obliged to bring a suit for possession, against Hanimi Reddy until such time as Hanimi Reddy obtained actual possession. Indeed during the time when the Receiver was in possession, obviously, they could not sue him for possession to vindicate their title. Nor were they obliged during that time to file a futile suit for possession either against Hanimi Reddy or against the defendants in Hanimi Reddy's suit when neither of them was in possession. It appears to us, therefore, that the adverse possession of Hanimi Reddy, if any, as against his co-heirs could not commence when the Receiver was in possession. It follows that assuming that the possession of Hanimi Reddy from January 20, 1930, was in fact adverse and amounted to ouster of the co-heirs such adverse possession was not adequate in time by October 23,1941 the date of suit to displace the title of the plaintiff. It follows that the plaintiff- respondent before us, is entitled to the decree which he has obtained and that the decision of the High Court is, in our view, correct, though on different grounds. It may be mentioned that objection has been raised on behalf of the respondent before us that the question of tacking on Receiver's possession was not in issue in the lower courts and should not be

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> allowed to be raised here. In the view we have taken it is unnecessary to deal with this objection."

15. In **AIR 2008 All 37 (*Ramzan & Ors. v. Smt. Hafooran & Ors.)*** the Hon'ble Allahabad High Court has held that unless there is specific plea and proof that adverse possession has disclaimed his right and asserted title and possession to the knowledge of the true owner within the statutory period and the true owner has acquiesced to it, the adverse possessor cannot succeed to have it established that he has perfected his right by prescription. Where the adverse possessor were not sure as to who was the true owner and question of their being in hostile possession, then the question of denying title of true owner does not arise. Relevant paragraphs 27, 29 and 30 of the said judgment read as follows:

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> "27. It is, therefore, explicit that unless there is specific plea and proof that adverse possessor has disclaimed his right and asserted title and possession to the knowledge of the true owner within a statutory period and the true owner has acquiesced to it, the adverse possessor cannot succeed to have it established that he has perfected his right by prescription.
>
> 29. As pointed out above, where the defendants are not sure who is the true owner and question of their being in hostile possession then the question of denying title of true owner does not arise. At the most, the defendants have claimed and which is found to be correct by the trial court that they have been in possession of the disputed property since the inception of the sale deeds in their favour. They came in possession, according to their showing, as owner of the property in question. It follows that they exercised their right over the disputed property as owner and exercise of such right, by no stretch of imagination, it

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can be said that they claimed their title adverse to the true owner.

30. Viewed as above, on the facts of the present case, the possession of the contesting defendants is not of the variety and degree which is required for adverse possession to materialise."

16. In **AIR 1983 All 223 (*Prabhunarain Singh. v. Ramniranjan)*** the Hon'ble Allahabad High Court has held that a person claiming title to land by adverse possession, he must specifically plead area of land and period of possession of land. As in the instant case neither the area of land has been specifically pleaded nor the period of possession has been specifically pleaded, the suit is liable to be dismissed. Relevant paragraph 6 of the said judgment reads as follows:

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"6. With regard to the dispute raised by the defendants about the plaintiff's title to the land, the defendants did not
set up any independent title themselves. They based their right in adverse possession. A person claiming title to any land by adverse possession has to be very specific about the area of the land and the period over which he has been in possession. The eastern boundary of the land purchased by the plaintiff was specific. Much reliance could not be placed on the area specified in the sale-deed, inasmuch as the western boundary was shown to be the field of the vendor. Even if the plaintiff had some extra land under his possession, it is not known whether he had increased the area of his occupation westwards or eastwards. So far as the defendants were concerned, it was sufficient that the eastern boundary of the land purchased by the plaintiff was specified to be their house. The defendants could, at the most, claim some piece of land around their house for purpose of approach or cleaning the drains etc. But that is not to say that they could allow the Nabdan from their house to flow on into the plaintiff's Sehan and create nuisance. The defendants should have maintained the

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> cesspool and prevented the outflow of the dirty water from the cesspool to the plaintiff's Sehan by constructing a proper drain."

17. In **AIR 1978 All 555 (*Smt. Bitola Kuer. v. Sri Ram Charan)*** the Hon'ble Allahabad High Court has held that possession follows title and the corollary from this principle is that the burdens lies on the person who claims to have acquired title by adverse possession to prove his case. As the plaintiffs have pleaded adverse possession, the burden lies upon them to prove their case which they have miserably failed to do. And, as such the suit is liable to be dismissed. Relevant paragraph 16 of the said judgment reads as follows:

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> "16. It is well settled that title ordinarily carries with it the presumption of possession and that when the question arises is to who was in possession of land, the presumption is that the true owner was in such possession. In other word" possession follows title. The inevitable corollary from this principle is that the burden lies on the person who claims to have acquired title by adverse possession to prove his case. As early as the case of Radhamoni Debi v. Collector of Khulna (1900) ILR 27 Cal 943 (PC); Lord Robertson expressed the principle in the following words :
> " It is necessary to remember that the onus is on the appellant and that what she has to make out is possession adverse to the competitor ..... ... ..... But the possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to that competitor;"

18. In **AIR 1970 All 289 (*Qadir Bux v. Ramchand)*** the Hon'ble Allahabad High Court has held that the term "dispossession" applies when a person comes in and drives out

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others from the possession. It implies ouster; a driven out of possession against the will of the person in actual possession. The term "discontinuance" implies a voluntary act and openness of possession followed by the actual possession of another. It implies that a person discontinuing as owner of the land and left at to be dispossessed by any one who has not to come in. As it has been admitted by the plaintiffs in their written statement filed in O.S.No.1 of 1989 that last namaj was offered on 16th December, 1949 and thereafter they discontinued offering prayer in the alleged mosque and plaintiffs or the persons under or through whom they are claiming had also admitted in their affidavit filed in the proceeding under Section 145 of Cr.P.C. that their intention was to discontinue offering the prayers in the alleged mosque so that it can be occupied by the Hindus as their place of worship. As the Hindus were already performing their worships the effect of discontinuing made their possession peaceful and uninterrupted. As such the instant suit which was filed on 18th December 1949 is also barred by limitations. Relevant paragraph 130 of the said judgment reads as follows:

> "30. The main point for consideration is whether in such circumstances it can be said that the plaintiff had been dispossessed or had discontinued his possession within the meaning of Article 142 of the First Schedule to the Indian Limitation Act. The term"dispossession" applies when a person comes in and drives out others from the possession. It imports ouster: a driving out of possession against the will of the person in actual possession. This driving out

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> cannot be said to have occurred when according to the case of the plaintiff the transfer of possession was voluntary, that is to say, not against the will of the person in possession but in accordance with his wishes and active consent. The term"discontinuance" implies a voluntary act and abandonment of possession followed by the actual possession of another. It implies that the person discontinuing has given up the land and left it to be possessed by anyone choosing to come in. There must be an intention to abandon title before there can be said to be a discontinuance in possession, but this cannot be assumed. It must be either admitted or proved.
>
> So strong in fact is the position of the rightful owner that even when he has been dispossessed by a trespasser and that trespasser abandons possession either voluntarily or by vis major for howsoever short a time before he has actually perfected his title by twelve years' adverse possession the possession of the true owner is deemed to have revived and he gets a fresh starting point of limitation - vide Gurbinder Singh v. Lal Singh, AIR 1965 S.C. 1553. Wrongful possession cannot be assumed against the true owner when according to the facts disclosed by him he himself had voluntarily handed over possession and was not deprived of it by the other side."

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19. In AIR 1965 SC 364 (*Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati)* the Hon'ble Supreme Court held that statement of a party in letters written by the said party can be used against the said party as the said party's admission but cannot be used in favour of such party accepting them to be correct statements. Relying on the said judgment it is humbly submitted that the statements made by the Mutwalli, Muezzins, Khattibs, some of the plaintiffs are to be used against them as their admissions accepting them to be correct statements. As from the statements of the above mentioned proceedings it appears that even after 1856 the Hindus were performing worship inside the central hall of the alleged Babri Mosque and also they accept that this practice was continued for several decades and ultimately in 1934 the disputed structure was demolished by the Hindus and when it was re-erected the Muslims did not go to offer prayer due to panic as in 1934 riots at least three Muslims had been killed are the admission of the plaintiffs or the persons through or under whom they are claiming. On the basis of whereof it can be inferred that the Hindus were all along asserting their customary rights and performing their customary rituals of worshipping the

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birthplace of the Lord of Universe Sri Rama in disputed structure and the Muslims were never in peaceful, uninterrupted possession of the alleged Babri Mosque. As such the instant suit is liable to be dismissed. Relevant paragraph 96 of the said judgment reads as follows:

> "96. The respondent stated in the examination-in-chief that when she went to Prantil from Bombay which was about the 4th of June 1947 she had swelling on her feet, hands and face. I cross-examination she further stated that she had swelling over these parts and also high blood-pressure in June and that the passing of albumin and swelling of hands and feet continued till delivery but there was no high blood-pressure at the time of delivery. The Court below did not act on the statement of the respondent about her having the symptoms of toxemia in the month of June as none of the letters on record written in June makes reference to such a written in June makes reference to such a condition of hers. This is true, but that does not accessarily mean that she did not have such symptoms in the month of June. They might not have been very servere that month and the severity appeared in the month of July. Letters on record amply make out that she was suffering from a servere type of toxemia in July. It has been urged for the respondent in connection with her alleged toxemic condition in the month of June 28 about statement in her letter dated June 28 about her walking 2 miles a day is not compatible with her statement in Court and the suggestion for the petitioner that she was suffering from toxemia in the month of June. The statements of the respondent in her letters can be used against her as her admissions, but cannot be used in her favour accepting them to be correct statements. If she was pregnant at the time of marriage she must take such steps up to the time of delivery as to allay the suspicion that she had been really pregnant at the time of marriage. She may therefore be inclined to make wrong statements in her letters to prepare for any plausible explanation when the delivery took place before the expected time on the basis of her conception after marriage. There is therefore no reason not to believe her statement that she did have such trouble of milder kind in the month of June. Severe trouble does not usually come at once. It develops from a mild stage."

20. In AIR 1996 SC 941 (*Raj Kumar v. M/s. Chiranjilal Ram Chand, Ludhiana & Ors.)* the Hon'ble Supreme Court held that

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in respect of joint properties admission by one of the co-owners that the other co-owners had 1/3rd share in the said properties is a admission which can be relied upon under Section 18 of the Evidence Act, 1872. Relevant paragraph 8 of the said judgment reads as follows:

> "8. In view of the discussion of various items by the High Court and the conclusion reached on the basis thereof, we entirely agree with the High Court that the admissions bind the appellants. Therefore, it is clearly established from the admission that the insolvent Chiranji Lal had 1/3 share in these properties. Consequently, they stood vested in the Official Receiver and he is entitled to proceed further in realising the amounts to distribute to the creditors."

21. In AIR 1965 SC 1553 (*Gurbinder Singh & Anr. v. Lal Singh & Anr.)* the Hon'ble Supreme Court held that in order that Article 142 is attracted the plaintiff must initially found in possession of the property and should have been dispossessed by the defendant or someone through whom the defendants claim or alternatively the plaintiff should have discontinued possession. It has also been held that in a suit to which Article 144 attracted the burden is on the party who claims adverse possession to establish that he was in adverse possession for 12 years before the date of suit and for computation of this period he can avail of the adverse possession of any person or persons through whom he claims but not the adverse possession of an independent trespasser. As it is Plaintiffs' admitted fact that the plaintiffs discontinued their possession at least on 16th December, 1949, they have failed to prove that they were in possession for 12 years before the date of filing of the instant suit i.e. 18th December, 1961. As such the suit is barred by Article 142 of the Limitation Act, 1908. As on the other hand the plaintiffs also claim adverse possession of the disputed structure, burden of proof lies upon them and as they have failed to prove their adverse possession for 12 years before the date of filing of the suit, i.e. 18th December, 1961, the suit is also barred by Article 144 of the Limitation Act. Relevant paragraph nos.6, 8 and 10 of the said judgment read as follows:

> "6. In order that Art. 142 is attracted the plaintiff must initially have been in possession of the property and should have been dispossessed by the defendant or someone through whom the defendants claim or alternatively the plaintiff should have discontinued possession. It is no one's case that Lal Singh ever was in possession of the propety. It is true that Pratap Singh was in possession of part of the property - which particular part we do not know -- by reason of

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a transfer thereof in his favour by Bakshi Singh. In the present suit both Lal Singh and Pratap Singh assert their claim to property by succession in accordance with the rules contained in the dastur ul amal whereas the possession of Pratap Singh for some time was under a different title, altogether. So far as the present suit is concerned it must, therefore, be said that the plaintiffs-respondents were never in possession as heirs of Raj Kaur and consequently Art. 142 would not be attracted to their suit.

8. Mr. Tarachand Brijmohanlal, however, advanced an interesting argument to the effect that if persons entitled to immediate possession of land are somehow kept out of possession - may be by different trespassers- for a period of 12 years or over, their suit will be barred by time. He points out that as from the death of Raj Kaur her daughters, through one of whom the respondents claim, were kept out of possession by trespassers and that from the date of Raj Kaur's death right up to the date of the respondents' suit, that is, for period of nearly 20 years trespassers were in possession of Mahan Kaur's, and after her death, the respondents' share in the land, their suit must, therefore, be regarded as barred by time. In other words, the learned counsel wants to tack on the adverse possession of Bakshi Singh and Pratap Singh to the adverse possession of the Raja and those who claim through him. In support of the contention reliance is placed by learned counsel on the decision in Ramayya v. Kotamma, ILR 45 Mad 370: (AIR 1922 Mad 59). In order to appreciate what was decided in that case a brief resume of the facts of that case is necessary. Mallabattudu, the last male holder of the properties to which the suit related, died in the year 1889 leaving two daughters Ramamma and Govindamma. The former died in 1914. The latter surrendered her estate to her two sons. The plaintiff who was a transferee from the sons of Govindamma instituted a suit for recovery of possession of Mallabattudu's property against Punnayya, the son of Ramamma to whom Mallabattudu had made an oral gift of his properties two years before his death. Punnayya was minor at the date of gift and his elder brother Subbarayudu was managing the property on his behalf. Punnayya, however, died in 1894 while still a minor and thereafter his brothers Subbarayudu and two others were in possession of the property. It would seem that

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the other brothers died and Subbarayudu was the last surviving member of Punnayya's family. Upon Subbarayudu's death the properties were sold by his daughters to the third defendant. The plaintiff-appellants suit failed on the ground of limitations. It was argued on his behalf in the second appeal before the High Court that as the gift to Punnayya was oral it was invalid, that consequently Punnaya was in possession as trespasser, that on Punnayya's death his heir would be his mother, that as Subbarayudu continued in possession Subbaruyudu's possession was also that of a trespasser, that as neither Subbarayudu nor Punnayya completed possession for 12 years they could not tack on one to the other and that the plaintiff claiming through the nearest reversioner is not barred. The contention for the respondents was that there was no break in possession so as to revest the properties in the original owners, that Punnayya and Subbarayudu cannot be treated as successive trespassers and that in any event the real owner having been out of possession for over 12 years the suit was barred by limitation. The High Court following the decision of Mookerjee, J. in Mohendra Nath v. Mt. Shamsunnessa, 21 Cal LJ 157 at p. 164 : (AIR 1915 Cal 629 at p. 633), held that time begins to run against the last full owner if he himself was dispossessed and the operation of the law of limitation would not be arrested by the fact that on his death he was succeeded by his widow, daughter or mother, as the cause of action cannot be prolonged by the mere transfer of title. It may be mentioned that as Mallabattudu had given up possession to Punnayya under an invalid gift Art. 142 of the Limitation Act was clearly attracted. The sons of Govindamma from whom the appellant had purchased the suit properties claimed through Mallabattudu and since time began to run against him from 1887 when he discontinued possession it did not cease to run by the mere fact of his death. In a suit to which that article applies the plaintiff has to prove his possession within 12 years of his suit. Therefore, so long as the total period of the plaintiff's exclusion from possession is, at the date of the plaintiff's suit, for a period of 12 years or over, the fact that this exclusion was by different trespassers will not help the plaintiff provided there was a continuity in the period of exclusion. That decision is not applicable to the facts of the case before us. This is a suit to which Art. 144 is attracted and the burden is on the defendant to establish that he

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was in adverse possession for 12 years before the date of suit and for computation of this period he can avail of the adverse possession of any person or persons through whom he claims - but not the adverse possession of independent trespassers.

10. This view has not been departed from in any case. At any rate none was brought to our notice where it has not been followed. Apart from that what we are concerned with is the language used by the legislature in the third column of Art. 144. The starting point of limitation there stated is the date when the possession of the defendant becomes adverse to the plaintiff. The word "defendant" is defined thus in S. 2 (4) of the Limitation Act thus :
'defendant' includes any person from or through whom a defendant derives his liability to be sued"
No doubt, this is an inclusive definition but the gist of it is the existence of a jural relationship between different persons. There can be no jural relationship between two independent trespassers. Therefore, where a defendant in possession of property is sued by a person who has title to it but is out of possession what he has to show in defence is that he or anyone through whom he claims has been in possession for more than the statutory period. An independent trespasser not being such a person the defendant is not entitled to tack on the previous possession of that person to his own possession. In our opinion, therefore, the respondents' suit is within time and has been rightly decreed by the Courts below. We dismiss this appeal with costs."

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22. In AIR 1954 SUPREME COURT 355 "Nathoo Lal v. Durga Prasad" the Hon'ble Supreme Court held that what is admitted by a party to be true must be presumed to be true unless the contrary is shown. Relying on said Judgment it is submitted that the ante litem motam statements of the plaintiffs made in their written statements in the suits which are also analogously being tried to the effect that the Muslims discontinued using the Disputed structure on or after 16.12.1949; their post litem motam statements made in the plaint of the instant suit that prayer was offered till 23.12.1949 can not be taken in to account which is very much false apparent from records as relevant records says that the said Disputed Structure was occupied by some Hindu group in the night of 22/23.12.1949 when alleged Mosque was under lock and key. There is no evidence to the contrary in the case,

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as such it is admitted fact of the plaintiffs that they discontinued their possession on 16.12.1949 and did'nt use it as Mosque from 17.12.1949 as such in view of this fact also instant suit is barred by limitation even under Article 142 or 144 of the Indian Limitation Act, 1908 though those Articles are not applicable but Article 120 of the said Act is applicable. Relevant paragraph 14 of the said judgment reads as follows:

> "14. In our judgment, there is force in the contention of Dr. Tek Chand and none of the contentions raised by the respondent's counsel have any validity. That Ramachandra bequeathed the suit property and did not gift it to his daughter Laxmi is a fact which cannot be questioned at this stage. It was admitted by the plaintiff himself in the witness box.
> This is what he said:
> "Ramachandra had made a will in favour of Mst. Laxmi and in that connection my maternal grand-mother and maternal great grand-mother got the gift deed registered. This very gift deed was got executed by my maternal grandmother and maternal great grandmother and had got it registered. Through this gift deed Mst. Laxmi held possession over it, till she was alive. She had kept deponent as her son and so she got the rent notes executed in my name."
> What is admitted by a party to be true must be presumed to be true unless the contrary is shown. There is no evidence to the contrary in the case. The gift deed fully supports the testimony of the plaintiff on this point. It definitely states that according to the will, the gift deed was executed in favour of Laxmi and it further recites that Laxmi was entitled to deal with the house in any manner she liked. Those who were, directed to execute the oral will made by Ramachandra must be presumed to have carried out his directions in accordance with his wishes.
> It seems clear that the intention of the testator was to benefit his daughter Laxmi and to confer upon her the same title as he himself possessed. She was the sole object of his bounty and on the attendant circumstances of this case it is plain that he intended to confer on her whatever title he himself had. Laxmi therefore became the absolute owner of the property under the terms of the oral will of her father and the plaintiff is no heir to the property which under the law devolved on Laxmi's husband who had full right to alienate it."

23. In Draupadi Devi v. Union of India,(2004) 11 SCC 425

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the Hon'ble Supreme Court held that the plaintiff was bound to plead in the plaint when the cause of action arose. If he did not, then irrespective of what the defendants may plead in the written statement, the court would be bound by the mandate of Section 3 of the Limitation Act, 1908 to dismiss the suit, if after ascertaining the facts by evidence it is found that on the plaintiff's own pleading his suit is barred by limitation. However, when the facts were ascertained by evidence Relying on said judgment it is submitted that on ascertained facts by evidence cause of action for instant Suit arose on 29.12.1949 i.e. the day of Order of attachment passed in the proceeding under section 145 of the Cr. P.C. 1898 which fact brings the instant suit within ambit of Article 120 of the Indian Limitation act, 1908; it is liable to be dismissed under Section 3 of the said Act of 1908.Relevant paragraph 73 to 75 of the said judgment read as follows:

"

> **73.** We may notice here that under the Code of Civil Procedure, Order 7 Rule 1(*e*) requires a plaint to state "the facts constituting the cause of action and when it arose". The plaintiff was bound to plead in the plaint when the cause of action arose. If he did not, then irrespective of what the defendants may plead in the written statement, the court would be bound by the mandate of Section 3 of the Limitation Act, 1908 to dismiss the suit, if it found that on the plaintiff's own pleading his suit is barred by limitation. In the instant case, the plaint does not plead clearly as to when the cause of action arose. In the absence of such pleadings, the defendants pleaded nothing on the issue. However, when the facts were ascertained by evidence, it was clear that the decision of the Government of India not to recognise the suit property as private property of the Maharaja was taken sometime in the year 1951, whether in March or May. Dewan Jarmani Dass, the plaintiff and the Maharaja were very much aware of this decision. Yet, the suit was filed only on 11-5-1960.
>
> **74.** The Division Bench was, therefore, right in applying Article 120 of the Limitation Act, 1908 under which the period of limitation for a suit for which no specific period is provided in the Schedule was six years from the date when the right to sue accrues. The suit was, therefore, clearly barred by limitation and by virtue of Section 3 of the Limitation Act, 1908, the Court was mandated to dismiss it.
>
> **75.** As rightly pointed out by the Division Bench, the learned Single Judge ought to have permitted the plea to be raised on the basis of the facts which came to light. The Division Bench has correctly appreciated the plea of limitation, in the facts and circumstances of the case, and rightly come to the conclusion that the suit of the plaintiff was liable to be dismissed on the 453ground of limitation. We agree with the

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conclusion of the Division Bench on this issue.

Sri P.N. Mishra, Adv. has further urged that the plaintiffs cannot be allowed to approbate and reprobate on one hand they are seeking declaration based on title while on other hand they are claiming relief based on adverse possession contrary to title as such the suit is liable to be dismissed on following grounds:-

**1.** In (2006) 2 SCC 641 National Insurance Co. Ltd. V. Mastan theHon'ble Supreme Court held that the election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims he cannot be allowed to enjoy both. The Doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate inheres in it. Relying on said judgment it is submitted that the plaintiffs cannot be allowed to press two inconsistent pleas; on one hand claiming possession based on the title under or through Emperor Babur while on other hand claiming possessory title based on adverse possession as such the instant suit is liable to be dismissed. Relevant paragraph 23-29 from the said judgment read as follows:

> **23.** The "doctrine of election" is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case.

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**24.** In *Nagubai Ammal* v. *B. Shama Rao*[5] it was stated: (SCR p. 470)

"It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto."

**25.** In *C. Beepathumma* v. *Velasari Shankaranarayana Kadambolithaya*[6] it was stated: (SCR p. 850)

"The doctrine of election which has been applied in this case is well settled and may be stated in the classic words of Maitland—

'That he who accepts a benefit under a deed or Will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.'

(See *Maitland's Lectures on Equity*, Lecture 18.)

The same principle is stated in *White and Tudor's Leading Cases in Equity*, Vol. (*sic*) 18th Edn. at p. 444 as follows:

'Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both.... That he who accepts a benefit under a deed or Will must adopt the whole contents of the instrument.' "

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(See also *Prashant Ramachandra Deshpande* v. *Maruti Balaram Haibatti*[7].)

**26.** Thomas, J. in *P.R. Deshpande* v. *Maruti Balaram Haibatti*[8] stated the law thus: (SCC p. 511, para 8)

"*8.* The doctrine of election is based on the rule of estoppel — the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

(See also *Devasahayam* v. *P. Savithramma*[9].)

**27.** The first respondent having chosen the forum under the 1923 Act for the purpose of obtaining compensation against his employer cannot now fall back upon the provisions of the 1988 Act therefor, inasmuch as the procedure laid down under both the Acts are different save and except those which are covered by Section 143 thereof.

**28.** We, therefore, with respect do not subscribe to the views of the Full Bench of the Karnataka High Court.

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> **29.** Mr P.R. Ramasesh is not correct in contending that both the Acts should be read together. A party suffering an injury or the dependent of the deceased who has died in the course of an accident arising out of use of a motor vehicle may have claims under different statutes. But when the cause of action arises under different statutes and the claimant elects the forum under one Act in preference to the other, he cannot thereafter be permitted to raise a contention which is available to him only in the former.

**2.** In (1992) 4 SCC 683 R.N. Gosain v. Yashpal Dhir the Hon'ble Supreme Court held that law does not permit a person to both approbate and reprobate, which principle is based on the doctrine of election which postulates that no party can say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. Relying on said judgment it is most respectfully submitted that having obtained benefit of the alleged waqf by stating that the Emperor Babur acquired title of the land in question by defeating the then ruler of Ayodhya and thereafter erected the alleged Mosque and created graveyards for the dead soldiers; now when the Babur's title is found void the plaintiffs cannot claim benefit on the ground of adverse possession as both are inconsistent to each other as such the instant suit is liable to be dismissed on this score alone. Relevant paragraph 10 of the said judgment reads as follows:

> **10.** Law does not permit a person to both approbate

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and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See : *Verschures Creameries Ltd.* v. *Hull and Netherlands Steamship Co. Ltd.*[4], Scrutton, L.J.] According to *Halsbury's Laws of England*, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508)

**3.** In AIR 1956 SC 593 Nagubai Ammal and others v. B.Shama Rao and others the Hon'ble Supreme Court held that a party who in earlier litigation had obtained decree on certain plea cannot be permitted to change his front in subsequent litigation. Relying on said judgment it is submitted that in Masmula Misl. Mukadama no. 61/280 of 1885 Mahant Raghubar Das v. Sarkar Bahadur Kaser-E-Hind and Mohammad Asghar and Civil appeal no. 27 of 1886 as well as in regular suit no. 29 of 1945 Shia Central Board of Waqf U.P. v. Sunni Central Board of Waqf the plaintiffs or their predecessors have obtained benefit from the respective courts on the basis of the plea that Emperor Babur was the owner of the disputed site and he had erected an alleged mosque thereon; now they are estopped from making plea of adverse possession ; as such the instant suit is liable to be dismissed on this ground alone. Relevant paragraph 21 of the said judgment reads as follows:

"21. We shall now deal with the contention of the

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> appellants that in view of what happened in O. S. No. 92 of 1938-39 it is not open to the plaintiff to plead in these proceedings that the decree and sale in O. S. No. 100 of 1919-20 are not collusive.
> It is argued that in his plaint in O. S. No. 92 of 1938-39 the plaintiff alleged that the proceedings in O. S. No. 100 of 1919-20 were collusive, adduced evidence in proof of these allegations, persuaded the court to give a finding to that effect, and obtained a decree on the basis of that finding, and he cannot therefore be permitted in this litigation to change his front and plead that the proceedings in O. S. No. 100 of 1919-20 are not collusive and succeed on it. This bar arises, it is argued, on the principle that a person cannot both approbate and reprobate."

**4.** In **AIR 1965 SC 241 C. Beepathuma and others v. Velasari Shankarnarayana Kadambolithaya** the Hon'ble Supreme Court held that the Doctrine of election is that, he who accepts a benefit under a deed or will or other instrument must adopt whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it. This principle is often put in another form that a person cannot approbate and reprobate the same transaction. Relying on said judgment it is submitted that the plaintiffs cannot be allowed to harp on applicability of Article 142 of the Indian Limitation Act, 1908 on one hand and of Article 144 on other hand. Relevant paragraph 17 and 18 of the said judgment read as follows:

> "17. The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland-
> "That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and

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renounce all rights that are inconsistent with it:"
(See Maitland's lectures on Equity Lecture18)
The same principle is stated in White and Tudor's Leading cases in Equity Vol, 1 8th Edn, at n. 444 as follows:
"Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both ..... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."

18. The Indian courts have applied this doctrine in several cases and a reference to all of them is hardly necessary. We may, however, refer to a decision of the Madras High Court in Ramakottayya v. Viraraghavayya, ILR 52 Mad 556: (AIR 1929 Mad 502 FB) where after referring to the passage quoted by us from White and Tudor, courts Trotter, G. J. observed that the principle is often put in another form that a person cannot approbate and reprobate the same transaction and he referred to the decision of the Judicial committee in Rangaswami Gounden v. Nachiappa Gounden, ILR 42 ) Mad 523: (AIR 1918 PC 196). Recently, this court has also considered the doctrine in Bhau Ram v. Baij Nath Singh, AIR 1961 SC 1327."

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Sri P.N. Mishra, Adv. **has contended that burden of proof** under Section 101,102,103 and 110 of the Indian Evidence Act,1872 lies on the plaintiffs which they have failed to prove as such the instant suit is liable to be dismissed on following grounds:

**1.** In AIR 2007 SC 2191 (*M/s. Kamakshi Builders. v. M/s. Anbedkar Educational Society & Ors.)* the Hon'ble Apex Court has held that in case of claim for possession based on title, there is no prima facie animus possidendi as the claim for title by prescription is not tenable.

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Presumption by itself would not discharge the burden of proof on claimant and would not create title. Acquisition of title is inference of law arising out of certain sets of facts as such a person not acquiring title in law cannot be vested only by reason of acquiescence or estoppel on part of other. Relying on the said ratio of law, it is submitted that as the plaintiffs have claimed the possession based on title there is no prima facie animus possidendi their claim for title by prescription is not tenable and the suit is liable to be dismissed. Relevant paragraph nos.24, 26, 28 and 29 of the said judgment read as follows:

> "24. Acquiescence on the part of Respondent No. 3, as has been noticed by the High Court, did not confer any title on Respondent No. 1. Conduct may be a relevant fact, so as to apply the procedural law like estoppel, waiver or acquiescence, but thereby no title can be conferred.
>
> 26. Acquisition of a title is an inference of law arising out of certain set of facts. If in law, a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of other.
>
> 28. It may be true that Respondent No. 3 herein should have examined himself and the learned Trial Judge committed a serious error in drawing an adverse inference in that behalf as against Respondent No. 1. It was, however, so done keeping in view the fact that Respondent No. 3 was evidently not interested in the property in view of the fact that it had suffered a decree. For all intent and purport, even if the submission of Mr. Parasaran is accepted that the appellant is 1999 AIR SCW 1129 claiming only by reason of an award, he has transferred the property in his favour. He received a valuable consideration in

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terms of the award. We are not concerned with the validity thereof. Non-examination of Respondent No. 3 indisputably would give rise to a presumption, as has been held by this Court in Sardar Gurbaksh Singh v. Gurdial Singh [AIR 1927 PC 230]; Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bombay 97]; and The Ramanathapuram Market Committee, Virudhunagar v. East India Corpn. Ltd., Madurai [AIR 1976 Madras 323] and Vidhyadhar v. Manikrao and Anr. [(1999) 3 SCC 573], but by reason of presumption alone, the burden is not discharged. A title is not created

29. A claim of title by prescription by Respondent No. 1 again is not tenable. It based its claim on a title. It had, therefore, prima facie, no animus possidendi."

2. In **(1997) 7 SCC 567 D.N. Venkata Rayappa v. State of Karnataka & Ors.** the Hon'ble Supreme Court has held that in view of the prohibition in respect of alienation, alienee derives no valid title. It has also been held that in claim of adverse possession, the plaintiffs are required to plead and prove that they disclaimed the title under which they came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of the true owner and the owner allowed them without any law or hindrance to remain in possession and enjoyment of the property adverse to his interest until the expiry of the prescribed period. Relying on the said principle of law, it is submitted that as according to Muslim Personal Law building a mosque on the land of others is prohibited, the plaintiffs or their predecessors derive no valid title. The plaintiffs have also not pleaded

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and proved that they disclaimed the tile under which they came into possession. They have also failed to set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of true owners as they themselves have not mentioned the true owner as such the plea of adverse possession have not been proved and the suit is liable to be dismissed. Relevant paragraph 3 of the said judgment reads as follows:

> **3.** The petitioners, admittedly, had purchased the property in the years 1962-63 and 1963-64 from the original allottees. The Government have allotted those lands as per Saguvali Chit containing prohibition of alienation of the land. Subsequently, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 was enacted totally prohibiting the alienation up to a particular period. The proceedings were initiated against the petitioners for ejectment under the said Act. All the authorities have concurrently held that the alienation in favour of the petitioners was in violation of the above Rules and the said Act and hence the sales are voidable. When the case had come up before this Court, this Court while upholding the constitutionality of the Act directed the authorities to go into the question of adverse possession raised by the petitioners. The learned Single Judge has extracted the pleadings on adverse possession of the petitioners. Therein, the High Court had pointed out that there is no express plea of adverse possession except stating that after the purchase of the lands made by them, they remained in possession and enjoyment of the lands. What requires to be pleaded and proved is that the purchaser disclaimed his title under which he came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of the true owner and the latter allowed the former, without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of the true owner until the expiry of the prescribed period. The classical requirement of adverse possession is that it should be

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*nec vi, nec clam, nec precario*. After considering the entire case-law in that behalf, the learned Single Judge has held thus:

"The contention raised by the petitioners that they have perfected their title in respect of the lands in question by adverse possession, has to fail on two counts. Firstly, the crucial facts, which constitute adverse possession have not been pleaded. The pleadings extracted above, in my [illegible]view, will not constitute the crucial facts necessary to claim title by adverse possession. It is not stated by the petitioners in their pleadings that the petitioners at any point of time claimed or asserted their title, hostile or adverse to the title of the original grantees/their vendors. In my view, mere uninterrupted and continuous possession without the animus to continue in possession hostile to the rights of the real owner will not constitute adverse possession in law.

In the case of *Lakshmi Reddy*[1] relied upon by Shri Narayana Rao at para 7 of the judgment, the Supreme Court, following the decision of the Privy Council in *Secy. of State* v. *Debendra Lal Khan*[2], has observed that the ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

In the case of *State of W.B.* v. *Dalhousie Institute Society*[3] the Supreme Court, on the basis of the materials on record, which were referred to by the High Court, took the view that in the said case, the respondent had established his title to the site in question by adverse possession. Further, the said decision proceeds on the basis that the grant made by the Government was invalid in law. That is not the position in the present case. The alienation in question was only voidable. The petitioners came into possession of the lands in question by virtue of the sale deeds which are only voidable in law. Therefore, they have come into possession by virtue of the derivative title as observed by the Supreme Court in the case of *Chandevarappa*[4]. Further, in the case of *Kshitish Chandra*[5], the observation made by the Supreme Court at para 8 of the judgment relied upon by Shri Narayana Rao in support of his contention that the only requirement of law to claim title by adverse possession is that the possession must be

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open and without any attempt at concealment and it is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner concerned, I am of the view that the said observation must be understood with reference to the observations made in para 7 of the judgment. At para 7 of the judgment, the Supreme Court has observed thus:

'*7*. ... For instance, one of the most important facts which clearly proved adverse possession was that the plaintiff had let out the land for cultivatory purposes and used it himself from time to time without any protest from the defendant. During the period of 45 years, no serious attempt was made by the municipality to evict the [570]plaintiff knowing full well that he was asserting hostile title against the municipality in respect of the land.'

Further, this Court, in the case of *Danappa Revappa Kolli* v. *Gurupadappa Kallappa Pattana Shetti*[6], while referring to the decision of the Supreme Court in *Kshitish Chandra case*[5], relied upon by Shri Narayana Rao in support of the plea of adverse possession, has observed that apart from the actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. The observations made in the said decision reads thus:

'*5*. ... Apart from actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all be adverse possession because it lacks necessary animus for perfecting title by adverse possession.'

Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner. Therefore, I am of the view that none of the decisions relied upon by Shri Narayana Rao in support of the plea of adverse possession set up by the petitioners, is of any assistance to the petitioners.

Further, admittedly, there is not even a whisper in the

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evidence of the first petitioner with regard to the claim of adverse possession set up by the petitioners. It is not stated by the petitioners that they have been in continuous and uninterrupted possession of the lands in question. What is stated by the petitioners, in substance, is that they came into possession of the lands in question by virtue of the sale deeds executed by the original grantees. The Supreme Court, in para 11 of the decision in *Chandevarappa case*[4], has observed thus:

'*11*. The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant.'

Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession and, therefore, the Act does not apply as laid down by the Supreme Court in *Manchegowda case*[7]. The law laid down by the Supreme Court in *Chandevarappa case*[4] fully applies to the facts of the present case. In the said case, while considering the claim of adverse possession of the purchaser of a granted land from the original grantee, the Supreme Court has observed that

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the person who comes into possession under colour of title from the original grantee, if he intends to claim adverse possession as against the State, must disclaim his title and plead his hostile claim to the knowledge of the State and the State had not taken any action thereon within the prescribed period. It is also relevant to point out that sub-section (3) of Section 5 of the Act provides that where a granted land is in possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer, which is null and void under the provisions of sub-section (1) of Section 4. Since I have negatived the contention of Shri Narayana Rao that the original grantees are not Scheduled Castes, it follows that the lands in question are granted lands within the meaning of clause (*b*) of sub-section (1) of Section 3 of the Act. Therefore, the burden is on the petitioners, who had admittedly come into possession of the lands in question, to establish that they have acquired title to the lands in question by a transfer, which is not null and void under the provisions of sub-section (21) of Section 4 of the Act. In the instant case, the petitioners have failed to discharge the said burden. On this ground also, the petition should fail. Secondly, the grants made in favour of the original grantees are admittedly free grants. The rule governing the grant prohibited alienation of the lands in question permanently. The lands in question were granted to a Scheduled Caste person taking into account their social backgrounds, poverty, illiteracy and their inherent weakness for being exploited by the affluent section of [illegible]572the society. Under these circumstances, the conditions were imposed that the grantees should not alienate the lands granted to them. Sections 66-A and 66-B of the Land Revenue Code authorise the State to resume the land for violation of the terms of the grant. Therefore, if the terms of the grants, which are hedged with conditions, and the class of persons to whom the lands are granted, are taken into account and considered, it is not possible to accept the contention of the learned counsel for the petitioners that the title in the lands had passed absolutely to the grantees. I am of the view that the title to the lands continued to remain in the State and what has been transferred to the grantees is the right to continue to be in possession of the lands granted to them and enjoy the same in perpetuity subject to the condition that they

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do not violate the conditions of the grant. This view of mine is supported by the Division Bench decision of this Court in the case of *Rudrappa* v. *Special Dy. Commr.*[8], wherein in para 8 of the judgment, the Division Bench of this Court, while considering similar grants, has taken the view that the grantee was not given absolute title in respect of the land granted. The relevant portion of the judgment at para 8, reads as follows:

'*8*. ... It is clear from the terms of the grant that the appellant's predecessor-in-title, the grantee could not alienate the land for certain period and if the land was alienated, it was open to the Government to cancel the grant and resume the land in question. If the grant was hedged in with several conditions of this nature, the same cannot be said to be absolute. Moreover, it must be noticed that the grant was made at an upset price. In the circumstances, proceedings initiated by the respondents cannot be stated to be barred by limitation nor is it possible to sustain the plea of adverse possession raised on behalf of the appellant.'

3. **In (2009) 7 SCC 161 (*Babulal Sharma v. State of Madhya Pradesh)*** the Hon'ble Supreme Court has held that the revenue records are relevant in a suit for title and possession. As the revenue record shows that the disputed land is nazool that is government land which is relevant under Sections 35 and 74 of the Evidence Act, 1872. In such circumstances, the State of Uttar Pradesh is the recorded owner of the disputed premises and unless the State Government executes a registered instrument of lease under the provision of Section 107 of the Transfer of Property Act, 1882 no one can claim as lessee. As the plaintiffs have failed to produce any lease deed in their favour, they cannot be considered as owner of the disputed

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premises. Relevant paragraph nos.15 to 18 of the said judgment read as follows:

> **15.** In our considered opinion reliance placed on the judgment of the various courts including the Supreme Court in respect of the land measuring 0.53 decimal which was allegedly sold by Mahadev Prasad Richharia, the 164 father of the appellant-plaintiff to Chhedilal Gupta is totally misplaced. The said land was transferred way back in the year 1945. We are here concerned with an area of land measuring 1.31 acres only. The said land is entered in the revenue records in the name of the Government of Madhya Pradesh. The Revenue Courts have given a finding against the appellant-plaintiff.
>
> **16.** In the documents which are exhibited it is clearly mentioned that these are not cultivable lands but originally they were "khadans" (mines) and the same land was declared as nazool lands. Therefore, the revenue records which are referred to in the present case clearly depict that the land has all along been the government land. The land was also said to be in a ruinous state and therefore, there was no possession of the appellant-plaintiff with respect to the said land.
>
> **17.** No argument for claiming a right by way of adverse possession was made before us which although was a plea taken in the courts below. The appellant-plaintiff has also admitted in his evidence that he has been residing outside the suit land. Therefore, it is clearly established that the appellant-plaintiff did not even have the possession of the suit land. Furthermore, there is no document to prove his title. He has not been able to prove and establish as to how Mahadev Prasad Richharia, his father came to own the said property which was a government land.
>
> **18.** The oldest khasra entry which is available on record is Exhibit P-11 which pertains to the period of 1943-1944. In the said khasra entry names of the appellant-plaintiff are not recorded in any capacity whatsoever in the relevant columns. Rather, in the column meant for the name of "kastkar" (cultivator) and his status, cross sign is shown whereas the nature of the land is shown as "BA AR RASTA". In the khasra corresponding to year 1951-1952 (Exhibit P-12) the name of the appellant-plaintiff is not mentioned at all in any capacity. The name of the appellant-plaintiff was recorded in the next year i.e.

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> 1953-1954 which is Exhibit P-4 but there also the name of the appellant-plaintiff is recorded in Column 7 whereas Column 8 was meant to show the name of the cultivator occupying them. The nature of the land is not shown to be cultivable but is shown to be as "khadan" i.e. mines.

4. In **AIR 1964 SC 1254 (*S.M. Karim. v. Mst Bibi Sakina)*** the Hon'ble Apex Court has held that the alternative claim must be clearly made and proved, adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. A mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "a possible title" was not enough to raise such a plea. Long possession is not necessary adverse possession and prayer clause is not a substitute for a plea. Relying on the said ratio of law, it is submitted that as the plaintiffs have not pleaded adverse possession adequate in continuity, in publicity and extent and also have not shown the starting point of limitation in their plaint and the prayer clause is not a substitute for a plea, this suit is liable to be dismissed. Relevant paragraph nos.3 to 5 of the said judgment read as follows:

> 3. In this appeal, it has been stressed by the appellant that the finding clearly establish the benami nature of the transaction of 1914. This is, perhaps, true but the

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appellant cannot avail himself of it. The appellant's claim based upon the benami nature of the transaction cannot stand because S. 66 of the Code of Civil Procedure bars it. That Section provides that no suit shall be maintained against any person claiming title under a purchase certified by the Court on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims. Formerly, the opening words were, no suit shall be maintained against a certified purchaser, and the change was made to protect not only the certified purchaser but any person claiming title under a purchase certified by the Court. The protection is thus available not only against the real purchaser but also against anyone claiming through him. In the present case, the appellant as plaintiff was hit by the Section and the defendants were protected, by it.

4. It is contended that the case falls within the second sub-section under which a suit is possible at the instance of a third person who wishes to proceed against the property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner. Reliance is placed upon the transfer by Syed Aulad Ali in favour of the appellant which is described as a claim by the transferee against the real owner. The words of the second sub-section refer to the claims of creditors and not to the claims of transferees. The

latter are dealt with in the first sub-section, and if the meaning sought to be placed on the second sub-section by the appellant were accepted, the entire policy of the law would be defeated by the real purchaser making a transfer to another and the first sub-section would become almost a dead letter. In our opinion, such a construction cannot be accepted and the plaintiff's suit must be held to be barred under S. 66 of the Code.

As an alternative, it was contended before us that the title of Hakir Alam was extinguished by long and uninterrupted adverse possession of Syed Aulad Ali and after him of the plaintiff. The High Court did not accept this case. Such a case is, of course, open to a plaintiff to make if his possession is disturbed. If the possession of the real owner ripens into title under the Limitation Act and he is dispossessed, he can sue to obtain possession, for he does not then rely on the benami nature of the transaction. But the alternative claim must be clearly made and proved. The High

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Court held that the plea of adverse possession was not raised in the suit and reversed the decision of the two courts below. The plea of adverse possession is raised here. Reliance is placed before us on Sukhan Das v. Krishnanand, ILR 32 Pat 353 and Sri Bhagwan Singh v. Ram Basi Kuer, AIR 1957 Pat 157 to submit that such a plea is not necessary and alternatively, that if a plea is required, what can be considered a proper plea. But these two cases can hardly help the appellant. No doubt, the plaint sets out the fact that after the purchase by Syed Aulad Ali, benami in the name of his son-in-law Hakir Alam, Syed Aulad Ali continued in possession of the property but it does not say that this possession was at any time adverse to that of the certified purchaser. Hakir Alam was the son-in-law of Syed Aulad Ali and was living with him. There is no suggestion that Syed Aulad Ali ever asserted any hostile title against him or that a dispute with regard to ownership and possession had ever arisen. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for " several 12 years" or that the plaintiff had acquired " an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in Bishun Dayal v. Kesho Prasad, AIR 1940 PC 202 the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.

5. In **(2005) 11 SCC 115 (*B. Leelavathi v. Honamma)*** the Hon’ble Supreme Court has held that the adverse possession is a question of fact which has to be specifically pleaded and proved and in the absence of any plea of adverse possession, framing of an issue and adducing evidence could not be held

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that the plaintiffs had perfected towards the title by way of adverse possession. Relying on the said judgment, it is submitted that as the plaintiffs had not pleaded settled ingredients of adverse possession in their plaint on the basis of framing of an issue and adducing evidence on the point cannot be held that the plaintiffs have perfected their title by way of adverse possession and the instant suit is liable to be dismissed with costs. Relevant paragraph nos.10 and 11 of the said judgment read as follows:

> 10. In our considered view, the High Court has erroneously set aside the judgment and decree passed by the trial court on the ground of non-issuance of notice by BDA to the plaintiff-respondent before executing the sale deed dated 21-5-1983 in favour of the appellant and that the plaintiff-respondent had perfected her title by way of adverse possession. Plea of non-issuance of show-cause notice by BDA before executing the sale deed in favour of the appellant was neither pleaded nor raised before the trial court. It was raised for the first time before the High Court. No issue had been framed in this respect. The plaintiff did not lead any evidence on this point. On the contrary, the case of the appellant and BDA was that Respondent 1 was present at the time when the sale deed was executed in favour of the appellant by BDA on 21-5-1983. DW 1, husband of the appellant has specifically deposed that [illegible]Respondent 1 was a consenting party to all the transactions and had visited the office of BDA along with the appellant at the time of the execution of the sale deed dated 21-5-1983. The High Court has not given any reasons to discard the testimony of DW 1. This was primarily a question of fact and in the absence of any pleadings and evidence on this point, the High Court has erred in holding that BDA did not issue a show-cause notice to the plaintiff before executing the sale deed in favour of the appellant.
>
> 11. Plea of adverse possession had been taken vaguely in the plaint. No categorical stand on this point was taken in the plaint. No issue had been

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> framed and seemingly the same was not insisted upon by the plaintiff-respondent. Adverse possession is a question of fact which has to be specifically pleaded and proved. No evidence was adduced by the plaintiff-respondent with regard to adverse possession. Honnamma, the plaintiff in her own statement did not say that she is in adverse possession of the suit property. We fail to understand as to how the High Court, in the absence of any plea of adverse possession, framing of an issue and evidence led on the point, could hold that the plaintiff-respondent had perfected her title by way of adverse possession.

6. In **(2008) 2 SCC 741 (*Dharamarajan v. Valliammal)*** the Hon'ble Supreme Court has held that in a claim of adverse possession openness and adverse nature of the possession has to be proved against the owner of the property in question. Relying on the said judgment, it is submitted that the plaintiffs have failed to prove openness and adverse nature of possession against the owner of the property as they themselves do not know as to who is the owner of the property and they have not pleaded the name of the owner in the plaint and, as such, the suit is liable to be dismissed. Relevant paragraph 11 of the said judgment reads as follows:

> **11.** In our opinion none of these questions could be said to be either question of law or a substantial question of law arising out of the pleadings of the parties. The first referred question of law could not and did not arise for the simple reason that the plea of adverse possession has been rightly found against the plaintiff. Karupayee Ammal's possession, even if presumed to be a valid possession in law, could not be said to be adverse possession as throughout it was the case of the appellant Dharmarajan that it was a permissive possession and that she was permitted to stay on the land belonging to the members of the Iyer

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family. Secondly, it has nowhere come as to against whom was her possession adverse. Was it adverse against the Government or against the Iyer family? In order to substantiate the plea of adverse possession, the possession has to be open and adverse to the owner of the property in question. The evidence did not show this openness and adverse nature because it is not even certain as to against whom the adverse possession was pleaded on the part of Karupayee Ammal. Further even the legal relationship of Doraiswamy and Karupayee Ammal is not pleaded or proved. All that is pleaded is that after Karupayee Ammal's demise Doraiswamy as her foster son continued in the thatched shed allegedly constructed by Karupayee Ammal. There was no question of the tacking of possession as there is ample evidence on record to suggest that Doraiswamy also was in the service of Iyer family and that he was permitted to stay after Karupayee Ammal. Further his legal heirship was also not decisively proved. We do not, therefore, see as to how the first substantial question of law came to be framed. This is apart from the fact that ultimately the High Court has not granted the relief to the respondents on the basis of the finding of this question. On the other hand the High Court has gone into entirely different consideration based on reappreciation of evidence. The second and third questions are not the questions of law at all. They are regarding appreciation of evidence. The fourth question is regarding the admissibility of Exhibit A-8. In our opinion there is no question of admissibility as the High Court has found that Exhibit A-8 was not admissible in evidence since the Tahsildar who had issued that certificate was not examined. Therefore, there will be no question of admissibility since the document itself was not proved. Again the finding of the High Court goes against the respondent herein. Even the fifth question was a clear-cut question of fact and was, therefore, impermissible in the second appeal.

7. In **(1995) Supp 4 SCC 570 (*A.S. Vidyasagar v. S. Karunanandan)*** the Hon'ble Supreme Court has held that permissive possession is not adverse possession and can be terminated at any time by the rightful owner. Relying on

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the said judgment, it is submitted that as the land in question has been recorded as government land and no lease deed has been executed in favour of the plaintiffs or their predecessors, they cannot claim for adverse possession as status of such occupants is only as a tenant on hold and as they have neither pleaded nor adduced any evidence to support the plea of openness, hostile and notoriety against the rightful owner as such their suit is liable to be dismissed. Relevant paragraph 5 of the said judgment reads as follows:

> **5.** Adverse possession is sought to be established on the supposition that Kanthimathi got possession of the premises as a licensee and on her death in 1948, the appellant who was 4 years of age, must be presumed to have become a trespasser. And if he had remained in trespass for 12 years, the title stood [illegible]perfected and in any case, a suit to recovery of possession would by then be time-barred. We are unable to appreciate this line of reasoning for it appears to us that there is no occasion to term the possession of Kanthimathi as that of a licensee. The possession was permissive in her hands and remained permissive in the hands of the appellant on his birth, as well as in the hands of his father living then with Kanthimathi. There was no occasion for any such licence to have been terminated. For the view we are taking there was no licence at all. Permissive possession of the appellant could rightfully be terminated at any moment by the rightful owners. The present contesting respondents thus had a right to institute the suit for possession against the appellant. No oral evidence has been referred to us which would go to support the plea of openness, hostility and notoriety which would go to establish adverse possession. On the contrary, the Municipal Tax receipts, Exts. B-39 and 40, even though suggestedly reflecting payment made by the appellant, were in the name of Kuppuswami, the rightful owner. This negates the assertion that at any stage did the appellant assert a hostile title. Even by examining the evidence, at our end, we come to the same view as that of the High

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> Court. The plea of adverse possession thus also fails. As a result fails this appeal. Accordingly, we dismiss the appeal, but without any order as to costs.

8. **In (1995) 6 SCC 523 (*P. Periasami. v. P. Periathambi)*** the Hon'ble Supreme Court has held that plea of adverse possession implies that someone else is the owner of the property. Relying on the said judgment it is submitted that as in their prayer the plaintiffs have sought relief on the basis of adverse possession it implies that someone else was the owner and they or their predecessors were not owner of the property. As such the suit on the basis of title is not maintainable and is liable to be dismissed with costs. Relevant paragraph 6 of the said judgment reads as follows:

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> **6.** With regard to the accreted property, there is a reference in the judgment under appeal relating to some accounting; after recording the finding that the defendants have failed to prove that that property was in their adverse possession. This is a finding of fact which need not be disturbed, as it has been sought to, in the cross-appeal. Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property. The failure of the plea has obvious results. If the parties herein were co-owners of that property and the said property had been purchased from the income derived from joint property, then obviously the same has to be accounted for as joint property and not as joint Hindu family property. It was like property jointly purchased by co-owners without attracting the rule of succession by way of survivorship. On this clarification, the judgment of the High Court is cleansed of the little vagueness about this particular which accidentally seems to have crept in while dealing with this aspect of the case.

9. IN **AIR 1970 SUPREME COURT 2025 "Goswami Shri**

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**Mahalaxmi Vahuji v. Shah Ranchhoddas Kalidas"** the Hon'ble Supreme Court held that a party cannot be allowed to set up a case wholly inconsistent with that pleaded in their written statement. Relying on said judgment it is submitted that the plaintiffs who have pleaded in their written statements ante litem motam filed in other suit being tried analogously admitting that lastly prayer was offered on 16.12.1949 and thereafter they discontinued in possession now in the instant suit they cannot be allowed to raise their post litem motam statement that they offered prayer till 22nd or 23rd December 1949 which is wholly inconsistent with their earlier pleading. Besides that in the instant suit on one hand they claims possession based on title of Emperor Babur while on other hand they claim possession based on Adverse possession treating someone else owner of the property in question without disclosing even name of such owner; these two inconsistent plea cannot be allowed to be raised in one suit itself. Relevant paragraph 8 of the said judgment reads as follows:

> "8. We may now proceed to examine the material on record for finding out the true character of the suit properties viz., whether they are properties of a public trust arising from their dedication of those properties in favour of the deity Shree Gokulnathji or whether the deity as well as the suit properties are the private properties of Goswami Maharaj. In her written statement as noticed, earlier, the 1st defendant took up the specific plea that the idol of Shri Gokulnathji is the private property of the Maharaj; the Vallabh Cult does not permit any dedication in favour of an

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idol and in fact there was no dedication in favour of that idol. She emphatically denied that the suit properties were the properties of the deity Gokulnathji but in this Court evidently because of the enormity of evidence adduced by the plaintiffs, a totally new plea was taken namely that several items of the suit properties had been dedicated to Gokulnathji but the deity being the family deity of the Maharaj, the resulting trust is only a private trust. In other words the plea taken in the written statement is that the suit properties were the private properties of the Maharaj and that there was no trust, private or public. But the case argued before this Court is a wholly different one viz., the suit properties were partly the properties of a private trust and partly the private properties of the Maharaj. The 1st defendant cannot be permitted to take up a case which is wholly inconsistent with that pleaded. This belated attempt to bypass the evidence adduced appears to be more a manoeuvre than a genuine explanation of the documentary evidence adduced. It is amply proved that ever since Mathuranathji took over the management of the shrine, two sets of account books have been maintained, one relating to the income and expenses of the shrine and the other relating to that of the Maharaj. These account books and other documents show that presents and gifts used to be made to the deity as well as to the Maharaj. The two were quite separate and distinct. Maharaj himself has been making gifts to the deity. He has been, at times utilising the funds belonging to the deity and thereafter reimbursing the same. The account books which have been produced clearly go to show that the deity and the Maharaj were treated as two different and distinct legal entities. The evidence afforded by the account books is tell-tale. In the trial court it was contended on behalf of the 1st defendant that none of the account books produced relates exclusively to the affairs of the temple. They all record the transactions of the Maharaj, whether pertaining to his personal dealings or dealings in connection with the deity. This is an obviously untenable contention. That contention was given up in the High Court. In the High Court it was urged that two sets of account books were kept, one relating to the income and expenditure of the deity and the other of the Maharaj, so that the Maharaj could easily find out his financial commitments relating to the affairs of the deity. But in this Court Mr. Narasaraju, learned Counsel for the

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> appellant realising the untenability of the contention advanced in the courts below presented for our consideration a totally new case and that is that Gokulnathji undoubtedly is a legal personality; in the past the properties had been dedicated in favour of that deity; those properties are the properties of a private trust of which the Maharaj was the trustee. On the basis of this newly evolved theory he wanted to explain away the effect of the evidence afforded by the account books and the documents. We are unable to accept this new plea. It runs counter to the case pleaded in the written statement. This is not a purely legal contention. The 1st defendant must have known whether there was any dedication in favour of Shree Gokulnathji and whether any portion of the suit properties were the properties of a private trust. She and her advisers must have known at all relevant times the true nature of the accounts maintained. Mr. Narasaraju is not right in his contention that the plea taken by him in this Court is a purely legal plea. It essentially relates to questions of fact. Hence we informed Mr. Narasaraju that we will not entertain the plea in question."

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10. In **AIR 1984 SC 718 (*A.R. Antulay. v. Ramdas Sriniwas Nayak & Anr.)*** the Hon'ble Supreme Court has held that if a statute prescribe anything to do in any specific manner then, it should be done in the same manner. Relevant paragraph 22 of the said judgment reads as follows:

> "22. Once the contention on behalf of the appellant that investigation under Section 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from Taylor v. Taylor, (1875-76) 1 Ch D 426; Nazir Ahmad v. King Emperor, AIR 1936 PC 253 (2) and ending with Chettiam Vettil Ammad v. Taluk Land Board, (1979) 3 SCR 839 : (AIR 1979 SC 1573), laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that

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way or not at all. Other methods of performance are necessarily forbidden."

11. In AIR 1983 SUPREME COURT 684 "State of Bihar v. Radha Krishna Singh = (1983) 3 SCC 118 the a Hon'ble Supreme court held that as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim to concoct, fabricate or procure false genealogy to suit their ends, the Courts in relying on the genealogy put forward must guard themselves against falling into trap laid by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims; as also that When a case of a party is based on a genealogy consisting of links, it is incumbent on the party to prove every link thereof and even if one like is found to be missing then in the eye of law, the genealogy cannot be said to have been fully proved. Relying on said judgment the plaintiffs have failed to prove geneology of the Mutwallis allegedly starting from the reign of Emperor Babur as such the suit is liable to be dismissed on this score alone. Relevant paragraph 18,19, 24,192 and 193 of the said judgment reads as follows:

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"18. After a brief narration of the facts, mentioned above, before going to the oral, documentary and circumstantial evidence, it may be necessary to state the well established principles in the light of which we have to decide the conflicting claims of the parties. It appears that the plaint genealogy is the very fabric and foundation of the edifice on which is built

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the plaintiff's case. This is the starting point of the case of the plaintiff which has been hotly contested by the appellant. In such cases, as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their ends, the courts in relying on the genealogy put forward must guard themselves against falling into the trap laid by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims.

19. The principles governing such cases may be summarised thus :
(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the courts before accepting or relying on the genealogies.
(a) Source of the genealogy and its dependability.
(b) Admissibility of the genealogy under the Evidence Act.
(c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.
(d) Age of genealogies.
(e) Litigations where such genealogies have been accepted or rejected.
(2) On the question of admissibility the following tests must be adopted :
(a) the genealogies of the families concerned must fall within the four corners of S. 32 (5) or S. 13 of the Evidence Act.
(b) They must not be hit by the doctrine of post litem motam.
(c) The genealogies or the claims cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.
(d) where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved.

24. It is well settled that when a case of a party is based on a genealogy consisting of links, it is incumbent on the party to prove every link thereof

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and even if one link is found to be missing then in the eye of law the genealogy cannot be said to have been fully proved. In the instant case, although the plaintiffs have produced oral and documentary evidence to show that Ramruch Singh and Debi Singh were brothers being the sons of Bansidhar Singh this position was not accepted by the trial court as also by M. M. Prasad, J. who dissented from the other two Judges constituting the Special Bench who had taken a contrary view and had held that the plaintiffs had fully proved the entire genealogy set-up in the plaint. This, therefore, makes our task easier because we need not discuss in detail the evidence and documents to show the connection of the plaintiffs up to the stage of Gajraj Singh though we may have to refer to the evidence for the purpose of deciding the main issue, viz., whether or not Gajraj Singh was the son of Ramruch Singh and Ramruch Singh a brother of Debi Singh and son of Bansidhar Singh.

192. Before, however, opening this chapter it may be necessary to restate the norms and the principles governing the proof of a pedigree by oral evidence, in the light of which the said evidence would have to be examined by us. It is true that in considering the oral evidence regarding a pedigree a purely mathematical approach cannot be made because where a long line of descent has to be proved spreading over a century, it is obvious that the witnesses who are examined to depose to the genealogy would have to depend on their special means of knowledge which may have come to them through their ancestors but, at the same time, there is a great risk and a serious danger involved in relying solely on the evidence of witnesses given from pure memory because the witnesses who are interested normally have a tendency to draw more from their imagination or turn and twist the facts which they may have heard from their ancestors in order to help the parties for whom they are deposing. The Court must, therefore safeguard that the evidence of such witnesses may not be accepted as is based purely on imagination or an imaginary or illusory source of information rather than special means of knowledge as required by law. The oral testimony of the witnesses on this matter is bound to be hearsay and their evidence is admissible as an exception to the general rule where hearsay evidence is not admissible. This is culled out from the law contained in Cl. (5) of S. 32 of the Evidence Act

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which must be construed to the letter and to the spirit on which it was passed.

193. In order to appreciate the evidence of such witnesses, the following principles should be kept in mind:

(1) The relationship or the connection however close it may be, which the witness bears to the persons whose pedigree is sought to be deposed by him.

(2) The nature and character of the special means of knowledge through which the witness has come to know about the pedigree.

(3) The interested nature of the witness concerned.

(4) The precaution which must be taken to rule out any false statement made by the witness post litem motam or one which is derived not by means of special knowledge but purely from his imagination, and

(5) The evidence of the witness must be substantially corroborated as far as time and memory admit."

12. In AIR 1983 SUPREME COURT 684 "State of Bihar v. Radha Krishna Singh = (1983) 3 SCC 118 the a Hon'ble Supreme Court in respect of admissibility of the documents has laid down principle of law relying where on it is submitted that the documents filed by the petitioner in the instant suit are not admissible. Relevant paragraph 35 of the said judgment reads as follows:

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"35. In our opinion, Ex. J. squarely falls within the four corners of S. 35 of the Evidence Act which requires the following conditions to be fulfilled before a document can be admissible under this section.

(1) the document must be in the nature of an entry in any public or other official book, register or record,

(2) it must state a fact in issue or a relevant fact,

(3) the entry must be made by a public servant in the discharge of his official duties or in performance of his duties especially enjoined by the law of the country in which the relevant entry is kept."

13. In AIR 1983 SUPREME COURT 684 "State of Bihar v.

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Radha Krishna Singh = (1983) 3 SCC 118 the a Hon'ble Supreme Court in respect of admissibility and probative value of the documents has laid down principle of law relying where on it is submitted that the documents filed by the Plaintiffs in the instant suit are not admissible. Relevant paragraph 40,47 and 52 of the said judgment reads as follows:

> "40. The admissibility of Ex J., or its genuineness is only one side of the picture and in our opinion, it does not throw much light on the controversial issues involved in the appeal. We may not be understood, while holding that Ex. J. is admissible, to mean that all its recitals are correct or that it has very great probative value merely because it happens to be an ancient document. Admissibility of a document is one thing and its probative value quite another - these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and the weight of its probative value may be nil. Before going to the contents of Ex. J., which have been fully discussed by the High Court, we would first like to comment on the probative value of this document.
>
> 47. We would like to mention here that even if a document may be admissible or an ancient one, it cannot carry the same weight or probative value as a document which is prepared either under a Statute, Ordinance or an Act which requires certain conditions to be fulfilled. This was the case in both Ghulam Rasul Khan's (AIR 1925 PC 170) and Shyam Pratap Singh's cases (AIR 1946 PC 103) (supra).
>
> 52. Finally, Ex. J., unlike the document in the case (1874-I Ind App 209) before the Privy Council was not a Report under any statutory authority but was merely a report submitted on the administrative orders of a high Government official. In our opinion, therefore, where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has a statutory favour in that it is given not merely by an administrative officer but under the authority of a statute, its probative value

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would indeed be very high so as to be entitled to great weight."

14. In AIR 1983 SUPREME COURT 684 "State of Bihar v. Radha Krishna Singh = (1983) 3 SCC 118 the a Hon'ble Supreme Court in respect of admissibility of the Judgments has laid down principle of law relying where on it is submitted that the judgment dated 24.12.1885 passed by Ld. Sub Judge Faizabad Sri Harikishan in Suit No. 61/280 of 1885 between Mahant Rghubardas v. Secretary of State & Anr as well as Judgment dated 18/26.03.1886 passed by Ld. District Judge Faizabad Mr. F.E.A. Chamier in Civil Appeal No.27 of 1885 preferred against said order of the Ld. Sub Judge Faizabad as well as the Judgment dated 30.03.1946 passed by Ld. Civil Judge Faizabad Sri S.A. Ahsan in Suit No. 29 of 1949 between Shia Central Board U.P. Wqfs vs. Sunni Central Board U.P. Waqfs filed by the Plaintiffs in the instant suit not being Judgment in rem or the judgment between the same parties are not admissible in evidence and not reliable for extracting inferences. Relevant paragraph 121,122,133 and 143 of the said judgment reads as follows:

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"121. Some Courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of S. 43, referred to above. We are, however, of the opinion that where there is a specific provision covering the admissibility of a document, it is not open to the court to call into aid other general provisions in order to make a particular document admissible. In other words if a judgment is not admissible as not falling within the ambit of Sections

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40 to 42, it must fulfil the conditions of S. 43 otherwise it cannot be relevant under S. 13 of the Evidence Act. The words "other provisions of this Act" cannot cover S. 13 because this section does not deal with judgments at all.

122. It is also well settled that a judgment in rem like judgments, passed in probate, insolvency, matrimonial or guardianship or other similar, proceedings, is admissible in all cases whether such judgments are inter partes or not.

In the instant case, however, all the documents consisting of judgments filed are not judgments in rem and therefore, the question of their admissibility on that basis does not arise. As mentioned earlier, the judgments filed as Exhibits in the instant case, are judgments in personam and, therefore, they do not fulfil the conditions mentioned in S. 41 of the Evidence Act.

133. The cumulative effect of the decisions cited above on this point clearly is that under the Evidence Act a judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit. In these circumstances, therefore, it is not open to the plaintiffs-respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgments are used for the limited purpose mentioned above, they do not take us anywhere so as to prove the plaintiffs' case.

143. Thus, summarising the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows :

(1) A judgment in rem e.g., judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter partes or not,

(2) judgments in personam not inter partes are not at all admissible in evidence except for the three purposes mentioned above. "

(3) On a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred

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to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.
(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.
(5) Statements, declarations or depositions, etc., would be admissible if they are post litem motam."

15. In AIR 1983 SUPREME COURT 684 "State of Bihar v. Radha Krishna Singh = (1983) 3 SCC 118 the a Hon'ble Supreme Court held that Statements, declarations or deposition etc. are not admissible if they are post litem motam. The statements or declarations before persons of competent knowledge made ante litem motam are receivable to prove ancient rights of a public or general nature. The admissibility of such declarations is however, considerably weakened if it pertains not to public rights but to purely private rights. It is equally well settled that declarations or statements made post litem motam would not be admissible because in cases made ante litem motam, the element of bias and concoction is eliminated . Before, however, the statements of the nature being ante litem motam they must be not also before the actual existence of any controversy but they should be made even before the commencement of legal proceedings. Relying on said judgment it is submitted that the Statements made ante litem motam that last prayer was offered on 16.12.1949 and thereafter the plaintiffs discontinued it, cannot make

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contrary statement in this suit that they offered prayer till 23rd December 1949 with sole motive to save limitation as the instant suit was instituted on 18th December 1949 as also; that the plaintiffs' ante litem motam stand was that the waqf was created by Emperor Babur now in the instant suit they cannot be allowed to take benefit of contrary statement that someone else was the owner and they are entitled for decree on the ground of adverse possession. Relevant paragraph 134 and 135 of the said judgment reads as follows:

> "134. It is also well settled that statements or declarations, before persons of competent knowledge made ante litem motam are receivable to prove ancient rights of a public or general nature vide Halsbury's' Laws of England (Vol. 15 : 3rd Edition, A. 308) where the following statement is to be found :
> "Declarations by deceased persons of competent knowledge, made ante litem motam, are receivable to prove ancient rights of a public or general nature. The admission of declarations as to those rights is allowed partly on the ground of necessity,. since without such evidence ancient rights could rarely be established; and partly on the ground that the public nature of the rights minimises the risks of misstatement."
> 135. The admissibility of such declarations is, however, considerably weakened if it pertains not to public rights but to purely private rights. It is equally well settled that declarations or statements made post litem motam would not be admissible because in cases or proceedings taken or declarations made ante litem motam. the element of bias and concoction is eliminated. Before, however, the statements of the nature mentioned above can be admissible as being ante litem motam they must be not only before the actual existence of any controversy but they should be made even before the commencement of legal proceedings. In this connection, in para 562 at page 308 of Halsbury's Laws of England (supra) the following statement is made :

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> "To obviate bias, the declarations must have been made ante litem motam, which means not merely before the commencement of legal proceedings, but before even the existence of any actual controversy, concerning the subject matter of the declarations. So strictly has this requirement been enforced that the fact that such a dispute was unknown to the declarant or was fraudulently begun with a view to shutting out his declarations has been held immaterial."'

Sri P.N. Mishra, Adv. has submitted that there is admission of the Muslims that **the Hindus were continuously worshiping at Sri Ramajanmasthan Temple and the Muslims were interrupting them only on Fridays aided by the Army of Nababs or the British Government** and ultimately the Muslims discontinued their said interruption on 16.12.1949, submissions are as under:

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**Annexure-V**
**Oral Evidence**
**Pages 240-281**

1. Mohammad Hashim the plaintiff no.7 in the instant suit has deposed in Hindi as PW1 relevant portions whereof read as follows:

> "a). If in a mosque there are figures of either human beings or of animals or birds then no prayer shall be offered therein (ibid p. 47 Line 11 & 12 from the top)
> b). Above the Nothern doors of the disputed property there are two images of lions on both sides. (ibid p. 47 Line 1 & 2 of the last paragraph)
> c). On the northern side of the disputed property there are several temples and habitation between the junction of the roads leading to a Unawal Temple and Kanak Temple. On the eastern side of the disputed property at very longest distances there is no Muslim habitation. (ibid p.52 L. 3, 4, 5)
> d). Myself and Salar Mohammad had adopted the

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written statement filed by Anisur Rahman. We had admitted the same. (ibid p.52 L.8, 9, 10)
e). On being shown the photographs being paper Nos. 54A-2/41, 54A-2/42 and 54A-2/43 said plaintiff admitted that those photographs were of the Hindu Deities. (ibid P. 46 L.18-20 & P. 57 L.1)
f). The place where is pictures of the God, Goddesses, animals or the birds prayer cannot be offered because it is forbidden. (ibid P.77 L.12-15)
g). The riot of the 1934 was unilateral in which only Muslims had been killed no Hindu was killed. It is correct that at that time Hindus were more powerful and whenever they thought they subdued the Muslims. (ibid P.103 L. 1-3 of the last Paragraph)
h). If in any building or temple Idol is placed and worship and prayer is going on then there Namaz cannot be offered. Mosque cannot be built over a grave-yard. (ibid P.1-7, L. 10-12)
i). No prayer was offered on 23rd December 1949. In the month of October-November at the instance of Raghav Das the mosque was cordoned off from all four sides and had started *Kirtan* at Ganj-e-Shahidan. (ibid P.172 L.15, 17 – 20)"

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2. Farooqe Ahmed son of Zahoor Ahmed, the plaintiff no.10/1 in the instant suit has deposed in Hindi as PW3 relevant portions whereof read as follows:

"a). In the photograph which was seen by me and in which Saitan was came to sight was because the Saitan has human like feature with two big eyes whose hands and legs are in to and fro movement. (ibid P.82 last paragraph )
b). No mosque can be built in the place where is a grave. (ibid P. 96 L. 14)"

3. Sayyed Kalbe Jawad, has deposed in Hindi as PW-26 relevant portion of his deposition made on 17.05.2002 reads as follows:

"a). Islam does not permit to engrave Idols or pictures of the Hindu Gods and Goddesses on the pillars inside a mosque.

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4. In paragraph-7 of his written statement dated 8.7.1950/29.12.1950 filed in the proceeding under Section145 Cr.P.C., 1898 Anisur Rahaman has stated that the party no.2 i.e. the Muslims of Ayodhya and other Muslims offered prayer in the building in question i.e. Babri Masjid till 16th December, 1949. In paragraphs 8 and 9 he states that on 12th November, 1949 the Hindus started *Jap* (repetition of a mantra or muttering of prayers) near the Babri Masjid wherein a large crowd of the Hindus gathered and they inflicted insult and humiliation upon *Quanati* Masjid and graves when this fact was informed to the district authorities they deployed a police guard and in view of apprehension of assault on Babri Masjid on 22nd November, 1949 the district authorities increased the number of the police guards. That Mohammad Hashim, the plaintiff No.7 in the instant suit in his written statement dated 09.04.1951 has adopted above-mentioned written statement of Anisur Rahaman which is on page 211 of volume 2 of the documents filed in the instant suit. The written statement of Anisur Rahaman is on page 215 to 219 of the volume no.2 of the documents filed.

5. From the aforesaid written statements of the Muslims it becomes crystal clear that according to their admission lastly prayer was offered on 16th December, 1949 and

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thereafter i.e. on and from 17th December, 1949 no prayer was offered and the possession of said Mosque was discontinued knowing fully well that the Hindu crowd which had surrounded the Babri Mosque since 12th November, 1949 would occupy the same. In view of such admitted facts if for the sake of argument for a moment it is assumed that the article 142 of the Limitation Act, 1908 is applicable in the instant case in that event the date of discontinuation i.e. 16th December, 1949 would be starting point of limitation under Article 142 of the Indian Limitation Act, 1908 and in that case also the suit is barred by limitation.

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6. Jan Mohammed, Abdul Sattar, Abdul Gani, Rojid, Hosaldar, Ramzan, Gulle Khan, Md. Ismile Abdul Sakoor, Abdul Razaqe, Naseebdar in their respective affidavits all dated 16.02.1950 have stated that the Babri Mosque was erected by demolishing Ramjanmabhumi temple but in spite of erection of said mosque the Hindus did not give up their possession and the Hindus were all along worshipping their idol therein. Muslims were able to offer prayer therein only on Fridays with the help of the forces of the Nawabs. In 1934 after the Hindu-Muslim riot the Muslims stopped going there in the mosque for the reason that in spite of killing three Muslims rioters were acquitted because the Muslims were apprehensive that going in mosque was risky

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for their lives. Since those days the Hindus have occupied principal place of the mosque and to read *namaz* on that place is against the Shar of Muslims. All those affidavits affirmed under order 19 Rule 1 of the Civil Procedure Code, 1908 and filed in the court of learned City Magistrate, Faizabad in 145 Cr.P.C., 1898 proceeding of 1949 have been compiled in volume 2 of the documents filed in the instant suit as page nos.135 to 180.

7. Anisur Rahaman in his affidavit dated 5.4.1950 affirmed and filed in Cri Misc. Case No.208 of 1950 filed in the High Court of Judicature at Allahabad praying inter alia for transferring the said 145 Cr.P.C. proceedings being case no. of 1949 REX versus Anisur Ramaham to some other court of competent jurisdiction outside the district of Faizabad; has stated that on the 9th November, 1949 a crowd of five thousand Hindus collected and raised religious slogans and performed 'kirtan' and levelled down two tombs, 25 graves and one qanati mosque outside the compound of the alleged Babri mosque. Abhdey Ram Dass, Ramshukul Dass, Sheodarshan Dass and 50 or 60 other persons committed trespass into the Babri mosque and installed an idol in the mosque and thereby polluted 'napak' the mosque. In the said affidavit it has also been stated that the Muslims of the vicinity were at that time persuaded by the authorities not to say the prayers on that Friday. On

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20.11.1949 the police advised the Muslim not to say their prayers in the surviving Babri mosque while the jap continued. In order to avoid a communal clash the Muslim acted on the advice and continued to say their prayers every Friday upto 16th December, 1949. Except for the Friday prayers the mosque used to be kept locked. A copy of said affidavit is on page nos.187 to 194 of volume no.2 of the documents filed in the instant suit. Relevant paragraph of the said affidavit reads as follows:

> "2. That in Ajodhya there is a historical mosque built by Emperor Babar in 1528 A.D. called the Babari Mosque which has got a grant attached to it and is registered under the Waqf Act and the courtyard of the mosque is separate by a wall from a small temple which is situated to its East.
> 3. That Hindus and Muslims of Ajodhya have been peacefully and calmly carrying on their worship in the temple and prayers in the mosque respectively from time immemorial.
> 4. That on the 9th of November 1949 it was found that two tombs and about 25 graves which lay outside the compound of the Babri mosque had been leveled down and the mosque in the cemetery known as the "Qanati" mosque had been dug up and a new platform adjacent to the aforesaid mosque was constructed and an idol placed on that platform.
> 5. That from 22.11.1949 the Hindus of the place started their 'Jap' (worship) on that place in which a large number of Hindus were collected and for that reason the police advised the Muslims not to say their prayers in the surviving Babari mosque all the 5 times while the 'Jap' continued but continue it to Fridays only. In order to avoid a coomunal clash the Muslims acted on the advice and continued to say their prayer every Friday upto December 16, 1949. Except for the Friday prayers the mosque used to be kept locked and guarded by the police.
> 6. That on the night preceding the next Friday, namely the night between 22nd and 23rd December

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> 1949 the Hindus surrupticiously and clandes sinely introduced an … inside the mosque itself and put it on the "member" (pulpit)"

8. The plaintiff no.4 of OOS No.4 of 1989 i.e. the instant suit Molvi Mohmmad Faiq is defendant no.3 in OOS No.1 of 1989 and defendant No.7 in OOS No.3 of 1989; in paragraph 22 of his written statement dated 21.02.1950 filed in OOS No.1 of 1989 as also in paragraph 26 of his written statement dated 28.03.1960 filed in OOS No.3 of 1989 has admitted that in the alleged Babri Masjid the prayer was offered only till 16.12.1949.

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9. The plaintiff no.10 of OOS No.4 of 1989 i.e. the instant suit Zahoor Ahemed is defendant no.1 in OOS No.1 of 1989; in paragraph 22 of his written statement dated 21.02.1950 filed in OOS No.1 of 1989 has admitted that in the alleged Babri Masjid the prayer was offered only till 16.12.1949.

10. The plaintiff no.1 of OOS No.4 of 1989 i.e. the instant suit U.P. Sunni Central Board of Waqfs is defendant no.9 in OOS No.3 of 1989; in paragraph 6 in its additional written statement dated 24.08.1995 filed in OOS No.3 of 1989 has adopted written statement of Molvi Mohammed Faiq and Zahoor Ahemed filed in OOS No.3 of 1989 and

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thereby it becomes admitted fact on part of the U.P. Sunni Central Board of Waqfs also that in the alleged Babri Masjid the prayer was offered only till 16.12.1949.

11. In (1901-02) 29 IA 24 the Hon'ble Privy Council held that the police report and orders for possession by Magistrates under Section 145 of Cr.P.C. are admissible in evidence under Section 13 being a "transaction" in which the rights or custom was claimed, modified, recognized, asserted or denied. Relying on the said judgment it is submitted that from the order of attachment dated 29.12.1949 passed by the Ld. City Magistrate Faizabad & Ayodhya in the proceeding under Section 145 of 1949 as well as police report, it is evident that the Hindus were in possession and they were worshipping in the disputed Sri Ramjanmasthan temple and were asserting their rights which fact is admissible evidence under Section 13 of the Evidence Act. Relevant portion from page 24 of the said judgment reads as follows:

> "These police orders are in their Lordships' opinion admissible in evidence on general principles as well as under s. 13 of the Indian Evidence Act to shew the fact that such orders were made. This necessarily makes them evidence of the following facts, all of which appear from the orders themselves, namely, who the parties to the dispute were; what the land in dispute was; and who was declared entitled to retain possession. For this purpose, and to this extent, such orders are admissible in evidence for and against every one when the fact of possession at the date of the order has to be ascertained. If the lands referred in such an order are described by metes and bounds, or by reference to objects or marks physically existing, these must necessarily be ascertained by extrinsic evidence, i.e., the testimony of persons who know the

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> locality. If the orders refer to a map, that map is admissible in evidence to render the order intelligible; and the actual situation of the objects drawn or otherwise indicated on the map must, as in all cases of the sort, be ascertained by extrinsic evidence. So far there appears to be no difficulty. Reports accompanying the orders or maps and not referred to in the orders may be admissible as hearsay evidence of reputed possession: 2 Tay. Ev. s. 517.§ But they are not otherwise admissible unless they are made so by s.13 of the Indian Evidence Act. To bring a report within that section the report must be "a transaction in which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence." These words are very wide, and are wide enough to let in the reports forming part of the proceedings in 1867, 1876, and 1888. Their Lordships are of opinion that the High Court did not err in receiving the report made in the proceedings of 1876 to the reception of which Mr. Cohen objected."

12. Sarkar's Law of Evidence, 15th Edn. Reprint 2003 published by Wadhwa and Company Nagpur in its Vol.1 on page 306 referring several Case laws conclude that the police reports, orders, affidavits etc. under Section 145 Cr.P.C. are admissible in evidence under Section 13 of the Indian Evidence Act, 1872. Relevant paragraph of the said book reads as follows:

> "—Police Reports and Orders Under S. 145 Cr.P Code etc. -- Police reports and orders for possession by magistrates under s 145 Cr P Code are admissible in evidence under s 13, being a "transaction" in which the right or custom wa claimed, modified, recognized, asserted or denied [Dinomoni v. Brojomohini, 29 IA 24:29C 187: 6 CWN 386:15 MLJ83 ante]. Such orders are admissible against all persons when the fact of possession on the date of the order has to be ascertained. But as between parties to the proceedings they are also admissible as evidence as regards possession before two months of the date of the order [Jogendra v. Mohim, 34 CWN 358:57 C 987]. Such orders are admissible on general

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> principles as well as under s 13 to show the fact that such orders were made [Hasim v. Abjal, 4 CLJ 30: 82 IC 392: A 1924 C 1046]. The facts of previous proceedings under s 145 and order thereon must be taken into consideration in a subsequent suit for possession based on the title [Boroda v. Manmatha, 41 IC 456]. Order under s 145 Cr P Code set aside by the High Court is admissible to show that possession was claimed by plaintiff who has complained of forcible dispossession [Devi v. Sisram, A 1939 L 188]. A judgment in a criminal case in which the plaintiff's assertion of possession was held to be with him is inadmissible against a person not a party to the criminal proceedings to prove plaintiff's possession at date of judgment, but it is admissible under s 13 to prove the assertion of plaintiff's title to the land at the date of judgment [Param v. Santosh, A 1942 P 372].

13. In 34 CWN 358 (*Jogendra v. Mohim)* the Hon'ble Calcutta High Court held that order passed under Section 145 Cr.P.C. are admissible against all persons when the fact of possession on the date of the order has to be asserted but as between parties to the proceedings they are also admissible as evidence as regards possession before two months of the date of the order. Relying on the said judgment it is submitted that from the orders passed in proceeding under section 145 Code of Criminal Procedure 1898 by the Magistrate are a piece of evidence which is to be looked into to ascertain the possession of the litigating parties and if they are looked into it becomes crystal clear that the Hindus were in possession before two months of the date of the order. Relevant extract from page 861 of the

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said judgment reads as follows:

> "the order of the Magistrate is in the nature of a police order admissible as evidence of the fact as to who was declared entitled to retain possession; and these orders are admissible against all persons when the fact of possession on the date of the order has to be ascertained. But as between parties to the proceedings they are also admissible as evidence as regards possession before two months of the date of the order, because if there had been a dispossession within 2 months of the date of the order when the proceedings were started, the Magistrate would have been bound to make over possession to the person who had been so dispossessed."

14. In AIR 1924 Calcutta 1046 Hasim Ali and others v. Abjal Khan and others the Hon'ble High Court Calcutta held that the facts of initiation of proceeding under Section 145, Criminal Procedure Code, enquiry conducted therein, stands taken by the parties therein and orders passed therein are relevant facts and the same are admissible in evidence on general principles as well as under Section 13 of the Indian Evidence Act. Relevant extracts from page 1046 -1047 of the said judgment read as follows:

> "The appeal raises three points for consideration, namely, first, whether reliance should have been placed upon the proceedings in a case under section 145, Criminal Procedure Code; secondly whether the alleged title by adverse possession had been established ; and thirdly, whether the plaintiffs were entitled to a declaration of title to an unascertained share.
> As regards the first point; it appears that the appellants were the first party in a proceeding under section 145, Criminal Procedure Code in

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> 1916. Their case then, as now, was that they were entitled to the exclusive possession of the tank and that there was a likelihood of a breach of the peace as the second party (predecessors in interest of the defendants) claimed wrongful possession jointly with them. Upon investigation, the Magistrate came to the conclusion that the plaintiffs were not in exclusive but in joint possession, and that there was no likelihood of a breach of the peace. On these grounds proceedings were discontinued on the 22nd March 1917.
>
> It is plain that the fact, that there was a proceeding under section 145, Criminal Procedure Code, that there was an inquiry into the matter and that there was a decision adverse to the allegations of the plaintiffs, is a relevant fact, and the Subordinate Judge has properly treated this as evidence. The view of the Subordinate Judge is supported by the decision of the Judicial Committee in Dinomoni Chowdhurani v. Brojomohini Chwdhurani (1). In that case Lord Lindley pointed out that orders for possession under the provisions of the Criminal Procedure Code relating to disputes regarding immoveable properties are police orders made to prevent breaches of the peace and decide no question of title: but such orders are admissible in evidence on general principles as well as under Section 13 of the Indian Evidence Act to show the fact that such orders were made. Consequently, the first point must be decided against the appellants."
>
> …
>
> "As regards the third point, Mr. Justice Walmsley has correctly held that the plaintiffs cannot claim a decree for declarations of title. The specific title alleged by them has not been established. On the other hand, the difficulty remains that the extent of their share cannot be determined on the evidence as it stands. In such circumstances, it is impossible to make a decree in favour of the plaintiff in respect of an unknown share."

15. In **41 IC 456 (*Baroda v. Manmatha)*** the Hon'ble Court held that the facts of previous proceedings under

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Section 145 Cr.P.C. and order thereon must be taken into consideration in subsequent suit for possession based on the title. Relying on the said judgment it is submitted that from the facts as stated in the affidavits of the persons through or under whom the present plaintiffs are claiming their right, title and interest, it becomes crystal clear that last prayer were offered on 16**th** December, 1949 and even prior to that date for last several months Muslims were unable to go to the disputed premises as large crowd of the Hindus were doing *kirtons* etc. and the learned Magistrate had directed them not to go their in group. In such circumstances it was not possible for any Muslim to go alone and offer prayer. From which it can be easily inferred that in fact from the several months back from 16**th** December, 1949, Muslims were unable to offer any prayer in the said disputed building.

16. In AIR 1942 Patna 372 *(Param v. Santosh)* the Hon'ble Patna High Court held that a judgment in a criminal case in which the plaintiffs' assertion of possession was held to be with him is inadmissible against a person not a party to the criminal proceedings to prove plaintiffs possession as date of judgment, but it is admissible under Section 13 to prove the assertion of plaintiffs' title to the land at the date of judgment. Relying on the said judgment it is submitted that the order passed in 145 Cr.P.C. proceedings is admissible

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under Section 13 to prove the claim of the Hindus' title to the land at the date of the said order. Relevant paragraph of the said judgment on its page 374 reads as follows:

> "Now the defence in the present case was that at some time, more than forty years ago, the lands in dispute had fallen to the share of the defendants and they had been in possession ever since. They therefore alleged that the entry in the cadastral survey was wrong. The plaintiffs, on the other hand, denied the story of the defendants being in possession for the period of which the latter alleged, and the Court has found that the defence is entirely untrue in this respect. In coming to this conclusion, it has relied on a judgment of a criminal case of 1901 in which the plaintiffs asserted their possession of the land in dispute, and possession was held to be with them. Now if this judgment be admissible, it undoubtedly disproves the defendants' case, but it is contended that the judgment is inadmissible against the defendants who were not parties to the criminal proceedings. It is not the decision on which reliance can be placed to prove the plaintiffs' possession in 1901, but the fact that at that point of time they asserted their title is admissible under S. 13, Evidence Act. In my opinion, therefore, the finding of the Court below is not vitiated by its reliance on the plaintiffs assertion of possession in 1901."

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17. Sections 8, 9 and 13 of the Evidence Act, 1872 in respect of relevant fact provides as follows:

> **8. Motive, preparation and previous or subsequent conduct.**—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
>
> The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

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*Explanation 1*.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

*Explanation 2*.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

*Illustrations*

(*a*) *A* is tried for the murder of *B*.

The facts that *A* murdered *C,* that *B* knew that *A* had murdered *C,* and that *B* had tried to extort money from *A* by threatening to make his knowledge public, are relevant.

(*b*) *A* sues *B* upon a bond for the payment of money. *B* denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, *B* required money for a particular purpose, is relevant.

(*c*) *A* is tried for the murder of *B* by poison.

The fact that, before the death of *B, A* procured poison similar to that which was administered to *B,* is relevant.

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(*d*) The question is, whether a certain document is the will of *A*.

The facts that, not long before the date of the alleged will, *A* made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e*) *A* is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, *A* provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is, whether *A* robbed *B*.

The facts that, after *B* was robbed, *C* said in *A*'s presence—"the police are coming to look for the man who robbed *B*", and that immediately afterwards *A* ran away, are relevant.

(*g*) The question is, whether *A* owes *B* rupees 10,000.

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The facts that *A* asked *C* to lend him money, and that *D* said to *C* in *A*'s presence and hearing— "I advise you not to trust *A,* for he owes *B* 10,000 rupees," and that *A* went away without making any answer, are relevant facts.

(*h*) The question is, whether *A* committed a crime.

The fact that *A* absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) *A* is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*) The question is, whether *A* was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is, not relevant, as conduct under this section, though it may be relevant as a dying declaration under Section 32, clause (1), or as corroborative evidence under Section 157.

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(*k*) The question is, whether *A* was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under Section 32, clause (1), or as corroborative evidence under Section 157

**9. Facts necessary to explain or introduce relevant facts.**—Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

*Illustrations*

(*a*) The question is, whether a given document is the will of *A*.

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The state of *A*'s property and of his family at the date of the alleged will may be relevant facts.

(*b*) *A* sues *B* for a libel imputing disgraceful conduct to *A*; *B* affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between *A* and *B* about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between *A* and *B*.

(*c*) *A* is accused of a crime.

The fact that, soon after the commission of the crime, *A* absconded from his house, is relevant under Section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

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(*d*) *A* sues *B* for inducing *C* to break a contract of service made by him with *A*. *C,* on leaving *A*'s service, says to *A*— "I am leaving you because *B* has made me a better offer". This statement is a relevant fact as explanatory of *C*'s conduct, which is relevant as a fact in issue.

(*e*) *A*, accused of theft, is seen to give the stolen property to *B,* who is seen to give it to *A*'s wife. *B* says as he delivers it—"*A* says you are to hide this". *B*'s statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) *A* is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

**13. Facts relevant when right or custom is in question.**—Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its

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existence;

(*b*) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

*Illustration*

The question is, whether *A* has a right to a fishery. A deed conferring the fishery on *A*'s ancestors, a mortgage of the fishery by *A*'s father, a subsequent grant of the fishery by *A*'s father, irreconcilable with the mortgage, particular instances in which *A*'s father exercised the right, or in which the exercise of the right was stopped by *A*'s neighbours, are relevant facts.

(The Indian Evidence Act, 1872)

18. Order 19 Rule 1 of the Civil Procedure Code lays down that the Court may at any time order that any particular fact or facts may be proved by affidavit and Rule 3 thereof says that the facts as stated in the affidavit on the basis of deponent's own knowledge is admissible. As such the affidavits filed by the persons under or through whom the present plaintiffs are claiming are admissible as evidence in respect of relevant fact stated therein.

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**1. Power to order any point to be proved by affidavit**.—Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

**State Amendments**

UTTAR PRADESH.—In Order XIX, in Rule 1, for the existing proviso, the following proviso shall be

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*substituted,* namely:

"Provided that if it appears to the Court, whether at the instance of either party or otherwise and whether before or after the filing of such affidavit, that the production of such witness for cross-examination is necessary and his attendance can be procured, the Court shall order the attendance of such witness, whereupon the witness may be examined, cross-examined and re-examined."—U.P. Act 57 of 1976, Section 9. (1-1-1977).

**High Court Amendments**

ALLAHABAD.—After Rule 1 the following Rule 1-A shall be *inserted*:

"1-A. *Power to permit ex parte evidence on affidavit.*—Where the case proceeds *ex parte,* the Court may permit the evidence of the plaintiff to be given on affidavit." (*Vide* Noti. No. 121/IV-h—36-D, dated Feb. 10, 1981 w.e.f. Oct. 3, 1981.)

**3. Matters to which affidavits shall be confined**.—(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same."

19. In **AIR 1970 All 154 (*Ram Khelawan Bhagwati. v. Sundar Nankau & Anr.)*** the Hon'ble Allahabad High Court has held that in a proceeding under Section 145 Cr.P.C., 1898, the Magistrate was empowered to direct to file affidavit. Relying on the said judgment it is submitted that as affidavit in the proceedings under Section 145 Cr. P.C. case of 1949 have been filed under order of the Magistrate the same are admissible evidence. Relevant paragraph nos.8 and 14 of

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the said judgment read as follows:

> “8. Though the amendments made under this section in 1955 aimed at expeditious disposal of proceedings and for that purpose this section has been extensively amended, sub-section (9) has been retained in its old form. The newly added proviso to sub-section (4) empowered the Magistrate to summon and examine any person whose affidavit has been put in. He is also empowered under sub-section (9) to summon any witness at any stage of the proceedings on the application of either party. Neither in subsection (9) nor in the proviso to sub-section (4), a party has a right to examine a witness. In either case, the discretion lies with the Magistrate. When it is not possible for a party to obtain affidavits from persons who may be competent to speak about the possession, the Magistrate has the discretion to examine such persons as witnesses under sub-section (9). Our reasons for this view are, that the first proviso to sub-section (4) is quite independent of sub-section (9). That proviso would govern only sub-section (4) and not other sub-sections which follow it. The view that sub-section (9) was subject to the proviso to sub-section (4) would be violating all rules of interpretation of the statutes. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined only to that case. In AIR 1957 Bom 20, Keshavlal Premchand v. Commissioner of Income-tax Bombay, their Lordships observed :
>
> "A proviso, which is in fact and in substance a proviso, can only operate to deal with a case which but for it would have fallen within the ambit of the section to which the proviso is a proviso, the section deals with a particular field and the proviso excepts or takes out or carves out from the field a particular portion, and therefore, it is perfectly true that before a proviso can have any application the section itself must apply. It is equally true that the proviso cannot deal with any other field than the field which the section itself deals with.....If a proviso is capable of a wider connotation and is also capable of a narrower connotation, if the narrower connotation brings it within the purview of the section, then the Court must prefer the narrower connotation-rather than the wider connotation.....".
>
> The proviso to sub-section (4) of S. 145 confers a

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right on the Magistrate in suitable cases to summon and examine 'any person' whose affidavit has been put in as to the facts contained therein. This simply means, that where necessary, the Magistrate could summon and examine any person who has filed an affidavit in the case. That evidence is also to be confined to the facts mentioned in those affidavits. That contingency would arise only in the case of ambiguity in the affidavit filed by the parties witnesses. As stated earlier, this specific provision was made by the amendment of 1955. Subsection (9) even existed prior to the amendment, and was allowed to continue. So, it could not be said that the same was redundant or superfluous. If that was so, the Legislature could have omitted it when drastic changes were made in Section 145. A plain reading of sub-s. (9) clearly indicates that it was quite independent of sub-section (4). It empowers the Magistrate where necessary 'at any stage' of the proceedings on the application of either party to summon 'any witness' directing him to 'attend or to produce any document or thing'. The words used in the proviso to sub-section (4) are 'any person' but in sub-section (9) the words are 'any witness'. The said proviso is restricted to the evidence of only those persons who have filed the affidavit. But sub-section (9) says that 'any witness' could be summoned at any stage. There is not the least indication that its scope is also confined only, to the persons who have filed affidavits in the case. 'At any' stage' occurring in the sub-section may even be prior to the filing of the affidavits. On the facts of the instant case, it is unnecessary to enter into the question whether the Magistrate has also the power to record the evidence of any witness summoned under that sub-section. As stated earlier, the request of the petitioner was only to summon the Lekhpal for filing an affidavit, but the Magistrate summarily dismissed the petition on the ground that there was no such provision under the existing law, which empowered him to summon any witness to file an| affidavit That power clearly existed under sub-section (9). So, we are convinced that the provisions of sub-s. (9) are quite independent of sub-section (4). In suitable cases, the Magistrate could summon any witness irrespective of the fact whether he has filed an affidavit in the case, and direct him to attend or produce any document or thing. In the circumstances, there was no bar to the Magistrate in summoning the petitioner's witnesss and directing

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him to file an affidavit

> 14. In this view, we hold that the Magistrate clearly erred in summarily rejecting the application of the petitioner for summoning the Lekhpal and directing him to file an affidavit. He was fully competent under S. 145 (9) of the Cri. P. C. to have granted that prayer if it was necessary in the ends of justice and for proper decision of the rights of the parties. In the circumstances, the reference is allowed and the recommendation made by the Sessions Judge, Lucknow, is accepted. The order of the Magistrate dated 7th June, 1966 is quashed and he is directed to decide the application of the petitioner for summoning the Lekhpal on the merits."

20. In **AIR 1963 All 256 (*Wahid & Anr. v. State*)** the Hon'ble Supreme Court held that the Magistrate before whom the proceedings under Section 145 Cr.P.C. are pending is a person authorized to administer oath either by himself or by an official empowered by him in this behalf and the affidavits sworn according are admissible evidence. Relying on the said judgment it is submitted that as the affidavits of the persons under or through whom the plaintiffs are claiming were sworn before an official empowered by the Magistrate are admissible evidence and the facts stated therein that after the riots of 1934, the Muslims did not use to go to offer prayer in the said Mosque and the alleged Mosque was being used as temple by the Hindus are relevant fact which can be inferred from their affidavits. Relevant paragraph nos.3, 5 and 6 of the said judgment read as follows:

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"3. The first point that arises for consideration, therefore, is whether the affidavits filed by the parties were properly sworn and could be considered as proper evidence in the case. Under the provisions of S. 145, Cri. P. C., a party to the proceeding can adduce evidence of such persons as the party relies upon in support of his claim by putting in affidavits of those persons. The affidavits that were put in by Mahangi (first party) were verified and taken before an oath commissioner appointed by the High Court under S. 539, Cri. P. C. On the back of those affidavits there is a note of attestation. That note does not show on its face as to who is the attesting authority, because the designation of the person attesting is not written under the signatures. Under the signature of the authority attesting those affidavits we find only the date and another small initials. The signatures of the magistrate
who tried the case, are on various other papers on the record. A comparison of the admitted signatures of the magistrate with the signatures on affidavits under the word "attested" clearly shows that the affidavits were attested by that very magistrate. The small initials under the date appear to be of the reader or other official of the magistrate's Court who wrote the word 'attested'.

Some of the affidavits filed by Wahid and Zahid (second party) appear to have been taken before a special magistrate. The view taken by the Sessions Judge is that the High Court has not appointed any commissioner or oath officer before whom an affidavit which is proposed to be filed before a magistrate can be sworn or affirmed. This view appears to be correct. The only provision in the Cri. P. C. regarding the mode of swearing affidavits and affirmations is to be found in S. 539. That section says that affidavits and affirmations which are to be used before any High Court must be sworn and affirmed before such Court..... or before any commissioner or other person appointed by the High Court for that purpose.... Section 539AA lays down that affidavits to be used before any Court other than a High Court under S. 510A or S. 539A may be sworn or affirmed in the manner prescribed in Section 539 or before any magistrate. A perusal of Ss. 539 and 539AA clearly shows that a commissioner or oath officer appointed by the High Court can have only such affidavits sworn before him as are to be used before the High Court or in the case of other Courts

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only those affidavits as are under S. 510A or 539A.
It is significant to note that in S. 539AA there is no mention of affidavits under S. 145. This clearly implies that an affidavit under S. 145 cannot be sworn or affirmed before a commissioner or oath officer appointed by the High Court. An examination of the provisions of various sections of the Cri. P. C. shows that affidavits are required to be filed under Sections 145, 510A, 526 and 539A. Section 526 provides for the transfer of a case by the High Court. An application for the exercise of the powers of transfer under S. 526 has, therefore, to foe made in the High Court. Such an application is required to be supported by an affidavit under the provisions of sub-s. (4) of S. 526. The affidavit referred to in that section has, therefore, to be filed before the High Court and can be sworn in the manner laid down in S. 539. Section 539A speaks of an affidavit in support of an application containing allegatings against any public servant and Section 510A speaks of affidavits with respect to evidence of a formal character.
Proceedings requiring an affidavit under Sections 510A and 539A can be a Court other than a High Court. In view of S. 539AA such affidavits can be sworn in the manner prescribed in S. 539. In other words, such affidavits can be sworn before an oath commissioner or oath officer appointed by the High Court. If the legislature had intended that affidavits under S. 145 were also to be sworn in the manner prescribed in S. 539, a provision similar to the provision relating to affidavits under Ss. 510A and 539A would have been enacted by adding S. 145 in S. 539AA. The affidavits put in by Mahangi (first party) are, therefore, not proper affidavits in so far as they are sworn before an oath commissioner.

5. The magistrate before whom the proceedings were pending had a duty to decide the dispute between the parties with regard to the possession of the enclosure and it cannot be doubted for a moment that for the proper discharge of his duty the magistrate had an authority to receive evidence in the proceedings. He was, therefore, a person authorised to administer oath either by himself or by an official empowered by him in this behalf. The affidavits that were to be filed in the proceedings could, therefore, be sworn by the magistrate before whom the proceedings were pending decision.

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> 6. The dictionary meaning of the word 'attested' is to testify, certify, put a person on oath or solemn affirmation. On the affidavit the word 'attested' above the signature of the magistrate, therefore, signifies that it was sworn before the magistrate. It may be that the magistrate might not have administered the oath himself to the person making the affidavit, but it is a well recognised practice that presiding officers of the Courts empower an official of their Court to administer oath and this they are entitled to do under the provisions of S. 4 of the Indian Oaths Act. The small initials under the date appear to be of an official of the magistrate's Court who was empowered to administer the oath. Affidavits for purposes of proceedings under S. 145 can be sworn before the magistrate in whose Court proceedings are pending.
> It is not necessary that the magistrate should write in so many words 'affidavit sworn in my presence'. Mere attestation by the magistrate is sufficient to signify that the affidavit was sworn before him. As the affidavits put in by Mahangi (first party) were attested by the magistrate before whom the proceedings were pending, these affidavits were properly sworn and can be taken into evidence. The affidavits put in by the second party were sworn before another magistrate. That magistrate had no concern with these proceedings. The affidavits put in by the second party were not proper affidavits and could not be taken into evidence. The Sessions Judge was in error in considering the affidavits filed by Mahangi which were attested by the magistrate, to be inadmissible in evidence. In view of the above discussion the affidavits put in by Mahangi (first party) are admissible and the affidavits put in by Wahid and Zahid (second party) are inadmissible as they were not properly sworn."

21. In AIR 1968 Bom 400 (*Lakshman Das. v. State)* the Hon'ble Bombay High Court held that facts necessary to explain or to introduce a fact in issue or relevant fact are relevant. Facts which support or rebut an inference suggested by a fact in issue or relevant facts are relevant; facts which establish an identity on anything or the person

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whose identity is relevant or fix the time or fix the place at which any fact in issue or relevant fact happened are relevant; facts which show the relation of party by whom in such fact was transacted are relevant. Relying on the said judgment it is submitted that the facts so far as they are necessary to ascertain the position of the parties in relating to possession of the suit premises or user of the suit premises are essential. Relevant paragraph 62 of the said judgment reads as follows:

> "62. Facts necessary (1) to explain or (2) to introduce a tact in issue or relevant fact, are relevant; (3) facts (i) which support or (ii) rebut an inference suggested by a fact in issue or relevant facts are relevant; (4) facts (i) which establish the identity of anything or (ii) the person whose identity is relevant or (iii) fix the time or (iv) fix the place at which any fact in issue or relevant fact happened, are relevant; (5) facts which show the relation of parties by whom any such fact was transacted, are relevant. The last sentence is very important and it is, "in so far as they are necessary for that purpose", which means that if these facts are introduced in evidence, they can be used only for that purpose, and no other. Mr. Khandalwala suggests that the prior transactions of Hamad Sultan and the part played by Yusuf Merchant and, accused Nos. 6 and 14 in them is relevant to explain or introduce the facts in issue, and therefore, the evidence was admissible. It is difficult to sustain this part of the contention. To admit every such fact and require again a volume of proof in respect of the same would unnecessarily complicate matters; but he would seem to be right in the second part of his contention that in any event these facts are necessary in order to support the inference that the registration of the telegraphic address and the trips made by accused No. 6 and accused No. 14 to Delhi were in relation to these gold smuggling transactions, and riot innocent as sought to be made out on behalf of the accused the registration of the address and each trip being a relevant fact."

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22. Section145 and 146 of the XII of the Code of Criminal Procedure (Act V of 1898 from page Nos. 655 to 657 and page Nos. 712-713 of the Vol.1 of the Code of Criminal Procedure (Act V of 1898 published by the All India Reporter Ltd. Nagpur 1st Edn. 1935-36 read as follows:

> "(1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.
> (2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
> (3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.
> (4) the Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:
> Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:
> Provided also, that if the Magistrate considers the

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case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case, the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was or should under the first proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction, and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding ism all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to produced under section 107."

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such

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possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:
Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.
(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure:
Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged."

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**Sri Ravi Shanker Prasad, Senior Advocate further submitted that the plea of adverse possession by the Muslims is not sustainable in law.**

(i) The plaintiff Muslims have vaguely claimed the right of adverse possession as well. This plea is fit to be rejected as wholly untenable. The principle of adverse possession is well-known: (a) There must be a real owner, (b) There must be another possessor who has come in possession of land or property in question, (c) The property in question must be an alienable property, (d) Such possession must be open, continuous, uninterrupted to the knowledge of and hostile to the true owner, (e) The real owner must have consented to such

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hostile possession and must not have taken any action. These propositions are too well-known.

(ii) As explained earlier, an idol in a temple which is the house of God, is not an alienable property. It cannot be transferred, sold or conveyed to any other person even by the Shevait or the manager. Anything done against the idol even under Court's order like selling the idol in execution of a decree has been held to be a nullity.

(iii) There is no pleading at all in the entire plaint of the Muslims that Ram Janma Bhumi belongs to Ram Lala who is the true owner where he is Virajman and on the same spot a big temple was in existence which was broken to build the Babari mosque. In Suit No. 4, the plaintiffs are completely silent about who is the actual owner. The law is further settled that long possession does not mean adverse. There is voluminous evidence on record that Muslims had never uninterrupted possession must less hostile and adverse possession. The Hindus continued to offer worship even after the alleged structure was constructed.

**RELEVANT CASE LAWS AND TEXTUAL REFERENCES**

**(i)** ***2004 (10) SCC, Page 65, Amarendra Pratap Singh***

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***Vs. Tej Bahadur Prajapati, Paragraphs 22 to 25 – Every possession in law is not adverse possession. The nature of property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising are all relevant factors. Adverse possession operates on alienable right. The prescription of 12 years so far as the immovable property of a tribal is concerned is not applicable.***

**(ii) AIR 1964 SC Page 1254 – S.M. Karim v. Bibi Sakina – Para 5 -**

"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

(iii) **2004 (10) SCC, Page 779, Karnataka Board of Waqf Vs. Government of India and Others,**

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**Paragraphs 11 and 12, at page 785 & 786 –** *Whenever the plea of adverse possession is projected inherent in the plea is that someone else was the owner of the property. Other principles stated as above.*

"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v._Bibi Sakina, Parsinni v. Sukhi and D N Venkatarayappa v. State of Karnataka. Physical fact of exclusive possession and the animus posited to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of

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this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma :)".

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12. Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: **S M Karim** v. **Bibi Sakinal**. In **P Periasami** v. **P Periathambi** : (1995)6SCC523 -

"Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with **Mohan Lal** v. **Mirza Abdul Gaffar** : (1996)1SCC639 that is similar to the case in hand, this

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Court held:

> 4. "As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

(iv) **2008 – Judgment Today (10) SC 562, Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan & Others, Paragraphs 12 to 24 –** *The entire evolution of Law of Adverse Possession explained vide Paragraph 34 the Court also observed that the law of adverse possession on the basis of inaction within limitation is irrational and illogical and a windfall for dishonest person who had illegally taken possession of the property*

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*of the true owner*.

13. This Court in P. Lakshmi Reddy v. L. Lakshmi Reddy AIR 1957 SC 314, while following the ratio of Debendra Lal Khan's case (supra), observed as under:

"But it is well settled that in order to establish adverse possession of non-co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be one the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secret hostile animus on his own part in derogation of the other co-heirs' title. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to be knowledge of the other so as to constitute ouster."

The court further observed thus:

"The burden of making out ouster is on the person

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claiming to displace the lawful title of a co-heir by his adverse possession."

14. In S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Hidayatullah, J. speaking for the court observed as under:-

"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

15. The facts of R. Chandevarappa & Others v. State of Karnataka & Others (1995) 6 SCC 309 are similar to the case at hand. In this case, this court observed as under:-

"The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse

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possession. But the crucial facts toconstitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

16. In D. N. Venkatarayappa and Another v. State of Karnataka and Others (1997) 7 SCC 567 this court observed as under:-

"Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original

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grantees, the petitioners cannot claim that they have perfected their title by adverse possession."

17. In Md. Mohammad Ali (Dead) By LRs. v. Jagadish Kalita & Others (2004) 1 SCC 271, paras 21-22, this Court observed as under:

"21. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

22. ....We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the written statement or not which can also be gathered from the cumulative effect of the averments made therein."

18. In Karnataka Board of Wakf v. Govt. of India (2004) 10 SCC 779 at para 11, this court observed as under:-

"In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in

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denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

19. In Saroop Singh v. Banto (2005) 8 SCC 330 this Court observed:

"29. In terms of Article 65 the starting point of

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limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak (2004) 3 SCC 376)

30. `Animus possidendi' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Md. Mohammad Ali (Dead) by LRs. v. Jagdish Kalita and Others (JT 2003) (8) SC 26)"

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20. This principle has been reiterated later in the case of M. Durai v.Muthu and Others (2007) 3 SCC 114 para 7. This Court observed as under:

"...In terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."

21. This court had an occasion to examine the concept

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of adverse possession in T. Anjanappa & Others v. Somalingappa & Another [(2006) 7 SCC 570]. The court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The court further observed that the classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

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22. In a relatively recent case in P. T. Munichikkanna Reddy & Others v. Revamma & Others [JT 2007 (6) SC 86; 2007 (6) SCC 59) this court again had an occasion to deal with the concept of adverse possession in detail. The court also examined the legal position in various countries particularly in English and American system. We deem it appropriate to reproduce relevant passages in extenso. The court dealing with adverse possession in paras 5 and 6 observed as under:-

"5. Adverse possession in one sense is based on the

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theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See Downing v. Bird 100 So. 2d 57 (Fla. 1958), Arkansas Commemorative Commission v. City of Little Rock 227 Ark. 1085 : 303 S.W.2d 569 (1957);

Monnot v. Murphy 207 N.Y. 240, 100 N.E. 742 (1913); City of Rock Springs v. Sturm 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).]

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6. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the

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possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See American Jurisprudence, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of Limitation Statutes, that the intention to dispossess can not be given a complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim."

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32. Reverting to the facts of this case, admittedly, the appellants at no stage had set up the case of adverse possession, there was no pleading to that effect, no issues were framed, but even then the trial court decreed the suit on the ground of adverse possession. The trial court judgment being erroneous and unsustainable was set aside by the first appellate court. Both the first appellate court and the High Court have categorically held that the appellant has miserably failed to establish title to the suit land, therefore, he is not entitled to the ownership. We endorse the findings of the first appellate court upheld by the High court.

33. Consequently, the appeal being devoid of any merit

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is accordingly dismissed with costs, which is quantified at Rs.25,000/-.

34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

35. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation.

(v) **"Salmond on Jurisprudence", 12th Edition, under Chapter-9 (Possession), at page 270,** *clearly states that things not in any way amenable to human control cannot form the subject matter of possession. A*

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*man cannot be said to possess, e.g. the sun, the moon or the stars.*

52. **Possession in fact:-** Possession, in fact, is a relationship between a person and a thing. I possess, roughly speaking, those things which I have : the things which I hold in my hand, the clothes which I wear, and the objects which I have by me. To possess them is to have them under my physical control. If I capture a wild animal, I get possession of it; if it escapes from my control, then I lose possession.

Things not in any way amenable to human control cannot form the subject-matter of possession. A man cannot be said to possess for example the sun, the moon or the stars. Indeed the expression " to possess the sun" is without application : if a man claimed to possess the sun, we should be at a loss to understand what he meant. In time, however, it is conceivable that means might be discovered of controlling such distant objects as the sund and in this event it might make sense to talk of possessing it; but this would be a very different world from the one we know and the one our language describes. Yet the fact that our ordinary language has no use for such expressions by no means rules out their employment in a legal system. We have seen that the

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legal concept of ownership could quite feasibly be applied to such objects as the sun and the same holds true of the legal concept of possession. We could, if we wanted, have laws specifying criteria according to which a man might be said to possess the sun. For legal concepts and ordinary concepts need not coincide.

Now to say that something is under my control is not to assert that I am continuously exercising control over it. I can have a thing in my control without actually holding or using it at every given moment of time. In the ordinary sense of the word, I retain possession of my coat even if I take it off and put it down beside me; and I continue in possession of it even though I fall asleep. All that is necessary is that I should be in such a position as to be able, in the normal course of events, to resume actual control if I want. At this point we may observe the influence of law and of the legal concept of possession on the idea of possession in fact. In a wholly primitive society utterly devoid of law and of legal protection for possession, there might well be little hope of resuming actual control over a thing once you had momentarily relinquished it. In such a society men could only be said to possess those objects over which they were actually exercising control. By contrast, in a society in which possession is respected generally and is protected by

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law, we may expect that temporary relinquishment of actual control will not result in complete loss of the ability to resume it at will. So, by providing remedies against dispossession the law enlarges the number of situations in which a person may count on retaining his power of control; in other words it increases the number of cases where a man may be said to have possession.

(vi) **Monomohini Dassi Vs. Eshan Chunder Roy, 1879 ILR 4 Calcutta, 683 states that the** *right of worshipping an idol is not in the nature of "an interest in immovable property" and, therefore, would not be within the purview of the Limitation Act in the same manner as any interest arising out of immovable property would be.*

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7. The plaintiffs have taken as objection before us against that part of the decision of the lower Appellate Court, which has gone against her. It has been aruged that the claimed, regarding the worship of the idol Shalgram, has been erroneously held as barred by limitation. The present suit is admittedly brought more than six years after the accrual of the cause of action, and unless the right in question is in the nature of an interest in immoveable property, the plea of limitation cannot be got over. After giving to the matter our best consideration, we are unable to come to the conclusion

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that the right of worshipping an idol is in the nature of " an interest in immoveable property." The plaintiff's objection to the decision of the lower Appellate Court must, therefore, also fail.

**(vii) Kasi Mangalath Illath Vishnu Nambudiri and others Vs. Pattath Ramunni Marar and others, AIR 1940 Madras 208,** holds "A public temple being 'res extra commercium" it is not open to a private individual to acquire by prescription any private ownership in regard thereto. The character of the temple as a public temple cannot be taken away by any assertion of private right."

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It is in evidence that the defendants' family have been always performing puja and appropriating all perquisites and offerings received at the temple and were generally attending to the management of the temple and at no time the trustees ever interfered with such management or claimed to receive any portion of the perquisites or offerings, even after the open assertion by the defendants of their absolute rights. It is also in evidence that such repairs as were needed have been done by the defendants in assertion of their absolute rights. It may be that the omission of the trustees of the Tiruvangad devaswom to interfere with such control

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may have been due to long continued mismanagement of the trustees of the main temple which necessitated the framing of a scheme by the Court. But if the defendants have been openly setting up exclusive right to the possession and management of the temple adverse to the right of the management which may inhere in the trustees of the main temple by virtue of the fact that the suit temple was a subordinate shrine, the right of the trustees of the temple would certainly be lost by adverse possession. Probably the absence of such control is due to the fact that the usage is that the archaka should be in such possession and management subject to general supervision the trustees of the main temple may have over them. The terms under which the defendants' ancestor was introduced into the temple are not known. On the findings of both the Courts, there can be no doubt that the defendants' family at any rate for a period of 30 years has been setting up a right of exclusive possession and management to the knowledge of the trustees. Therefore, the facts I of this case warrant the inference that the defendants have acquired the right of being hereditary archakas of the suit temple and as such to be in possession and management of it. They are therefore entitled to be in possession of the said temple, to perform the puja and appropriate the perquisites and

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offerings offered at the temple for their own use subject of course to the obligation of performing the puja. The plaintiffs-trustees have no right to interfere with the said management except to exercise a general supervision over them as trustees of the main temple. The plaintiffs would not therefore be entitled to a decree for possession. In my opinion the defendants are the hereditary archakas of the suit temple subject to the supervision of the trustees of the main temple as mentioned by me aforesaid.

In the view I have taken that the defendants are the hereditary archakas of the suit temple subject to the supervision of the trustees of the main temple as mentioned by me as aforesaid, the decree of the lower Appellate Court negativing their right must be reversed and the decree of the subordinate Judge dismissing the suit must be upheld on the basis that the defendants are entitled to be in possession as hereditary archakas. The result is that the plaintiffs' suit will be dismissed, but I direct each party to bear their own costs throughout. Leave to appeal is refused.

Some doubt was raised by the office with regard to the refund of court-fee in this case. I issued notice to the Government Pleader. Mr. Krishna Rao on behalf of the Government Pleader frankly stated to me that refund

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should be ordered and I think he is right. Apart from Sections 13, 14 and 15, Court-fees Act, the Court has got inherent power to refund court-fee: vide Thammayya Naidu v. Venkataramanamma As the temple in this case is incapable of valuation I think the appellants are entitled to a refund of the excess court-fee paid by them. The proper court-fee in this case is Rs. 100. The appellants are therefore entitled to a certificate for the refund of the balance. Mr. Govinda Menon asks me to make an order also in his client's favour. I cannot do so in this appeal. If so advised, he is entitled to make an application to the lower Court".

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**Sri Prasad, Senior Advocate concluded his submissions:**

**What is the most important fact that is to be noted from the above mentioned discussion is that a deity is the God and a temple the abode of God and no one can possess God and raise the plea of adverse possession. No one can own the Supreme Being Himself.**

The plaintiffs have filed this representative suit, alleging that they have perfected their title by adverse possession. Further they submit that they remained in possession of the property in dispute till 1949 and they were dispossessed from the same in 1949. In this regard evidence adduced by the plaintiffs and the defendants both documentary and oral have already been

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discussed. Initially the plaintiffs claimed that a declaration be made in their favour and thereafter during the pendency of the suit around 34 years afterwords the plaint was amended and thereafter they claimed possession but it transpired that this is alternative case for the reasons that prayer (b) does not specify that alternative prayer was made in this case. For convenience the amended prayer is reproduced as below;

*"That in case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of possession of the mosque and grave yard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as object of their worship be passed in plaintiff's' favour, against the defendants."*

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Thus, the plaintiffs have sought delivery of possession after 35 years of the institution of the suit and in case it is alternative prayer of possession, then this prayer too is time barred .

On behalf of the plaintiffs, it has been submitted that mosque was in exclusive possession of the plaintiffs and cash grant was given for maintenance of mosque till 1864 and thereafter revenue free land was provided by the British Government. It is further contended that this fact never establishes that Muslims were continuously in possession of the property in suit. It is further submitted that on the Chabutra 17x 21 ft. the Suit No.61/280/85 was filed to construct the temple by Mahant Raghubar Das and the suit was dismissed. It is also

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submitted on behalf of the plaintiffs that on the basis of original Sanad and other papers, referred to above, the plaintiffs are the owners of the property in suit.

These allegations have been rebutted from the side of Hindus.

I have given anxious thoughts to the rival submissions and perused the record. Ext. A3 does not confer title on plaintiffs. It is cash grant of Rs. 302-3-6 for maintenance of the mosque in favour of Rajjab Ali and Mohd. Asghar. Ext. A 10 is the certified copy for continuance of the grant. Ext. A3 further shows that the grant may continue so long as the Masjid is kept up. Thereafter Ext. 3 shows that on 27.9.1902 the mosque was inspected and was found in good order .Ext. A 21 and Ext. A 14 further reveals that

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**Annexure-V**
**Ext. A-18**
**Pages 177-189**

grant was commuted . **Ext. A-18** is Sanad dated 30th October, 1865 regarding the allotment of land of Khateeb Masjid Janam Sthan. On the basis of these papers, the plaintiffs claim title over the property in suit.

At the cost of repetition, I may refer that original sanand , granted by the chief Commissioner( Ext. A 3) relates to grant for maintenance of the mosque. It does not confer any title on the plaintiffs. Ext. A 10 also does not confer any title but provides that grant shall continue. Ext. A 11 also shows that the grant be

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continued for maintenance of the mosque . These papers do not confer that the State Government either sold or gifted the property to the plaintiffs. Ext. A 11 further shows that the grant was to be made so long as Masjid was to be kept up.

Inspection report Ext A-3 dated 27.9.1902 also does not prove the title of the plaintiffs. It does not refer that really the plaintiffs were enjoying the property in suit exclusively. Ext A 18 leaves no room of doubt that the State Government allotted the land and the land was granted for Musjid Janm Sthan vide order Ext. A6. Ext. A 19 also shows that for the support of Janmsthali Masjid cash grant was made by the Government. I have dealt with these papers at the time of considering the arguments of Sri H.S. Jain. For the sake of brevity, I am to say that these papers do not confer any title on the plaintiffs. On the contrary, they prove the arrangement for maintenance of the mosque. It transpires that since cash grant was taken by Rajjab Ali and Mohd. Asgar and their descendants they all the time wanted to utilize the same. These arrangements so made between the British Government and the plaintiffs do not confer them the title. The plaintiffs have never stated anywhere that they were holding the title adverse to the interest of the Government. The grant was also not perpetual in nature . The grant was made for up keep of the mosque. This grant was utilized by Rajjab Ali and others by preparing the accounts on which reliance has been placed . These accounts of repairs and whitewash do not prove the title. Consequently, on the basis of

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these papers, the plaintiffs cannot establish the title and the possession over the property in suit. Even in the settlement map, 1937 Ext.32 the property was not shown as Babri Mosque and the authorities had shown it as a temple.. Ext. 32 leaves no room for doubt that at the time of preparation of settlement map, the authorities were aware that after 1934 riots the Muslims were dispossessed from the mosque, that is the disputed structure and the property was under the control of Hindus. Accordingly they treated it as a temple. I have also referred to Ext. A 15, 16,18,19,20, 21,22, 23 and 24 and Ext. 27 to show that in the inner courtyard also the Hindu Nihang Sikhs were continuously worshiping and Muslims were objecting to it and making persistent efforts to get them removed.

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There is no evidence worth the name to establish that Sikhs were completely removed from the disputed structure altogether. It is established form the judicial record that in the outer grave yard Mahant Raghubar Das and others were having full control and same was acknowledged by the Court in the year 1885.

In view of the aforesaid circumstances, the plaintiffs , who have come out with a case that they have perfected for their right by adverse possession is not proved The evidence so adduced before this Court is not of such nature that can cure the defendants of the plaint. There is no averment in the plaint which constitutes adverse possession of the plaintiffs. The ingredients of adverse possession have not been referred to in the plaint.

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Thus, I agree with the contention of Sri Ravi Shanker Prasad, Senior, Advocate that the plaintiffs have failed to prove adverse possession.

It is admitted between the parties that during the proceedings under Section 145 Cr.P.C. the suit was instituted on the ground of perfection of right and title through adverse possession.

I have referred the submission of Sri H.S. Jain, who has elaborately discussed the revenue record. Thus, on the basis of revenue record also the claim of Muslims that they remained in exclusive possession of the property is not proved. On the contrary, it is proved that Janm Sthan was identified and the disputed property was shown as Nazool land.

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It further transpires that on the basis of waqf also the Muslims have failed to establish that they have exclusive possession over the property. According to the tenets of Islam the Waqf could not be created. Adverse possession of debutter is impermissible under Hindu Law which has been earlier referred to. It is also settled that the plaintiffs have failed to produce any registered lease deed about the disputed land and thus they cannot claim any relief based on title. I further find that there is no evidence worth the name from the side of the plaintiffs to establish their title over the land. In this reference detailed discussion has already been made while dealing with the arguments of Sri P. N. Mishra, who has rightly pointed out that

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ingredients of the adverse possession have neither been pleaded nor have been proved by the plaintiffs. Accordingly they cannot be allowed to claim relief based on title. Several rulings have been considered and discussed to justify the aforesaid proposition of law. It is settled proposition of law that the plaintiffs cannot be allowed to approbate and reprobate on one hand. They are seeking declaration based on title while they are , on the other hand, claiming relief based on adverse possession, contrary to the possession. Thus, on this count also the plaintiffs' suit is not maintainable.

The burden of proof under the provisions of the Indian Evidence Act lies on the plaintiffs and they have failed to discharge their obligations. They claim possession based on title while they have failed to prove the possession and they were not found in exclusive possession of the property. Accordingly on this count also as per case law referred to above the claim is not maintainable. There is admission of Muslims that Hindus were continuously worshipping at the outer courtyard and also interrupting the Muslims on Friday **inside the inner courtyard**. Mohammad Hashim, plaintiff no. 7 deposed this fact. Farooq Ahmad( P.W.3) also admitted the aforesaid contentions. Hindus claim that inside and outside the pillars contained the images of Hindu Gods and Goddesses and they were being worshipped throughout . It has come in evidence and I have also referred to in separate volumes that several figures of Hindu Gods and

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Goddesses were found on the pillars affixed inside the mosque and according to the tenets of Islam there cannot be any image inside the mosque. The plaintiffs could not substantiate any explanation about the same . Even in **proceedings under Section**

**Annexure-II**
**Pages 120-193**

**145 Cr.P.C.** the parties exchanged affidavits and certain facts have been referred to in the pleadings Since no cross-examination was conducted , accordingly the affidavits are not considered in evidence but on the basis of the pleadings referred to above, it transpires that the theory of adverse possession by Muslims is not sustainable in the law as they have vaguely claimed the right of adverse possession. The principle of adverse possession is well known. The conditions are not fulfilled . The plaintiffs have failed to establish that they are real owners of the property in dispute. They have further failed to prove that they subsequently became in possession of the land. The property must be alienable property . The possession must be open and hostile to true owner and the real owner must have consented the hostile possession. As explained earlier since the place of worship is deity, the property is not inalienable property. Even mosque itself cannot be sold or transferred to any person. Thus, looking to the case of the plaintiffs from all or any angle, it transpires that the property was not transferable. The plaintiffs have not stated any where who is actual owner of the property. Long possession does not mean

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adverse possession. It is proved that the Muslims have no uninterrupted possession and hostile to real owner. On the contrary, the Hindus have proved that they were worshipping even after the alleged structure was constructed. Thus, on the basis of relevant case laws ,referred to above, the plaintiffs have failed to substantiate the plea of adverse possession and to show that who was the real owner of the property. Thus, on this count also the plea of adverse possession is not sustainable in the eyes of law. It is further settled proposition of law that whenever plea of adverse possession is projected , inherent plea is that someone else was the owner of the property. Hon'ble apex court in **Mohan Lal vs Mirza Abdul Gaffar 1996(1) SCC 639** held that plea of title and possession is inconsistent and the latter does not begin to operate until the former is renounced. I have discussed this case at length but it is necessary to point out that the case of the plaintiffs in OOS No. 4 of 1989 on the point of title is hit by the aforesaid proposition of law and they are not entitled to claim adverse possession in this case. The plaintiffs have also failed to establish that they were in possession in continuity and publicity. It has come in evidence all the time that right from 1858 onwards they had no uninterrupted possession in the inner courtyard. One way or the other in this open place other than Muslims were offering prayers and the Muslims were making complaints against Hindus. On behalf of the Hindus it is said that the property belonged to Almighty. It belonged to God and nobody can raise

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the plea of adverse possession.

The plaintiffs have not mentioned in the plaint the necessary requisites to establish adverse possession . The concept of adverse possession contemplates the hostile possession, i.e. a possession which is expressly or impliedly in possession of true owner. Adverse possession must be possession by a person, who does not acknowledge but denies it. Principle of law is that it formally establishes with a person who bases his title on adverse possession as to demonstrate before the court through clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In such matters to constitute a possession the animus of person is most crucial factor. Adverse possession is concept of rem and is arrayed against right and if there is silent possession, it will not amount to ouster and adverse possession is not constituted. A person, who claims adverse possession has to establish that he held property adversely to the real owner and has denied title of owner's right and excluded him from the enjoyment of his property. Further it transpires where stranger is in possession, then the knowledge of true owner cannot be attributed. The stranger has to establish notorious and exclusive possession against the enjoyment of the property of the true owner. The requirements of adverse possession are that the possession must be adequate in continuity in publicity and in existence.

In AIR 1935 Privy Council page 53 Ejas Ali Quidwai and

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others Vs. Special Manager, Court of Wards and others their Lordships of Privy Council have held;

"The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of the title to the property claimed."

Further in AIR 1919 Privy Council in A.R.R. M. V. Arunachallam Chetty and others Vs. Venratachalapathi Guruswamigal have held;

"Their Lordships of Privy Council in AIR 1919 PC 62 have held: "Where the person claiming to be owner stands by while others continue to possess not by any derivative title but in practical contravention of his legal rights the possession of such other persons is adverse to the person claiming to be the owner. The law does not require that the claimant to ownership must in such circumstances be shown to have protested that his rights were being violated and that the possession went on adversely to his protests."

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At this juncture it would be worthwhile to mention that the property in dispute exists in Nazool plot no. 583 of Mohalla Kot Ram Chandra as Ram Kot city Ayodhya. **Consequently, the land belongs to State and there cannot be any adverse possession against the State and the title cannot be derived on the basis of long possession and that too as has already been**

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**extinguished in the year 1949**. Consequently, neither at the time of filing of the suit nor during the pendency of the suit, the plaintiffs remained in possession of Nazool plot no. 583 of Khasra of Mohalla Kot Ram Chandra. The property has already been acquired by the Central Government and objection against the acquisition was also filed and thereafter the apex court referred this matter to this Court to adjudicate on the point of title as claimed by the plaintiffs. The plaintiffs have not produced any evidence worth the name to establish their title over the property. They have come out with a case that by adverse possession they became owner and they have lost possession in 1949.

Thus, there is nothing on record to establish that they had any hostile possession against the State Government or they were not enjoying the rights . Even if for the arguments sake, it is presumed that it was permissive possession of the State Government, it will never be termed to be hostile. Even if the State has not objected possession of the plaintiffs, it would not necessarily mean the possession as to construe as possession because there is nothing on record to suggest that the State Government acknowledged the rights of the plaintiffs and the plaintiffs denied the rights of the Government and also denied the title, stating that the possession was hostile to the Government and amounted to denial of the title of plot no. 583. Thus, the possession of the plaintiffs cannot render hostile on their part against the Government and further they were not in exclusive

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possession and enjoyment of the property for the reasons that from 1858 and onwards the Hindus were clearly in possession over the property and persistently the complaints were made from the side of the Muslims against Hindus for their induction in the property in suit. At the cost of brevity I would not like to refer the evidence which has already been discussed by me but on the basis of evidence it transpired that in 1858 there were complaints that one Nihang entered into the disputed premises and took the possession of the entire property and also lit fire and performed worship of fire and Havan. Several complaints were made against him for his removal in which it has been specifically referred that the Nihang was writing words' Ram Ram Ram" on the walls of the disputed property. There is no evidence worth the name that he was totally removed from the property in suit. Consequently, it has to be admitted on the basis of the record that there was no exclusive entry of Muslims inside the disputed structure and it was commonly used by Hindu pilgrims. Further Original Suit No. 61/280 of 1885 was filed by Mahant Raghubar Das, restraining the Muslims from using the disputed structure. The claim was rejected on the ground of law and order. It is admitted to the plaintiffs' right from beginning including at the time of the institution of the suit which finds place in the averments that Hindus were worshipping in the outer courtyard. The place was known as Charan Paduka and Sita rasoi and other idols were installed on Ram Chabutra. The plaintiffs have filed the suit with

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composite unit. They have not demarcated the property. This Court has to presume only one unit and unit cannot be split in open land and also in a building. The building and adjoining area constitute one unit. Admittedly, structure was surrounded by open land where the defendants claim that they were having possession over the said land which were acknowledged by the Court in the year 1885 also. Thus, the papers filed by the plaintiffs leave no room for doubt that more than half of the property in suit was open land and it was in the exclusive possession of the Hindus and the same was acknowledged by the Court as well as by the Muslims, as the finding of the Civil Court in the above suit was not set aside.

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Thus, the plaintiffs were not in exclusive possession of the property in suit, accordingly the theory of adverse possession of plaintiffs fails.

As regards the disputed structure it transpires that there was no door inside to restrict the entry of any body. Structure was surrounded by open land right from the days of Nihang and other people, who were using the structure as a religious place with the knowledge of the Muslim. There is no convincing evidence to show that Hindus were not worshipping inside the building for the reasons that in the year 1990 the Court directed for preparation of photographs which relate to issue no. 19 (F). I have already recorded my finding on issue no. 19 (F). Thus, the plaintiffs' version was not found correct that on the pillars inside

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and outside of the building, in question, did not contain images of Hindu Gods and Goddess . At the behest of the Court photographs were taken. A glimpse of those photographs indicate that on the pillars of inside and outside disputed building there were images of Hindu Gods and Goddesses and that is why the Hindus were going inside the building to offer prayers and they could not be restrained permanently from entering into the disputed structure.

**Annexure-V**
**Photographs**
**Pages 13-44**

I have already **referred that pillar nos. 1 to 14** contained images of Hindu Gods and Goddesses and other religious structure also contained images of Gods and Goddesses. This structure having images of idols and design cannot be constituted as a place of worship in a form of mosque under the Divine Law of Shar, which is applicable to Muslims. Even if the Holy Prophet has said that angels do not enter into a house which has image structure etc. According to sacred compilation of Hadith **Sahih** Muslim (Vol..III). Thus, these images definitely prompted the Hindus to go inside the structure and to offer prayers of Gods and Goddesses . This leads an inescapable conclusion that the property which was open and not in exclusive possession of Muslims and accordingly Muslims cannot claim adverse possession against the said property because it was open place and every body was visiting including Muslims. I have also referred the tenets of Islam and

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certain injunction of Islam to establish that the structure could not be a mosque as it was not retained by Muslim in accordance with the tenets of Islam and at all it was functional. It was contrary to the religious practices and injunction of Holy Quran and other Holy practices in Islam, Thus, applying the Islamic tenets on the version of the plaintiffs it transpires that the building was not used exclusively by Muslims after adhering Islamic proposition of law relating to the religion or adhering to the injunctions of Islam. Thus, the concept that the property in suit was exclusively used as a mosque is not wroth convincing and the circumstances leads inescapable conclusion that right from 1858 and onwards the property in suit could not remain in exclusive possession of Muslims. In the year 1855 under the orders of Nawab one wall was erected. It does not specify that the structure was exclusively used by the Muslims. It transpires that unit as a whole, as referred in the plaint, was excluded by a wall. Thus, with no stretch of imagination on the basis of evidence adduced by the plaintiffs even if it is relied can make this court to presume that Muslims were in exclusive possession of the property. Thus, the adverse possession as pleaded by the plaintiff without referring to ingredients of adverse possession in the plaint leaves no room for doubt that the plaintiffs have failed to establish that they contemplated possession as a hostile possession against the Government ,who is true owner of the property, according to the Khasra for the year 1931. It is also not the case that Government

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acknowledged the rights of the plaintiffs which were denied openly and the animus was retained by the Muslims, hostile to the real owner which amounted to denial of title of the State in the property in suit. Thus, the plea of adverse possession against the State is also not proved. The plaintiffs could not demonstrate that they remained in exclusive possession over the property in suit and the Hindus have come out with a case that from 1934 onwards Muslims were not allowed to enter into the premises in suit. Muslims claim that they have been denied of their entry in December, 1949, but they admit that the mosque was desecrated and damaged in the year 1934 and repairs were made at the cost of the State in the year 1934. Thus, it is admitted to the plaintiffs that the mosque was desecrated and considerably damaged . It leads to an inference that after damage and desecration of the property in suit by Hindus, it remained not in use of the Muslims till it was repaired completely by the State Government. Although State was arrayed as a party but no witness has been produced to establish this fact that at the cost of State Government or at the behest of the State Government the mosque was repaired and it was again given in possession of the Muslims for their exclusive use. I have also

**Annexure-V**
**Report of Sheo Shanker Lal Pleader Commissioner**
**Page 149-151**

gone through the site-plan, prepared by the Vakil Commissioner in O.S.No. 2 of 1950. **Sri Sheo Shanker Lal** , Pleader prepared

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the site-plan and also inspected the place of dispute. From his report it also does not transpire that there was any door in the structure or the property was exclusively under the control and possession of Muslims. He has not made any assertion about the possession of Muslims. Thus, the disputed structure was an open place. There was no door. Consequently it was not possible to check the entry of Hindus inside the disputed property.

On the contrary, Hindus claim that they were offering prayers and visiting the place till the date of demolition and even after attachment of the property.

Thus to sum up, I am of the view that the plea of adverse possession as contended by the plaintiffs implies that someone is owner of the property. Hon'ble the Apex Court has considered the scope of adverse possession. On the acid test of law as laid down by Hon'ble the Apex Court in **2006 7 SCC 570, T. Anjanappa and Others vs. Somalingappa and Another** this Court is of the view that the plaintiffs have miserably failed to establish their adverse possession over the property in suit .

Their Lordships of the Hon'ble Apex Court in **2006 7 SCC 570, T. Anjanappa and Others vs. Somalingappa and Another** held that mere long possession does not mean that it is adverse to the true owner. Paragraphs no. 13, 14, 15, 16, 17, 18, 19, 20 and 21 are reproduced as under:

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

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> "It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner."

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:

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> "14....Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act,] burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and

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circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed....

15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. (See Annasaheb Bapusaheb Patil v. Balwant, SCC p. 554, paras 14-15)

16. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See Ward v. Carttar, (1865) LR 1 Eq.29).

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Adverse possession is of two kinds, as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse

possessor being in occupation. (See Rains v. Buxion (1880 (14) Ch D 537).

17. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by Section 15. Possession is not held to be adverse if

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it can be referred to a lawful title.

18. According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".

19. It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.

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20. In Halsbury's Laws of England, 1953 Edition, Volume-I it has been stated as follows:

> "At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterward be reviewed either by re-entry or by subsequent acknowledgment. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject

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him"

21. It is well recognized proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

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22. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable. Therefore, the appeal which relates to OS

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168/85 is allowed by setting aside the impugned judgment of the High Court to that extent. Equally, the High Court has proceeded on the basis that the plaintiff in OS.286/88 had established his plea of possession. The factual position does not appear to have been analysed by the High Court in the proper perspective. When the High Court was upsetting the findings recorded by the court below i.e. first appellate Court it would have been proper for the High Court to analyse the factual position in detail which has not been done. No reason has been indicated to show as to why it was differing from the factual findings recorded by it. The first appellate Court had categorically found that the appellants in the present appeals had proved possession three years prior to filing of the suit. This finding has not been upset. Therefore, the High Court was not justified in setting aside the first appellate Court's order. The appeal before this Court relating to O.S. 286 of 1988 also deserves to be allowed. Therefore, both the appeals are allowed but without any order as to costs."

Thus, operation of Section 110 in the above case is also restricted because the plaintiffs have failed to satisfy that the possession is not prima facie wrongful. However, even bare reading of plaint transpires that the case does not fall within the ambit of Section110 of Indian Evidence Act because the plaintiffs have themselves sought declaration and thereafter in 1995 against statutory time limit claimed possession . On the date of institution of suit in the year 1961 the possession was not claimed. It was

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claimed in the year 1995. The possession could only be claimed within the time limit prescribed under the Law of Limitation and not afterword. Thus, the amendment in the plaint does not confer any right on the plaintiffs to get any relief of possession as the amendment cannot relate back to the date of the institution of the suit after 35 years.

I further find that the case also does not fall within the ambit of Section 110 of the Indian Evidence Act because admittedly the plaintiffs were not in possession over the property in suit at the time of filing of the suit. Consequently, it is not incumbent upon the defendants to affirm that the plaintiffs are not owners of the property. The plaintiffs had to prove the tittle independently in the suit and the same was not done. On the whole the suit filed by the plaintiffs is against the title of the State Government as the property in suit admittedly lies in plot no. 583 which is Nazool plot owned by the Government. It further transpires that Hindu devotees of Lord Rama were offering prayers and worshipping idols etc. and visiting the disputed site which was not in possession of the Muslims.

Yet there is another aspect in this case. It is established principle of law that the plaintiff has to stand on his own legs and the burden of proof lies on him to prove adverse possession. But the burden has to be discharged has to be seen in the light of the provisions of the Indian Evidence Act under Sections 101,102, 103 and 110 of the Indian Evidence Act . Plaintiffs have failed to

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prove the same. Thus, the defendants claim that the suit is liable to be dismissed.

This Court has occasion to scrutinize documentary as well as oral evidence. This case is based on circumstantial evidence. The documentary evidence has edge over oral evidence. I have considered rival submissions in detail but it is also essential to look the oral evidence adduced by the parties .

The parties have adduced oral evidence in this case. From Muslim side 25 witnesses have been produced to establish the fact that they offered prayer inside the mosque till 22.12.1949. I have already discussed oral evidence while deciding issue nos. 1 and 2 . Considering the totality of the circumstances, it transpires that Muslim sides have produced interested witnesses before this court. They were thoroughly cross-examined. After cross -examination also it transpires that they do not fall within the category of reliable witnesses and their statements in toto cannot be accepted unless corroborated by some other evidence. Thus, they all are partisan witnesses and their testimony is required to be corroborated by other evidence which should be independent in nature. Independent evidence. Survey Commissioner's report of 1885, judicial record and other public documents reveal that the disputed structure was never exclusively used by Muslims from 1858 and onwards and even in the year 1885 the disputed property was not in the exclusive control of Muslims but was also in exclusive control of Hindus. This part can be treated to be

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outer courtyard. As regards inner courtyard i.e, the building it transpires that it was not at secluded place. It was an open place which was surrounded by another place of worship where Hindus were offering prayers which is proved from the Judicial record right from 1885 onwards. Accordingly assertion of Muslims that they were offering prayers up to 22.12.1949 cannot be accepted for want of proper evidence. The first information report that was lodged to the Police about the installation of deities inside the disputed structure by Hindus even if presumed to be correct, it does not give any inference that the property in suit was place of prayer of Muslims upto 22.12.1949.

Thus, the Muslims have failed to establish that the disputed structure was used by the members of Muslim community for offering prayers from time immemorial. It is the case that mosque was constructed in the year 1528. I have already discussed evidence, adduced by the parties, which goes to show that Muslims have failed to establish that they were offering prayers without any interruption from 1858 and onwards and the disputed structure i.e. inner courtyard was in their exclusive possession.

It does not appeal to reason as to why any Muslim has not come forward to launch the prosecution against the Hindus about the alleged installation of deities inside the disputed structure which leads to a conclusion that had the inner courtyard been under the control of Muslims, they would have objected and had initiated legal action against Hindus. Thus, the Muslims remained

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dormant. It has come in oral evidence from Hindu side that the prayers were never offered by Muslims after 1934. It does not appeal to reasons as to why in 1949 action was not initiated by the Muslims against Hindus while they initiated action against Hindus in 1934. This is strong circumstance which is against Muslims that they were offering prayers upto 22.12.1949.

The plaintiffs have failed to prove that they were in exclusive possession of the property in suit up to 1949 and they were dispossessed from the same in the year 1949. Hindus have proved that they were regularly making prayers at the birth place of Lord Ram and they were in exclusive possession of the outer courtyard and vising inner court yard for offering prayers. Muslims have failed to prove that they were in possession over the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general. The defendant no. 3 has also failed to prove that he was in exclusive possession of the disputed site, but Hindus were in exclusive possession of the outer courtyard i.e. part of the disputed site.

In view of my findings referred to above, issue nos. 2 , 4, 10, 15 and 28 are decided against the plaintiffs.

Tripathi/-
Tanveer/-
Akhilesh/-
Raghvendra/-

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## ISSUE NOS. 11, 13, 14, 19-a AND 19-c

**11. Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?**

**13. Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?**

**14. Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?**

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**19-a. Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said deities?**

**19-c. Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets, at the place in dispute?**

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**FINDINGS**

These issues are inter related and can be conveniently disposed of at one place.

On behalf of the plaintiffs it is submitted that property in suit is not site of Janm Bhumi of Lord Ram Chandra Ji and at present, so called Ram Chabutra, Sita Rasoi and other idols are not in existence. He has further submitted that disputed place is not the birth place of Lord Ram and under false notion recently people have started considering it as a sacred place and and there is no evidence worth the name that the property in suit was used by Hindus as a place of worship immediately prior to the construction of the building in question. Sri Z. Jillani, Advocate has further submitted that assertion of the defendant no. 13 is incorrect that the deities continued to exist on the property in suit even after construction of the building. Thus, the question of vesting of property in deities does not arise and there is no material worth the name before this Court to presume that Babri mosque was constructed at the site of the Janm Bhumi of Ram Chandra Ji. Accordingly the claim as set up by the Hindus is not correct. Plaintiffs submitted that idols and object of worship were placed inside the building in the intervening night of 22/23 December, 1949, as alleged in para 11 of the plaint. Prior to it the place was used as a mosque and Muslims used to offer prayer inside the disputed structure. The Hindus have no right to retain the property and the assertion of the defendant no.3 that the deity continued to

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exist is incorrect. No body was allowed to worship inside the mosque. Hence question of vesting of property in deities does not arise.

Sri P.N. Mishra Advocate on behalf of Hindus has submitted that the disputed structure right from the birth of Lord Ram was being considered as a sacred place of pilgrims and people were offering prayer and worshipping there. He has also submitted that the property in suit is the site of Janam Bhumi of Lord Ram. He has further contended that Hindus in general and defendants in particular had right to worship Charan Paduka and Sita Rasoi and other idols. Even after the construction of the building in suit Hindus used to offer prayer and there was no mosque like structure. It always remained a structure under the control of Hindus and place of worship of Hindus. As regards identity of land, it has been submitted that historian suggests that the place of birth of Lord Ram is the place where the disputed structure existed. He has further submitted that on the basis of scriptures like Valmiki Ramayan, Srimad Bhagwat and other religious books, it is absolutely clear that the property in suit is site of Ram Janam Bhumi. He has further referred religious books to establish his version. On the assertion of Muslims, Sri P.N.Mishra has further submitted that Ayodhya is the holy place where Lord Ram took birth, Who is incarnation of Lord Vishnu. The archeological evidence completely supports the claim of Hindus that Ram

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Janamsthan is the place where previously a temple used to exist and this place is being worshipped from time immemorial .

Sri P.N.Mishra submits that existence of Sri Ram Janam Bhumi is evident from holy scriptures . They are as under :-

**SRI RAMAJANMASTHAN EVIDENT FROM THE HOLY SCRIPTURES**

1. The Holy Scriptures of the *Sanatan Dharma* i.e. the *Hindu Dharma* namely: the Holy Divine *Srimad Atharvaved*, the Holy Scriptures *Srimad Skand-Puranam, Srimad Narsimh Puranam, Srimad Valmiki Ramayana* and; the Sacred Religious Book *Sri Ramacharitmanas* of Sri Goswami Tulasidas describe the Place of Birth of the Lord of Universe *Sri Rama* i.e. *Sri Ramajanmasthan* and Three-domed Temple lying thereon in the City of Ayodhya as Abode of *Brahm* (Almighty), the land wherefrom Lord of Universe *Sri Vishnu* the benefactor of *Kauslya* appeared and on her prayer subsumed therein in invisible form leaving on *Sthandil* His Incarnation Sri Ramlala as His incarnate and; further say that *Sri Ramajanmasthan* is most sacred place only by seeing which the devotees acquire salvation and all those merits which can be acquired by visiting all other *Tirthas* and thereby said holy sacred Scriptures of the *Hindu Dharma* make performance of customary rites at *Sri Ramajanmasthan* integral part of *Hidu Dharma*.

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2. The Holy Scriptures *Srimad Valmiki Ramayana* and *Srimad Skandpuranam* and the sacred book *Sri Ramacharitamanasa respectively* reveal presence of *Sri Visnu's* Temple in the Apartment of Mother *Kausalya,* temples of other Deities and tradition of pilgrimage thereto as well as celebrations of Birthday Festival at the Place of Birth of the Lord of Universe Sri Ram in Ayodhya right from the *Tretayuga*.

3. The Holy Spells *'Ken Suktam'* of Divine *Srimad Artharv-veda* i.e. *Atharv-ved Samhita* 10.2.31-32 describes the Threedomed Temple at Sri Ramajanmasthan in Ayodhya as follows:

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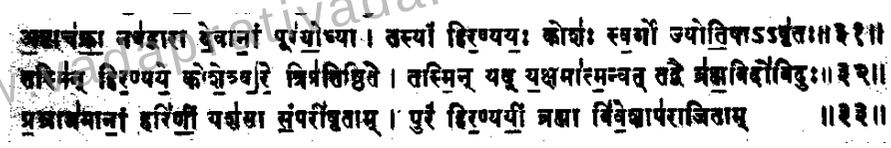

अष्टाचक्रा नवद्वारा देवानां पूरयोध्या । तस्यां हिरण्ययः कोशः स्वर्गो ज्योतिषाऽऽवृतः॥३१॥
तस्मिन् हिरण्यये कोशेऽयुरे त्रिप्रतिष्ठिते । तस्मिन् यद् यक्षमात्मन्वत् तद्वै ब्रह्मविदोविदुः॥३२॥
प्रभ्राजमानां हरिणीं यशसा संपरीवृताम् । पुरं हिरण्ययीं ब्रह्मा विवेशापराजिताम् ॥३३॥

> "*Ayodhya,* the city of Gods is Octagonal (like Dice-board) and Nine-doored. In that golden sanctum encircled with radiance is abode of Deities.[31]
> In the said tri-spoked tri-supported golden sanctum resides soul-possessing *Yaksha,* that verily the knowers of *Brahm* know.[32]
> The *Brahm* entered in the resplendent, sin-destroying, golden unconquered city that was all surrounded with glory. [33]"

Be it mentioned herein that W.D. Whitney has transalated these Holy Spellss word by word which has made said transalation obscure. For example he has transalated word *"Aashtachakra"* as "eight wheeled" while *"Aashtachakra"* has been translated as "*Ashtapadakara"* by Sri Valmiki in Ramayana English translation whereof published by Sri Gita

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Press Gorakhpur is " like Dice Board" i.e. octagonal. W.D. Whitney has translated the word "*Ayoodhya"* as *"impregnable stronghold"* while herein it has been used as proper noun which will become clear from the use of adjective *"Aparajitam puram"* for the city *"Ayodhya"* . This Translation has been given based on Hindi Translation of Padmabhushan Dr. Sreepad Damodar Satvalekar as well as Srimad Valmiki Ramayana /1/ V/6 text and English translation thereof published by Gita press Gorakhpur for the purpose of removing obscurity of English Translation of D.W. Whitney.

Amongst Western Scholars of olden days there was tradition of even translating the proper noun into English words, accordingly in her translation of *"Humayun-Nama"* Annette S. Beveridge has translated proper noun *" Gul-Badan Begam"* as "Princess Rose-Body" as also *"Dildar Begam"* as " Heart-Throwing Princess"

4. The Holy *Kena-Upanishad (3.1,2,11,12 & 4.1)* describes *Yaksha Brahm* (Translator has spelled *"Brahm"* as *"Brahman"*) itself as follows:

> "It was *Brahman*, indeed, that achieved victory for the sake of the gods. In that victory which was in fact *Brahman's*, the gods became elated. [Ken U.III.1]
>
> They thought, 'Ours indeed, is this victory, ours,

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indeed, is this glory,' *Brahman* knew this pretension of theirs. To them It did appear. They could not make out about that thing, as to what this *Yaksa* (venerable Being) might be. [Ken U.III.2]

Then (the gods) said to *Indra, '0 Maghava*, find out thoroughly about this thing, as to what this Yaksa is.' (He said), 'So be it.' He (*Indra*) approached It (*Yaksa*). From him (*Yaksa*) vanished away. [Ken U.III.11]

In that very Space he approached her, the superbly Charming woman, viz *Uma Haimavati*. To Her (he said), 'What is this *Yaksa?*' [Ken U.III.12]

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'It was *Brahman*', said She. 'In *Brahman's* victory, indeed, you became elated thus.' From that (utterance) alone, to be sure, did *Indra* learn that It was *Brahman*. [Ken U.IV.1]"

5. The Holy Scripture *Srimad Skandpuranam (Part VII Page 142)* records Echo of the said Divine Code of Holy Ordinances Sri Atharv-ved as follows:

> "I bow down to the immutable Rama, the Supreme Brahman whose eyes resemble lotus, who is as dark-blue as flower of flax (in complexion) and who killed Ravana.
> Great and holy is the City of Ayodhya which is inaccessible to perpetrators of evil deeds. Who would not like to visit Ayodhya wherein Lord Hari himself resided?
> This divine and splendid City is on the bank of the

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river Sarayu. It is on a par with Amaravati (the capital of Indra) and is resorted to by many ascetics."
(*Skandpuranam .II.VIII. .. 29 –31)*

6. The Holy Scripture *Srimad Valmiki Ramayana* also describes the City of Ayodhya as '*Astapadakara'* i.e. designed as octagonal like a dice-board and, the house of Lord of Universe Sri Rama three enclosured one as follows:

> "There is a great principality "known by the name of Kosala, extending along the bank of Sarayu. It is happy and prosperous, nay, full of abundant riches and plenty of food grains. In it stands comprised the world-renowned city, Ayodhya by name, a city which was built by dint of his own volition by Vaivaswata Manu, the ruler of mankind."
> (Srimad Valmiki Ramayana/1/ V/6).
> "Adorned with mountain like mansions built of precious Stones, and thickly set with attics it looks like Indra's Amaravati. Presenting a colorful appearance, it is laid out after the design of a dice-board, is thronged with bevies of lovely women and full of all varieties of precious stones, and is embellished with seven-storied buildings."
> (Srimad Valmiki Ramayana/1/ V/15-16).
> "Reaching Sri Rama's palace resplendent like a compact mass of white clouds, Vasistha (the foremost of the ascetics) drove through its three enclosures in the chariot itself."
> (Srimad Valmiki Ramayana/2/ V/5).

7. The Holy Scripture *Srimad Skandapuranam (II.VIII.10.1-25)* describing the location of the birth place of Lord of Universe Sri Rama commands the devotees to visit the birth place of Lord of Universe Sri Rama in Ayodhya and to observe the Holy vow on the *Navami* day to get salvation and acquire merits of visiting of all *Tirthas.* It testifies that only by seeing the place of birth one attains the merit of performing

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penance, of thousands of *Rajasuya* sacrifices and *Agnihotra* sacrifices. It reveals that one obtains the merit of the holy men by seeing a man observing the holy right particularly in the place of birth. Thus visiting and observing the holy right in the place of birth is integral part of the *Hindu Dharma.* The Holy commands reads as follows:

> "The devotee shall take his holy bath in the waters of *Sarayu* and then worship *Pindaraka* who deludes sinners and bestows good intellect on men of good deeds always. The (annual) festival should be celebrated during *Navaratris* with great luxary. To the west of it, the devotee should worship *Vighnesvara* by seeing whom not even the least obstacle remains (in the affairs) of men .Hence *Vighnesvara* the bestower of all desired benefits, should be worshipped. "
>
> *(Srimad Skandapuranam II.VIII.10.15-17)*
>
> "To the North-East of that spot is the place of the birth of Rama. This holy spot of the birth is the means of achieving salvation etc. It is said that the place of the birth is situated to the East of *Vighneswar,* to the North of *Vasistha* and to the West of *Laumasa.* Only by visiting it a man can get the rid of staying (frequently) in womb (i.e. rebirth). There is no necessity for making charitable gifts, performing a penance or sacrifices or undertake pilgrimage to holy spots. On the *Navami* day the man should observe the Holy vow. By the power of the holy bath and charitable gifts, he is liberated from the bondage of births. By visiting the place of birth one attains that benefit which is obtained by one who gives thousand of tawny-coloured cows every day. By seeing the place of birth one attains the merit of ascetics performing penance in hermitage, of thousands of *Rajasuya* sacrifices and *Agnihotra* sacrifices performed every year. By seeing a man observing the holy right particularly in the place of birth, he obtains the merit of the holy men endowed with devotion to mother and father as well as preceptors."
>
> *(Srimad Skandapuranam II.VIII.10.18-25)*

8. The Holy Scripture of the The Hindus *Srimad Narsingh*

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*Puranam (62.4-6½ )* commands that worship of *Vishnu* in idol as well as in *Sthandil* is best. *Sthandil* means a piece of open ground leveled, squared for sacrifice (Sanskrit-English dictionary of Moniar Williams p.1261). *Sthandilam* means a piece of land leveled, and squared for sacrifice i.e. *Vedi* (Sanskrit-Hindu Kosh of Vaman Shirman Apte p.1139). "*Vedi"* is also translated as "Sacrificial Altar" or simply "Altar". Be it mentioned herein that *Srimad Skandapuranam (supra) and Srimad Narasinghapuranam* prescribe worshiping of Lord of Universe Sri Rama in *Vedi* at the birth place of Lord of Universe Sri Rama in Ayodhya. *Srimad Narasinghapuranam* reveals as follows:

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*श्रीमार्कण्डेय उवाच*

**अर्चनं सम्प्रवक्ष्यामि विष्णोरमिततेजसः।**
**यत्कृत्वा मुनयः सर्वे परं निर्वाणमाप्नुयुः॥ ४**

**अग्नौ क्रियावतां देवो हृदि देवो मनीषिणाम्।**
**प्रतिमास्वल्पबुद्धीनां योगिनां हृदये हरिः॥ ५**

**अतोऽग्नौ हृदये सूर्ये स्थण्डिले प्रतिमासु च।**
**एतेषु च हरेः सम्यगर्चनं मुनिभिः स्मृतम्॥ ६**

**तस्य सर्वमयत्वाच्च स्थण्डिले प्रतिमासु च।**

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**श्रीमार्कण्डेयजीने कहा**—अच्छा, मैं अमिततेजस्वी भगवान् विष्णुके पूजनकी विधि बता रहा हूँ, जिसके अनुसार पूजन करके सभी मुनिगण परम निर्वाण (मोक्ष) पदको प्राप्त हुए हैं। अग्निमें हवन करनेवालेके लिये भगवान्‌का वास अग्निमें है। ज्ञानियों और योगियोंके लिये अपने-अपने हृदयमें ही भगवान्‌की स्थिति है तथा जो थोड़ी बुद्धिवाले हैं, उनके लिये प्रतिमामें भगवान्‌का निवास है। इसलिये अग्नि, सूर्य, हृदय, स्थण्डिल (वेदी) और प्रतिमा—इन सभी आधारोंमें भगवान्‌का विधिपूर्वक पूजन मुनियोंद्वारा बतायां गया है। भगवान् सर्वमय हैं, अतः स्थण्डिल और प्रतिमाओंमें भी भगवत्पूजन उत्तम है॥ ४-६½॥

9. The Sared Religious Book of the The Hindus *Sri Ramcharitmanas* reveals the Place of Birth of the Lord of Universe Sri Ram in the City of Ayodhya as follows:

> "At the other end Sri Rama who brought delight to the soul of race as the sun to the lotus was busy saying the charming city to the monkies. Listen 'King of the monkies (*Sugriva*), *Angada* and *Vibhisana,* holy is this city and beautiful is this land. Although all after extolled *Vaikuntha* who is follower to the Vedas and Purans and known throughout the world. It is not so dear to Me as the city of Ajodhya; only some rare soul knows this secret. This beautiful city is My birthplace; to the North of it flows the Holy *Sarayu* by bathing in which men secure a home near Me without any difficulty. The dwellers here are very dear to Me; the city is only full of pleases itself, but bestows a residence in My divine *Abode.'* The monkies were all delighted to hear these words of the Lord and said that blessed indeed is Ajodhya that has evoked praise from Sri Rama Himself !"
>
> *(Sri Ramcharitmanas/ Uttara-kanda 3.1-4)*

10. The Sacred Religious Book of the The Hindus *Sri*

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*Ramcharitmanas* reveals that the Lord of Universe Sri Ram was not born in ordinary manner like other human being, but first He appeared as Lord of Universe Sri Vishnu bearing His characteristic emblems in His four-arms and later on for the sake of Mother Sri Kausalya on her prayer He assumed a form of infant which was a product of His own will. This sacred book records birth of Lord of Universe Sri Ram as follows:

> "The gracious Lord, who is compassionate to the lowly and benefactor of Kausalya appeared. The thought of His marvellous form, which stole the heart of sages, filled the mother with joy. His body was dark as a cloud, the delight of all eyes; in His four-arms He bore His characteristic emblems (a conch-cell, a discus a club and a lotus). Adorned with jewels and a garland of sylvan flower and endowed with large eyes, the Slayer of the demon Khara was an ocean of beauty. Joining both her palms the mother said ,"O infinite Lord, how can I praise you! The Vedas as well as the Puranas declare You as transcending Maya, beyond attributes, above knowledge and beyond all measures. He who is sung by the Vedas and the holy man as an ocean of mercy and bliss and a repository of all virtues, the same Lord of Laksmi, the lover of His devotees, has revealed Himself for my good. The Vedas proclaim that every pore of your body contains multitudes of universes brought forth by Maya. That such a Lord stayed in my womb-this amusing story staggers the mind of even men of wisdom." When the revelation came upon the mother, the Lord smiled; He would perform many a sportive act. Therefore He exhorted by telling her the charming account of her previous birth so that she might love Him as her own child. The mother's child was changed: She spoke again, "Give up this superhuman form and indulge in childish sports, which are so dear to a mother's heart; the joy that comes from such sports is unequalled in everyway." Hearing these words the all-wise Lord of immortal became an infant and

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> began to cry. Those who sing this lay (says Tulsidasa) attain to the abode of Sri hari and never fall into the well of mundane existence."
>
> (Sri Ramacharitamanasa/*Bala-kanda*/191/1-4)
>
> "For the sake of Brahmans, cows, gods and saints, the Lord who transcends Maya and is beyond the three modes of Prakrti (Sattva, Rajas and Tamas) as well as beyond the reach of senses took birth as a man assuming a form which is a product of His own will."
>
> (Sri Ramacharitamanasa/ *Bala-kanda* /192)

11. Sri Golapchandra Sarkar, Sastri in his celebrated Treatise on Hindu Law (first published in 1897) also approves the belief of the The Hindus that their Gods did not borne like human beings as follows:

> " the Idea – that their Gods are deemed born like human beings ,-is most repugnant and abhorrent to The Hindus who have knowledge of their Shastras."
>
> (A Treatise On Hindu Law. 6th edn.1927 Cha.XIV Page 785)

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12. The Holy Scripture *Simad Valmiki Ramayana* reveals that there was a temple of Lord of Universe *Sri Janardan* i.e. *Sri Vishnu* in the Mother Kausalya's Palace as follows:

> " Entering in his own palace in order to break the news of the installation announced by the emperor (to Sita), but coming out instantly on not finding her in the apartments) he moved to his mother's apartment (in the gynaeceum). There he saw his aforesaid mother clad in silken robes, exclusively devoted to the worship of her chosen deity Praying for royal fortune (in favour of Sri Rama) Hearing of Sri Rama's welcome installation, Sumitra too had arrived as well as (her Son) Lakshman; and Sita (too) had been sent for (there). At that moment when (Sri Rama called on her) Kausalya remained sitting with her eyes closed and waited upon by Sumitra and Lakshman, and contemplating with suspended breath on the Supreme Person, Lord Narayana (who

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> is solicited by all men), having heard that her son was going to be installed in the office of Prince Regent when the asterism Pusya was in the ascendant."
>
> (Valmiki Ramayana/1/ IV/29-33)

13. *Srimad Skandpuranam (II.VIII.10. 1 –87)* enumerates *Sarayu (a* river*), Vishnuhari, Brahmkunda* (a Holy Lake*), Mantresvara, Chakratirtha* (tirtha of holy water*), Chakrahari, Dharmahari, Vira, Surasa, Bandi, Sitala, Batuka, Holy-lake* in front of Batuka*, Mahavidya, Pindaraka, Bhairava, Vighnesvara, Vasistha, Laumas* and *Janamsthan* of Lord of Universe *Sri Ram* as *Tirthas* and *Devasthanam* of Ayodhya and right from the *Tretayuga* these sacred places are being visited and worshiped according to Scriptural customary rituals. .

14. *Srimsad Skandpuranam [Part VII inner Page 142 i.e. ibid II.VIII.....26 –31& ibid II.10.VIII.1-87]* reveals that the Tradition of Pilgrimage to the Birth Place of the Lord of Universe Sri Ram as well as other *Devasthanam* in Ayodhya according to injunctions was told by sage *Narada* to *Sri Skand.* This *Sage Narada* was of *Tretayug* and contemporary of the Lord of universe Sri Ram on whose instance *Maharshi Valmiki* wrote *Ramayana.* Then it was narrated to *Sage Agastya*. From the Tradition of *Acharyas* it came down from *Sage Agastya* to Sage *Krishna Dviapayan Vyas* who recounted it to *Suta*.

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15. The Sacred Religious Book of the Hindus *Sri Ramcharitmanas* records celebration of Birthday Festival of the Lord of Universe Sri Ram in the year 1574 A.D. on the day of Chaitra Shukla Navami Tuesday at His Birth Place Temple in Ayodhya as follows:

> " Reverently bowing my head to Lord Siva, I now proceed to recount the fair virtues of Sri Rama. Placing my head on the feet of Sri Hari I commence this story in the *Samvat* year 1631 (1574 A.D.). On Tuesday, the ninth of the lunar month of *Caitra,* this story shed its luster at Ayodhya. On this day of Sri Rama's birth the presiding spirits of all holy places flock there – so declares the Vedas – and demons, *Nagas,* birds, human beings, sages and Gods come and pay their homage to the Lord of Raghus. Wise men celebrate the great birthday festival and sing the sweet glory of Sri Rama."
>
> (*Sri Ramcharitamanasa /Balkanda 33.2-4)*

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16. Bharat-Ratna Mahamahopadhyay Dr. Pandurang Vaman Kane in his book Dharmashastra Ka Itihas Tritiya Bhag (3rd Edn. 1994 published by Uttar Pradesh Hindi Sansthan, Lucknow) in chapter 11 has summarised tradition, importance, spiritual merits, of the sacred places of the The Hindus as laid down in the Divine Holy Vedas, Smritis, Puranas, Ramayana, Mahabharata and other Religious books which make it crystal clear that The Pilgrimage is integral part of Hinduism. Relevant pages thereof forms part of volume I of the compilation of this defendant as document no. 19. On inner page 1371 of the said book relevant Slokes of the Holy Scriptures - Sri Brahmand Puran (4.40.91); Sri

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Skand Puran(Kashikhand 6.68 & 23.7); Sri Garud Puran (Pretkhand 34.5-6) have been reproduced wherein amongst seven Holiest Pilgrimage Centres Ayodhya has been enumerated alongwith Mathura, Maya (Hardwar), Kashi (Varanasi), Kanchi, Avantika (Ujjain) and Dwaravati (Dwarka). On inner page 1403 of the said book in the list of Sacred Places Ayodhya has also been enlisted and described.

17. In the book Bharat Ka Gazetteer, Khand 1 (published by the Publication Division Ministry of Information and Broadcasting Government of India reprint 1973 of the 1st revised Edn. 1964) on its page 499 Sri Ramchandra have been described as an incarnation and on pages 698 to 701 festivals, fairs and pilgrimages have been described and recognised as age-old tradition of the Hindu faith and belief.

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18. Three-domed Temples are characteristic features of the Hindu Architectures. The Holy Sri Agni Puran (38.8) says that one who builds *Trayatan* (Three-domed) Temple goes to the *Brahm-lok* (Abod of Almighty).

19. Ibn Battuta also mentions a Three-domed Hindu Temple in Kachrad now known as Khajrawan towards 27 miles east from Chhatrapur City in Bundelkhand region. He writes that the said Three-domed Temple was built of red-stone in the centre of a lake and Yogis were living therein. Eyes, ears and noses of the Idols of the Temple had been mutilated by the Muslims. Relevant extract

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from Pages 181 & 182 of the book Ibn Battuta Ki Bharat Yatra translated into Hindi by Madan Gopal. First Edition 1933 Reprinted in 1997 by National Book Trust India, New Delhi reads as follows:

बरौन नामक नगर से चलकर, अमबारी[1] होते हुए, हम कचराद[2] नामक स्थान में पहुंचे। यहां पर एक मील लंबे सरोवर के किनारे बहुत-से मंदिर बने हुए हैं, परंतु इन मंदिरों की

प्रत्येक प्रतिमा की आंख, नाक और कान मुसलमानों ने काट लिए हैं।

सरोवर के मध्य में रक्तपाषाण के तीन गुंबद बने हुए हैं। इनके अतिरिक्त प्रत्येक कोण पर भी इसी प्रकार के गुंबद निर्मित हैं जिनमें योगी लोग निवास करते हैं। योगियों के केश पैर तक लंबे होते हैं; सारे शरीर में भभूत लगी रहती है और तपस्या के कारण उनका वर्ण तक पीत हो जाता है। चमत्कार दिखाने की शक्ति प्राप्त करने के इच्छुक बहुत से मुसलमान भी इनके पीछे पीछे लगे फिरते हैं। लोगों का तो यह कथन है कि गलित तथा श्वेतकुष्ठ तक से पीड़ित पुरुष योगियों की सेवा में उपस्थित होने पर ईश्वर-कृपा से आरोग्य लाभ करते हैं। मावरा उन्नहर के सम्राट 'तरम शीरीं' के कैंप में मुझको इनके सर्वप्रथम दर्शन हुए। गिनती में ये पूरे पचास थे। इनके रहने के लिए धरती के भीतर गुहाएं बनी हुई थीं और वहीं धरातल के नीचे ये अपना जीवन व्यतीत करते थे, केवल शौच के लिए बाहर आते थे और प्रातः, सायं तथा रात्रि में शृंग के सदृश किसी वस्तु को बजाया करते थे। इन लोगों की जीवनचर्या भी अतीव विचित्र थी।

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Sri Hari Shanker Jain, Advocate on behalf of Hindu Mahasabha has submitted that this historical issue relates to 500 years back for which there is no direct evidence and parties have to depend on religious books, gazetteers and other testaments which fall within the ambit of Section 57 (13) of Indian Evidence Act and the Court can take judicial notice and the relevant facts contained in gazetteers, religious books are admissible evidence and they can be relied upon to establish the place of birth of Lord Ram. He has placed reliance on AIR 1951 Supreme Court page 288 **Sukh Deo Singh Vs. Mahraja Bahadur of Gidhaur.** At para 10 Hon'ble the apex court held that gazetteer is an official document . It is compiled by experienced official with great care after

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obtaining the facts from official records.

Sri H.S. Jain has further relied on AIR 1995 Supreme Court page 167**Bala Shankar Maha Shankar Bhattajee Vs. Charity Commissioner, Gujrat** wherein Hon'ble Apex Court has held gazetteer is admissible evidence under Section 35 read with Section 81 of Indian Evidence Act. Thereafter Sri Jain has relied over **AIR 1967 Supreme Court 256 Mahant Shrinivas Ramanuj Das Vs. Surajanar**ayn Das in para 25 that a gazetteer can be consulted in the matter of public history and statement in such gazetteer can be relied upon as they prove historical facts. Sri Jain has further submitted that Section 57 of the Indian Evidence Act inter alia says that the Court shall take judicial notice of all laws, public acts, public festivals and public history and the Court may resort for its aid to appropriate books and documents. These papers require no proof. Thus, Court can take judicial notice of the gazetteer and other religious books etc. under Section 57 of the Indian Evidence Act and in view of Section 81 of the Evidence Act the Court shall presume the genuineness of these official gazetters.

Sri Jain submits that William Finch who travelled India in the reign of Emperor Nuruddin Mohammad Jahangir from 1608 A.D. to 1611 A.D. saw the Hindus visiting the Birth Place of the Lord Sri Ram Chandra in Ramkot where Brahmins used to note down names of the visitors to that sacred place. Be it mentioned

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herein that in each and every prominent sacred places of the Hindus since time immemorial a class of Brahmins known as Pandas have been helping the devotees to perform customary rites as also noting down names of the devotees. As such presence of Brahmin Pandas at Sri Ramjanmsthan during the visit of William Finch is conclusive proof that Hindus were performing their traditional customary rites as laid down in Sri Skanda Puran. Relevant extract from page 176 of the book Early Travels in India 1583 – 1619 by William Foster reads as follows:

> "To Oudh [Ajodhya] from thence are 50c; a citie of ancient note, and seate of a Polan king, now much ruined; castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand [S] castle and houses, which the Indians acknowled[g]e for the great God, saying that he tooke flesh upon him to see the Tamasha of the World. In these ruines remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby, which custome, they say hath continued foure lackes of yeeres (which is three hundred ninetie foure thousand five hundred yeeres before the world's creation). Some two miles on the further side of the river is a cave of his with a narrow entrance but so spacious and full of turnings within that a man may well lose himselfe there, if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance, certaine grains of rice as blacke as gun-powder which they say have been reserved ever since. Out of the ruines of this castle is yet much gold tryed. Here is great trade and such abundance of Indian asse-horne that they make here of bucklers and divers sorts of drinking cups. There are of these hornes, all the Indian affirme, some rare of great price, no jewell comparable, some esteeming them the right unicorns horne".
>
> (Early Travels in India 1583 – 1619 by William Foster p.176).

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1. In his book Description Historique Et Geographique De l' Inde, Joseph Tieffenthaler who visited Sri Ramjanmsthan in the year 1770 A.D. during the reign of Emperor Shah Alam II (1759-1806 A.D.) evidenced the performance of customary rites by the Hindus in the central & left Halls of the Sri Ramjanmsthan Temple, Ajodhya in India. Tieffenthaler says that there was a *Vedi* i.e. *Sthandi*l inside the said Temple which was being worshipped by the Devotees by prostrating and circumambulating it thrice, but he did not mention offering of prayer therein by the Muslims; from the said facts made available by an eye witness it becomes crystal clear that in the 1770 the Hindus were in use and occupation of the Sri Ramjanmsthan as their sacred shrine which has been described as Babari Mosque by the plaintiffs in their pleadings and it was not being used as a Mosque by the Muslims. The said book is written in Latin language, an English translation of his narrative of Ajodhya find place in the book Modern Traveler, a Popular Description, Geographical, Historical and Topographical of the Various Country of the Globe – India Vol-III published by James Duncan in the year 1828. Relevant extracts containing translation of Tieffenthaler's account from pages 312, 313, 314, 316 and 317 read as follows:

"Its appearance, in 1770, is thus described by *Tieffen*

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*theler: "Avad, called Adjudea by the Learned Hindoos i*s a city of the highest antiquity. Its houses are, for the most part, only on mud, covered with straw or with tiles; many, however, are of brick. The principal street, running from S. to N., is about a *league* (mille) in length; and the breadth of the city is somewhat less. Its western part, as well as the northern, is situated on a hill; the north-eastern quarter rests upon *eminences;* but towards *Bangla,* it is level. This town has now but a scanty population, since the foundation of *Bangla* or *Fesabad; a* new town where the Governor has established his residence, and to which a great number of inhabitants of *Oude* have removed. On the southern bank of *Deva (or Goggrah),* are found various buildings erected by the *Gentoos* in memory of Ram, extending from east to west. The more remarkable place is that which is called *Sorgodoari,* that is to say, the heavenly temple; because they say, that Ram carried away from thence to heaven all the inhabitants of the city. The deserted town was repeopled and restored to its former condition by *Bikaramajit,* the famous King of *Oojain.* There was a temple here on the high bank of the river; but *Aurangzebe,* ever attentive to the propagation of the faith of Mohammed, and holding the heathen in abhorrence, caused it to be demolished, and replaced it with a mosque with minarets, in order to abolish the very memory of the Hindoo superstition. Another mosque has been built by the Moors, to the east of this. Near the *Sargodoari* in an edifice erected by *Nabalroy* a former Hindoo governor. But a place more particularly famous is that which is called *Sitha Rassoee,* the table of *Sitha* (Seeta), wife of Ram; situated on an eminence to the south of the city. The emperor Aurangzebe demolished the fortress called Ramcote, and erected on the site, a *Mohammedan* temple with a triple dome. According to others, it was erected by Baber. There are to be seen fourteen columns of black stone, five spans in height, which occupied the site of the fortress. Twelve of these columns now support the interior arcades of the mosque: the two other form part of the tomb of a certain Moor. They tell us, that these columns, or rather these remains of skilfully wrought columns, were brought from Isle of *Lanca* or *Selendip (Ceylon)* by *Hanuman,* king the of monkeys. On the left is seen a square chest, raised,

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five inches from the ground covered with lime, about 5 *ells* in length by not more than four in breadth. The Hindoos call it *Bedi,* the cradle; and the reason is, that there formerly stood here the house in which *Beshan (Vishnoo)* was born in the form of Ram and were also, they say, his three brothers were born. Afterwards, Aurangzebe, or, according to others, Baber, caused the place to be destroyed, in order to deprive the heathen of the opportunity of practicing there their superstitions. Nevertheless, they still pay a superstitious reverence to both these places; namely, to that on which the *natal* dwelling of Ram stood, by going three times round it, prostrate on the earth. The two places are surrounded with a low wall adorned with battlements. Not far from this is a place where they dig up grains of black rice changed into little stones, which are affirmed to have been hidden underground ever since the time of Ram. On the 24th of the month *Tshet (Choitru),* a large concourse of people celebrate here the birth-day of Ram, so famous throughout India. This vast city is only a mile distant from *Bangla (Fyzabad)* towards the E.N.E."

(Ibid. 312-314)

"…Between three and four miles from *Fyzabad,* on the Southern bank of the *Goggrah,* there is a remarkable place planted with bushy trees, of which *Tieffenthaler* gives the following account:

"It is seated upon a hill somewhat steep, and fortified with little doors of earth at the four corners (of the enclosure). In the middle it is seen a subterranean hole, covered with a dome of moderate dimensions. Closed by is a lofty and very old tamarind-tree. A p*iazza* runs round it. It is said that Ram, after having vanquished the giant Ravan, and returned from Lanka descended into this pit, and there disappeared: hence, they have given to this place the name of *Gouptar (or Gouptargath).* You have here, then, a descent into hell, as you had at *Oude and* ascension to heaven". "As the scene of many of the leading events in the great epic poem of the *Ramayuna, Oude* might be expected to abound with sports of traditional sanctity

(Ibid.p.316-317)

Principal submission of Sri H.S. Jain is that place of birth of Lord Ram was previously Janamsthan temple which was

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demolished and Babri mosque was constructed at the site which is also reflected from the gazetteers,prepared by P. Carnegi, Millet, Fuhror, Newill and E.B.Joshi. They are Exts. O.O.S. -57, Ext. 7, Ext.8, Ext.9, Ext.10, Ext. 11, Ext. 12 and Ext. 13 in O.O.S. 5-7. He has further submitted that Encyclopedia of India and Eastern and Southern India by Surgeon General Edward Balfour referred Janmsthan which shows that Muslims destroyed Hindu temple and converted into a mosque. He has further urged that according to Tiffen Thaler at the site of Ram Janam Bhumi, mosque was constructed after demolishing Hindu temple. He has also referred Ayodhya by Hans Bakker which reveals that place of birth of Lord Ram is identifiable and was used to be a place of worship and old temple was renovated which was demolished at the command of Babur in the year 1528 by Mir Baki at the behest of Muslim Saint Kwaja Fazal Abbas. Mr Jain has further submitted that Tiffen Thaler had not given reference of Babur but of Aurangzeb. He has also pointed out that in O.S.No. 280 of 1885 Mahant Raghubar Das Vs. Secretary of State the place was identified as birth spot of Lord Ram and in view of historical background it is crystal clear Ram Janam bhumi temple was demolished by Muslims. There is clinching evidence that Ram Janam Bhumi is the place where the temple was built by King Govind Chandra but the same was demolished at the command of Babur by Mir Baki. 12 line inscription in dev nagri script written in 11th and 12th century was

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also recovered. This is fully established by Paleography (Science of of old writing). He has further submitted that besides the above inscription even from the ruins of the disputed structure certain archaeological remains of pre Babri Hindu temple were recovered and they establish that there was a Janamstan temple prior to construction of Babri mosque and 14 black stone pillars were recovered in the construction of the mosque and they are embellished with different Hindu Iconography,repeatedly found in all Hindu temples. He has further argued that different objects of archeological importance were recovered from the debris of the demolished disputed structure. Sri Jain has further stressed that Hindu temple of 12th century constructed during the reign of Govind Chand was destroyed at the command of Babur and mosque was erected on it , which was site of Ram Janam Bhumi. Parts of the temple were re-used in the construction of Babri mosque. Accordingly at the time of demolition of disputed structure 260 artifacts were recovered. They denote Aamlak, part of Hindu temple, lotus, part of Shikhar, dorgem etc. Further Shvi Parti images were also found. Inscription of Hindu Vishnu temple establishes that disputed place is Ram Janam bhumi and there used to be temple. Thus, on the basis of descriptions gazetteers and other historical accounts, it is established that the mosque was constructed at the site of Ram Janambhumi. It was considered as sacred place of Hindus and it was worshipped like a deity and

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incarnation of birth place of Lord Ram Chandra . Thus, this pious place was all the time worshipped and kept in high esteem by Hindus even after the construction of the disputed structure. Thus, Hindus have always attached sacred character of birth spot of Lord Ram. The defendants have proved the existence of Ram Janambhumi temple at the place of birth of Lord Ram . Accordingly they have discharged their duties and this fact should be admitted in evidence and now burden lies on the plaintiffs to show otherwise that it was not a Hindu temple. He has heavily relied over the conclusion of archeological team consisting of 14 members which transparently worked under the control of this Court as two Judicial Officers were the observers and team was composed of officers of both communities . The scientific report of experts which is data base fully establishes the existence of Ram Janambhumi and accordingly the defendants have successfully established the prior construction of temple which was demolished for the construction of the mosque by Muslim under the command of Babur which was prevalent practice among Muslims to destroy Hindu temples and the numerous instances for the destruction of the Hindu temples which was the order of the day during those days are established from historical records. Thus, looking to the place from any angle even prior to the construction of Babri mosque it transpires from archeological evidence that there was a Ram Janambhumi temple .

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Sri Jain has relied upon para 78 of Dr. **M. Ismail Faruqui and others Vs, Union of India and others 1994(6) SCC 360** which is reproduced as under :

> "While offer of prayer or worship is are religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and move reverentially. "

Sri H.S. Jain, Advocate has further argued that since birth place of Lord Ram was considered as a place of worship which was integral part of religious practice of Hindu from times immemorial. It is deity and it stands on a different footing and have to be treated reverentially. Sri Jain has further urged that in view of the constitutional mandate as provided under Article 25 of the Constitution this place which was all the time being worshipped has be treated by this Court as a place of worship because of the belief of the Hindu based on religious book and religious practice to be birth place of Lord Ram as the temple was constructed in the 12th century. It is expedient to say that prior to 12th century there is evidence that earlier temples were also constructed at the site .Thus, according to Sri H.S.Jain, Advocate there is overwhelming evidence to establish the site of Ram Janambhumi and the Court has to recognize the same. Thus, the suit of the plaintiffs which causes hindrance for worship of Hindu is liable to be dismissed on this

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count as no relief can be granted under Section 42 of the Specific Relief Act,1877, now Section 34 of the Specific Relief Act,1963.

Sri Ravi Shanker Advocate has also advanced argument in support of the claim of Hindus. He has submitted that it is established from the gazetteers, Hindu religious books and belief of Hindus and sacred character of the birth place of Lord Ram which was worshipped like a God. The plaintiffs have no claim over the property in suit and Hindus have fundamental rights to retain the same.

The learned counsel Shri Ravi Shanker Prasad has further submitted that in the present case, the adjudication has to be made in a matter relating to Hindu faith. His submissions are as under:-

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Basic submission is that Hindus have been worshiping the place in dispute as Sri Rama Janma Bhumi or Janamasthan and visiting it as a sacred place of pilgrimage as of right since times immemorial.

**The following facts are undisputed-**

**(a) That Ayodhya is a sacred place for Hindus;**

**(b) That Bhagwan Sri Rama was born in the said Ayodhya;**

**(c) That Bhagwan Sri Rama is incarnation of God as per Hindu belief;**

**The relevant voluminous documentary evidence concerning the sacred character of Ayodhya being the place of**

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**birth of Lord Sri Ram and, therefore, which is held in high esteem by the Hindus even after the construction of the disputed structure.**

**In the present case the plaintiffs though have made statements regarding an alternative birthplace of Bhagwan Sri Ram but they have not led any evidence whatsoever to prove the same. The defendants have discharged their burden of proof by showing that there was a temple of Bhagwan Sri Rama under the present disputed structure. It is for the plaintiffs to prove to the contrary.**

**(d) Under the above-mentioned circumstances, the question which arises is whether Hindus believe that Bhagwan Sri Ram was born at the impugned/disputed site in issuing known as Sri Rama Janma Bhumi.**

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It is apparent from prima facie examination of the facts that the dominant issue in the present dispute pertains to the legal adjudication of matters relating to the Hindu faith.

It has been held by the Supreme Court in **AIR 1953 Supreme Court 491- Saraswathi Ammal Vs. Rajagopal Ammal,** in paragraph 6 that to find out that religious purpose under Hindu law must be determined according to Hindu notions which in turn has been variously recognized by the Court in a large number of decisions.

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In this connection one of the most important books universally acknowledged and recognized as an authority by the Courts in India and abroad is "**The Hindu Law of Religious and Charitable Trusts" by B.K. Mukherji**- a very renowned and outstanding jurist of the country who is an authority on the subject and is widely quoted. It may be relevant to refer to few pages of the said book, fifth edition, by A.C. Sen, a former judge of Calcutta High Court. The first edition which in fact was a compendium of Tagore Law Lectures series was published in the year 1952 and at Page 75 of the book there is a very significant paragraph which throws light on the interpretation of issues in the present suit:

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"2.27. These observations, if I may say so, apply with full force to trusts created by Hindus for religious purposes. Undoubtedly the court and not the donor is the judge, of whether an object is charitable or not, but the court cannot enter into the merits of particular religious doctrine, and therefore must remain neutral. The divine service of a particular religion is defined by the doctrines of the religion itself and no court can appreciate their spiritual efficacy, unless it knows there doctrines and hypothetically admits them to be true. In controversial matters the court cannot possibly decide whether the doctrines are beneficial to the community or not. **It has got to act upon the belief of the members of the community concerned, and unless these beliefs are per se immoral or opposed to public policy, it cannot**

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**exclude those who profess any lawful creed from the benefit of charitable gifts...”**

**THE CONCEPT OF DEITY IN HINDU FAITH**

1. As the Hindus have since times immemorial and for many generations consistently held in great esteem and reverence the Rama Janmasthan in Ayodhya where they believe Sri Ram was born, this at once requires an understanding and recognition of the Hindu concept of deity as recognized by law and whether the Rama *Janmasthan* where *Ram Lala is Virajman* is in accordance with the said concept of deity.

2. The concept of deity which is a very distinguishing feature of the Hindu faith is one that is eternal, permanent and omnipresent wherein the deity is the image of the Supreme Being. The temple is the home of the deity and to constitute a temple it is enough if the people believe in its religious efficacy, i.e., there is some supreme super human power existing there whom they need to worship and invoke its blessings. As a result, the existence of an idol, though desirable, is not a legal precondition. The worship of such a divinity can also be formless or without any image, the only criteria being that people must believe in its divinity and seek its blessings.

3. There are many examples of this concept, Hindu worships Agni, Vayu and many sacred rivers like Ganga which do not resemble the traditional image of a deity yet the Hindus believe in their power of divinity. If such experience and the invocation of

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blessings are possible even in the case of a log of wood or a simple stone, it acquirees the sacred character of divinity. The *Sangam* (confluence) at Prayag is another example which is supposed to be a holy place where three rivers *Ganga, Yamuna and Saraswati* (which is invisible) meet and for the last thousands of years its sacred character remains intact where millions of people believe that by taking a bath there they wash off their sins. The recent *Kumbha Mela* in Haridwar where nearly 8 crore people visited further reinforces the divine character of the river Ganga at Haridwar which is highly sacred and its blessing is sought. The famous *Vishnupad Mandir in Gaya again has no image at all except a small image of two* 'Charan" only which is being worshipped for the last hundreds of years as *Vishnupad.*

*4.* The traditional and classical legal literature relating to Hindus has also duly sanctified such belief and faith which has been exalted to a juristic status requiring legal recognition. In this connection, "**the Hindu Law of Religious and Charitable Trusts" by B.K. Mukherjea** lays down some of the relevant concepts relating to deity and the temple along with concerned page number which are consistently being recognized as judicial authorities, not only in India but also abroad. The concept mentioned therein along with concerned page numbers are being quoted below:

**Page 26-27 – Para "1.33: Idols representing same divinity –** One thing you should bear in mind in connection with image worship

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viz. That the different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. **The rationale of image worship is thus given in a verse which is quoted by Raghunandan:**

**"***Chinmayasyaadwitiiyasya Naskalashariirina*

*Saadhakaanaam Hinaathayi Brahmanii Roopakalpanaa."*

"**It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."**

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Temples and mutts are the two principal religious institutions of the Hindus. There are numerous texts extolling the merits of founding such institutions. In *Sri Hari Bhaktibilash a* passage is quoted from Narsingha Purana which says that "whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated; what then shall be said of finishing the structure according to rule ……..... He who dies after making the first brick obtains the religious merits of a competed Jagna."

"1.34. **Other kinds of religious and charitable benefactions.- "**A person consecrating a temple", says Agastya, "also one establishing an asylum for ascetics also, one consecrating

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an alms house for distributing food at all times ascend to the highest heaven."

Besides temples and mutts the other forms of religious and charitable endowments which are popular among the Hindus are excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit of travellers, establishment of *Choultries, satras or alms* houses and Dharamsala for the neefit of mendicants and wayfarers, Arogyasalas or hospitals, and the last though not the least, Pathshalas or schools for giving free education. Excavation of tanks and planting of trees are Purtta works well known from the earliest times. I have already mentioned that there is a mention of rest houses for travellers even in the hymns of the *Rigveda*. The Propatha of the Vedas is the same thing as Choultrie or sarai and the name given to it by subsequent writers is *Pratishraygrih*. They were very popular during the Buddhist tie. In *Dana Kamalakara*, a passage is quoted from Markandeya Puran which says that one should make a house of shelter for the benefit of travellers; and inexhaustible is his religious merit which secures for him heaven and liberation. There are more passages than one in the Puranas recommending the establishment of hospitals. "One must establish a hospital furnished with valuable medicines and necessary utensils placed under an experienced physician and having servants and rooms for the shelter of patients. This text says further that a man, by the gift of the means of freeing

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others from disease, becomes the giver of everything. The founding of educational institutions has been praised in the highest language by Hindu writers. Hemadri in his *Dankhanda* has quoted a passage from Upanishad according to which gifts of cows, land and learning are said to constitute *Atihaan* or gifts of surpassing merit. In another text cited by the same author, it is said that those excluded from education do not know the lawful and the unlawful; therefore no effort should be spared to cause dissemination of education by gift of property to meet its expenses".

**Page 38-Para "1.50. The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests:-** As you shall see later on the decision of the Courts of India as well as of the Privy Council have held uniformly that the Hindu idol is a juristic person in whom the dedicated property vests. "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued." You should remember, however, that the juridical 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 by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is

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the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests."

**Page 38-39-Para "1.51. Deity owner in a secondary sense.-** The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Asutosh Mookerjee in his judgment in Bhupati v Ramlal and I will reproduce such portions of them as are necessary for my present purpose."

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Sulapani, a reputed Brahminical Jurist, in his discourse on Sraddha thus expresses his views regarding the proper significance of gift to God:- "in 'Donation' having for its dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz., the offer of the sacrifical fee etc. it has already beeb remarked in the chapter on the Bratis that such usage as Devagram, Hastigram, etc., are secondary". Sree Krishna in commenting on this passage thus explains the meaning of the expression Devgram: "Moreover, the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas

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in the term Devagram) figuratively means abandonment for them (the Gods)". Therefore, the expression is used in the sense of "a village which is the object of abandonment intended for the Gods". This is the purport. According to Savar Swami, the well-known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use."

**Page 39-Para "1.52.** These discussions are not free from obscurity but the following conclusions I think can be safely drawn from them:-(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense. (2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (Upchaar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu

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Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. 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 and the correct view is that in the capacity alone the dedicated property vests in it."

**Page 152-153-Para "4.3B. Sources of Puranas.-** It is said sometimes that the Vedic mythology was merely elaborated in the Puranas. This is not wholly or even substantially true. The sources of some of the legendary stories occurring in the Puranas can, no doubt, be traced in the Vedas but it would not be correct to say that the Pouranic gods were mere reproductions of the Vedic gods. There is nothing in the Vedas corresponding to the Pouranic Trinity of Brahma, Vishnu and Siva. Brahma in the Vedic text signified the Sun, or was a synonym of prayer. Vishnu in the Rigveda occupied a rather subordinate position. He was also identified with the Sun, and his three strides encompassing the three spheres of existence, as suggestive of all pervasiveness constituted the foundation of the Pouranic legend of the three steps of Vishnu in his incarnation of the "Dwarf." Siva hardly appears as the name of any deity in Vedic

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time. The expression "Siva" means propitious or benignant. Rudra, one of the Vedic deities, was in all probability, another name of Agni or fire, and the Puranas identified Siva with Rudra. We hear very little of Ganpati or Kartikeya in the Vedas. Kali, who is described in the Puranas as a consort of Siva, was spoken of in Mandukopanishad as one of the seven tongues of fire, while the name of "Uma occurs in the Kenopanishad, where she is described as a resplendent lady who gave lessons in divine knowledge to the gods. Sri Krishna, who looms so large in the Pouranic literature, is mentioned only as a scholar and not as a deity in the Vedas, though many of the legendary stories attributed to him in the Puranas are traceable to similar legends associated with Indra in the Vedic literature.

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It is not necessary for our present purpose to pursue these discussions any further. Though the Puranas are by no means uniform, the legends associated with the various gods are fairly well known and have been the basis of a considerable mass of poetic literature in later times. **One cardinal principle underlying idol worship you would always bear in mind – and this has some bearing on the law relating to gift of property to idols – that whichever god the devotee might chose for purposes of worship and whatever image he might est up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different**

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**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."**

**Page 153-Para "4.4. Building and consecration of temples.-**Along with the establishment of idol worship, in Hindu religion, elaborate rites and ceremonies, it seems, were introduced by Brahminical writers in regard to building of temples and consecration and purification of idols. I will touch these matters very briefly. A temple is the house of the deity and many of the rules of construction of a temple are practically the same as are prescribed for construction of a dwelling house, the additional rules being laid down to ensure greater sanctity of the structure that is meant for the abode of a deity. One who wants to build a temple has got to select the proper time for building with reference to astrological calculations. There are detailed rules relating to selection of the site which include examination of the nature and colour of the soil, its odour, taste, solidity, etc. after the site is selected, it is ploughed up and seeds are sown in it. As soon as the seeds germinate, the crop is allowed to be grazed over by cows. The cardinal points are then to be ascertained for giving this structure an auspicious aspect and there are rules to be observed regarding the material to be used and the location of doors, windows, etc. the

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important religious ceremony is the Vastu Jaga in honour of Vastu Purusha or Vastu Debta who presides over dwelling house, with oblations of milk, rice and sugar. This Vastu Gaja is a very ancient ceremony which dates from the Grihya Sutras of Aswalayan and Goville. The Puranas, however, contain a mythological legend regarding the Vastu Purusha and the modern form of the sacrifice in honour of this deity is described among others in Matsya Purana, Brihat Samhita and Devi Purana. All these ceremonies in connection with the building of a temple have been described with elaborate by Pandit Prana Nath Saraswati in his Tagore Lectures on the Hindu Law of Endowment. They are of little importance to a lawyer, as no question of law could possibly turn upon the manner in which a temple has been consecrated. Even if the rules prescribed by the Smriti writers are not obeyed, the founder of the temple may incur sin but the legal rights over or in respect of the temple cannot in any way be affected by thee omissions."

**Page 154-Para "4.5. Images – their description.-** Image, 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 Puran 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; …..... where the self possessed Vishnu has placed himself on earth in stone or**

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**wood for the benefit of mankind, that is styled the self revealed."** A Swyamhu or self-revealed image is a product of nature, it is Anadi or without any beginning and the worshippers simply discover its existence. Such image does not require consecration of Pratistha. All artificial or man-made images require consecration. An image according to Matsya Purana may properly be made of gold, silver, copper, iron, brass or bell metal or any kind of gem, stone or wood, conch shell, crystal or even earth.

**Some persons worship images painted on wall or canvas, says the Brihata Purana and some worship the spheroidical stones known as Salgram. Generally speaking, the Pouranic writers classify artificial images under two heads: viz. (1) Lepya and (2) Lekhya. Lepya images are moulded figures of mental or clay, while Lekhyas denote all kinds of pictorial images including chiselled figures of wood or stone not made by moulds. In the case of Goswami Geeridhariji v. Ramanlalji which went up to the Privy Council, the subject matter of dispute was the pictorial image of the head of the Ballavacharya Sect and not of any deity.** Images again may be permanent or temporary. Temporary images which are set up for periodical Pujas like Durga, Saraswati, etc. are generally made of clay and are immersed in a river or tank after the puja is over."

**Page 156 – Para "4.7. Worship of the Idol.-After** a deity is installed, it should be worshipped daily according to Hindu Sastras.

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The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always carried out by a pious Hindu either by personal performance of the religious rites or, in the case of Sudras, by the employment of a Brahmin priest. The daily worship of a consecrated image includes the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with sweets and water and other practices." **The deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant.** The daily routine of life is gone through, with minute accuracy, the vivified image is regaled with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest."

**Page 156-157 – Para "4.8. Reconstruction or purification of idols in case of defilement or destructions.-**According to Hindu sages, an image becomes defiled if it is not worshipped regularly. Reconstruction or purification of the image is ordained in cases where the image is mutilated, broken, burnt, fallen down or removed from its place or is defiled by a beast or the touch of an out-caste or even when hymns appropriate to other gods are recited before it. The rules for reconstruction or replacement of an idol are thus laid down in Hayasirsha Pancharatram. "Whatever is the

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material and whatever the size, of the image of Hari (God), that is to be renewed; of the same material and of the same size, an image is to be caused to be made; of the same size, of the same form and of the same material, should be placed, there, either on the second or the third day (the image of) Hari should be established; if it be established after that, even in the prescsribed mode, there would be blame." **The destruction of an image, as you will see presently, does not cause an extinction of the religious trust that is created in its favour; the rules of construction or replaacement of an idol as set out above are most liberally construed. It is enough if an image is established substantially representing the old or is treated as such, and the fact that the replacement was not made within the prescribed time, though blamable from the orthodox point of view, does not affect the validity of replacement. When** the settler had provided for Puja being performed in a specified Bhajana Matam, and subsequently that building was lost to the trust, it was held that did not extinguish the trust, as a new Bhajana Matam could be constructed and Puja performed there."

**Page 158 - Para "4.10. Dedicated property vests in the idol as a juristic person.-**When property is given absolutely by a pious Hindu for worship of an idol, the property vests in the idol itself as a juristic person. This view, as I have explained in the first lecture, is quite in accordance with Hindu ideas and has been uniformly accepted in a long series of decisions of the different High Courts in

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India as well as by the Judicial Committee. As West, J. observed in Manohar Ganesh v. Lakshmi Ram: “The Hindu law recognises not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also juridical subjects or persons called foundations.”

The Hindu idol is juridical subject, and the pious idea that it embodies is given the status of a legal person and is deemed capable in law of holding property in the same way as a natural person.

“The idol, deity or religious object,” observed West and Buhler in their Digest on Hindu Law, “is looked upon as a kind of human entity.” It is a sacred entity and ideal personality possessing proprietary rights. The Judicial Committee has pointed out on more occasions than one that it is only an ideal sense that property can be said to belong to an idol and the possession and management of it must, in the nature of things, be entrusted to some persons as Shebait or manager. The legal principle has thus been summed up in one of the pronouncements of the Judicial Committee:

“**A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which**

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**would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."**

***Page 158-159 – Para "4.10A. Existence of idol is necessary for temple.-***

**While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that 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 one superhuman power which they should worship and invoke its blessings. However, in almost all cases the temple does possess an idol."**

**Page 160-162. Para "4.13. The principle of Hindu Law that a donee must be in existence at the time of gift whether applicable to the creation of a Dubutter endowment?** In a Debutter endowment, as you have seen, the deity or idol is the recipient or donee of the endowed property which vests in it as a juridical person. To constitute a valid gift under Hindu law it is necessary that it must be accepted by a sentient being who is in existence at the time of the gift. This rule which was authoritatively laid down by the judicial Committee in the case of Tagore v. Tagore has been scrupulously followed ever since by all the High Courts in India. An

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attempt was made however in some of the decisions of the Calcutta High Court to carry the rule too far, and to hold that a gift to an idol which is not consecrated or in existence at the time of dedication is not valid. Thus, in Upendra Lal Boral v. Hem Chandra where one of the question raised related to the validity of a bequest in favour of a non-existent idol, it was held by the learned Judges that "if there was a gift to the idol, it was bad, because there was no idol in existence at the time of his death, and further if there was a oer to make such a gift the power was ineffective because on the authority of Bai Malivahu v. Mamubai we think that " a power must be to convey to a person who was in existence either actually or in contemplation of law at the death of the testator and the idol to which the dedication is sought to have been made was not then in existence." the learned Judges proceeded to say, "the deity no doubt is always in existence but there could be no gift to the deity as such and there was no personification of the deity to whom the gift could have been made, or who was capable of taking it." The same view was taken by Stanley, J. in Rojomoyi v. Troylukho and it was held that a direction in the will of a testator to establish a 'thakur' to whom the entire residuary estate was to go was invalid. "Whether a gift be in presenti or in futuro", thus observed the learned Judge, "it is settled that the donee must be a person in existence and capable of accepting the gift at the time it takes effect – Tagore v. Tagore. That which cannot be done directly by gift cannot be done

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by the intervention of a trustee; Krishna Ramani v. Ananda; Rajendra Dutt v. Sham Chand. An idol cannot be said to have juridical existence unless it has been consecrated by the appropriate ceremonies, and so has become spiritualised. Before this, the deity of which the idol is the visible image does not reside in the idol: Doorga Pershad v. Sheo Pershad. In Nagendra Nandini v. Binoy Krishna, Stephen, J. took it to be a settled law that a bequest to a thankur not in existence at the date of the death of the testator was not valid. It may be noticed here that the case of Doorga Pershad v. Sheo Pershad, to which reference was made by Stanley, J., is of a different type altogether. In that case an image of Vishnu, as also the Debotter property dedicated to it, were sold in execution of a money decree against the Shebait, and the purchaser brought the image to his house and continued to conduct its worship. The Shebait's son set up another image of the god, and instituted a suit against the purchaser to recover the property but not the original image. It was contended on his behalf that the removal of the original image destroyed its sanctity and justified its replacement by another image, and in any event the property should be devoted to the worship of the second image also. The first contention was negatived and with it the second contention fell also. It was held by the learned judges and quite rightly that no second image could be set up when an existing image continues fit for worship, the deity being intended by the founder to be worshipped by one image and

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not simultaneously by two. No doubt the learned judges observe in the course of their judgment that according to Hindu rites when an idol has been consecrated by appropriate ceremonies and pronunciation of Mantras, then and then only the deity of which the idol is the visible image could reside in it. But there is nothing in the decision which might be taken to lay down that a dedication is not valid unless a consecrated image is in existence at the date of dedication. This question was neither considered nor decided by the learned Judges. The authority of the cases referred to above has been overruled by the pronouncement of Full Bench of the Calcutta High Court in Bhupati Smrititirtha v. Ram Lal. The main question referred to the Bull Bench was: "Does the principle of Hindu Law which invalidates a gift other than to sentient being capable of accepting it, apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death, and make such a bequest void?" The Full Bench answered the question in the negative. Sir Lawrence Jenkins who presided over the Full Bench in the course of his judgment observed that the "rule which requires relinquishment should be to a sentient person does not forbid the gift of property to trustees for a religious purpose though that purpose cannot in strictness be called a 'sentient person'. It would seem that the rule propounded by Jinutabahan had regard rather to the general proposition for he was contending, i.e., the act of the giver is the cause of property, than to its application to

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particular objects of benevolence. The fiction that an idol is a person capable of holding property must be kept within its proper limits, and were we to accede to the argument that has been advanced before us, we should be allowing fiction to be built on fiction to the hindrance and not for the furtherance of justice." Mookerjee, J. in the same case held on a review of all the relevant texts that according to Hindu law the rule about the acceptance of a gift as a necessary condition for its validity was applicable to secular gifts only. There is no foundation for the assumption that the dedication to deity or for religious purpose stands on the same footing. In summing up the legal position the learned Judge observed as follows: "The view that no valid dedication of property can be made by a will to a deity the image of which is not in existence at the time of the death of the testator is based upon a double fiction, namely, first that the Hindu deity is for all purposes a juridical person and secondly that a dedication to the deity has the same characteristics and is subject to the same restrictions as a gift to a human being. The first of these propositions is too broadly stated, and the second is inconsistent with the first principles of Hindu Jurisprudence." The provisions of Hindu law relating to secular gifts are therefore not applicable when the dedication is to the idol. Moreover,-and this was pointed out by Chatterjee, J., who was a member of the Full Bench-the conception of Hindu jurists was not that the image of clay or stone constituted the juristic

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person. **The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated thakur become vested in the substituted thakur. Thus, a dedication to an idol is really a dedication to the deity who is ever-present and ever-existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration. The decision in Bhupati Smrititirtha v. Ramlal has been followed by other High Courts in India, and it has been held by the Allahabad High Court in Mohor Singh v. Het Singh that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu Law. The fact that the gift is made by a deed inter vivos and not by a will does not make any difference."**

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I may quote relevant case law;

**(i) 1999 (5) SCC Page 50 (Ram-Janki Deity Vs. State of Bihar):** *Paragraphs 13 to 19-An Idol is not a precondition. Even a piece of stone may become the idol. Agni and Vayu are worshipped. They are shapeless and formless. Even a simple piece of wood can attain divinity. If the public goes for worship and consider that there is a divine presence, then it is a temple.*

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**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 Hindu Shastras - In any event, Hindus have in 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 consecrate the image.

**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

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the benefit of the worshipper and nothing else."

(B.K. Mukherjea - on 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 Bhupatinath v. Ramlal Maitra , wherein Chatterjee, J. (at page 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."

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. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems

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to have been totally misread by the learned Single Judge.

(ii) **2000 (4) SCC, Page 146 – Shiromani Gurudwara Prabandhak Committee Vs. Somnath Das:** Para 30 to 42- Guru Granth Sahib is a juristic person.

35. Now, we proceed to examine the judgment of the High Court which had held to the contrary. There was difference of opinion between the two Judges and finally the third Judge agreed with one of the differing Judges, who held Guru Granth Sahib to be not a "Juristic Person". Now, we proceed to examine the reasonings for their holdings so. They first erred, in holding that such an endowment is void as there could not be such a juristic person without appointment of a Manager. In other words, they held that a juristic person could only act through some one, a human agency and as in the ease of an Idol, the Guru Granth Sahib also could not act without a manager. In our view no endowment or a juristic person depends on the appointment of a Manager, It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either by the trustees or Courts in accordance with law. Mere absence of a-manager (does not) negative the existence of a juristic person. As pointed out in Manohar Ganesh v. (approved in Yogendra Nath Naskar's case ) referred to above, if no manager is appointed by the founder, the ruler would give

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effect to the bounty. As pointed in Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami ,ILR Mad. (at p. 457), by Bhashyam Ayyangar, J (approved in Yogendra Nath Naskar's case : the property given in trust becomes irrevocable and if none was appointed to manage, it would be managed by the "Court as representing the sovereign." This can be done by the Court in several ways under Section 92, C.P.C. or by handing over management to any specific body recognised by law. But the trust will not be allowed by the Court to fail. Endowment is when donor parts with his property for it being used for a public purpose and its entrustment is to a person or group of person in trust for carrying out the objective of such entrustment. Once endowment is made, it is final and it is irrevocable. It is the onerous duty of the persons entrusted with such endowment, to carry out the objectives of this entrustment. They may appoint a manager in the absence of any indication in the trust or get It appointed through Court. So, if entrustment is to any juristic person, mere absence of manager would not negate the existence of a Juristic person. We, therefore, disagree with the High Court on this crucial aspect.

(iii) AIR **1963 Supreme Court, Page 510-Para 8, The Poohari Fakir Sadavarthy of Bondilipuram v. The Commissioner, Hindu Religious and Charitable**

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**Endowments.** The institution will be a temple if two conditions are satisfied-one-it is a place of public religious worship-and and other- it is used as of right by the Hindu community or any section thereof as a place of worship.

(iv) 2005 **(1) SCC, Page 457-Thayarammal Vs. Kanakammal and Others-**Para 16 at Page 463: 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.

(v) (1888) **ILR 12 Bombay, Page 247, Manohar Ganesh Tambekar Vs. Lakhmiram Govindram**–*Property dedicated to a pious purpose is by the Hindu as by the Roman Law placed extra-commercium*. Para-11 reads as under:-

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"**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 West and Buhler, H.L., 201, 185, 553, 555. A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it West and Buhler, H.L., 99, 197, 216, 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**

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**morality West and Buhler, H.L., 33, Mann VIII, 41, Coleb. Dig., B. III, Ch. II, T. 28. 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 Spence Eq. Juris., 440; Sav. Syst., Section.**

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 See Rupa Jagset v. Krishnaji Govind, I.L.R., 9 Bom., p. 169 such as the institution at Dakor, and could not, any more then 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.

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(vi) **AIR 1959 Supreme Court 951-Mahant Ram Swarup Vs. S.P. Sahi – Page 958-959 – Para 10 & 12 –** *It is difficult to visualize that a Hindu private Debuttar will fail for a deity is immortal. Even if the idol gets broken or lost or stolen another image may be consecrated and it cannot be said that the original object has ceased to exist. Para 12-B.K. Mukherjee quoted*.

10. We now turn to some of the other provisions of the Act, which we have earlier quoted. Section 29(1) which talks of supervision of a religious trust being vested in any committee

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or association appointed by the founder or by a competent court or authority is ordinarily appropriate in the case of a public trust only. Section 30(1) which embodies the doctrine of cypres permits any Hindu to make an application for invoking the power of the Board to determine the object to which funds, property and income of a religious trust shall be applied where the original object of the trust has ceased to exist or has become impossible of achievement. This section is also inappropriate in the case of a private trust, the obvious reason being that any and every Hindu cannot be interested in a private trust so as to give him a locus standi to make the application. Further, it is difficult to visualise that a Hindu private debutter will fail, for a deity is immortal. 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. Section 32 is an important section of the Act and confers power on the Board to settle schemes for proper administration of religious trusts. Now, the section says that the Board may exercise the power of its own motion or on application made to it in this behalf by two or more persons interested in any trust. The language of the section follows closely the language of Section 92 Civil Procedure Code, so far as the phrase "two or more persons interested in any trust" is concerned.

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(vii) **AIR 1965 Supreme Court 906 - Idol of Thakur Sri Govind Dev Ji Maharaj Vs. Board of Revenue -** Page 908-Para-6 - *An idol which is a juridical person is not subject to death because the Hindu concept is that the idol lives for ever.*

6. The question which arises is, can the grant made to the appellant be said to attract the operation of rule 5 ? Rule 5 prescribes for the levy of Matmi in respect of State grants and if the said rule applies, the appellant would have no case. In deciding the question as to whether the appellant's estate is liable to pay Matmi under r. 5 it is necessary to examine the nature of this Matmi, and find out whether a claim in respect of it can be made against the appellant. We have already noticed that Matmi means mutation of the name of the successor to a State grant on the death of the last holder. 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 is a juridical person is not subject to death, because the Hindu concept is that the Idol lives for ever, 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.** That being so, it seems difficult to hold that any claim **for Matmi can be made against the appellant,** and

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that must clearly lead to the inference that no amount can be recovered from the properties belonging to the **Idol on the ground that Matmi** is claimable against a person who claims to be the successor of the Shebait of the appellant.

It is next contended by Mr. Muthiah Mudaliar that there is no "institution' in this case so as to attract the operation of Section 84 (1), the institution, according to him, coming into existence only if and when the building is completed and the idol installed and consecrated in the manner prescribed by the Agama Sastras, and described by Satyanarayana Rao J. in his judgment. Consecration, according to the ceremonial rites prescribed by the Agama.

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(viii) **AIR 1951 Madras Page 473 – T.R.K. Ramaswamy Servai and Anr. Vs. The Board of Commissioners –** *Para 47- Existence of idol not necessary if the public which go there consider that there is a divine presence in a particular place and by offering worship at that place they are likely to be the recipient of the bounty or blessing of God, then you have got the essential feature of a temple. The test is not the installation of an idol and the mode of its worship.*

47. It is next contended by Mr. Muthiah Mudaliar that there is no "institution' in this case so as to attract the operation of Section 84 (1), the institution, according to him, coming into existence only if and when the building is completed and the

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idol installed and consecrated in the manner prescribed by the Agama Sastras, and described by Satyanarayana Rao J. in his judgment. Consecration, according to the ceremonial rites prescribed by the Agama Sastras, is not a legal requisite, though it is a sacredotal necessity according to the views of the orthodox. The test is not whether the installation of an idol and the mode of its worship conform to any particular school of Agama Sastras. 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 by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God, then, you have got the essential features of a temple as defined in Section 9, Clause (12) of the Act. The presence of an idol, though an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in Section 9, Clause (12) of the Act. The word "institution" which is used in Section 84 (1) of the Act is a term of very wide import, capable of different meanings according to the context in which it is used. It means, among other things, a foundation, a system, a constitution, an establishment, or organisation, a place designed for the promotion of some. religious, charitable or other object of public utility and so on. In this case, the place for the construction of the temple had been fixed, the building had

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been substantially erected though not completed, the idol was ready to be installed, properties had been endowed and trustees appointed for the conduct of the worship and the management of the properties. The Board had jurisdiction to decide the preliminary fact, whether there was an institution within the meaning of Section 84 (1) and whether it was a temple as defined in the Act. It decided in the affirmative an its order Ex. R-1, dated 27-9-1938. Its decision has not been sot aside in the only manner permitted by law and has now become final and binding on the trustees. Merely because I would have come to a different conclusion from the Board, I cannot treat the order of the Board as null and void.

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(ix) **AIR 1939 Madras Page 134 – Board of Commissioners of Hindu Endowment Vs. P. Narasimha – Para 5** at Page 135 – The Hindu Religious Endowments Act, no doubt, speaks of a temple as a place of "public religious worship". That what the evidence in this case describes as taking place in connection with the institution is public worship can admit of no doubt. We think it is also religious. The test is not whether it conforms to any particular school of Agama Sastras; we think that 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

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the object of the bounty of some superhuman power, it must be regarded as "religious worship". In this view, the learned District Judge was not justified in holding that the appellant Board had no power under the Act to frame the scheme. The appeal must be allowed with costs here and in the Court below - costs to be paid by respondent 1."

(x) **2007 (5) SCC – Page 677 – Gedala Stachidanand Murti Vs. Commissioner,** confirms the above view.

(xi) **AIR 1989 Madras – Page 60 – P.V. Durrairajulu Vs. Commissioner of Hindu Religious Trusts –** Para 18 – Presence of Idol is not necessary. It is in this background that I will analyse the various clauses in Ex. A. 1. Veeraswami Naidu, the founder of this temple was a Police Inspector. Therefore one could take it that he was wordly wise. He had already built this Sri Ramar Madalayam. According to him it was built as a charity for the salvation of his soul. He dedicates the same to the Public and requires under the will to use as a temple and a mutt. I do not think anything more necessary than this unequivocal dedication for the public to enjoy as of right. In several places he uses the word "Sannathi"; firstly with regard to the homums; secondly with regard to the lighting during pooja days, offering prasadam and distribution of the same, the cooked rice being distributed as Prasadam. Therefore, I am unable to accept the contention

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of Mr. T. R. Rajagopalan, that there is no picture of Sri Rama which has come to be installed. As a matter of fact, it came to be installed even during the lifetime of Veeraswamy, the founder, and pooja was being performed. As Viswanatha Sastri, J., pointedout in T.R.K. Ramaswami Servai v.Board of Commissioner for the Hindu Religious Endowments, Madras ILR (1950) Mad 779 : (AIR1951 Mad 473) the presence of idol is solely unnecessary, I should think this Mutt in question should answer the definition of "temple, which definition, I have already analysed. If a sense of reverence is created by the place in the belief that God resides there or if an edifice devoted to divine worship, that would be enough to attract the definition of "Temple" under Section 6(20) of the Act. In other words, it is a sense of reverence that is very important. It may be stated that this very definition has been repeated under the Act right from Act 2 of 1927, again in Act 19 of 1951 and also the present Act (Tamil Nadu Act 22 of 1959). Nowhere the requirements as are ordinarily expected of a temple are insisted upon. It is a faith that it is the abode of God that matters. It is that compelling faith, that by offering prayers, one will be the object of bounty, that is important. I consider these elements being present in this case.

(xii) **1997 (4) SCC Page 606 – Sri Adi Vishweshara of**

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**Kashi Vishwanath Temple v. State of U.P.-Paragraph 30 at Page 631-**The nature of Hindu religion is monism. It believes in one supreme-being who manifests himself in many forms. This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru, Swayambhu and seek to attain the ultimate supreme.

(xiii) **AIR 1953 Allahabad – 552 – Gokul Nath Ji Maharaj Vs. Nathji Bhogilal** -According to Hindu notion what is worshipped in a temple is not the stone image or image made of wood. It is the God behind the image which is the object of worship. The real owner of the property dedicated to a temple is deemed to be God himself represented through a particular idol or deity which is merely a symbol.

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**Para 4 –** Property worshipped for more than 300 years there can be no direct evidence of consecration.

**Para 5 –** After the length of time it is impossible to prove by affirmative evidence that there was consecration. However, the idol was duly recognized by all who believed it is an idol of Lord Krishna.

(xiv) **AIR 1925 Privy Council -139 – Pramathanath Mullick Vs. Pradhyumna Kumar Mullick and Others:** Para 9 – Deity is a living being to be treated like a master**.**

**Para 29** – It is not a moving chattel.

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**Para 31** – Hindu idol is not property. Custodian cannot destroy or cause injury.

(xv) **3 Indian Cases 642 - Full Bench of Calcutta High Court – Bhupati Nath Smrititirth Bhattacharjee Vs. Ram Lal Mitra and Ors.** ***As per Shastric Hindu Law*** *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 and properties previously vested in the lost or mutilated Thakur. Para 73 reads as under;*

***"73.*** Sastri's Hindu Law 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. 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 and properties previously vested in the lost or mutilated Thacoor become vested in the substituted Thacoor. 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,

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according to some, the gratification of the deity. According to either view, it is the relinquishment of property in the name of the deity for securing its gratification that completes the gift and such relinquishments are valid according to Hindu Law even if made by dying man. It may be true that the illiterate Hindu thinks of the consecrated symbol as the deity and has not any clear idea of the particular attribute of the God-head that is worshipped in a particular form, but it cannot be said with any approach to truth that the great Rishis and their commentators who declared the Hindu Law had such a gross idea of the divinity they worshipped. In this view of the case also the text of the Dayabhaga relied on in the Tagore case 9 B.L.R. 377 : 18 W. R. 359 cannot invalidate the gift in favour of a deity whose image is consecrated after the death of the door."

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**OWNERSHIP OF PROPERTY BY A DEITY**

The right of a deity of being worshipped by its followers can never be confused with secular laws relating to management of deities since they are fundamentally different. In the present case, the question which is before this Court is that whether the site/place of Sri Rama Janma Bhumi which is believed to be the birthplace of Lord Ram by Hindus and is, therefore, a deity in itself and cannot be alienated in any manner. The law on the said point is very clear as has been explained above. It is undoubtedly apparent that the

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said site cannot be alienated, even by the manager or the Shebait.

**RELEVANT CASE LAWS RELIED BY SHRI RAVI SHANKER ARE AS UNDER:**

**(i) 1969 (1) SCC Page 555 (Jagendra Nath Naskar Vs. Commissioner of Income Tax)** *Para 5 & 6-A Hindu idol owns property only in a figurative sense.*

**"5.** It is well established by high authorities that a Hindu idol is a juristic person in whom the dedicated property vests. fit Manohar Ganesh v. Lakshmiram called the Dakor temple case, West and Birdwood, JJ. state :

"The Hindu Law, like the Roman Law and those derived from it, recognises not only incorporate bodies with rights of property vested in the corporation apart from its individual members but also juridical persons 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 is consistent with his own Dharma or conception or morality. A trust is not required for the purpose; the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English Law. In early law a gift placed as it was expressed on the altar of God, sufficed it to convey to the Church the lands thus dedicated. It is

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consistent wit the grants having been made to the juridical person symbolised or personified in the idol."

The same view has been expressed by the Madras High Court in Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami and Ors. in which Mr. Justice Subrahmania Ayyar stated :

"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's History of English Law, Volume I, 481)."

**"6.** The consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case, which Mr. Prannath Saraswati, the author of the 'Tagore Lectures on Endowments' rightly enough speaks of as one ranking as the leading case on the subject, and in which West J., discusses the whole matter with much erudition. And in more than one case, the decision of the Judirial Committee proceeds on precisely the same footing (Maharanee Shibessourec Dehia v. Mothocrapath Acharjo and Prosanna Kumari Debya v. Golab Chand

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Baboo Such ascription of legal personality to an idol must however be incomplete unless it be linked of human guardians for them variously designated in Debya v. Golab Chand Baboo the Judicial Committee observed thus : 'It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must be necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir'-words which seem to be almost on echo of what was said in relation to a church in a judgment of the days of Edward I: 'A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age' (Pollock and Maitland's 'History of English Law', Volume I, 483."

(ii) **AIR 1957 Supreme Court 133 - Deoki Nandan Agrawal Vs. Murlidhar –** Para 6 – Endowment of property in case of an idol is only in an ideal sense and it cannot have

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any beneficial interest in the endowment. This is for the worshipper. Para-6 reads as under:-

**"6.** Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefore ? Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the beneficial owner of the endowment ? Though such a notion had a vogue at one time, and there is an echo of it in these proceedings (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of endowed properties. Vide Prosunno Kumari Debya v. Golab Chand Baboo ; Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi and Pramatha Nath Mullik v. Pradhyumna Kumar Mullik . It cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. This was clearly laid down in the Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamsa, Adhayaya 9, Pada 1, Sabara Swami is the authenticity on the subject.

"Words such as 'village of the Gods', 'land of the Gods'

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are used in figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however does not make use of the village or lands, according to its desires. Therefore nobody makes a gift (to Gods). Whatever property is abandoned for Gods, brings prosperity to those who serve Gods".

Likewise, Medhathithi in commenting on the expression "Devaswam" in Manu, Chapter XI, Verse 26 is as under:-

"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application to Gods. For the Gods do not make use of the property according to their desire nor are they seen to act for protecting the same".

Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. In Bhupati Nath Smrititirtha v. Ram Lal Maitra , it was held on a consideration of these and other texts that a gift to an idol was not to be judged by

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the rules applicable to a transfer to a 'sentient being', and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends. Thus, it was observed by Sir Lawrence Jenkins C. J. at p. 138 that "the pious purpose is still the legatee, the establishment of the image is merely the mode in which the pious purpose is to be effected" and that "the dedication to a deity" may be "a compendious expression of the pious purposes for which the dedication is designed". Vide also the observations of Sir Ashutosh Mookerjee at p. 155. In Hindu Religious Endowments Board v. Veeraraghavachariar , Varadachariar J. dealing with this question, referred to the decision in Bhupati Nath Smrititirtha v. Ram Lal Maitra (supra) and observed :

> "As explained in that case, the purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust".

(iii) **AIR 1970 Supreme Court 439 – Kalanka Devi Sansthan Vs. Maharashtra Revenue Tribunal –** Para 5 at Page 442 – *The properties of an idol do not vest in the*

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*manager or Shevait. It is the deity or the Sansthan which owns and holds the property. It is only the possession and management which vests with the manger.*

Para 5 reads as under:

**"5.** It has next been contended that in the provisions of the Berar Regulation of Agricultural Leases Act, 1951 public trusts of charitable nature were included among those who could claim possession from a tenant on the ground of personal cultivation. It is not possible to see how the provisions of a repealed statute which was no longer in force, after the enactment of the Act, could be of any avail to the appellant. The decision in Ishwardas v. Maharashtra Revenue Tribunal and Ors.: [1968]3 SCR 441 = (AIR 1968 SC 1364) has also been referred to by the counsel for the appellant. In that case it was said that under Section 2(18) of the Bombay Public Trusts Act a trustee has been defined as meaning a person in whom either alone or in association with other persons the trust property is vested and includes a manager. In view of this definition the properties of the trusts vest in the managing trustee and he is the landlord under Clause 32 of Section 2 of the Act. As he is the landlord, he can ask for a surrender from the tenant of the lands of the trust "to cultivate personality". In the present case it is common ground that the Sansthan is a private trust and is not governed by the provisions of the Bombay Public Trusts Act. The manager of the Wahiwatdar of the Sansthan cannot, therefore, fall within the

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definition of the word "trustee" as given in Section 2(18) of that Act. It may be mentioned that in Ishwardas, case : [1968]3 SCR441 = (AIR 1968SC 1364) the court refrained from expressing any opinion on the question whether a manager or a Shebait of the properties of an idol or the manager of the Sansthan can or cannot apply for surrender by a tenant of lands for personal cultivation. The distinction between a manager or a Shebait of an idol and a trustee where a trust has been created is well recognised. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager."

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**(iv) AIR 1960 Supreme Court Page 100 -(Narayan Vs. Gopal)** Para 35 to 38 – A manager of a public temple has no right to remove the idol especially when majority of the worshippers object to it. It quotes Kane – an idol is not to be removed permanently because that would tantamount to establishing a new temple. However, if the public agreed to temporary removal it could be done for a valid reason. Paras-35 to 38 read as under:-

**"35.** There are, however, cases in which this matter has come up for consideration before the Courts. In Ram Soondur Thakoor v. Taruck Chunder Turkoruttun , there was a destruction of the temple

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by the erosion of the river on the banks of which the idol was installed. The suit was filed by the plaintiffs for a declaration of their right to remove the idol to their own house and to keep it there for the period of their turn of worship. This claim was decreed. On appeal, Dwarknath Mitter and Ainslie, JJ., interfered only to the extent that the lower Court ought to have defined the precise period for which the plaintiffs were entitled to worship the idol before it could make the declaratory decree, which it had passed in their favour. They also directed that if it was found by the lower appellate Court that the plaintiffs and the defendants were jointly entitled to worship the idol during any part of the period mentioned by the plaintiffs, the lower appellate Court should not allow the plaintiffs to remove the idol to their own house at Khatra for that portion of time. It appears from the judgment that though the plaintiffs were allowed to remove the idol to their own house, they were to re-convey it at their own expense to the place where it was at the time of the institution of the suit. The learned Judges, however, qualified their judgment by saying that it was not contended in the case before then that the idol was not removable according to the Hindu Shastras.

36. In Hari Raghunath v. Anantji Bhikaji , ILR 44 Bom. 466 (AIR 1920 Bom. 67 (2), the temple was a public one. It was held by the High Court that under Hindu law, the manager of a public temple has no right to remove the

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image from the old temple and install it in another new building, especially when the removal is objected to by a majority of the worshippers. It is interesting to note that in this case Dr. P. V. Kane appeared, and in the course of his argument, he stated as follows :

> "According to the Pratishtha-Mayukha of Nilkantha and other ancient works an image is to be removed permanently only in case of unavoidable necessity, such as where the current of a river carries away the image. Here the image is intact. It is only the temple that is dilapidated. For repairing it, the image need not necessarily be removed. Even if it may be necessary to remove the image, that will be only temporarily. The manager has under Hindu law no power to effect permanent removal of an image in the teeth of opposition from a large number of the worshippers. In the instances cited by the appellant, worshippers had consented to the removal. Permanent removal of an image without unavoidable necessity is against Hindu sentiment."

(Italics hereto supplied)

**Shah, J. (Crump J. concurring) observed as follows:**

> "It is not disputed that the existing building is in a

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ruinous condition and that it may be that for the purpose of effecting the necessary repairs the image may have to be temporarily removed. Still the question is whether the defendant as manager is entitled to remove the image with a view to its installation in another building which is near the existing building. Taking the most liberal view of the powers of the manager, I do not think that as the manager of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. To remove the image from that temple and to instal it in another building would be practically putting a new temple in place of the existing temple. Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not concerned in this suit with the question of the temporary removal which may be necessary when the existing building is repaired."

The case is an authority for the proposition that the

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idol cannot be removed permanently to another place, because that would be tantamount to establishing a new temple. However, if the public agreed to a temporary removal, it could be done for a valid reason.

37. In Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App 245 (AIR 1925 PC 139), the deed of trust created an injunction against the removal of the deity. The following quotation from that deed of trust shows the powers of the manager :

> "Shall be for ever held by the said Jadulal Mullick, his heirs, executors, administrators and representatives to and for the use of the said Thakur Radha Shamsunderji to the intent that the said Thakur may be located and worshipped in the said premises and to and for no other use or intent whatsoever provided always that if at any time hereafter it shall appear expedient to the said Jadulal Mullick, his heirs, executors, administrators or representatives so to do it shall be lawful for him or them upon his or their providing and dedicating for the location and worship of the said Thakur another suitable Thakur Bari of the same or greater value than the premises hereby dedicated to revoke the trusts hereinbefore contained and it is hereby declared that unless and until another Thakur Bari is provided and

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dedicated as aforesaid the said Thakur shall not on any account be removed from the said premises and in the event of another Thakur Bari being provided and dedicated as aforesaid the said Thakur shall be located therein, but shall not similarly be removed therefrom on any account whatsoever."

The Privy Council analysed this provision, and stated that the last condition made the idol immovable, except upon providing for the dedicate another Thakur Bari of the same or larger value. It observed :

"The true view of this is that the will of the idol in regard to location must be respected. If, in the course of a proper and unassailable administration of the worship of the idol by the Shebait, it be thought that a family idol should change its location, the will of the idol itself, expressed through his guardian, must be given effect to."

Their Lordships ordered the appointment of a disinterested next friend, who was to commune with the deity and decide what course should be adopted, and later the instructions of the deity vouchsafed to that representative were carried out. In this case, there was a family deity and there was a provision for removing the idol to another better and more suitable Thakur Bari, if it appeared necessary. The wishes of the deity were

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considered and consulted. The case, however, is not quite clear as to whether in all circumstances the idol can be removed from one place to another.

38. The last case on the subject is Venkatachala v. Sambasiva, AIR 1927 Mad. 465: 52 Mad. LJ 288. The headnote quite clearly gives the decision, and may be quoted here :

> "Where all the worshippers of a temple, who are in management of it, decide to build a new temple, the old one being in ruins and the site on which it stood becoming insanitary and inconvenient for worshippers, then, unless there is clear prohibition against their demolishing the old temple and building a new temple, the Court is not entitled to prevent the whole body from removing the temple with its image to a new site in the circumstances."

Devadoss, J., quoted passages from Kamika Agama, and referred to Prathista Mayukha by Nilakanta, Purva Karana Agamam and Nirnaya Sindhu. He, however, relied upon certain passages from Purva Thanthiram by Brighu, Kamika Agama, Siddhanta Sekhara and Hayasirsha Pancharatra, and came to the above conclusion. The effect of the decision is that the whole body of worshippers, if they are of one mind, can even

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permanently remove an idol to another habitation.

**AN IDOL/PUBLIC TEMPLE IS NOT SUBJECT TO ALIENATION (Res extra-commercium)**

It is a well known legal proposition that temples are sancrosanct and there cannot be alienation of a public temple under any circumstance being res extra commercium. Shri Ravi Shanker has relied over following cases:-

**(i) AIR 1957 Allahabad – 77 : Mukundji Mahraj Vs. Persotam Lalji Mahraj -Para 28-29 –** A temple has a special sanctity distinct from other endowed property. To alienate a temple itself is to cut at the root of the very existence of the idol. Hindu sentiments view the alienation of a temple as a sacrilege. The sale of temple and an execution of a deed are totally void.

28. Whatever may be said about a permanent alienation of endowed property other than a temple, in the very nature of things, having regard to the duties of a Manager or a Shebait towards the idol or institution, there can be no necessity of alienating the temple or any portion of it in which the idol is installed. The maintenance of the entire building is the prime concern of the Manager or the Shebait.

(ii) The temple has a special sanctity distinct from other endowed property. To alienate the temple itself is to cut at the root of the very existence of the idol in the habitation

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intended by the founder. Hindu Sentiment views the alienation of a temple as a sacrilege. Not until the idol has been removed from the temple in accordance with shastric rites and has assumed a new habitation and the temple abandoned as a place of worship may the temple be alienated or sold in execution of a decree.

**Para 31 –** Idol was not a party and hence the decree is nullity. This brings us to the question of limitation. As the idol was not properly represented in the aforesaid suits, the decrees were nullities as against the idol. , In such cases the principle laid down by the Privy Council in Rashidunnisa v. Muhammad Ismail, ILR 31 All 572 (PC) (I) and by this Court in Dwarika Halwai v. Sitla Prasad, AIR1940 All 256 (J) applies. The decree is not merely voidable, but null and void. The decrees being nullities can be ignored and the plaintiff is not under the necessity of having them set aside before suing for possession.

Limitation would run against the plaintiff from the date on which the defendant took effective possession over the property, see Sudarsan Das v. Ram Kirpal Das, AIR 1950 PC 44 (K). This possession was taken in 1936. The period of limitation would be 12 years under Article 142, Limitation Act. The suit was, therefore, well within time.

(ii) **AIR 1940 Madras – 208 - Kashi Mangal Nath IIIath**

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**Vishnu Namboodiri vs. Pattah Ramamuni Mara –** Para 2 – Public temple is res extra-commercium, i.e., cannot be alienated, hence no adverse possession.

(iii) **(1888) ILR 12 Bombay 247 – (Manohar Ganesh Tambekar Vs. Lakhmiram Govindram)** Para 88 – Temple property is res extra-commercium.

**(iv) AIR 1974 Calcutta 126 -Smt. Panna Banerjee Vs. Kali Kinkar – para 65-66 –** ***An*** *idol can never be made a subject matter of commerce. It is opposed to the fundamental concept of Hindu jurisprudence. It is so repulsive to judicial mind that every court is bound to strike it down.* ***The deity cannot be sold. It is not a property and none can be its owner not even its founder.***

**65.** Moreover the alleged custom, if any, as to the sale of these deities is wholly void. An idol can never be the subject-matter of commerce. The sale of an idol is prohibited by Hindu Law, (See Khettar Chunder Ghose v. Haridas Bundopadhyay, (1890) ILR 17 Cal 557 at p. 559). A deity is not a chattel but a juridical person. No custom can ever validate a sale of any deity. The legal necessity of the deity cannot destroy the very existence of the deity by selling it in the open market. The very thought of It is opposed to the fundamental concept of the Hindu Jurisprudence. It is against public policy. It is wholly unreasonable. It is absolutely

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repugnant to the Hindu Law. It is so repulsive to the judicial mind that every Court is bound to strike it down in limine.

(v) **(1890) ILR 17 Calcutta 557 at 559 (Khittar Chander Ghosh Vs. Haridas Bandopadhyay) –** Para 66 – The deity is not a property. None can own it. Para 126 – idol is not a transferable property.

(vi) **AIR 1974, Supreme Court, 1932, Kali Kinkar Ganguli Vs. Panna Banerji, Para 24-25, at Page 1936 –** Neither the temple nor the deities nor the Shevaiti right can be transferred by sale for pecuniary consideration. **The transfer by sale is void in its inception.**

Dr. B. K. Mukherjea doubted the propriety of these decisions. Shri Venkatarama Aiyar as the editor of the Second Edition of Dr. B. K. Mukherjea's Tagore Law Lectures also expressed the same view at pages 219-220 even if the transfer is for no consideration the transfer would be bad if it is not in favour of those next in the line of succession.

**INDIAN CLASSICAL TEXTS, THE DHARMA SHASTRAS AND OTHER COMMENTARIES FORM THE BASIS OF THE HINDU FAITH WHICH ARE DULY RECOGNISED IN LAW.**

The above proposition of the sanctity of Hindu Temples have also been given recognition by Hindu scriptures and legal texts from ancient times and have been accepted by both modern Hindu

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texts as well as the Courts who have stressed that the conception of Hindu Law must be judged in terms of Hindu world views very specifically.

**THE RELEVANT CASE LAWS ARE AS UNDER:-**

**(i) AIR 1953 Supreme Court 491 – Saraswathi Ammal and another Vs. Rajagopal Ammal –** *Para 6 – Page 494 – It is correct to say that what is a religious purpose under the Hindu Law must be determined according to Hindu notions. So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefore is fairly definite.*

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"6. 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. Advocate General of Bombay, 6 Bom. 42(D). 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. This is illustrated by the series of cases which recognize the validity of perpetual endowment for the maintenance and worship of family idols or for the continued

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performance of annual sradhs of an individual and his ancestors. See Dwarkanath Bysack and another v. Burroda Persaud Bysack and Rupa Jagashet v. Krishnaji . So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefore is fairly definite. As stated by the learned author Prananath Saraswathi on the Hindu Law of Endowments at page 18 -

"From very ancient times the sacred writings of the Hindus divided works productive of religious merit into two divisions named ishta and purtta, a classification which has come down to our own times. So much so that the entire object of Hindu endowments will be found included within the enumeration of ishta and purtta."

The learned author enumerates what are ishta works at pages 20 and 21 and what are purtta works at page 27. This has been adopted by later learned authors on the law of Hindu Religious Endowments and accepted by Justice Subrahmania Ayyar in his judgment in Parthasarathy Pillai and another v. Thiruvengada Pillai and others . These lists are no doubt not exhaustive but they indicate that what conduces to religious merit in Hindu law is primarily a matter of Shastraic injunction. To the extent, therefore, any purpose is claimed to be a valid one for perpetual

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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 therefore 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. That is a question which does not arise for direct decision in this case. But is cannot be maintained that the belief in this behalf of one or more individuals is sufficient to enable them to make a valid settlement permanently tying up property. The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society."

**(ii) AIR 1952 Supreme Court – Page 75 – The State of West Bengal Vs. Anwar Ali Sarkar –** At para 84 – Page 103 – Much of the existing Hindu law has grown up in that way from instance to instance the threads being

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gathered now from the Rishis, now from custom, now from traditions.

84. “I realise that this is a function which is incapable of exact definition but I do not view that with dismay. The common law of England grew up in that way. It was gradually added to as each concrete case arose and a decision, was given ad hoc on the facts of that particular case. It is true the judges who thus contributed to its growth were not importing personal predilections into the result and merely stated what was the law applicable to that particular case. But though they did not purport to make the law and merely applied what according to them, had always been the law handed down by custom and tradition, they nevertheless had to draw for their material on a nebulous mass of undefined rules which though they existed in fact and left a vague a awareness in man's minds, nevertheless were neither clearly definable not even necessarily identificable, until crystalised into concrete existence by a judicial decision; not indeed is it necessary to travel as far afield. Much of the existing Hindu law has grown up in that way from instance to instance, the threads being gathered not 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

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slowly assume recognisable shape as decision is added to decision. They cannot, in may judgment, be enunciated in static from by hidebound rules and arbitrarily applied standards or tests."

**TEXTUAL AUTHORITIES**

**(1) Relevant quotations from the book "History of Dharma Shastra" by P.V.Kane -**

P.V. Kane was not only an outstanding jurist and a brilliant lawyer. His seminal contribution in collecting all the relevant Dharma Shastras, Shruti and Smritis and commentaries of great saints, Rishis, thinkers and men of great learning who have defined the contours of Hindu law in the last thousands of years, till date remains one of the most authoritative expositions of Hindu law and widely quoted by Supreme Court and other High Courts. In many ways he remains the last word on such interpretations.

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**(i) Quotation from Vol. II Part II – Chapter XXVI-**

**Page 911 –** The *Mitakshara* on Yajnavalkya II 186 says that the king should sedulously safeguard all rules about the pastures for cows (in a village) or about the preservation of tanks and temples.

**Page 911 –** Manu IX 280 requires the king to pronounce the death sentence on those who break into a royal store house or an armoury or a temple and prescribed that the breaker of an image shall repair the whole damage and also pay a fine of 500 Panas.

**Page 911 and 912 –** Kautilya III 9 prescribes punishment for

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encroachment on temple.

**(ii) Vol. III Page 327-328 – Narad IV, Page-83,** emphatically states that women's property (*Streedhana)* and stated property (land) is not lost even after hundreds of years when it is enjoyed without title. **Katyayana (330) adds to the above list Temple Property and what is inherited from the father or mother. All systems of jurisprudence throw protection round the interests of minors, persons of unsound mind and others similarly situated and provide longer periods of possession for loss of their right.**

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**(1991) 4 All England Reports 638 – Bumper Development Corporation Vs. Commissioner of Police of the Metropolis and Other (Union of India and Others Claimants).** In this case, the Court of Appeal in England held that a ruined Hindu temple had a better title over Shiv Nataraja than a British company which has purchased it for the purpose of auction.

(2) **Quotation from Yajnavalkya Smriti from its translation into English by Manmatha Nath Dutt**

**Sutra 343 –** When a foreign kingdom is brought under subjection he should observe the conduct, law and

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family practices obtaining in the4 same kingdom.

Even in the Mulla's Hindu Law at Page 84, Chapter-II, **Source of Hindu Law, Yajnavalkya 343 is quoted - "Whatever customs, practices and family usages prevail in a country shall be preserved intact when it comes under subjection by conquest."**

**THE ABOVE AUTHORITY BY EMINENT SAINTS AND RISHIS WHO WERE GREAT JURISTS OF HINDU LAW HAS ALSO BEEN RECOGNISED BY MODERN COMMENTARIES.**

Even the latest research and the modern historical view of Hindu Law clearly upholds that the sacredness and sanctity of Hindu Temples were protected during Islamic Rule in India, or where the temples were and the classical Hindu literature and customary law was protected both during Islamic Rule and British Rule.

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**RELEVANT TEXTS AND CASE LAW RELIED BY SHRI RAVI SHANKER ARE AS UNDER:-**

**(I) Mayne's Hindu Law & Usage (16th Edition) – Chapter II, Page 16, Para 13 –** The list of law givers – The Smriti of Yajnavalkya gives a list of 20 sages as law givers – Manu, Atri, Vishnu, Harita, Yajnavalkya, Usana, Angiras, Yama, Apastamba, Samvarta, Katyayana, Vrihaspati, Gautama, Vasistha and others as the propounders of Dharma Shastra.

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This quote clearly shows the authority of the earlier scriptures cited above even in today's Hindu Law.

(ii) In the same book, in Chapter-I (**The Nature and Origin of Hindu Law)** at Para 4, Page 3, it is clearly mentioned that even after the establishment of Mohammedan rule in the country the Smriti law continued to be fully recognized and enforced.

(iii) There is a very extraordinary book (**The Classical Law of India by Robert Lingat translated by J. Duncan M. Derrett).** It is to be noted that Robert Lingat who was a professor at Sorbonne University, Paris, was a very well-known author of many works on Hindu law. He is rated very high. Similarly, Duncan Derrett is equally a highly respected jurist widely recognized and he has written among others two well-known books – Hindu Law – Past and Present (Calcutta 1957) and Religion, Law and State in India (1968).

(iv) Therefore, the work of an outstanding authority on Hindu law which was written in French has been translated by equally outstanding jurists on Hindu law. The conclusion portion of the said book is to be found from pages 257 to 272. Their conclusion is the same that the classical Hindu law also remained operational during the Mughal period.

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(V) **AIR 1952, Allahabad 825-S. Darshan Lal Vs. Dr. R.E.S. Daliwall,** Para 15-16. The same principle is applicable in English law as well.

16. "The matter may be considered upon broader principles. According to English law, Englishmen carry English law with them in countries which were formerly uninhabited and are peopled by them. English common law as well as Statute law brought into force up to the date of the settlement is applicable to such colony to the extent to which such laws are suitable to the conditions of the colony. Statutes passed subsequently apply to the colony only if they are made expressly applicable to it. In an inhabited country, however, obtained by conquest or cessation, law already prevalent therein continues to prevail except to the extent to which English law has been introduced and also except to the extent to which such law is not civilised law at all, vide Yeap Cheah Neo v. Ong Cheng Neo (1875) 6 p. c. 381. India fell in the category of conquered or ceded country because it was already inhabited and civilised law prevailed therein before the advent of the British and, therefore, prima facie there can be no presumption that English law applied to Indians in India."

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(VI) **84 Ind. Cas. 759- Advocate General of Bombay Vs. Yusuf Ali Ebrahim,** Para 95 to 109:

95. Now coming down to first principles, British Government brings to its subjects, as a general rule, liberty of the person, liberty of conscience, liberty of speech, liberty to own property, and last, but perhaps not least, equality of man in the sight of the law. But the liberty granted to one subject must not be used to the detriment of another subject. The principle sic utere tuo ut alienum non loedas is applicable to rights as well as property. In other words, liberty must not degenerate into license. Hence the law has to impose restraints on those who misuse the privileges of a free citizen. The slanderer, for instance, is restrained by the law of libel, the thief by the Indian Penal Code. But the fact that such restraints exist and apply to all citizens alike is not a slur upon the honest citizen. It is unthinkable that His Grace the Archbishop of Canterbury, for instance, would commit a criminal offence, but he is subject to the Criminal Law all the same, and this act involves no slur. So, too, in theory the Mullaji Saheb is amenable to the Criminal and Civil Law of this country, through it is unthinkable that he would commit any offence. A striking instance of his is the attempt made by the

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Dawoodi Borah Priest to put the 49th Dai into prison for failure to pay a judgment debt, and which I have already referred to. (See Ex. B. E5)

96. Similar principles apply, I think, to trustees. The foundation of the law of trusts is that the trustee is trusted. Hence the greater the trust, the more unthinkable does it become that the trustee will violate it. And yet the law has to impose restraints on the guilty or negligent trustee and to give its assistance to any honest trustee who requires it. But the existence of these civil restraints is no more a slur upon the honest trustee, than the existence of criminal restraints is upon the honest citizen. Hence in my judgment the infallibility of any particular individual does not affect his theoretical legal position in the slightest. In short the test of a trust is not whether the alleged trustee can ever commit a breach of trust, which is what the defendants contention in effect amounts to. His Holiness the Pope of Rome claims to be infallible and immaculate, and Iris followers are numbered by the million and are found in ail parts of the globe. And yet in Moore v. The Pope (1919) 1 Ir. R. 316, His Holiness submitted to the jurisdiction of the Irish Courts and contented that a bequest to him to be applied at his sole, discretion in carrying out the duties

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of his sacred office was a valid charitable bequest. If the defendants are correct, the Holy Father ought to have strongly protested against any suggestion that he could be a trustee of a charitable fund. He was held to be a trustee but that the trust was invalid.

97. In 1 Blackstone's Commantaries 112 (which is quoted in Halsbury's Laws of England, Volume 11, page 717), I find the following passage:

> In respect of these lands the King as supreme Ecclesiastical head was entitled to the Ecclesiastical emoluments in trust that he should distribute the same for the good of the Church.

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98. This, of course, was before the days of Governors of Queen Anne's Bounty and Ecclesiastical Commissioners and Charity Commissioners, who now relieve the burden which would otherwise fall upon the Crown, but it shows that even in olden days the Crown thought it no slur to be regarded as a trustee. As the present is not a case of Sovereign rights, I need not consider what remedies, if any would be open in such a case to a subject who alleged a misapplication of such emoluments.

99. Nor has the Mullaji or his predecessors been ashamed in other days to be called trustees. In the book,

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Ex. A. L., to which I attach great importance, the 48th Dai describes the Dai and his duties as follows:

He is the trustee of the public funds which it is his duty to dispose of economically and at his discretion as directed by the sacred rules, in relieving the distressed and needy so as to save them from sordid beggary, and paying the expenses incurred by them and his deputies and discharging their sacred duties and in keeping schools and institutions for religious and secular instructions.

100. In Ex. 16, which is a later edition by the present Mullaji, the corresponding passage runs:

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He is the trustee of the public funds of the community which it is his duty to dispose of economically as directed by the sacred Laws of Islam.

101. The defendants have relied on Her late majesty Queen Victoria's Proclamation of November, 1, 1858.

102. His Lordship quoted the portion of the Proclamation dealing with religious toleration and then proceeded as follows.

103. If, in the words of the Proclamation, all alike are to enjoy the equal and impartial protection of the law, charitable trusts must be protected just as other trusts are. This is no breach of the rest of the Proclamation.

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Accordingly, Section 14 of the Religious Endowments Act, 1863, gives some protection as regards certain mosques and other places of worship. Section 92 of the C.P.C. Is still wider in its application. And recently in response to a public demand for still greater protection for Indian religious and other charities, the Charitable and Religious Trust Act, 1920, has been passed. Nowhere do I find any express exemption of Dawoodi Borah mosques or other charities.

104. But speaking very generally, the protection of the law in religious matters of confined to the protection of religious property or a religious office. The Court will not decide mere questions of religious rites or ceremonies (see C.P.C. Section 9), nor will it, I think, pronounce on any religious doctrine see Attorney-General v. Pearson (1917) 3 Mer. 353 at P. 409 : 17 R. R. 100 : 36 E. R. 135 unless it is necessary to do so in order to determine rights to property, as in Free Church of Scotland (General Assembly of ) v. Oyertoun (Lord) (1904) A.C. 515 : 91 L. T. 395 : 20 T. L. P. 730. As put by Mr. Justice Melvill in Vasudev v. Vamnaji (5 B. 80 at PP. 81, 82 : 5 Ind. Jur. 427 : 3 Ind. Dec. (N. S.) 55. It is the policy of the State to protect all religious, but to interfere with none.

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(VII) **1 Ind. Cases 834-Jamshedji Cursetjee Tarachand Vs. Soonabai,** Paras 166 to 171:

166. Now, in this case it is proved beyond doubt that according to the doctrines of the Zoro astrian religion the performance of the Muktad ceremonies is enjoined-- that it is the duty of all Zoroastrians to have these ceremonies performed. The Court has before it the knowledge what ceremonies are obligatory and what are optional-- the Court has before it the prayers ordained to be recited during the ceremonies-- the Court has before it the evidence of witnesses proving that these ceremonies have to be performed by priests who are paid for doing so and such honoraria as they receive form a portion of their income, and are their ordinary means of livelihood. The Court is then in a position to judge how far the witnesses are right, when they say the performance of such religious ceremonies amounts to an Act of Divine worship which is believed by the community to bring down to the world both temporal and spiritual benefits-- not only on those that perform the ceremony--but on the whole community--on their country and their Sovereign--on all mankind—on the Universe. If this is the belief of the community--and it is proved undoubtedly to be the belief of the Zoroastrian

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community--a secular judge is bound to accept that belief--it is not for him to sit in judgment on that belief--he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be in advancement of his religion and for the welfare of his community or of mankind, and say to him, "You shall not do it." This court can only judge of the efficacy of such gifts in procuring public benefits by the belief of the donor and of the community to which he belongs--the belief of those who profess the religion-- the ordained ceremonies of which the donor desires performance.

167. Lord Justice Fitz Gibbon, speaking on the point, says (at p. 279):

In determining whether the performance of any particular rite promotes any particular religion, and benefits the members of the Church or denomination, or body, who profess it, the secular Court must act upon evidence of the belief of the members of the community concerned. It can have no other guide upon that subject.

The exclusiveness, the vagueness, or the self-sufficiency of principles religiously held by particular creeds, whether they rest on dogma, or on conscience, cannot exclude those who profess any lawful creed from the benefits of charitable gifts.

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It would be strange, indeed, if bequests for the promotion of total abstinence, or even vegetarianism; for the maintenance of a place of worship, or of a minister for a small congregation of peculiar people; for the dissemination of the works of Joanna Southcote; or for the prevention of cruelty to animals, should be held, as they have been, to be charitable objects, if a provision by a Roman Catholic, for Roman Catholics, for the celebration of the Mass, more especially in Ireland, where 'Superstitious Uses' are not mala prohibits, were to be excluded from that category.

168. To this I would add that it would be stranger still in a country like India, where superstition abounds, where each community is by the Crown left free to profess what religion it pleases-- from where the doctrine of superstitious uses is rigorously excluded, where trusts of lands and moneys in perpetuity for idols and similar trusts are recognised and enforced by the Courts-- that a Parsi professing the Zoroastrian religion should be precluded from making a gift for the performance of religious rites and ceremonies, which he is enjoined by the religious he professes to perform, and the non-performance of which, according to his religion, is a great sin. Why should he be precluded from setting apart a

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portion of his property and devoting it to a purpose which he believes would result in benefits to himself, his family and his community-- in promoting the religion he professes and saving his descendants from committing a sin should circumstances place them in a position of inability to perform these ceremonies for want of means. On this point in the same case Lord Justice Fitz Gibbon, a Protestant Judge, observes (at p. 280):

Speaking with all reverence of a faith which I do not hold, touching the very 'Mystery of Godliness', I could not impute to any individual professing the Roman Catholic religion that he regarded a gift of money for Masses as a means of seeming from such a Sacrifice a private and exclusive benefit for himself alone, as being much less than blasphemy; and, as I understand the proved doctrine of the Church, it would certainly be heresy. But the hope or belief that, in some shape or form, her or hereafter, a man's good works will follow him-- an ingredient of selfishness in that sense-- enters into almost every set of charity; and if the act is done in the belief that it will benefit others; for example, in the belief that he that gives to the poor lends to the Lord, it can be none the less charitable because the giver looks for his reward in heaven.

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169. Lord Justice Fitz Gibbon ends his judgment by saying:

The fruition of faith, 'the evidence of things not seen', is hidden from humanity. It is not within the power of any earthly tribunal to entertain the question whether these propositions are true. But it is for us to decide that belief in their truth is part of the faith of the members of the Church which has laid them down.

170. Speaking of the belief of the Roman Catholics in the efficacy of the performance of Masses being benefits to the community, Lord Justice Holmes says (at p. 286):

A temporal Court in Ireland, having no authority to decide for itself whether it was true or not, must take as its guide the belief of the Church of which the testatrix is a member.

171. I would like here to say that so far as I am concerned, I have scarcely ever come across a case in a Court in another country bearing closer resemblance to facts and contentions of a case before our Courts than the case of O'Hanlon v. Logue (1861) 30 Beav. 360 at p. 362 bears to the present case. It must be remembered that it is decided by the tribunal having the highest jurisdiction in a country in which religious matters bear remarkable analogy to this country-- Ireland like India having no

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established Church, no State religion, and where the doctrine of superstitious uses has no application. It is decided as recently as 1906, its pronouncements are clear and emphatic; there is no element of doubt or a note of uncertainty in the judgments pronounced; every case of importance on the subject, ancient or modern, is carefully considered and the question before the Court finally and definitely settled. Judgments such as those pronounced in this case must command the respectful attention of other Courts deciding similar questions. This case alone is sufficient to set at rest all doubts and remove all difficulties in the decision of this case, and enables me to answer the question before me-:

Whether the Trust declared in respect of the Government Promissory Notes for 15,000 Rupees mentioned in the plaint are valid in the affirmative with considerable confidence. I hold that Trusts and bequests of lands or money-- for the purpose of devoting the incomes thereof perpetuity for the purpose of performing Muktad, Baj, Yejushni and other like ceremonies, are valid “charitable” bequests, and as such exempt from the application of the Rule of Law forbidding perpetuities.

It is, therefore, very clear that the injunction against destruction of Hindu temples has been maintained even

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during the times of Muslim rule in India and, therefore, the question of destruction of the preexisting Hindu temple and construction of the mosque on the said spot therefore cannot be said to be acceptable and is null and void.

**IMPORTANCE OF RAM JANMASTHAN IN HINDU RELIGION**

There is voluminous evidence available on record both documentary and oral which substantially establish that Lord Ram was born at the place which the Hindus believe to be the Rama Janmasthan since times immemorial. The worship, divine character and sacred status has been recognized not only be the classical literature, tradition but also by series of travel records of foreigners, gazetteers as also foreign authorities. Some of the said Hindu authorities and scriptures are quoted below:

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**SACRED SCRIPTURES**

(ii) **Valmiki Ramayana-** The Vlamiki Ramayana is integral to Hindu faith and ethos which deals elaborately with the birth of Lord Ram and the entire life of Prabhu Ram thereafter becomes a part of Indian psyche passed on from generations to generations. There is a very famous book **"Sanskriti Ke Chaar Adhyay" by the very well-known Hindi poet and writer ramchari Singh Dinkar.** The foreword of this book was written by Jawahar Lal Nehru as the Prime

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Minister when the book was first published in 1956. The learned author in his book, reprinted in 2009, at page 72, has mentioned the profound impact which Valmiki Ramayana had created in the entire country leading to the story of Lord Rama being reproduced in many languages of India and outside. He particularly mentions Kamban Ramayana (Tamil), 12th Century, Telugu Dwipad Ramayana (12th Century), Malayalam Ramacharitam (14th Century), Bangla Kritibas Ramayana (15th Century), Oriya Balaram Das Ramayana (15th Century), Kannada Torave Ramayana (16th Century), Hindi Ramcharit Manas (16th Century) and Marathi Bhavarth ramayana (16th Century). The learned author also quotes that Rama Kavya was equally popular in the literature of Tibet, Sri Lanka, Khotan Indo-China, Burma and Sumatra and Kashmir and Indonesia.

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Therefore, the Valmiki Ramayana, in fact became the symbol of India's cultural unity and shining symbol of Hindu faith. In effect, if became the pivot of Sanatana Dharma much before the arrival of Mughals in India. The impact of valmiki Ramayana was felt whereever the Sanatana Dharma went.

(iii) Quotations from **Valmiki Ramayana: Chaturvedi Dwarka Prasad Sharma** has translated Valmiki

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Ramayana which was published in the year 1982 by Ram Narayan Lal Publisher, Allahabad. It contains the relevant Shlokas as also its Hindi translation. In the Bal Kand, Chapter-18, Shlok Nos. 8 to 18, at Pages 144 and 145 of the said book, contains the entire story as recited in Valmiki Ramayana about the birth of Lord Ram. It specifically mentions about the astrological alignment at the time of Lord Ram's birth, the celebrations in Ayodhya. Shlok 12 particularly mentions that He was the manifestation of Lord Vishnu.

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(iv) There is another book "**Sri Ramayana Mahakavya" by Mahakavi Valmiki,** edited by Pt. Shripad Damodar Satvalekar. It also mentions the same thing, i.e. the relevant Sanskrit Shloka of Valmiki Ramayana and its Hindi translation.

(v) **In the Skanda Puran,** in Chapter ***"Ayodhya Mahatmya",*** the entire Shloka 13 to 20 mention the details about birth of Lord Ram and the highly sacred and divine character of Ayodhya and the *janmasthan.*

(vi) In fact, the **English translation of the Skanda Puran has been published by Motilal Banarsidas** as a part of Ancient Indian Tradition and Mythology series. In fact the book has been recognized by the

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UNESCO Collection of Representative Works and also jointly sponsored by the Government of India. It has been translated and annotated by Dr. G.V. Tagare. Vol. 55, Part-VIII, Chapte-X, Pages 216 to 218, Shlokas 13 to 25, mentions specifically vide Sholka 18-19 by Agastaya that to the North-East of that spot is the place of birth of Rama. This holy spot of the birth is, it is said, is the means of achieving salvation. It further says, in Shlokas 22-25, that visiting the place of birth one attains the merits of ascetics. Further, vide Shloka 20, it is specifically mentioned that by visiting it one attains Moksha, i.e., escape from rebirth.

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(vii) The above two scriptures and texts embody not only the essence of the birth of Lord Ram, but highlight with due sanction of Shastric texts the divinity and sanctity which attaches to the place of birth of Lord Ram and the blessings one attains by having the Darshan of the same. They form an integral part of Hindu faith and practiced as such even till today.

(viii) The Bhagavad Gita, as is well known, is the word of God. In fact, Sri Sri Paramahansa Yogananda of the Yogada Satsang Society of India, has published the **Bhagavad Gita** in two volumes along with the Sanskrit verse and its english translation. The two-

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volume book was published in the year 2002. **In Chapter-X, Verse 31, Page 797, Bhagwan tells Arjun like this: "*Among purifiers I am the breeze; among wielders of weapons, I am Rama; among aquatic creatures, I am Makara (Vehicle of the god of the ocean); among streams, I am Jahnavi (the Ganges).*"** Same text with the same meaning quoted in Bhagvad Gita by Swami Prabhupad at pages 541 and 542 Chapter 10.

**SOME OTHER DOCUMENTARY EVIDENCE ABOUT PLACE OF BIRTH OF LORD RAM**

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There are also numerous accounts which clearly evidence that the Hindus continued to worship the Ram Janambhumi holy and sacred even after the disputed structure was constructed on it. These accounts are by foreign travelers and British officials who however shocked to see the continued struggle the Hindus waged to recover their holiest of holy shrines, and who were not Hindus, and therefore, could be termed as **independent observers**.

**SOME ACCOUNTS OF THE SANCTITY AND SACREDNESS OF THE RAM JANAMBHUMI**

(ix) The sacred character of such faith and its continued practice has also been confirmed by historical accounts as also by public gazetteers. In this connection, the **account of Le Pere Joseph Tieffenthaler, during his visit to**

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**India is the 18th Century, (Exhibit No. OOS-5-133)** is of great significance. He had written the account of his travel in a book in French which was published in the year 1786 CE. He was an Austrian Jesuit priest. He also visited Ayodhya. The relevant pages of this book were also translated into English by the Government of India under orders of the Court. At page 254, it clearly mentions what Hindu calls "Bedi" that is the cradle where Befchen was born in the form of Ram besides his three brothers. According to another belief, Babur got this place destroyed in order to deny them the opportunity of practicing their superstitions. He also mentions the place where the native house of Ram existed people go around and prostrate on the floor. On the 24th of Chait Month, a big gathering of people takes place to celebrate the birthday of Ram, so famous in entire India.

**Therefore, the above documentary evidence shows that even after more than 258 years of the construction of the disputed structure, people of the country held it to be sacred, prostrated and there was big assembly in the month of Cahitra, i.e., Ram *Navami*. This account is confirmed by a non-Indian.**

(x) **A Gazetteer of the territories under the Government of the East India Company, by Edward**

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**Thornton (Exhibit No. OOS-5-5),** was published in 1858. At page 739 about Oud, there is a mention of the cradle where Lord Rama was born as the 7th Avatar of Vishnu and is abundantly honoured by the pilgrimages and devotions of Hindus. It also mentions that Ayodhya is considered by the best authorities to be the most ancient city in Hindustan.

(xi) **The P. Carnegie Report (1870), (Exhibit No. OOS-5-49):** It mentions at Page 5 that Ajudhia is to Hindus what Mecca is to Mohammedans, Jerusalem to Jews.

(xii) **Gazetteer of Province of Oud, Vol.-I, 1877, (Exhibit No. OOS-5-7).** It clearly mentions the *Janmasthan* temple on which Babur built the mosque, i.e. at the *Janamsthan,* It also mentions about the continuous struggle of Hindus to reclaim it.

(xiii) Report of the **Settlement of Land Revenue in the Faizabad District by A.F. Millett, Officiating Settlement Officer, 1880: At Page 234, (Exhibit NO. OOS-5-8),** the report mentions about the *Janamasthan* temple wherein Emperor Babur built the mosque.

(xiv) **The Imperial Gazetter of India, Provincial Series,** 1905, (**Exhibit No. OOS-5-10)** The present town stretched island from a high bluff overlooking the

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Ghaghra. At one corner of the vast mound is the holy spot where Rama was born where Babur built a mosque.

(xv) **Faizabad Gazetteer by H.R. Nevill, ICS, 1905, at page 173, (Exihibit No. OOS-5-11),** specifically mentioned that the Janmasthan was in Ramkot, the birthplace of Rama and Babur in 1528 destroyed the ancient temple and on its site built a mosque known as Babur's mosque.

(xvi) **Barabanki Gazetteer edited by H.R. Nevill, 1903, Page 169,** reiterated that there was continuous struggle of Hindus to reclaim the ground on which formerly stood the Janmasthan temple.

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(xvii) **Faizabad Gazeeteer by H.R. Nevill, ICS 1905, Pages 173-174, (Exhibit NO. OOS-5-11),** reiterates the facts of the existence of the Rama Janmasthan temple and destruction of the same by Babur in 1528 and the continuous struggles of Hindu to reclaim the same.

(xviii) **Faizabad Gazetteer by H.R. Nevill, 1928, (Exhibit NO. OOS-5-12),** the said story is reiterated.

(xix) **Uttar Pradesh District Gazetteers Faizabad, (Exhibit No. OOS-5-13),** published by the Government of Uttar Pradesh in 1960 reiterated the same fact in page 352.

(xx) An article titled "**Babur and the Hindus"** by S.K.

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Banerji, published in the **Journal of the United Provinces Historical Society published in July 1976 at Page 76,** specifically mentions: "***The present Jami Masjid at Ayodhya was built in Babur's time on a site sacred to the Hindus as Rama's birthplace."***

*(*xxi) Even the **New Encyclopedia Britannica, Vol. IX, 15th Edition, at page 916,** describes Rama as the seventh incarnation of Lord Vishnu which appears as such in the Ramayana. Similarly, in Volume-I, at page 751, Ayodhya is mentioned wherein it is specifically mentioned that the Baburi Masjid was built in the early 16th Century by the Mughal Emperor Babur on a site traditionally identified as Rama's birthplace and at the location of an ancient Hindu temple, the Rama Janma Bhumi.

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The above are only a sample of evidence available on record. Yet, they show a continuity since times immemorial about the divinity attached to the place Rama Janmasthan not only in the scriptures, worship and devotion in practice, but also a recurring continuity even after the construction of the disputed structure.

**Under the orders of this Hon'ble Court, the Archaeological Survey of India was directed to undertake an exhaustive excavation to find out as to whether there existed any temple/structure underneath the disputed structure. The report of the expert agency, that is the ASI, clearly confirms the**

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**existence of a Hindu religious structure dating back to thousands of years. This evidence too confirms that the disputed site was and is the site of a temple and the Hindus have always believed the same to be the birthplace of Lord Ram.**

**EVIDENTIARY VALUE OF THE ABOVE DOCUMENTS**

The said documents being official documents of the Government have been consistently held by the Court that they are admissible in Court as evidence.

**(1) Section 57 of the Indian Evidence Act, 1872,** mentions the facts of which Court must take judicial notice. Section 57(13) further provides that in all these cases and also on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books and documents of reference.

(ii) The entire Valmiki Ramayana, Skanda Puran, Gita and the Traveller's accounts mentioned above fall in that category.

(iii) Further, **under Section 81 of the Evidence Act,** there is a presumption as to Gazettes.

(iv) **RELEVANT CASE LAW ON THE SUBJECT ARE AS UNDER:-**

**(a) (1990) 2 SCC, Page 22, Vimla Bai Vs. Hiralal Gupta, Para 4 & 5, at Pages 27-28 –** *The statement of fact contained in the official Gazettee in the course of the*

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*discharge of official duties or on historical facts in some cases is best evidence of facts stated therein.*

*5.* The Statement of fact contained in the official Gazette made in the course of the discharge of the official duties on private affairs or on historical facts in some cases is best evidence of facts stated therein and is entitled to due consideration but should not be treated as conclusive in respect of matters requiring judicial adjudication. In an appropriate case where there is some evidence on record to prove the fact in issue but it is not sufficient to record a finding thereon, the statement of facts concerning management private temples or historical facts of status of private persons etc. found in the Official Gazette may be relied upon without further proof thereof as corroborative evidence. Therefore, though the statement of facts contained in Indore State Gazette regarding historical facts of Dhangars' social status and habitation of them may be relevant fact and in an appropriate case the Court may presume to be genuine without any further proof of its contents but it is not conclusive.

(b) **1995 Supplementary (1) SCC Page 485, Balashankar Mahasankar Bhattjee and Others Vs. Charity Commissioner, Gujarat, Para 22,** *The Gazettee of the year 1879 is admissible being official*

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*record evidencing public affairs and the Court may presume their contents as genuine especially about the existence of an old temple.*

22. The contention of Sri Yogeshwar Prasad that the Asstt, Charity Commissioner has failed to prove that Kalika Mataji temple is a public trust; contrarily the evidence on records, namely the 'Will' of Bai Diwali, widow of N. Girjashankar, establishes that the lemple and its properties Were always treated as private properties. It would get fortified and gets corroborated by decrees in civil suit No. 439/1985, one of the legatees sought to annual the Will in Exhibits 10, 59 and the decree in that behalf. The Civil Suits Nos. 353/93, Ex. 24 and the Civil Suit No. 439 of 1885, Ex 26 and the Civil Suit Nos. 904 of 1903 and 910 of 1903: Ex 52 and Ex. 54, Civil Suit No, 912 of 1903, Ex 55 would establish that the appellant's family had always treated the temple and the lands attached to temple as private properties. It has also been further contended that the entry into the temple was subject to permission and the devotees were not allowed to have pooja, but have darshan Only. These circumstances have duly been taken into consideration by the District Judge while the High Court had not considered them in proper perspective. We find no force

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in the contention, It is seen that the Gazette of the Bombay Presidency, Vol. Ill published in 1879 is admissible under s.35 read with s.81 of the Evidence Act, 1872. The Gazette is admissible being official record evidencing public affairs and the court may presume their contents as genuine. The statement contained therein can be taken into account to discover the historical material con-tained therein and the facts stated therein is evidence under s.45 and the court may inconjunction with other evidence and circumstance take into consideration in adjuding the dispute in question though may not be treated as conclusive evidence. The recitals in the Gazette do establish that Kalika Mataji is onlhe lop of the hill. Mahakali temple and Bachra Mataji on the right and left to the Kalika Mataji. During Moughal rule another Syed Sadar Peer was also installed there, but Kalika Mataji was the chief temple. Hollies and Bills are the main worshipers. Oh full Moon of Chaitra (April) and Dussehra (in the month of October), large number of Hindus of all classes gather there and worship Kalika Mataji, Mahakali, etc. After the downfall of Moughal empire, Marathas took over and His Highness Scindias attached great importance to the temple. One of the devotees in 1700 offered silver doors. The British

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annexed the territory pursuant to the treaty between Her Majesty's Government of India and His Highness Scindia on the 12th December, I860, A condition was imposed in the treaty for continued payment of fixed cash grants to all the temples from the Treasury and that British emperors accepted the condition. Regular cash grants of fixed sums were given to all the temples by Scindias and British rulers, as evidence by exhibits 27, 29 and 30. The historical statement of noted historian, stated by the High Court, by name M.S. Commissionaria in his Vol. I of 1938 Edition corroborates the Gazette on the material particulars, which would established that the temple was constructed on the top of the hill around 14th century and the people congregate in thousands and worship, as of right, to Kalika Mataji and other deities. R.N. Jogelkar's Alienation manual brought up in 1921 in the Chapter 5 Devas-tbana also corroborates the historical evidence. It is true that Bai Diwali in her Will, Ex.22 treated the temple and the properties to be private property and bequeathed to her brother and the litigation ensued in that behalf. At that time, as rightly pointed out by the High Court, the concept of public trust and public temple was not very much in vogue. Therefore, the treatment meted out to these properties at that time is not conclusive. On

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the other hand the fixed cash grants given by a Rulers Scindias and the successor British emperors, the large endowment of lands given to Kalika Mataji temple by the devotees do indicate that the temple was treated as public temple. The appropriation of the income and the inter se disputes in that behalf are self serving evidence without any probative value. Admit-tedly, at no point of time, the character of the temple was an issue in any civil proceedings. All the lands gifted to the deity stand in the name of the deities, in particular large extent of agricultural lands belong to Kalika Mataji. The entries in Revenue records corroborated it. The Gazette and the historical evidence of the temple would show that the village is the pilgrimage centre. Situation of the temples on the top of the hill away from the village and worshiped by the people of Hindus Community at large congregated in thousand without any let or hindrance and as of right; devotees giving their offerings in large sums in discharge of their vows, do establish that it is a public temple. It is true that there is ho proof of dedication to the public. It is seen that it was lost in antiquity and no documentary evidence in that behalf is available. Therefore, from the treatment meted out to the temple and aforesaid evidence in our considered view an irresistible inference would be

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drawn that the temple was dedicated to the Hindu public or a section thereof and the public treat the temple as public temple and worship thereat as of right. It is true that there is evidence on record to show that there was a board with inscription thereon that "no entry without permission" and that only Darshan was being had and inside pooja was no permitted. But that is only internal regulation arranged for the orderly Darshan and that is not a circumstance to g o against the conclusion that it is a public temple. Enjoyment of the properties and non-interference by the public in the management are not sufficient to conclude mat the temple is a private temple. It is found by the District Court and the High Court that the appellants are hereditary priests and when the public found that they are in the management of the properties, they obviously felt it not expedient to interfere with the management of the temples. It is seen that the High Court considered the evidence placed on record and has drawn the necessary conclusions and inferences from the proved facts that kalika Mataji temple is a public temple. It is a finding of fact. As regard the oral evidence the High Court rightly appreciated the evidence and it being a question of fact, we find no error in the assessment of the evidence by the High Court.

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(c) **AIR 1967 Supreme Court, 256, Srinivas Das Vs. Suraj Narayan Das, Para 26 –** The Gazetteer can be consulted as providing historical material and the practice followed by the Math and its head. The Gazetteers can be consulted on matters of public history.

**LORD RAM AS THE AVATAR OF VISHNU HAVING BEEN BORN AT AYODHYA AT THE JANMASTHAN IS ADMITTEDLY THE CORE PART OF HINDU BELIEF AND FAITH WHICH IS IN EXISTENCE AND PRACTICED FOR THE LAST THOUSANDS OF YEARS. THE HINDU SCRIPTURES ALSOS SANCTIFY IT. ARTICLE 25 OF THE CONSTITUTION BEING A FUNDAMENTAL RIGHT ENSURES ITS PRESERVATION AND NO RELIEF CAN BE TAKEN BY THE COURT WHICH SEEKS TO RESTRICT OR ALTOGETHER EXTINGUISH THIS RIGHT.**

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The fact that Ram Janambhumi is an integral part of Hindu Religion and the right to worship there is a fundamental right of the Hindu religion and can be enforced through a suit can be clearly made out through a number of decisions of the Hon'ble Supreme Court.

**RELEVANT CASE LAW**

**(i) 1995 Supplementary (4) SCC, Page 286 – Most Rev. P.M.A. Metropolitan and Others Vs. Moran Mar Marthoma and Another,** Para 43 at Page 327 and Para 89, Page 361 – the Civil Courts have jurisdiction to

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entertain the suits for violation of rights guaranteed under Article 25 and 26 of the Constitution of India. The expression 'civil nature" used in Section IX of the Civil Procedure Code is wider than even Civil Proceedings and thus extends to such religious matters which have civil consequences.

43. In reading Section 9 widely and construing it expansively the jurisdiction to entertaina suit for declaration whether the Church was episcopal or congregational and whether the appellants could have been ordained by the Patriarch when it was contrary to the earlier decision given by this Court that the ordination was required to be approved by Synod, the court is not being asked to adjudicate on faith but whether the exercise of right in respect of faith was valid. The Grace no doubt comes from Patriarch and on that there is no dispute but whether the Grace came in accordance with the Canon or the Constitution is certainly a matter which would fall within Section 9 C.P.C. Status and office are no doubt different but what was challenged is not the status or faith in Patriarch but the exercise of right by Patriarch which interfered with the Office of Cathelico held validly. Apart from it, as stated earlier, after coming into force of the

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Constitution Article 25 guarantees a fundamental right to every citizen of his conscience, faith and belief, irrespective of cast, creed and sex, the infringement of which is enforceable in a court of law and such court can be none else except the civil courts. It would be travesty of justice to say that the fundamental right guaranteed by the constitution is incapable of enforcement as there is no court which can take cognisance of it. There is yet another aspect of the matters that Section 9 debars only those suits which are expressly or impliedly barred. No such statutory bar could be pointed out. Therefore, the objection that the suit under Section 9 C.P.C. was not maintainable cannot be accepted.

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**89.** The conclusions thus reached are:

1. (a) The civil courts have jurisdiction to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India.

(b) The expression 'civil nature' used in Section 9 of the Civil Procedure Code is wider than even civil proceedings, and thus extends to such religious matters which have civil consequence.

(c) Section 9 is very wide. In absence of any ecclesiastical courts any religious dispute is

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congnizable, except in very rare cases where the declaration sought may be what constitutes religious rite. Places of Worship (Special Provisions) Act, 1991 does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognised before coming into force of the Act.

3. The following findings in Moran Mar Basselious (supra) have become final and operate as res judicata:-

(a). The Catholicate of the East was created in Malankara in 1912.

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(b). The Constitution framed in 1934 by Malankara Association is valid.

(c). The Catholicos werenot heretics nor they had established separate church.

(d). The meeting held by Patriarch Group in 1935 was invalid.

4 (a). The effect of the two judgments rendered by the Appellate Court of the Royal Court and in Moran Mar Basselios (supra) by this Court is that both Catholicos and Patriarch Group continue to be members of the Syrian Orthodox church.

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(b) The Patriarch of Antioch has no temporal powers over the churches.

(c) Effect of the creation of Catholicate at Malankara and 1934 Constitution is that the patriarch can exercise spiritual powers subject to the Constitution.

(d) The spiritual powers of the patriarch of Antioch can be exercised by the Catholico in accordance with the Constitution.

5. (a) The Hudaya Canon produced by the Patriarch is not the authentic version.

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(b) There is no power in the Hudaya Canon to ex-communicate Catholicos.

6. The ex-communication of the Catholicos by the Patriarch was invalid.

7. All churches, except those which are of Evangelistic Association or Simhasna or St. Mary are under spiritual and temporal control of the Malankara Association in accordance with 1934 Constitution.

(ii) **AIR 1954 Supreme Court 388 (Ratilal Panachand Gandhi and Others Vs. State of Bombay)-** Constitution Bench – Para 10, Page 391, Article 25

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protects not only the right to practice or freedom of religion but to exhibit his belief in such overt acts as are sanctioned by his religion.

**Para 12, 13, Page 392 –** *A religion is not merely an opinion, doctrine or belief. It has its outward expression as well. Religious practices are as much part of religion as faith or belief in actual doctrine.*

12. The moot point for consideration, therefore, is where is the line to be drawn between what are matters of religion and what are not ? Our Constitution-makers have made no attempt to define what 'religion' is and it is certainly not possible to frame an exhaustive definition of the word 'religion' which would be applicable to all classes of persons. As has been indicated in the Madras case referred to above, the definition of the 'religion' given by Fields J. in the American case of Davis v. Beason , does not seem to us adequate or precise. "The term 'religion'", thus to observed the learned Judge in the case mentioned above, "has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will. It is often confounded with cults or form of worship of a particular sect, but is distinguishable from the latter". It may be noted that

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'religion is not necessarily theistic and in fact there are well known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine for belief. It has its outward expression in acts as well. We may quote in this connection the observations of Latham C.J. of the High Court of Australia in the case of Adelaide Company v. The Commonwealth , 124.), where the extent of protection given to religious freedom by section 116 of the Australian Constitution came up for consideration.

"It is sometimes suggested in discussion on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears

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to me to be difficult to maintain this distinction as relevant to the interpretation of section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion."

In our opinion, as we have already said in the Madras case, these observations apply fully to the provision regarding religious freedom that is embodied in our Constitution.

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13. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed as certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authorities has any right to say that these are not essential parts of religion and it is not open to the secular authority of the

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State to restrict or prohibit them in any manner they like under the guise of administering the trust estate. Of course, the scale of expenses to be incurred in connection with these religious observances may be and is a matter of administration of property belonging to religious institutions; and if the expenses on' these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to the observation of Davar J. in the case of Jamshedji v. Soonabai , and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad baj, Vyezashni, etc., which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose. "If this the belief of the community" thus observed the learned Judge, "and it is proved undoubtedly to be the belief of the Zoroastrian community, - a secular Judge is bound to accept that belief - it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the

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welfare of his community or mankind". These observations do, in our opinion, afford an indication of the measure of protection that is given by article 26(b) of our Constitution.

**(iii) AIR (1954) Supreme Court 282 (The Commissioner Hindu Religious Endowments Vs. Shri Lakshmendra Tirtha Swami, Para 17 at page 290):** Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

(iv) **AIR 1959, SC Page 860, Saroop Singh Vs. State of Punjab, Para 7 –** We are unable to accept this

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argument as correct. Article 26 of the Constitution, so far as it is relevant for our purpose, says-

" Art. 26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a).....

(b) to manage its own affairs in matters of religion

(c) ….....

(d) to administer such property in accordance with law."

The distinction between cls. (b) and (d) strikes one at once. So far as administration of its property is concerned, the right of a religious denomination is to be exercised in " accordance with law ", but there is no such qualification in cl. (b). In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1), this distinction was pointed out by this Court and it was there observed: " The administration of its property by a religious denomination has thus been placed OD a different footing from the right to manage its own affairs in matter of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose ". Secondly, the expression used in cl. (b)

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is 'in matters of religion'. In what sense has the word 'religion ' been used ? This was considered in two decisions of this Court: The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shiru Mutt (1) and Sri Venkataramana Devaru v. The State of Mysore (2), and it was hold that freedom of religion in our Constitution is not confined to religious beliefs only, but extends to essential religious practices as well subject to the restrictions which the Constitution has laid down. In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1) it was observed at p. 1026 that under Art. 26(b), a religious denomination or Organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold (we emphasise here the word 'essential'). The same emphasis was laid in the later decision of Sri Venkataramana Devaru v. The State of Mysore (2), where it was said that matters of religion in Art. 26(b) include

practices which are regarded by the community as part of its religion.

(v) **AIR 1962 SC, 853 Sardar Syedna Vs. State of**

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**Bombay –** *A law prohibiting the right to excommunicate a Bohra Muslim held violative of Art. 25 & 26 because this is a part of their religion.*

40. Let us consider first whether the impugned Act contravenes the provisions of Article 26(b). It is unnecessary for the purpose of the present case to enter into the difficult question weather every case of excommunication by the Dai on whatever grounds inflicted is a matter of religion. What appears however to be clear is that where an excommunication is itself based on religious grounds such as lapse from the orthodox religious creed or doctrine (similar to what is considered heresy, apostasy or schism under the Cannon Law) or breach of some practice considered as an essential part of the religion by the Dawoodi Bohras in general, excommunication cannot but be held to be for the purpose of maintaining the strength of the religion. It necessarily follows that the exercise of this power of excommunication on religious grounds forms part of the management by the community, through its religious head, "of its own affairs in matters of religion." The impugned Act makes even such excommunications invalid and takes away the power of the Dai as the head of the community to excommunicate even on religious

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grounds. It therefore, clearly interferes with the right of the Dawoodi Bohra community under clause (b) of Article26 of the Constitution.

41. That excommunication of a member of a community will affect many of his civil rights is undoubtedly true. This particular religious denomination is possessed of properties and the necessary consequence of excommunication will be that the excommunicated member will lose his rights of enjoyment of such property. It might be thought undesirable that the head of a religious community would have the power to take away in this manner the civil right of any person. The right given under Article 26(b) has not however been made subject to preservation of civil rights. The express limitation in Article 26 itself is that this right under the several clauses of the article will exist subject to public order, morality and health. It has been held by this Court in Sri Venkataramana Devaru v. The State of Mysore : [1958]1SCR895 , that the right under Article 26(b) is subject further to clause 2 of Article 25 of the Constitution.

42. We shall presently consider whether these limitations on the rights of a religious community to manage is own affairs in matters of religion can come to

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the help of the impugned Act. It is clear however that apart form these limitations the Constitution has not imposed any limit on the right of a religious community to manage its own affairs in matters of religion. The fact that civil rights of a person are affected by the exercise of this fundamental right under Article 26(b) is therefore of no consequence. Nor it is possible to say that excommunication is prejudicial to public order, morality and health.

56. ….If the property belongs to a community and if a person by excommunication ceased to be a member of that community, it is a little difficult to see how his right to the enjoyment of the denominational property could be divorced from the religious practice which resulted in his ceasing to be a member of the community. When once it is conceded that the right guaranteed by Article 25(1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee.

(vi) **AIR 1962 SC 1106, Dalbir Singh Vs. State of Punjab, Para 8 –** The Act prohibited or penalized and public order must be proximate and intimate.

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8. The content of the expression "in the interests of ..... public order" has been the subject of detailed and elaborate consideration by this Court in Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia, (1960) 2 SCR 821 : (AIR 1960 SC 633) where the effect of the First (Constitution) Amendment by which the words "for the maintenance of public order" were replaced by the words "in the interests of public order" was considered in the light of the previous decisions of this Court on that topic, Subba Rao, J., speaking for this Court said that the expression "public order" in the juxtaposition of the different grounds set out in Article 19(2) was synonymous with "public peace, safety and tranquility". He also pointed out that the expression "in the interests of public order" though undoubtedly wider than the previous phrasing "for the maintenance of public order" could not mean that the existence of any remote or fanciful connection between the impugned act and public order was sufficient to sustain the validity of the law, but that on the other hand, the connection between the act prohibited or penalized and public order should be intimate; in other words there should be a reasonable and rational relation between it and the object sought to be achieved, viz., public order.

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The nexus should thus be proximate - not far-fetched, problematical or too remote in the chain of its relation with public order.

(vii) **1986 (3) SCC Page 615, Bijoe Emmanneul Vs. State of Kerala, Para 20 –** *If the belief is genuinely and conscientiously held as part of religion or its profession, then regardless of our personal views, it attracts the protection of Art. 25 subject to the inhibition mentioned therein.*

20. The meaning of the expression 'Religion' in the context of the Fundamental Right to freedom of conscience and the right to profess, practise and propogate religion, guaranteed by Article 25 of the Constitution, has been explained in the well known cases of The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954]1SCR1005 ; Rati Lal Panachand Gandhi v. State of Bombay : [1954]1SCR1055 and S. P. Mittal v. Union of India : [1983]1SCR729 . It is not necessary for our present purpose to refer to the exposition contained in these judgments except to say that in the first of these cases Mukherjea, J. made a reference to "Jehova's Witnesses" and appeared to quote with approval the views of Latham, C.J. of the Australian High Court in

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Adelaide Company v. The Commonwealth (supra) and those of the American ' Supreme Court in West Virginia State Board of Education v. Barnette (supra). In Ratilal's case we also notice that Mukherjea, J. quoted as appropriate Davar, .'s following observations in Jamshedji v. Soonabai :

> If this is the belief of the Community and it is proved undoubtedly to be the belief of the Zoroastrian community,—a secular Judge is bound to accept that belief—it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind.

We do endorse the view suggested by Davar J.'s observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein.

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(viii) **2004 (12) SCC, Page 770, Commissioner of Police Vs. Acharya J. Avadhutananda, Para 9, Page 782 (Majority view) –** *The protection under Art. 25 & 26 is not confined to matters of doctrine or belief, but extends to acts done in pursuance of religion. What constitutes an essential part of religion has to be determined with reference to doctrine, practice, tenets, historical background of that religion. Essential part of religions means the core belief upon which a religion is founded. It means those practices that are fundamental to follow a religious belief.*

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9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background etc. of the given religion. (See generally the Constitution bench decisions in The Commissioner v. L T Swamiar of Srirur Mutt 1954 SCR 1005, SSTS Saheb v. State of Bombay 1962 (Supp) 2 SCR 496, and Seshammal v. State of T.N. regarding those aspects that

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are to be looked into so as to determine whether a part or practice is essential or not). What is meant by 'an essential part or practices of a religion' is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution. No body can say that essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the 'core' of religion where the belief is based and religion is founded upon. It could only be

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treated as mere embellishments to the non-essential part or practices.

(ix) **1997 (4) SCC, 606, Sri Adi Vishweshwar of Kashi Vishwanath Temple and Others Vs. State of U.P. And Others, at Para 28, Page 631 –** ***The*** *practice in question is religious in character and whether it could be regarded as an integral and essential part of religion and if the Court finds upon evidence adduced before it that it is an integral part of religion, Art. 25 accords protection to it.*

30. Hindusim cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monisim/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 and manifests Himself as many. This multiplicity is not contrary to on-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.

31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They

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extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Sehsammal case on which great reliance was placed and stress was laid by counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the Deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those Articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect

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of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters of religion" or "religious beliefs or practice". Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these Articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are integral part of religion are protected. It is well settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which

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regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty.

**A SOVEREIGN GOVERNMENT EVEN BY EXERCISING THE POWER OF EMINENT DOMAN CANNOT EXERCISE THE POWER OF ACQUISITION OF LAND OR PROPERTY WHICH EXTINGUISHES THE CORE OF THE FAITH OR THE PLACE OR THE INSTITUTION WHICH IS HELD TO BE SACRED.**

What clearly follows is that a sovereign government cannot extinguish the core of the Hindu religion which is the Ram Janambhumi, let alone the same be extinguished through a suit, by transferring the same to some other party in this case the plaintiff thereby ensuring that the said fundamental right to worship at the Ram Janambhumi is extinguished forever.

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**RELEVANT CASE LAW**

**(a) 1975 (1) SCC, Page 11 (Acharya Maharshi Narendra Prasadji Vs. State of Gujarat), at Para 26, Page 18 –** *If on the other hand acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to*

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*be examined in a different light.*

26. 26. While Article 25, as stated earlier, confers the particular rights on all persons, Article 26 is confined to religious denominations or any section thereof. Article 19(1) confers the various rights specified therein from (a) to (g) on citizens. A religious denomination or a section thereof as such is not a citizen. In that sense the fields of the two Articles may be to some extent different. Again while Article 26(c) refers to the right "to own and acquire movable and immovable property", Article 19(1)(f) confers the right on citizens "to acquire, hold and dispose of property". We are not required to consider in this case why the same expression is not used in the said two clauses of the two Articles. One thing is, however, clear that Article 26 guarantees interalia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2). If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have

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to be examined in a different light. That kind of a factual position, however, is not taken in these appeals before us. When, however, property is acquired by the State in accordance with law and with the provisions of Article 31(2) and the acquisition cannot be assailed on any valid ground open to the person concerned, be it a religious institution, the right to own that property vanishes as that right is transferred to the State. Thereafter there is no question of any right to own the particular property subject to public order, morality and health and Article 26 will in the circumstances be of no relevance. This being the legal position, there is no conflict between Article 26 and Article 31.

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**(b) 1994 (6) SCC, Page, (Dr. M. Ismail Faruqui and Others Vs. Union of India & Others), Para 76, Page 416 –** Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. State of Gujarat, (1976) 2 SCR 317 at pages 327-328 : (AIR 1974 SC 2098 at p. 2103), has held :

" One thing is, however, clear that Article 26 guarantees inter alia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property .....If, on

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the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light.:" (Emphasis supplied)

**Para 82 -** A mosque is not an essential part of the practice of religion of Islam and Namaz by Muslims can be offered anywhere, even in the open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose. **Keeping in view that such acquisition should not result in extinction of the right to practice the religion if the significance of that place be such.**

**Note (i) Ram Janmasthan in Ayodhya where Ram Lala is Virajman is a place of religious significance as described in the above judgment. If the sovereign authority, under the power of eminent domain, cannot acquire it, can a plea at the instance of plaintiffs who are private persons in Suit No. 4 be entertained, upholding of which would lead to denial of such sacred place altogether to the Hindus.**

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**Note (ii) At page 413, Para 65 of Ismail Faruqui – No argument made about a mosque of special significance which forms an essential part of Islam. Hence, no question raised about Baburi Mosque as integral to Islam and it has not been raised in the plaint here or evidence laid or any contention ever made that the said mosque was of any significance to the practice of Islam as a religion.**

**(c) 1995 Supplementary (1) SCC, 596, Jilubhai Nanbhai Khachar and Others Vs. State of Gujarat, Para 34, at Page 622 –** The right of eminent domain is the right of sovereign state through its regular agencies to reassert either temporarily or permanently its dominion over any soil of the state including private property without its owner's consent.

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**(d) 2008 (9) SCC 552, Suraram Pratap Reddy and Others Vs. District Collector Ranga Reddy, Para 43 is as under:-**

"43`Eminent domain' may be defined as the right or power of a sovereign State to take private property for public use without the owner's consent upon the payment of just compensation. It means nothing more or less than an inherent political right, founded on a common necessity and interest of appropriating the property of

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individual members of the community to the great necessities and common good of the whole society. It embraces all cases where, by the authority of the State and for the public good, the property of an individual is taken without his consent to be devoted to some particular use, by the State itself, by a Corporation, public or private or by a private citizen for the welfare of the public [American Jurisprudence, 2d, Volume 26, pp. 638-39, para 1; Corpus Juris Secundum, Volume 29, p. 776, para 1; Words & Phrases, Permanent Edition, Volume 14, pp. 468-70].

**THE RELIGIOUS RIGHT OF HINDUS TO WORSHIP RAM LALA AT THE JANMASTHAN BECAME CONCRETISED BEFORE THE CONSTITUTION CAME INTO BEING AND THE SAME REQUIRES TO BE PROTECTED.**

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It is well-known that the Constitution of India was enacted, i.e. given to ourselves, w.e.f. 26th January, 1950. Before it, the right of Hindus to worship was duly sanctified and recognized by judicial orders.

In fact, the Supreme Court records in the Ismail Faruqui case above the contention in paragraph 1.2 of the White Paper of the Government of India as recorded in Paragraph 9, Page 380, of the said judgment. It reads as follows: "***Interim orders in these civil***

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***suuits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December 1949 till 6.12.1992 the structure had not been used as a mosque."***

It is further very significant to note that the Muslims for the first time, after 1949, assert their right howsoever unsustainable, ***only in 18th December, 1961.***

Therefore, the right of the Hindus to worship at the Rama Janma Bhumi, continuing since times immemorial as an integral part of their religious right and faith was also sanctified by judicial orders form 1949 continuously. This right has concretised and remains an integral part of Hindu religion and has to be protected.

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**IN SUCH A CASE NO PLEA CAN BE ENTERTAINED THE EFFECT OF WHICH WOULD BE TO GRANT INJUNCTION AGAINST THE HINDUS TO PRACTICE THEIR RELIGIOUS BELIEFS AT THE SACRED PLACE.**

**RELEVANT CASE LAW**

**(i) 1976 (2) SCC, Page 58, Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshminarayana and Others.**

**Para 20 at Page 72 –** *It is well settled that a relief under the Specific Relief Act is purely discretionary and can be refused where the ends of justice do not require the relief to be granted.*

Assuming for the sake of arguments, but not deciding

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that this decision has extended the scope of the exceptions, so that the appellant Executive Committee though a non-statutory body will still be bound by the statutory provisions of law, let us see what is the position. It would appear that under s. 25-C (2) of the Agra University Act corresponding to similar provisions in Kanpur and Meerut Universities Act of 1965 which runs thus:

> "Every decision by the Management of an affiliated college, other than a college maintained by Government, to dismiss or remove from service a teacher shall be reported forthwith to the Vice-Chancellor and subject to provisions to be made by the Statutes shall not take effect until it has been approved by the Vice-Chancellor." it was incumbent on the Executive Committee of the College to have taken the previous approval of the Vice-Chancellor before terminating the services of the plaintiff/respondent. Reliance was placed by the learned counsel for the respondent on the words "shall not take effect until it has been approved by the Vice-Chancellor". It was urged that there has been an infraction of a mandatory provision of the Act itself which is undoubtedly binding on the appellant

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Executive Committee and the resolution of the Executive Committee terminating the services of the respondent is not only invalid but completely without jurisdiction, and, therefore, the plaintiff/respondent is entitled to the injunction sought for. It is common ground that the procedure enjoined in sub-s. (2) of s. 25-C of the Agra University Act was not at all followed by the Executive Committee and there can be no doubt that the Executive Committee has been guilty of this default. The question remains whether even if there has been a violation of the mandatory provisions of the statute, should we in the exercise of our discretion grant a declaration or an injunction to the plaintiff/respondent in the peculiar facts and circumstances of the present case ? It is well settled that a relief under the Specific Relief Act is purely discretionary and can be refused where the ends of justice do not require the relief to be granted. Mr. Ramamurthi learned counsel for the plaintiff/respondent submitted that the question of discretion would arise only in case where the High Court or this Court is acting in a writ jurisdiction and not in a suit. We are, however, unable to agree with 1022 this argument because the exercise of

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discretion is spelt out from the provisions of the Specific Relief Act and the common law and it applies as much to the writ jurisdiction as to other action at law.

**Para 27 at Page 74 –** The relief of declaration and injunction under the provisions of the Specific Reliefs Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the Court according to sound legal principles and ex debito justitiae the Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression.

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(ii) **1993 (2) SCC, Page 199, American Express Bank vs. Calcutta Steel Company, Para 22, Page 213 –** Undoubtedly declaration of the rights or status is one of discretion of the court under Section 34 of the Specific Relief Act, 1963. Equally the grant or refusal of the relief of declaration and injunction under the provision of that Act is discretionary. The plaintiff cannot claim the relief as of right. It has to be granted according to sound principles of law and ex debito justicia. The court cannot convert itself into an instrument of injustice or vehicle of oppression. While exercising its discretionary power, the court must keep in its mind the well settled principles of

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justice and fair play and the discretion would be exercised keeping in view the ends of justice since justice is the hall mark and it cannot be administered in vacuum. Grant of declaration and injunction relating to commercial transactions tend to aid dishonesty and perfidy. Conversely refusal to grant relief generally encourages candour in business behaviour, facilitates free Row of capital, prompt compliance of covenants, sustained growth of commerce and above all inculcates respect for the efficacy of judicial adjudication. Before granting or refusing to grant of relief of declaration or injunction or both the court must weigh pros and cons in each case, consider the facts and circumstances in its proper perspective and exercise discretion with circumspection to further the ends of justice. From the back-drop fact situation we have no hesitation to hold that the relief of declaration granted is unjust and illegal. It tended to impede free flow of capital, thwarted the growth of merchantile business and deflected the course of justice.

**THE ALLEGED BABRI MOSQUE IS NOT A VALIDLY CONSTITUTED MOSQUE UNDER MOHAMMADAN LAW AND THE TENETS OF ISLAM, AND THEREFORE THE CLAIM OF THE PLAINTIFF IS CONTRARY TO LAW.**

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It is submitted that in any case the Babri Masjid is contrary to Koranic injunctions and cannot be termed as a mosque in terms of Islamic Law. Some of the most eminent commentators have been quoted below to illustrate the Islamic Law on the point.

**RELEVANT EXTRACTS OF EMINENT COMMENTATORS OF ISLAMIC LAW.**

**(i)** There are many eminent jurists who are authorities on Islamic Law. In the "**Mulla Principles of Mahomedan Law"** edited by the equally well-known jurist M. Hidayatullah, the former Chief Justice of India, in its 19th edition, has cited the names and the works of such authorities which includes Macnaghten, Ameer Ali, Baillie and Hedaya as translated by Hamilton. **There is consistent view of these authorities that if the title of the land is disputed then no valid mosque can be constructed there.**

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**(ii) Name of the Book - "Principles and Precedents of Moohummudan Law" by W.H. Macnaghten, Esq., 1825 (2nd Edition) -**

**Chapter – X on Endowments – Case No. V at page 335 –** Case of a mosque built without the consent of the land owner-

"*Both land and building are included in the term mosque.*

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*It is neither simply land nor simply building but it comprises both. The land is the chief part of it because the foundation of the mosque stands upon it and the superstructure is dependant on the land. Under these circumstances without the consent of the Fakeer who is the landlord, the building cannot in the legal sense be termed a mosque because* ***no one is at liberty to erect a building on the land of another without that other's consent and if he do so the law sanctions its being razed to the ground."***

***At Page 336-337, in this book the author quotes Kazee Khan – The appropriation of a superstructure without its basis is not allowable, an edifice independently of its founder is not a mosque. Further as per Shurhi Viqya if anyone build or plant on the land of another let the thing built or planted be razed or rooted out.***

**Note:- In Qutlines of Muhammadan Law by Asaf A. Fyzee, published from Oxford University, 1949, in the Appendix-E (Page 418) – Mohammadan Law, the above work of Macnaghten has been described as a work of great authority.**

**It is to be noted that this book was written in 1825 when the Mughal rule was still there.**

**(iii) "The law relating Gifts, Trusts and**

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**Testamentary Dispositions among the Mahommedans"** by Syed Ameer Ali (**Tagore Law Lectures, 1884**)-

**At page 236 –** A sovereign cannot give any portion of the land acquired by treaty and negotiation to be converted into a mosque without the consent of the owners, but he can give any portion of the land acquired by war, provided it does not interfere with the rights of way possessed by any individual.

**At page 337 –** Hedaya is quoted as "if a person usurps land and build and plant thereon, he will be desired to eradicate and raise his plants or buildings."

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**Therefore, if the right of way of an individual is important, then the right of an entire community to offer worship at the land in question is of greater sanctity.**

(iv) "**A Digest of Moohummudan Law" by Neil B.E. Baillie (1875), Chapter-VII, Page 615 (How a Musjid is Constituted), Page 615 at Page 616-**

"*A sick man has made his mansion a Musjid and died but it neither falls within a third of his property nor is allowed by his heirs: the whole of its is heritage and the making of it a Musjid is void because the heirs having a right in it*

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*there has been no separation from the rights of mankind and a* ***confused portion has been made a Musjid which is void."***

(v) **"The Hedaya" (A Commentary on the Mussulman Laws)** translated by the order of the Governor General by Charles Hamilton (Premier Book House, Lahore) – If a person convert the centre hall of his house into a mosque giving general admission into it, still it does not stand as a mosque but remains saleable and inheritable because a mosque is a place in which no person possesses any right of obstruction; and wherever a man has such a right with respect to the surrounding parts the same must necessarily affect the place enclosed in them. The place, therefore, cannot be a mosque; besides it is necessarily a thoroughfare for the family and consequently does not appertain solely to God.

(vi) **In 1976 (4) SCC, Page 780 (Syed Md. Salie Abbas Vs. Md. Hanifa), Para 34-35 –** The above authorities have been quoted to construe as to what is a mosque.

(vii) "**The history of Islam" by Akbar Shah Najeebabadi, Revised by Safi-ur-Rahman Mubarakpuri, published by Darussalam, Riyadh, Saudi Arabia -**

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The said book was written in Urdu language in 1922 and became a classic thereafter. It contains authentic events in concise form from the famous histories of Islam written in Arabic and Persian languages. Its English translation was done by Darussalam in three volumes.

**At page 147 and 148, Vol.I,** contains the entry of Prophet into Al-Madinah. At Page 148, there is a specific reference about a deserted land being the property of two orphan boys Sahl and Suhail. The said land was offered by Muadhbin Afra for building a mosque as the two orphan boys were related to him and he would make them part of the land. **But the Prophet asserted *"I want to buy it and will not take it without paying the price".***

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**Note:- If from the authentic real life of Prophet he imposed such an injunction that for building a mosque the land of an orphan in spite of the consent of their guardian shall not be taken unless price is paid for; could the Babri mosque erected forcibly by breaking a temple at a place held sacred by Hindus be at all described as a valid mosque and can the plaintiff seek any declaration as such when the disputed structure is not a valid mosque in terms of Islamic law.**

In view of the arguments referred to, I find that on behalf of

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the evidence that has been produced before this Court is of convincing nature that temple was destroyed and the mosque was erected on the site of the temple. Historical account as available in gazetteers etc. has already been referred while deciding issue nos.1 and 1-A by me. I crave to refer the same, but otherwise also it transpires that on the basis of archeological evidence that has been referred while deciding issue no. 1-B leaves no room for doubt that on the site of the old Hindu temple the mosque was constructed. In this reference P. Carnegy has given in detail data based finding and thereafter another gazetteer has specifically mentioned that at the site of the Ram Janam Bhumi Mandir the mosque was constructed after destruction of the temple but Hindus were worshipping the place like a deity and they were offering prayers with a belief as birth place of Lord Rama. I have already referred that in view of statement of O.P.W,14 Dr. Rakesh Tiwari, Director State Archaeological Organization 265 pieces of broken images of different idols of Hindus and broken pieces of temples were collected from the debris after 6th December, 1992. Thus, on the basis of the historical account which has been given in the epigraphical evidence which was found after the demolition of disputed structure referred to above do not leave a doubt that finding of Archeological survey of India about the site of old temple is fully corroborated by other circumstantial evidence which has been referred to above. Account of Tieffen Thaler that the temple

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was destroyed by Aurangzeb appears to be a clerical error who as a foreigner could have committed mistake because Aurangzeb was a descendant of Babur and coming out from his family. Thus, his one mistake about mentioning of the name could not make his description in this account useless. He has referred that Ram Naumi was birth day of Lord Ram and it was celebrated by Hindus as a festival day. Hindus used to offer prayer doing Parikrama and observing religious rites at Babri mosque. This fact gets strength from the site plan, prepared by Vakil Commissioner in O.O.S. No. 61/280 of 1885 and O.S 2 of 1950.

I further find that in the above case there is judicial pronouncement in the aforesaid case showing that the District Judge was also of the view that Babri mosque was constructed at the site of Ram Janam bhumi.

I have already referred that in Hindu mythology a deity can be formless also. Brahm is considered as formless but it is always being worshipped like God. There are certain idols which are also worshipped . There are certain places which are worshipped like deity like Kedarnath, Govardhan, Vishnupad and kamadgiri. Even fire is considered as a God. Gangotri and other places are also considered like deities .

Thus idol is the object which is worshipped. Deity may be like idol or otherwise also but is being worshipped religiously in accordance with the faith by Hindus. This has been recognized

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under the Hindu text which have been referred to by Mr Ravi Shanker Advocate and Sri H.S, Jain Advocate. I do not want to further reproduce for the sake of brevity and I agree with their contention that the defendants have successfully placed the material before the Court to arrive at a decision that there was strong belief of Hindu from times immemorial that Lord Ram's birth took place at the place where the old temple was constructed and same was of 12th century which was destroyed by Babur.

Hans Bakker has completed his research work in most methodical and scientific manner . He has devoted much time in his studies. He formed his opinion about the Janamsthan .Part II chapter 21 page 143-145 deal with the Janamsthan. For convenience I am reproducing the same:-

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"The most conspicuous fact with respect to the textual evidence relating to the *tirtha* Rama-janmasthana (Janmabhumi) is that on the one hand a description of this principle holy place is found in all MSS of the AM used for this edition, and on the other hand that the *tirtha* is not mentioned in other classical sources (e.g. Puranas, Laksmidhara's TVK, *Nrsimhapurana* MS, Jinaprabhasuri's TK, Bhusram., and Mitra Misra's TP). Such a silence is all the more surprising in view of the fact that archaeological evidence indicates the existence of a temple at this *tirtha* in the eleventh century. A reason for the omission of this holy place in the Bhusram and TP might be that at the time these texts were written the site was

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occupied by a mosque (built by Babur in AD 1528).”

The DA recension, which presumably also dates from after the destruction of the original Janmabhumi temple, has merely taken over the description of the place as found in s and B, without adding more details and praise, yet it has connected the Janmasthana with an elaborate description of Ramanavami (OA 22, OA 23).

This chapter is interesting for text-criticism in that it illustrates the relationship between OA, B,and S. The analysis of this relationship in II, XXIXF.leads to the conclusion that, since OA is not directly based on B and S but goes back to an a-type-of-text which comprised the textual materials of B and S, both agreement between B and S against OA (AM 21. 2d), as well as agreement between OA and B against S (AM 21, 1cd/4cd,2b,7b,9/15), are likely to occur. Since B rests on a later version of the 1-type-of-text than S, a version that stands nearer to the OA recension, a greater affinity of B with OA than with S can be expected, especially in regard to the sequence and the occurrence of verses (see 21.1cd/4cd and 21.9/15 (sequence of OAB vs. S), and 21.3-4, 8-11 (occurring in OAB missing in S) vs. 21.13ab (occurring in BS missing in OA)).

The fact that B represents the most direct or crudest version of the a-type-of-text, which was edited in S and in OA, while the latter has not extended the description of the birthplace (possibly for

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reasons advanced above), accounts for the given evidence that MS B actually contains the most complete version of this section of the Mahatmya. The incongruity of S with the a-type-of-text may have prompted the author of B(P), at variance with his normal procedure, to include the entire description of the Janmasthana, thus rewriting a passage of S that was felt to be insufficient. The omission in S of DAB 21.8-11 may have been caused by homoeoteleuton (OABS 21.7cd=OAB 21.11cd).

MS P, which omits several *slokas* ocurring in B (B 21.2-4) and replaces B 21.8 by another *sloka,* contains a hiatus after B 21.9 which is indicated by a sign …. *truti. Slokas* 11 and 12 are corrupt and rendered incompletely in Mss O1 and O2, and BS 21.12abcd seems to be an anacoluthon. Obviously this passage had become corrupt in an early stage of its transmission and the clumsiness of the Sanskrit that remained my have led the editor of A to delete it altogether.

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Page 147 further deals about Janam Bhumi. Chapter 28 further deals with location which he had prepared indicating the reason as to how he could come to a conclusion about the Ram Janambhumi. Relevant extracts of chapter 28 are as under:

**CHAPTER 28**. SVARNAKHANI.

**Introduction**

Textual evidence.

AM MSS; 10.44abcd, 11.1-61: O2 10.43abcd, 11.1-60ab: A 10.46abcd, 11.1-61; C 5.37ab-40ab; K 5.37ab-40ab; S 4.30-71,

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5.1-18ab; om.BP.

Class.Lit.: *Raghuvamsa* 4.26-88, 5.1-35: Mbh. 5.104.8-26 (cp. Mbh. 5.112-117); SMC p.50

Mod.Lit.: Sitaram 1932, 53; Sitaram 1933, 72f.; Carnegy 1870 App. A,p.IX (*kuti* of Raghunathadasa); Ghurye 1953, 191 (Bari Chavani of Raghunathadasa); simha 1957, 415 (*kuti* of Ramaprasada), ibid. p.463 (Bari Chavani of Raghunathadasa).

**Note to the textual evidence.**

Although the *mahatmya* of this holy place is a conflation of two classical legends (*Raghuvamsa* 4-5, and Mbh. 5.104), the text does not follow either source verbatim.

**Location.**

| OA | S | At present |
|---|---|---|
| Hanumatkunda | Dharmahari | Dharmahari Hanumatkunda |
| Ksirodaka | | Ksirodaka |
| Yajnavedi Yajnavadi | Tilodak I-Sarayu-Samgama | Tilodaki-Sarayu-Samgama |

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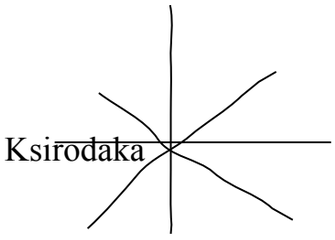

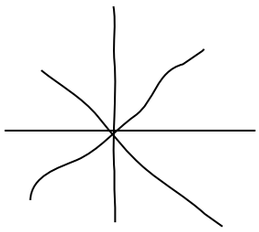

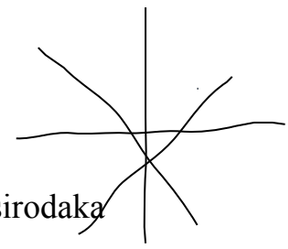

Version of P. Carnegy was confirmed after due research by Hans Bakker.

This Court has occasion to go through the “A Historical

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Skethch of Faizabad including Parganas Haveli-Oudh and Pachhimrath with the old capitals Ajudhia and Fyzabad" by P. Carnegy . He has given description of Ayodha, Ram and Ramayan. Looking to the controversy in dispute as regards location of Ram Janam Bhumi, Ram Kot and description given by Carnegy which was based on a systematic way leaves no room for doubt that he affirmed Janambhumi and other temples and took a view that Emperor Babur built the mosque in 1528 after demolishing the Hindu temples Janamstali marks the place where Lord Ram was born. Relevant extracts of Gazetteers by P. Carnegy of Ayodhya are as under:-

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**AJUDHIA.**

Ajudhia- Ajudhia, which is to the Hindu what Macca is to the Mahomedan, Jerusalem to the Jews, has in the traditions of the orthodox, a highly mythical origin, being founded for additional security not on the earth for that is transitory, but on the chariot wheel of the Great Creator himself which will endure for over.

In appearance Ajudhia has been fancifully likened to a fish, having Guptar as its head, the old town for its body, and the eastern parganas for its tail.

Derivation- The name Ajudhia is explained by well-known local Pandits to be derived from the Sanskrit words, *Ajud*, unvanquished, also *Aj,* a name of Barmha, the unconquerable city of the Creator, But Ajudhia is also called *Oudh,* which in Sanskrit

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means a promise, in allusion it is said, to the promise made by Ram Chandr when he went in exile, to return at the end of 14 years. These are the local derivation; I am not prepared to say to what extent they may be accepted as correct. Doctor Wilson of Bombay thinks the word is taken from *yudh* to fight, the city of the fighting Chhatris.

Area.- The ancient city of Ajudhia is said to have covered an area of 12 *jogan* or 48 kos, and to have been the capital of Utar-Kausala or Kosala, (the Northern Treasure) the country of the Surajbans race of Kings, of whom Ram Chundar was 57th in descent from Raja Manu, and of which line Raja Sumintra was the 113th and last. They are said to have reigned through the Suth, Tireta, and Dwapar Jugs, and 2,000 years of the Kul or present Jug or Era.

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The description of the Ajudhia of Rama and the Ramayan has been beautifully rendered into verse by the distinguished Principal of the Benares College, Mr. Griffiths.

---

Her ample streets were nobly planned,
And streams of water flowed,
To keep the fragrant blossoms fresh,
That strewed her royal road.

There many a princely palace stood,
In line, on level ground,
Here temple, and triumphal are,
And rampart banner crowned.

There gilded turrets rose on high,
Above the waving green,

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Of mango-groves and blooming trees,
And flowery knots between.

On battlement and gilded spire,
The pennon streamed in state;
And warders, with the ready bow,
Kept watch at every gate,

She shone a very mine of gems,
The throne of Fortune's Queen;
So many-hued her gay parterres,
So bright her fountains sheen.

Her dames were peerless for the charm,
Of figure, voice, and face;
For lovely modesty and truth,
And woman's gentle grace.

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Their husbands, loyal, wise and kind,
Were heroes in the field,
And sternly battling with the foe,
Could die, but never yield.

Each kept his high observances,
And loved one faithful spouse;
And troops of happy children crowned,
With fruit their holy vows.
(Scenes from the Ramayan.)

———

With the fall of the last of Rama's line, Ajudhia became a wilderness, and the royal race became dispersed even as the Jews. From different members of this dispersed people, the Rajas of Jaipur, Joudhpur, Udeypur, Jambu, &c., of modern times, on the

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authority of the "Tirhut Kuth-ha," claim to descend. Even in the days of its desertion Ajudhia is said still to have remained a comparative Paradise, for the jungle by which it was over-run, was the sweet-smelling *keorah,* a plant which to this day flourishes with unusual luxuriance in the neighbourhood.

*Ban-Oudha.*- In less ancient times when waste began to yield to cultivation, it took the name of Ban-Oudha or the Jangle of Oudh. With this period the name of Vikramajit is traditionally and intimately associated, when Budhism again began to give place to Brahminism.

*The restoration by Vikramajit.*- To him the restoration of the neglected and forest-concealed Ajudhia is universally attributed. His main clue in tracing the ancient city was of course the holy river Sarju, and his next was the shrine still known as Nageshar-nath, which is dedicated to Mahadeo, and which presumably excaped the devastations of the Budhist and atheist periods. With these clues, and aided by descriptions ehich he found recorded in ancient manuscripts , the different identified, and vikramajit is said to have indicated the different shrines to which pilgrims from afar still in ghousands half-yearly flock.

*Ramkot.*- The most remarkable of those was of course Ramkot the strong-hold of Ramchandar. This fort covered a large extent of ground and according to ancient manuscripts, it was surrounded by 20* bastions, each of which was commanded by one

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of Rama's famous generals, after whom they took the names by which they are still known. Within the fort were eight royal mansions-!- where dwelt the Patriarch Dasrath, his wives, and Rama his deified son, of whom it has been plaintively sung-

“Lord of all virtues, by no stain defiled,
The king's chief glory was his eldest child,
For he was gallant, beautiful, and strong,
Void of all envy, and the thought of wrong.
With gentle grace to man and child he spoke,
Nor could the churl his harsh reply provoke,
He paid due honor to the gook and sage,
Renowned for virtue and revered for age.
And when at eve his warlike task was o'er,
He sat and listened to their peaceful lore,
Just pure and prudent, full of tender ruth,
The foe of falsehood and the friend of truth;
Kind, slow to anger, prompt at miseries call,
He loved the people, and was loved of all,
Proud of the duties of his warrior race,
His soul was worthy of his princely place.
Resolved to win, by many a glorious deed,
Throned with the gods in heaven, a priceless meed
What thought Brihaspati might hardly vie,
With him in eloquence and quick reply,
Nano heard the music of his sweet lips flow
In idle wrangling or for empty show.
He shunned no toils that student's life befit,
But learned the Vedas and all holy writ;
And even eclipsed his father's archer fame,
So swift his arrow and so sure his aim.

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| | | | |
|---|---|---|---|
| * 1. | Hanuman Garhi. | 11. | Kuteswar. |
| 2. | Sugreon. | 12. | Labidh Bawan. |
| 3. | Ungad. | 13. | Mayand. |
| 4. | Dibadh. | 14. | Rakhach. |
| 5. | Nal. | 15. | Surumbha. |
| 6. | Nil. | 16. | Bibhi Khan. |
| 7. | Sukhen. | 17. | Pindark. |
| 8. | Kuber. | 18. | Mat Gajyindr. |
| 9. | Gwachh. | 19. | Jamwant. |
| 10. | Dadh Biktr. | 20. | Kesri. |

-!-1. Rattan Singasin (the throne room).
2. Kosilla Mandr (the palace of Kosilla, Raja Dasrath's 1st wife)
3. Sumantra Mandr, (ditto, ditto, 2nd wife.)
4. Kekai Bhawan, (ditto, ditto, 3rd do.)
5. Subha Mandr, (the court house.)
6. Janam Asthan, (Rama's birth place.)
7. Nowratan, (assembly room of the queens.)
8. Kunak Bhawan, (the golden palace of Ramchandar.)

To this praise for virtue his ancient father apparently had no pretension; for we are told that besides the three wives above marginally indicated, who caused him so much anxiety, there were 360 others of whom history says little.* A prodigality of connubial happiness which in modern days found its parallel also in Oudh, in the Kesar Bagh Harem of Wajid Ali Shah.

*Note:-* The same story and number of wives is also ascribed to Salivahara and Tilokchand.

*Samundra Pal Dynasty.-* According to tradition Raja Vikramaditta ruled over Ajudhia for 80 years, and at the end of that time he was outwitted by the Jogi Samundra Pal, who having by magic made away with the spirit of the Raja, himself entered into the abandoned body, and he sand his dynasty succeeding to the

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kingdom they ruled over it for 17 generations or 643 years, which gives an unusual number of years for each reign.

*Note:-* Ancient Hindu History is sadly mystified by the irrepressible appearance of Vikramditta. Wilford speaks of eight rulers of the name, extending over as many centuries. Something of the same kind may be said of Tilokchand in these parts, for the Bais, Bachgote and Siribastam families all had most prominent rulers of that name.

*The Ajudhia Mahatum.-* No account of Ajudhia would be complete with did not throw some light on the Ramayan and the Ajudhia Mahatum. Of the former of these works, I need not speak, for through the writings of Wheeler, Cust, Monier Williams &c. most readers are familiar therewith. I will therefore confine my remarks to the Ajudhia Mahatum, which is comparatively unknown.

This work was prepared to the glorification of Ajudhia according to some, by Ikshawaku of the solar race, while others with more probability aver that it is a transcript from the Askundh and Padam Purans, and is not the production of any Raja. Be that as it may it is well that the essence of the work should be made available to the public, and in this view Mr. Woodburn c.s. Has been good enough to make a connected abstract for me, from a literal translation which I had made some years ago. This abstract is given as Appendix B.

*Limits of Oudh.-* It is not always easy to comprehend what is

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meant by the Oudh or Ajudhia of ancient times, for that territory has been subjected to many changes. So far as these are known to me, I give them below-

*The Oudh of Rama.*- Such intelligent natives as Maharaja Man Singh have informed me that at this period Oudh was divided into five portions, thus:- (1) *Kosal or Utar Kosala,* which included the present Trans-Gogra districts of Gorakhpur, Busti, Gondah and Baraich. (2) *Pachhamrath,* which included the country between the rivers Gogra dnd Gomti, extending westwards from ajudhia to Nimkhar in Sitapur, (3) *Purabrath,* or the territory between the same rivers, extending eastwards towards Jaunpur, the limit not being traceable. (4) *Arbar* being the country around Pertabgurh, lying between the rivers Gomti and Son, probably the same that is still known as Aror or Arwar: and (5) *Silliana,* which incoluded some portion of the Nepal hills running along the then Oudh frontier.

*The Oudh of Akbar.*- Mention is made of the title of Subadar of Oudh as early as A.D. 1280, and it was one of the 15 subas or Governorships into which Akbar subdivided the empire in 1590 A.D. The Mahamadan attempt to change the name from Oudh to Akhtarnagar, never seems to have succeeded fully.

The boundaries of the old Suba differed materially from those of the present day, and a large part of what is now the eastern portion of the Province, including tanda, Aldemau, Manikpur, &c.,

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was not in those days included in Suba Oudh, but in Allahabad. According to the Ain-i-Akbari the Suba then extended from and inclusive of Sirkar Gorakhpur, to Kanouj, and from the Himalayas to Suba Allahabad, 135 kos by 115 kos.

Suba Oudh contained five Sirkars, viz., (1) Oudh ; (2) Lucknow : (3) Baraich ; (4) Khyrabad ; and (5) Gorakhpur. The details of these are given below, but they are only approximately correct, and in regard to some places my information is incomplete.

*The Janmasthan and other temples.*- It is locally affirmed that at the Mahomedan conquest there were three important Hindu shrines, with but few devotees attached, at Ajudhia which was then little other than a wilderness. These were the "Janmasthan," the "Sargadwar mandir" also known as "Ram Darbar" and the "Tareta-ke-Thakur."

On the first of these the emperor Babar built the mosque which still bears his name, A.D. 1528. On the second Aurangzeb did the same A.D. 1658-1707; and on the third that sovereign, or his predecessor, built a mosque, according to the well known Mahomedan principle of enforcing their religion on all those whom they conquered.

The Janmasthan marks the place where Ram Chandr was born. The Sargadwar is the gate through which he passed into paradise, possibly the spot where his body was burned. The Tareta-ke-Thakur was famous ad the place where Rama performed a great

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sacrifice, and which he commemorated by setting up there images of himself add Sita.

*Babar's mosque*- According to Leyden's memoirs of Babar that emperor encamped at the junction of the Serwa and Gogra rivers two orthree kos east from Ajudhia, on the 28th March 1528, and there he halted 7 or 8 days settling the surrounding country. A well known hunting ground is spoken of in that work, 7 or 8 kos above Oudh, on the banks of the Surju. It is remarkable that in all the copies of Babar's life now known, the pages that relate to his doings at Ajudhia are wanting. In two places in the Babari mosque the year in which it was built 935 H., corresponding with 1528 A.D. is carved in stone, along with inscriptions dedicated to the glory of that emperor.

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If Ajudhia was then little other than a wild, it must at least have possessed a fine temple in the Janmasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Babari Mosque. These are of strong close-grained dark slate-colored or black stone, called by the natives *Kasoti* (literally touch-stone,) and carved with different devices. To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately.

*Hindu and Musalman differences*.- The Janmasthan is within

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a few hundred paces of the Hanuman Garhi. In 1855 when a great rupture took place between the Hindus and Mahomedans, the former occupied the Hanuman Garhi in force, while the Musalmans took possession of the Janmastham. The Mahomedans on that occasion actually charged up the steps of the Hanuman Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt, took the Janmasthan, at the gate of which 75 Mahomedans are buried in the "Martyrs' grave" (ganj-shahid.) Several of the King's Regiments were looking on all the time, but their orders were not to interfere. It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque-temple. Since British rule a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings.

The two other old mosques to which allusion has been made (known by the common people by the same of *Nourang Shah,* by whom they mean Aurangzeb,) are now mere picturesque ruins. Nothing has been done by the Hindus to restore the old Mandir of "Ram Darbar." The "Tareta-ke-Thakur" was reproduced near the old ruin by the Raja of Kalu, whose estate is said to be in the Punjab, more than two centuries ago; and it was improved upon afterwards by Hilla Bai, Marathin, who also built the adjoining ghat A.D. 1784. She was the widow of Jaswant Rai, Holkar, of Indore,

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from which family Rs. 231 are still annually received at this shrine.

Thus, on the basis of convincing epigraphical evidence the belief of Hindus and the arguments advanced by Hindus, I am of the view that the city of Ayodhya undeniably is city of great antiquity and sacred spot to the Hindus for a long time. Valmiki Ramayan, Srimad Bhagwat, Mahabhart and Raghuvansham recognised the identity of Ayodhya.

On the basis of record it transpired that on the basis of historical account given by William Finch, William Foster and Tieffen Thaler, it is crystal clear that Hindus were worshipping the site as birth place of Lord Ram as a deity. The aforesaid assertions corroborate that Hindu temple used to exist at the birth place of Lord Ram at Ram Kot. Encyclopaedia Britannica India by Surgeon J.A. Balfour , gazetteer of P. Carnegy and other gazetteers reveal the location of Babri mosque as the site of Ram Janam Bhumi and corroborate the version of William Finch that the pilgrims were offering prayers with a belief that site was the birth place of Lord Ram. Hans Bakker in hi s research work also corroborated the historical version. He also consulted religious books of Hindus and other historical books. I have already referred important extracts of his thesis on the subject . Thus, from the material on record it transpires that site was used to be a temple on Ram Janam Bhumi which was reconstructed in 12$^{th}$ century and the same was demolished. A.S.I. also confirms ruins of 12$^{th}$ century

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temple. Even the debris of the Babri mosque which were collected on 6.12.1992 proves the existence of Ram Janam Bhumi temple which was considered at the birth spot of Lord Ram. Fourteen Kasauti pillars were taken from the old temple and were used in the construction of the mosque by Muslim on which images of Hindu Gods and Goddesses were engraved. Sita Rasoi and Charan Paduka were identified by Hans Bakker. In this context para 78 of Dr. M Ismail Faruqui and others Vs. Union of India and others 1994(6) SCC 360 is relevant which reads as under:-

"*While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof.* ***Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially."***

Thus, there is overwhelming evidence that the property in suit is site of Ram Janambhumi.It is corroborated by religious records, religious books, judicial records and relevant scriptures . The fact of destruction of Ram Janambhumi temple is also established. This fact is also established that Hindus were worshipping Ram Janambhumi. Revenue records also show entry of Janambhumi, which was not objected by the parties at any point of

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time. The first revenue record also refers the place as Janambhumi, probably for the reason that Britishers after investigation and research work of P. Carnegy were satisfied that the place of birth of Lord Ram is site of Babri mosque. William Finch and others also corroborated the version that Hindus were worshipping the site as Ram Janambhumi. Version of William Finch is more acceptable for the reason that according to Muslims the mosque was constructed in the year 1528 while William Finch visited Ayodhya in the early 17th century, that is, about 70 years after the demolition of the temple. Thus, his information and description about the place was based on correct appreciation of facts and on the basis of information based on faith and belief of Hindus, P. Carnegy also acknowledged the work of William Finch and others .

On the basis of the statements of parties it further transpires that there is no dispute between the parties that Lord Ram took birth at Ayodhya. The only dispute is with regard to birth spot. The parties admit the existence of Ram Kot ,i.e. fort of Lord Ram. There is overwhelming evidence that after the destruction of old temple celebration of Ram Naumi was going on at Ayodhya. Even in those days five lakh people used to assemble to celebrate the festival of Ram Naumi. Thus, the circumstantial evidence available on record fully corroborate the report of the ASI and if read in the light of historical account given by William Finch and others leaves no room for doubt that Janambhumi was worshipped along with

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Charan Paduka and Sita Rasoi by Hindus. I may further clarify that according to Hindus place of worship may be deemed to be a deity itself with or without any idol. Ritually among Hindus this is considered as a deity at other religious place like Gangotri, Yamnotri,Gaya, Kedar Nath Amaranath etc. Even at Jagannathpuri the deities are changed after 12 years. Even then the place is worshipped like a deity. Thus, without any form or shape the place can also be worshipped without idols. **The deities were installed in the inner courtyard on 22/23.12.1949. They are being worshipped by devotees. Thus, the Hindus are worshipping the place in dispute as Ram Janambhumi as a sacred place of pilgrims from time immemorial and idols were also worshipped, firstly at Ram Chabutra and thereafter idols were shifted on 22/23. 12.1949 at birth spot of Lord Rama inside the disputed structure.** Thus from Hindu side overwhelming evidence has been produced to establish that the property in suit is site of Janambhumi of Lord Ram. It is also established from record that idols and objects of worship were placed inside the disputed building in the night intervening 22/23-12.1949. Hindus in general and defendants in particular were worshipping Charan Paduka, Sita Rasoi and other idols even after the construction of Babri mosque in the outer courtyard. Hindus were worshipping the place in dispute as a sacred place of birth of Lord Rama in the inner courtyard from times immemorial.

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Hindus have proved the existence of temple construed in 12th century at the site of Ram Janambhumi. They have also proved their belief that the place was worshipped like a deity and further proved the fact that after demolition of the temple the mosque was constructed after re-using material and broken part of the temple and the deities.

Lastly, against the tenets of Islam, no mosque can be constructed after demolishing a temple. Further according to the Muslims, inside the mosque there cannot be two spots of worship, one for Hindus and another for Muslims. Thus, temple and mosque cannot co-exist at the disputed spot. Accordingly it is established that even prior to the destruction of Hindu temple which was constructed in 12th century, no mosque can come into existence against the tenets of Islam at the site of birth place of Lord Ram.

It is manifestly established by public record, gazetteers, history accounts and oral evidence that the premises, in dispute, is the place where Lord Ram was born as son of Emperor Dashrath of solar dynasty. According to the traditions and faith of devotees of Lord Ram, the place where He manifested Himself has ever been called as Sri Ram Janmbhumi by all and sundry through ages. Thus, the Asthan, Ram Janambhumi has been an object of worship as a deity by the devotees of Lord Ram as it personifies the spirit of divine worshipped in the form of Ram Lala or Lord Ram, the child. Ram Janmbhumi is also a deity and a juridical person. It is

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established from evidence that the Hindus worship the divine place in the form of God. The Hindus can mediate upon the formless and shapeless divine. The spirit of Divine is indestructible. Birth place is sacred place for Hindus and Lord Ram, who is said to be incarnation of God, was born at this place. The Hindus since times immemorial and for many generations constantly hold in great esteem and reverence the Ram Janmbhumi where they believe that Lord Ram was born. It is established by tradition and classical legal literature relating to the Hindus and according to their belief and faith that the place is regarded as a deity. This place, according to Hindu religion, is symbol and embodiment of spiritual purpose and the property is dedicated and vested with the Asthan, Janmbhumi. This place being worshipped as idol from times immemorial and dedicated property vests in idol as juristic person. Thus, the place according to the Smirit have to be considered as a deity like Agni and Vayu being worshipped. They are shapeless and formless but they attain the divinity. If the public go for worship and consider that there is divine presence, then it is temple which has already been held by Hon'ble apex court in 1999(5) SCC page 50 **Ram Janki Deity Vs. State of Bihar.**

In view of **Gokul Nath Ji Mahraj Vs. Nathji Bhogilal AIR 1953 Allahabad 552,** after the length of time it is impossible to prove by affirmative evidence that there was any consecration ever by faith and belief. It is believed that the place is the place which

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was considered by all times as a deity and is being worshipped like a deity. Accordingly Asthan is personified as the spirit of divine worshipped as the birth place of Lord Ram.

In view of the discussions, referred to above, it is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping the place in dispute as Janm Sthan i.e. a birth place and visiting it as a sacred place of pilgrimage as a right since times immemorial. After the construction of the disputed structure it is not proved the deities were installed inside the disputed structure before 22/23.12.1949, but the place of birth is a deity. It is also proved that in the outer courtyard was in exclusive possession of Hindus and they were worshipping throughout and in the inner courtyard (in the disputed structure) they were also worshipping. It is also established that the disputed structure cannot be treated as a mosque as it came into existence against the tenets of Islam.

In view of the above findings issues No.11,13,14,19-a and 19-c are decided against the plaintiffs.

## ISSUES NO. 16 & 22

**16. To what relief, if any, are the plaintiffs or any of them, entitled?**

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**22. Whether the suit is liable to be dismissed with special costs?**

## FINDINGS

These issues are inter related and conveniently be decided at one place. The Hon'ble Apex Court in ***Dr. Ismail Farooqui Vs. Union of India, 1994 (6) SCC 390***, directed this Court to consider the title of the parties. Plaintiffs have claimed title through adverse possession and have also relied upon certain revenue records, which has been discussed while deciding issues by me. Thus, on the basis of revenue record the plaintiffs have failed to establish the title and adverse possession over the property in suit. Plaintiffs have further failed to establish their exclusive possession over the property in suit till 22nd December, 1949. Hon'ble Apex Court upheld the validity of provisions of Acquisition of Certain Area at Ayodhya, 1993 in Dr. Ismail Faruqui case (supra) and held that the Central Government can acquire any place of worship. At para- 78 Apex Court held that the place of birth has a particular significance for Hindus and it should be treated on different footing, which reads as under:-

> "**78.** While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice **unless the place has a particular significance for that religion so as to form an essential or**

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**integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially."**

On behalf of Hindus it is urged that the plaintiffs are not entitled for the relief claimed and as such the relief is barred by the provisions of Section 42 of the Specific Relief Act,1877 which is at par with Section 34 of the Specific Relief Act,1963 on the ground that they have superior fundamental rights. Contentions of Hindus are as under:-

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The Hindus have superior fundamental right than the Muslims under articles 25 & 26 of the Constitution of India for the reasons that performing customary rituals and offering service worship to the lord of universe to acquire merit and to get salvation as such it is integral part of Hindu Dharma & religion in view whereof it is humbly submitted that the instant suit is liable to be dismissed with exemplary cost:

1. In (1998) 8 SCC 296 (*Mr. 'X' v. Hospital 'Z'.)* the Hon'ble Supreme Court held that where there is a clash of two Fundamental Rights, the Right which would advance the public morality or public interest would alone be enforced through the process of Court. In other words the superior Fundamental Right would prevail. Relying on said judgment it is submitted that the pilgrimage, service and worship as

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well as performance of customary rituals at Sri Ramjanamsthan which has been described as Babri Mosque in the plaint is integral part of Hinduism as it has been commanded by the Holy Divine Scripture Sri Atharv Ved, the Holy Sacred Scripture Sri Skand Puran & Sri Narsimh Puran, Sri Valmiki Ramayana, The Sacred Religious Book Sri Ramacharitamanasa that the persons must visit the birth place of the Lord of Universe Sri Ram and by doing so they will acquire merit of visiting all the sacred places, performing of all yajnas (sacrifice) and gifting of thousands of cows etc. as also they will get salvation. But in no sacred holy books of Islam it has been mentioned that offering prayer at the birth place of Sri Ram which has been described as Babri Mosque in the plaint is integral part of Islam. As such the Hindus have superior Fundamental Right to enforce through this Hon'ble Court and the instant suit is liable to be dismissed as *Sthandil* of Sri Ram which is a deity cannot be declared as mosque otherwise it will infringe Fundamental Rights of the Hindus guaranteed under Article 25 and 26 of the Constitution of India. Relevant paragraph nos.44 and 45 of the said judgment read as follows:

> **"44.** Ms 'Y', with whom the marriage of the appellant was settled, was saved in time by the disclosure of the vital information that the appellant was HIV(+). The disease which is communicable would have been positively communicated to her immediately on the consummation of marriage. As a human being, Ms 'Y'

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must also enjoy, as she obviously is entitled to, all the Human Rights available to any other human being. This is apart from, and in addition to, the Fundamental Right available to her under Article 21, which, as we have seen, guarantees "right to life" to every citizen of this country. This right would positively include the right to be told that a person, with whom she was proposed to be married, was the victim of a deadly disease, which was sexually communicable. Since "right to life" includes right to lead a healthy life so as to enjoy all the faculties of the human body in their prime condition, the respondents, by their disclosure that the appellant was HIV(+), cannot be said to have, in any way, either violated the rule of confidentiality or the right of privacy. Moreover, where there is a clash of two Fundamental Rights, as in the instant case, namely, the appellant's right to privacy as part of right to life and Ms 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay in the hall known as the courtroom, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day". (See: Allen: *Legal Duties*)

**45.** "AIDS" is the product of undisciplined sexual impulse. This impulse, being a notorious human failing if not disciplined, can afflict and overtake anyone howsoever high or, for that matter, how low he may be in the social strata. The patients suffering from the dreadful disease "AIDS" deserve full sympathy. They are entitled to all respect as human beings. Their society cannot, and should not be avoided, which otherwise, would have a bad psychological impact upon them. They have to have their avocation. Government jobs or service cannot be denied to them as has been laid down in some American decisions. (See: *School Board of Nassau Country, Florida* v. *Airline*[8]; *Chalk* v. *USDC CD of Cal.*[9]; *Shuttleworth* v. *Broward Cty.*[10]; *Raytheon* v. *Fair Employment and Housing Commission, Estate of Chadbourne*[11]. But "sex" with them or the possibility thereof has to be avoided as otherwise they would infect and

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communicate the dreadful disease to others. The Court cannot assist that person to achieve that object."

2. In (1994) 6 SCC 360 (*M. Ismail Faruqui (Dr.) v. Union of India)* the Hon'ble Supreme Court has held that the Right to Practise, Profess and Propagate Religion guaranteed under Article 25 of the Constitution does not extend to the Right of Worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution of India. The protection under Articles 25 and 26 is to religious practice which forms integral part of practice of that religion. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular signifgicance of that religion to make it an essential or integral part of the religion stand on a different footing and have to be treated differently and more reverentially. Relying on said judgment it is submitted that Sri Ramjanamsthan has particular significance for the Hinduism as visiting and performing customary rites confer merit and gives salvation it is firm belief of the Hindus based

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on their sacred Divine Holy Scriptures which belief neither can be scrutinized by any Court of Law nor can be challenged by the persons having no faith in Hinduism as this is conscience of the Hindus having special protection under Article 25 of the Constitution of India. Relevant paragraph 77 and 78 of the said judgment read as follows:

> **77.** It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.
>
> **78.** While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.

*3.* In M. Ismail Faruqui (Dr.) v. Union of India *(supra)* the Hon'ble Supreme Court held that a mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered any where even in open.

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The Right to Worship is not at any and every place so long as it can be practised effectively, unless the Right to Worship at a particular place is itself an integral part of that right. Relying on said ratio of law it is submitted that without offering prayer at Sri Ramjanamsthan described as Babri mosque in the plaint it can be practised somewhere else but offering prayer in stead of Sri Ramjanamsthan at any other place cannot be practised because the merit which is obtained by worshiping at the birth place of Sri Ram cannot be obtained by doing so at other places and it will be contrary to the holy Divine Sacred Scripture of the Hindus and will cause extinction of a most sacred shrine of the Hindus. Relevant paragraph nos.80 to 87 of the said judgment read as follows:

> **"80.** It has been contended that a mosque enjoys a particular position in Muslim Law and once a mosque is established and prayers are offered in such a mosque, the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque and any person professing Islamic faith can offer prayer in such a mosque and even if the structure is demolished, the place remains the same where the namaz can be offered. As indicated hereinbefore, in British India, no such protection was given to a mosque and the mosque was subjected to the provisions of statute of limitation thereby extinguishing the right of Muslims to offer prayers in a particular mosque lost by adverse possession over that property.
>
> **81.** Section 3(26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 367 of the Constitution adopts this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to

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protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions.

**82.** The correct position may be summarised thus. Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (See *Mulla's Principles of Mahomedan Law*, 19th Edn., by M. Hidayatullah — Section 217; and *Shahid Ganj* v. *Shiromani Gurdwara*[3] 13). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and *namaz* (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.

**Maintainability of the Reference**

**83.** In the view that we have taken on the question of validity of the statute (Act No. 33 of 1993) and as a result of upholding the validity of the entire statute, except Section 4(3) thereof, resulting in revival of the pending suits and legal proceedings wherein the dispute between the parties has to be adjudicated, the

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Reference made under Article 143(1) becomes superfluous and unnecessary. For this reason, it is unnecessary for us to examine the merits of the submissions made on the maintainability of this Reference. We, accordingly, very respectfully decline to answer the Reference and return the same.

**Result**

**84.** The result is that all the pending suits and legal proceedings stand revived, and they shall be proceeded with, and decided, in accordance with law. It follows further as a result of the remaining enactment being upheld as valid that the disputed area has vested in the Central Government as a statutory receiver with a duty to manage and administer it in the manner provided in the Act maintaining status quo therein by virtue of the freeze enacted in Section 7(2); and the Central Government would exercise its power of vesting that property further in another authority or body or trust in accordance with Section 8(1) of the Act in terms of the final adjudication in the pending suits. The power of the courts in the pending legal proceedings to give directions to the Central Government as a statutory receiver would be circumscribed and limited to the extent of the area left open by the provisions of the Act. The Central Government would be bound to take all necessary steps to implement the decision in the suits and other legal proceedings and to hand over the disputed area to the party found entitled to the same on the final adjudication made in the suits. The parties to the suits would be entitled to amend their pleadings suitably in the light of our decision.

**85.** Before we end, we would like to indicate the consequence if the entire Act had been held to be invalid and then we had declined to answer the Reference on that conclusion. It would then result in revival of the abated suits along with all the interim orders made therein. It would also then result automatically in revival of the worship of the idols by Hindu devotees, which too has been stopped from December 1992 with all its ramifications without granting any benefit to the Muslim community whose practice of worship in the mosque (demolished on 6-12-1992) had come to a stop, for whatever reason, since at least December 1949. This situation, unless altered subsequently by any court order in the revived

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suits, would, therefore, continue during the pendency of the litigation. This result could be no solace to the Muslims whose feelings of hurt as a result of the demolition of mosque, must be assuaged in the manner best possible without giving cause for any legitimate grievance to the other community leading to the possibility of reigniting communal passions detrimental to the spirit of communal harmony in a secular State.

**86.** The best solution in the circumstances, on revival of suits is, therefore, to maintain status quo as on 7-1-1993 when the law came into force modifying the interim orders in the suits to that extent by curtailing the practice of worship by Hindus in the disputed area to the extent it stands reduced under the Act instead of conferring on them the larger right available under the court orders till intervention was made by legislation.

**87.** Section 7(2) achieves this purpose by freezing the interim arrangement for worship by Hindu devotees reduced to this extent and curtails the larger right they enjoyed under the court orders, ensuring that it cannot be enlarged till final adjudication of the dispute and consequent transfer of the disputed area to the party found entitled to the same. This being the purpose and true effect of Section 7(2), it promotes and strengthens the commitment of the nation to secularism instead of negating it. To hold this provision as anti-secular and slanted in favour of the Hindu community would be to frustrate an attempt to thwart anti-secularism and unwittingly support the forces which were responsible for the events of 6-12-1992."

*4.* AIR 1966 SUPREME COURT 1119 "Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya" a constitution Bench of the Hon'ble Supreme Court of India inferred that according to Hindu Dharma the ultimate goal of humanity is the release and freedom from the unceasing cycle of births and rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual

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soul with the infinite. ‘Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse; and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion'. This definition brings out succinctly the broad distinctive features of Hindu religion. Relying on said judgment it is respectfully submitted that as according to the Holy Devine Srimad Atharv- Ved, Sri Skand Puran, Sri Narsimh Puran,Sri Valmiki Ramayan, Sri Ram-charitmanas etc. a Hindu gets salvation on visiting and having a look of *Sthandil / Site* of ‘Sri Ramjanamsthan’ in Ayodhya as well as by performing customary rituals thereon, pilgrimage to said most holiest place and performing service and worship thereon is integral part of Hinduism guaranteed under Articles 25 and 26 of the Constitution of India deprivation wherefrom would amount to infringement of Fundamental right of freedom of religion of the Hindus and extinction of sacred place of Hiindus which is easiest means of ultimate end of salvation for the Hindus. Relevent paragraph 39-41 of the said judgment reads as follows:

> 39. Whilst we are dealing with this broad and comprehensive aspect of Hindu religion, it may be permissible to enquire what, according to this religion, is the ultimate goal of humanity? It is the release and freedom from the unceasing cycle of

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births and rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual soul with the infinite. What are the means to attain this end? On this vital issue, there is great divergence of views; some emphasise the importance of Gyan or knowledge, while others extol the virtues of Bhakti or devotion; and yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and mind inspired by true knowledge. In this sphere again, there is diversity of opinion, though all are agreed about the ultimate goal. Therefore, it would be inappropriate to apply the traditional tests in determining the extent of the jurisdiction of Hindu religion. It can be safely described as a way of life based on certain basic concepts to which we have already referred.

40. Tilak faced this complex and difficult problem of defining door or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak: "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse; and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion(11-A)". This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: "When we pass from the plane of social practice to the plane of intellectual outlook. Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary (12)*"

(11-A)

B. G. Tilak's Gitarahasaya".

* (12) "The Present day experiment in Western Civilisation" by Toynbee, page 46-49.

41. The Constitution-makers were fully conscious of

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> this broad and comprehensive character of Hindu religion; and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Art. 25 has made it clear that in sub-clause (b) of clause. (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

*5.* In AIR 1996 SUPREME COURT 1765 = (1996) 9 SCC 548 "A. S. Narayana Deekshitulu v. State of A.P." the Hon'be Supreme Court held that a religion undoubtedly has its basis in a system of belief and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being; and religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. 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. Relying on said judgment it is submitted that performing customary rituals and service worship at Sri Ramajanamasthan is integral part of Hindus religious practices but offering prayer on that sacred place is not integral part of Islam. Relevant paragraph 89-91 of the said judgment reads as follows:

> "89. A religion undoubtedly has its basis in a system

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of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Religion, therefore, be construed in the context of Articles 25 and 26 in its strict and etymological sense. Every religion must believe in a conscience and ethical and moral precepts. Therefore, whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men believing in that theistic, conscience or religious belief that alone can constitute religion as understood in the Constitution which fosters feeling of brotherhood, amenity, fraternity and equality of all persons which find their foot-hold in secular aspect of the Constitution. Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion of matters or religion or religious belief or practice.

90. 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 denominates 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 pre-dominant in the matter of religion; to others, rituals or ceremonies may be

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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. That is far from saying that it is not possible to State with reasonable certainty the limits within which the Constitution conferred a right to profess religion. Therefore, the right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity - economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts 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.

93. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community-life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular, are intricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of ancient Samriti, human actions from birth to death and most of the individual actions from day to day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary

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and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One, hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a social engineering and an instrument of social change evolved by a gradual and continuous process. As Banjamin Cardozo has put it in his "Judicial Process," life is not a logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination shall be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentially is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person

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> performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. Whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question?

*6.* In AIR 1996 SUPREME COURT 1765 = (1996) 9 SCC 548 "A. S. Narayana Deekshitulu v. State of A.P." the Hon'be Supreme Court distinguished between Dharma and religion stating that that the Hindu Dharma is eternal and since time immemorial. Relying on said judgment it is submitted that as the Lord of Sri Ram any protector of Dharma and has shown path of Dharma to the mankind, His Place of Birth has special significance for the Hindus and it is not only part of religious practices but the epicenter of the Hindu Dharma. Relevant paragraph nos. 143 to 148 of the said judgment read as follows:

> " 143. Very often the words "religion" and the same concept or notion; to put it differently, they are used inter-changeably. This, however, is not so, as would become apparent from what is being stated later, regarding our concept of dharma. I am of the considered view that the word religion in the two articles has really been used, not as colloquially understood by the word religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two articles. it is a different matter that the word dharma has now been accepted even in English language, as would appear from Webster's New Collegiate

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Dictionary which has defined it to mean : Dharma : n (Skt. fr. dharayati he holds:) akin to L firmus firm : custom or law regarded as duty : he basic principles of cosmic or individual existence : nature : conformity to one's duty and nature". The Oxford Dictionary to one's duty and nature",. The Oxford Dictionary defines dharma as : "Right behaviour, virtue; the law (Skt. a decree, custom)".

144. The difference between religion and dharma is eloquently manifested when it is remembered that this Court's precept is
It is apparent that the word dharma in this canon or, for that matter, in our saying :
,does not mean religion, but the same has been used in the sense defined in the sense defined in the aforesaid two dictionaries. This is how the President of India, Dr. Shanker Dayal Sharma, understood the word dharma in his address at the First Convocation of the National Law School of India University delivered on 25th September, 1993 at Bangalore.

145. Our dharma is said to be `Sanatana' i. e. one which has eternal values: one which is neither time-bound nor space-bound. It is because of this that Rig veda has referred to the existence `Sanatan Dharmani'. The concept of `dharma', therefore, has been with us for time immemorial. The word is derived from the root`Dh. r' - which denotes : `upholding', supporting', nourishing' and sustaining', It is because of this that in Karna Parva of the Mahabharata, Verse- 58 in Chapter 69 says :
"Dharma is for the stability of the society, the maintenance of social order and the general well-being and progress of human king. Whatever conduces to the fulfillment of these object is Dharma; that is definite."
(This is the English translation of the Verse) as finding place in the aforesaid Convocation Address by Dr. Shanker Dayal Sharma.)

146. The Brhadaranyakopanisad identified Dharma with Truth, and declared its supreme status thus :
" There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the King. So what is called Dharma is really Truth. Therefore people say

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> about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this."
> (English translation of the original text as given in the aforesaid convocation address).
>
> 147. The essential aspect of our ancient thought concerning law was the clear recognition of the supremacy of dharma and the clear articulation of the status of `dharma', which is somewhat akin to the modern concept of the rule of law. i. e. of all being sustained and regulated by it.
>
> 148. In Verse- 9 of Chapter-5 in the Ashrama Vasika Parva of the Mahabharata, dhritrashtra states to Yudhisthira : "the State can only be preserved by dharma- under the rule of law."

7. AIR 1982 SUPREME COURT 1107 "K. Rajendran v. State of T.N." the Hon'ble Supreme Court has quoted the statement of the Lord of Universe Sri Rama from the Ramayana depicting the attitude of an Indian ruler as an authority. From said judgments it becomes crystal clear that even a statement of the Lord of Sri Rama has greatest value for the Hindus as such the religious value of His Birth place is beyond description. Relevant paragraph 49 of the said judgment reads as follows:

> "49. The nature of the relationship that exists or ought to exist between the Government and the people in India is different from the relationship between the ruler and his subjects in the West. A study of the history of the fight for liberty that has been going on in the West shows that it has been a continuous agitation of the subjects for more and more freedom from a king or the ruler who had once acquired complete control over the destinies of his subjects. The Indian tradition or history is entirely different. The attitude of an Indian ruler is depicted

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in the statement of Sri Rama in the Ramayana thus :

…….. (Ramayana III-10-3)
(Kshatriyas (the kings) bear the bow (wield the power) in order to see that there is no cry of distress (from any quarter)).”

*8.* AIR 1998 SUPREME COURT 3164 = (1998) 7 SCC 392 "State of Gujarat v. Hon'ble High Court of Gujarat" the Hon’ble Supreme court has observed that the world would have been poorer without the great epic "Ramayana". From the said judgment it becomes clear that each and every thing connected with the Lord of Universe is of great value to the Hindus and extinction of the most holiest shrine *Sri Ramajanamsthan* will deprive the Hindus from acquiring un-parallel merit and salvation which can be obtained only by visiting the said sacred shrine and performing customary ritual there. Relevant paragraph 31 of the said judgment reads as follows:

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> “31. It is a grand transformation recorded in the epics that the hunter Valmiki turned out to be a poet of eternal recognition. If the powers which brought about that transformation had remained inactive the world would have been poorer without the great epic **"**Ramayana**".** History is replete with instances of bad persons transforming into men of great usefulness to humanity. The causes which would have influenced such swing may be of various kinds. Forces which condemn a prisoner and consign him to the cell as a case of irredeemable character belong to the pessimistic society which lacks the vision to see the innate good in man.”

*9.* In AIR 1954 SUPREME COURT 282 "Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha

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Swamiar of Shirur Mutt" the Hon'ble Supreme court held that a religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it will not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress. The guarantee under the Constitution of India not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Art. 25. Relying on said judgment it is submitted that performing customary rites at Sri Ramajanamasthan is integral part of religions practices of the Hindus as Hindus believe that therein there is invisible power of the Lord of Universe Sri Ram who confers merit on devotees and gives them salvation as such said practice is integral part of Hindu Dharma & Religion and is protected under Article 25 & 26 of the constitution of India. Relevant paragraph nos. 17, 18 and 19 of the said judgment read as follows:

> "17. It will be seen that besides the right to manage its own affairs in matters of religion which is given

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by cl. (b), the next two clauses of Art. 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no Legislature can take away, where as the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which cl. (b) of the Article applies.

What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case --- -'Vide Davis v. Beason', (1888) 133 US 333 at p. 342 (G), it has been said :

"that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with 'cultus' of form or worship of a particular sect, but is distinguishable from the latter."

We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Art 44(2), Constitution of Eire and we have great doubt whether a definition of 'religion' as given above could have been in the minds of our Constitution-makers when they framed the Constitution.

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in ay Intelligent First Cause. A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conductive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and

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these forms and observances might extend even to matters of food and dress.

18. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion' in Art. 25. Latham, C. J. of the High Court of Australia while dealing with the provision of S. 116, Australian Constitution which 'inter alia' forbids the Commonwealth to prohibit the 'free exercise of any religion' made the following weighty observations ---- 'Vide Adelaide Company v. The Commonwealth', 67 CLR 116 at p. 127 (H) :

"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil government should not, interfere with religious 'opinions', it nevertheless may deal as it pleases with any 'acts' which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of S. 116. The Section refers in express terms to the 'exercise' of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the Section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion".

These observations apply fully to the protection of religion as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under Arts. 25 and 26 on grounds of public order, morality and health. Clause (2) (a) of Art. 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-cl. (b).under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices. The learned Attorney-General lays stress upon cl (2) (a) of the Article and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation.

19. The contention formulated in such broad terms

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> cannot, we think be supported, in the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art. 26(b). …"

*10.* In AIR 1954 SUPREME COURT 282 "Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt" the Hon'ble Supreme court held that Under Art. 26(b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters and ; under Art. 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration

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from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under cl. (d) of Art. 26. Relying on said ratio of law it is submitted that prohibiting the Hindus from performing their customary religious rituals at Sri Ramajanamasthan which has been described as Babari Mosque and not handing over management of the said sacred shrine of the Hindus shall infringe fundamental rights of the Hindus guaranteed under Articles 25 and 26 of the constitution of India. Relevant paragraph 22 of the said judgment reads as follows:

> " 22. It is to be noted that both in the American as well as in the Australian Constitution the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection, An adjustment of the competing demands of the interests of Government and constitutional liberties is always a delicate and difficult task and that is why we find difference of judicial opinion to such an extent in cases decided by the American courts where questions of religious freedom were involved.
> Our Constitution-makers, however, have embodie the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Arts. 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only, it extends to religious practices as well subject to the restrictions which the Constitution itself had laid down. Under Art. 26(b), therefore a religious denomination or organization

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> enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.
>
> Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature, for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Art. 26 (d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law, and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose.
>
> A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under cl. (d) of Art 26."

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*11.* AIR 2004 SUPREME COURT 2984 = (2004) 12 SCC 770 "Commr. of Police v. Acharya Jagadishwarananda Avadhuta"

It is settled law that protection under Articles 25 and 26 of the Constitution of India extend guarantee for rituals and observances, ceremonies and modes of worship which form part and parcel of religion. Practice becomes part of religion only if such practice is found to be essential and integral part. It is only those practices which are integral part of religion that are protected. What would constitute an essential part of religion or religious practice is to be determined with reference to the Doctrine of a particular religion which

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includes practices which are regarded by the Community as part and parcel of that religion. Test has to be applied by Courts whether a particular religious practice is regarded by the community practicing that particular practice is integral part of the religion or not. It is also necessary to decide whether the particular practice is religious in character or not and whether the same can be regarded as an integral or essential part of religion which has to be decided based on evidence. Many symbols have been used in Hindu Literature. Different kinds of symbols and images have different sanctity. Brading of chest, arms and other parts of body represent to the weapons of symbols of Siva. Relying on said judgment it is submitted that being Shartric (Scriptural) command visiting Sri Ramajanamasthan and performing service worship there is integral part of religion of Hindus but it is not integral part of Muslim religion as such instant suit is liable to be dismissed. Relevant paragraph nos. 80 to 86 read as follows:

> "80. It would be pertinent to mention that the Sikh Community carry "Kirpans" as a symbol of their religious practice and the Gurkhas the "Kukris" or "Dagger". So also, the Hindus are permitted to carry the idol of "Ganesa" in procession before immersion in the sea during Vinayaka Chaturti Celebrations. Persons professing Islamic Faith are allowed to take out procession during "Moharrum" Festival and persons participating in such processions beat their chest with hands and chains and inflict injuries on them and the same has been permitted as a religious practice of that community.

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81. Each deity presides over a certain function, has a certain consort, uses a particular vehicle, giving them a concrete aspect that appeals to less spiritually sophisticated lay people. All these insignia have a deep philosophical symbolism. What might interest us presently is that all these vehicles are mostly drawn from the world of animals, birds, and even reptiles. For example, Brahma has a swan, Vishnu has a garuda, a type of eagle, Siva rides a bull, Ganesa a mouse, Subrahmanya a peacock, and so on. The idea is only to emphasize the kinship with animals. Trees have the divinity Vanadevata. War is presided over by the Goddess Chemundi riding a lion. Sound has a divinity, the Nadabrahmam. The Goddess Saraswathi presides over music and arts. Lakshmi sitting on a lotus deals with wealth. Parvathi, the consort of Siva, rules the entire Nature. All these divinities serve to consecrate every aspect of daily life. The whole pantheon serves to emphasize the one ultimate Reality.

82. Reading and reciting old scriptures, for instance, Ramayana or Quran or Bible or Gurur Granth Sahib is as much a part of religion as offering food to deity by a Hindu or bathing the idol or dressing him and going to a temple, mosque, church or gurudwara. . . .

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83. The authorities concerned can step in and take preventive measures in the interest of maintenance of Law and Order if such religious processions disturb Law and Order. It has to be held that the right to carry Trishul, Conch or Skull is an integral and essential part of religious practice and the same is protected under Article 25 of the Constitution of India. However, the same is subject to the right of the State to interfere with the said practice of carrying Trishul, Conch or Skull if such procession creates Law and Order problems requiring intervention of concerned authorities who are entrusted with the duty of maintaining Law and Order.

What is Religion

84. Religion is a social system in the name of God laying down the Code of Conduct for the people in Society. Religion is a way of life in India and it is an unending discovery into unknown world. People living in Society have to follow some sort of religion. It is a social Institution and Society accepts

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religion in a form which it can easily practice. George Barnard Shaw stated, "There is nothing that people do not believe if only it be presented to them as Science and nothing they will not disbelieve if it is presented to them as Religion." Essentially, Religion is based on "Faith". Some critics say that Religion interfered with Science and Faith. They say that religion led to the growth of blind faith, magic, sorcery, human sacrifices etc. No doubt, history of religion shows some indications in this direction but both Science and Religion believe in faith. Faith in Religion influences the temperament and attitude of the thinker. Ancient civilization viz., the Indus Valley Civilization shows faith of people in Siva and Sakthi. The period of Indus Valley Civilization was fundamental religion and was as old as at least Egyptian and Mesopotamian Culture. People worship Siva and the Trishul (Trident), the emblem of Siva which was engraved on several seals. People also worshipped stones, trees, animals and Fire. Besides, worship of stones, trees, animals etc. by the primitive religious tribes shows that animism viz., worship of trees, stones, animals was practiced on the strong belief that they were abodes of spirits, good or evil. Modern Hinduism is to some extent includes Indus Valley Civilization Culture and religious faith. Lord Siva is worshipped in the form of Linga. Many symbols have been used in Hindu Literature. Different kinds of symbols and images have different sanctity. Brading of chest, arms and other parts of body represent to the weapons of symbols of Siva. Modern Hinduism has adopted and assimilated various religious beliefs of primitive tribes and people. The process of worship has undergone various changes from time to time.

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85. The expression of 'RELIGION' has not been defined in the Constitution and it is incapable of specific and precise definition. Article 25 of the Constitution of India guarantees to every person, freedom of conscience and right freely to profess, practice and propagate religion. No doubt, this right is subject to public order related to health and morality and other provisions relating to Fundamental Right. Religion includes worship, faith and extends to even rituals. Belief in religion is belief of practice a particular faith, to preach and to profess it. Mode of worship is integral part of

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religion. Forms and observances of religion may extend to matters of Food and Dress. An act done in furtherance to religion is protected. A person believing in a particular religion has to express his brief in such acts which he thinks proper and to propagate his religion. It is settled law that protection under Articles 25 and 26 of the Constitution of India extend guarantee for rituals and rituals and observances, ceremonies and modes of worship which form part and parcel of religion. Practice becomes part of religion only if such practice is found to be essential and integral part. It is only those practices which are integral part of religion that are protected. What would constitute an essential part of religion or religious practice is to be determined with reference to the Doctrine of a particular religion which includes practices which are regarded by the Community as part and parcel of that religion. Test has to be applied by Courts whether a particular religious practice is regarded by the community practising that particular practice is integral part of the religion or not. It is also necessary to decide whether the particular practice is religious in character or not and whether the same can be regarded as an integral or essential part of religion which has to be decided based on evidence.

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86. It is not uncommon to find that those delve deep into scriptures to ascertain the character and status of a particular practice. It has been authoritatively laid down that Cow Sacrifice is not an obligatory over-act for a Muslim to exhibit his religious belief. No Fundamental Right can be claimed to insist on slaughter of a healthy cow on a Bakrid Day. Performance of "Shradha" and offering of "Pinda" to ancestors are held to be an integral part of Hindu Religion and religious practice. Carrying "Trishul" or "Trident" and "skull" by a few in procession to be taken out by a particular community following a particular religion is by itself an integral part of religion. When persons following a particular religion carry Trishul, Conch or Skull in a possession, they merely practice which is part of their religion which they wanted to propagate by carrying symbols of their religions such as Trishul, Conch etc. If the conscience of a particular community has treated a particular practice as an integral or essential part of religion, the same is

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protected by Articles 25 and 26 of the Constitution of India.”

*12.* In AIR 1969 SUPREME COURT 563 "Kamaraju Venkata Krishna Rao v. Sub-Collector, Ongole" the Hon’ble Supreme court held that the entire objects of Hindu endowments will be found included within the enumeration of *Ishta* and *Purta* works. In the Rig Veda I*shtapurttam* (sacrifices and charities) are described as means of the going to heaven. In commenting on the same passage Sayana explained *Ishtapurtta* to denote "the gifts bestowed in *Srauta* and *Smarta* rites." In the Taittiriya Aranyaka, *Ishtapurtta* occur in much the same sense and Sayana in commenting on the same explains *Ishta* to denote "*Vedic* rites like Darsa, Purnamasa etc." and *Purta* "to denote *Smarta* works like tanks, wells etc." From the aforesaid judgment it is crystal clear that service worship of the Deities comes within the definition of *Ishta* as such depriving Hindus to worship at Sri Ramjanamsthan on Sthandil would amount to depriving them from the result of *Ishta* i.e. ultimate goal of salvation at the cost of less expenditure and less efforts. In view of such religious belief of the Hindus the Suit primises is not fit for being declared as mosque it is respectfully submitted.Relevant extract from para 6 of the said judgement reads as follows:

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> “6. … …. "From very ancient times the sacred writing of the Hindus divided works productive of religious merit into two divisions named ishta and purta a classification which has come down to our times. So much so that the entire objects of Hindu endowments will be found included within the enumeration of ishta and purta works. In the Rig Veda ishtapurttam (sacrifices and charities) are described as means of the going to heaven. In commenting on the same passage Sayana explained ishtapurtta to denote "the gifts bestowed in srauta and amarka rites." In the Taittiriya Aranyaka, ishtapurtta occur in much the same sense and Sayana in commenting on the same explains ishta to denote "Vedic rites like Darsa, Purnamasa etc." and purta "to denote Smarkta works like tanks, wells etc." … “

*13.* IN AIR 1995 SUPREME COURT 1531 = (1995) 3 SCC 635 "Sarla Mudgal, President, Kalyani v. Union of India" the Hon’ble Supreme Court held that religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience ensured inner aspects of religious belief. And external expression of it were protected by guaranteeing right to freely practice and propagate religion. Relying on said judgment it is submitted that as the Suit premises is the Birth Place of the Lord of Universe Sri Rama and his invisible power is present in the said Sthandil the Hindus have superior fundamental right to worship at that sacred place according to injunctions of their Sacred Scriptures in comparison to the fundamental right of the Muslims to offer their prayer at that place which in not integral part of Muslim religion. Relevant paragraph 43 of the said judgment reads as follows:

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> "43. When Constitution was framed with secularism as its deal and goal, the consensus and conviction to be one, socially, found its expression in Article 44 of the Constitution. But religious freedom, the basic foundation of secularism, was guaranteed by Articles 25 to 28 of the Constitution. Article 25 is very widely worded. It guarantees all persons, not only freedom of conscience but the right to profess, practice and propagate religion. What is religion? Any faith or belief. The Court has expanded religious liberty in its various phases guaranteed by the Constitution and extended it to practices and even external overt acts of the individual. Religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience ensured inner aspects of religious belief. And external expression of it were protected by guaranteeing right to freely practice and propagate religion. Reading and reciting holy scriptures, for instance, Ramayana or Quran or Bible or Guru Granth Sahib is as much a part of religion as offering food to deity by a Hindu or bathing the idol or dressing him and going to a temple, mosque, church or gurudwara."

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*14.* In AIR 1962 SUPREME COURT 853 "Sardar Syedna Taher Saifuddin Saheb v. State of Bombay" held that the protection of Articles 25 and 26 of the Constitution of India is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion as also that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and practices which are regarded by the community as a part of its religion.

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> "34. The content of Arts. 25 and 26 of the Constitution came up for consideration before this Court in 1954 SCR 1005 : (AIR 1954 S.C. 282), Ramanuj Das v. State of Orissa 1954 SCR 1046 : (AIR 1954 SC 400), 1958 SCR 895 : (AIR 1958 S.C. 255); (Civil Appeal No. 272 of 1960 D/- 17-3-1961 : (AIR 1961 SC 1402), and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what consitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

*15.* In **Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498, the Hon'ble Supreme Court held that the** Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Relying on said judgement it is most respectfully and humbly submitted that this Hon'ble Court would be pleased to dismiss the instant Suit and to protect the integral part of religious and customary practices of the Hindus i.e. their right to offer service and worship to the Lord of Universe Sri Ramlala's Idol & *Sthandil* at Sri Ramajanamasthan which has been described as Babari Mosque in the plaint otherwise the superior fundamental right of the Hindus shall be infringed and they shall suffer with irreparable loss and injury which cannot be compensated in any

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manner whatsoever and justice shall suffer adversely. Relevant paragraph 26 and 27 of the said judgment read as follows:

> **26.** Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and 26 is available to the people professing Hindu religion subject to the law therein. The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act.
>
> **27.** The question then is whether legislative declaration of the need for maintenance, administration and governance of all charitable and Hindu religious institutions or endowments or specific endowments and taking over the same and vesting the management in a trustee or board of trustees is valid in law. It is true, as rightly contended by Shri P.P. Rao, that the legislature acting on the material collected by Justice Challa Kondaiah Commission amended and repealed the predecessor Act of 1966 and brought the Act on statute. Section 17 of the predecessor Act of 1966 had given power to a hereditary trustee to be the chairman of the board of non-hereditary trustees. Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfilment of the objective with which it was founded unless, in due course, foul in its

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> management is proved. Therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feelings to actively participate, not only as a true representative of the source, but the same would also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tenets, customs and sampradayams of the founder of the charitable or religious institution or endowment or specific endowment. Mere membership along with others, many a times, may diminish the personality of the member of the family. Even in case some funds are needed for repairs, improvement, expansion etc., the board headed by the founder or his family member may raise funds from the public to do the needful, while the executive officer, being a government servant, would be handicapped or in some cases may not even show interest or inclination in that behalf. With a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective. The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institution or endowments or specific endowment thereof in future. It would add incentive to establish similar institutions.

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Thus, in view of my findings on issues, referred to above, plaintiffs are not entitled for the relief claimed and the suit is liable to be dismissed, but defendants have failed to point out the circumstances under which they are entitled for special costs.

**Order**

The suit is dismissed but the parties shall bear their own costs.

Tripathi/Tanveer
Akhilesh/Raghvendra

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***Reserved***

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD,**
**LUCKNOW BENCH, LUCKNOW**
**O.O.S NO. 5 OF 1989**

**(R.S.NO. 236/1989**

1. Bhagwan Sri Rama Virajman at Sri Rama Janma Bhumi, Ayodhya, also called Bhagwan Sri Rama Lala Virajman, represented by next friend, Sri Deoki Nandan Agrawal Senior Advocate/ Retired High Court Judge,56 Dilkusha, Allahabad is no more and in his place Sri Triloki Nath Pandey S/o Askrut Pandey, Karsewakpuram, Ayodhya, Distt. Faizabad is substituted as next friend of plaintiff nos.1 and 2.

2. Asthan Sri Rama Janma Bhumi, Ayodhya, represented by next friend, Sri Deoki Nandan Agrawal Senior Advocate/ Retired High Court Judge,56 Dilkusha, Allahabad is no more and in his place Sri Triloki Nath Pandey aged about 65 years S/o Askrut Pandey, Karsewakpuram, Ayodhya, Distt. Faizabad.

3. Sri Deoki Nandan Agrawal Senior Advocate/ Retired High Court Judge,56 Dilkusha, Allahabad is no more and in his place Sri Triloki Nath Pandey aged about 65 years S/o Askrut Pandey, Karsewakpuram, Ayodhya, Distt. Faizabad.

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.....Plaintiffs

Versus

1. Sri Rajendra Singh, adult, son of Late Sri Gopal Singh Visharad, at present residing at Gonda, care of the State Bank of India, Gonda Branch Gonda.

2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya. (Dead)

2/1. Mahant Suresh Das aged about 55 years, Chela late Mahant Ram Chandra Das of Digambar Akhara, Ayodhya.

3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya, through its present Mahant Jagannath Das, aged about 54, years, Chela of Vaishnav Das Nirmohi resident of Mohalla Ram Ghat Nirmohi Bazar Pargana Haveli Awadh, Ayodhya, District Faizabad—Substituted by court dated 1.9.95.

4. Sunni Central Board of Waqfs, U.P. having its office at Moti Lal Bose Road, Lucknow.

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5. Sri Mohammad Hashim, Adult, son of Sri Karim Bux, resident of Mohalla Sutahti, Ayodhya

6. Sri Mohammad Ahmad, Adult son of Sri Ghulam Hasan, resident of Mohalla Rakabganj, Faizabad.

7. State of Uttar Pradesh, through the Secretary, Home Department, Civil Secretariat, Lucknow.

8. The Collector & District Magistrate, Faizabad.

9. The City Magistrate, Faizabad.

10. The Senior Superintendent of Police, Faizabad.

11. The President, All India Hindu Mahasabha, New Delhi.

12. The President, All India Arya Samaj, Dewan Hall, Delhi.

13. The President, All India Sanatan Dharma Sabha Delhi.

14. Sri Dharam Das Adult, Chela Baba Abhiram Das, Resident of Hanuman Garhi, Ayodhya.

15. Sri Pundarik Misra, Adult son of Sri Raj Narain Misra, resident of Baham pur Sarai, Rakabganj, Faizabad.

16. Sri Ram Dayal Saran Adult, Chela Ram Lakhan Saran, resident of Ramcharit Manas Bhavan, Mohalla Ramkot, Ayodhya.

17. Sri Ramesh Chandra Tripathi Adult, son of Sri PARASH Ram Tripathi, resident of Village Bhagwan Patti, Pargana Minjhaura, Tehsil Akbarpur, District Faizabad.
**Parties mentioned at serial Nos. 18 and 19 have been deleted vide order dated 20.09.1989.**

20. Sri Umesh Chandra Pandey, Adult, son of Sri Uma Shankar Pandey, Advocate, resident of Ranopali, Ayodhya.

21. Sri Rama Janma Bhumi Nyas, a Trust, having its office at Sankat Mochan Ashram, Sri Hanuman Mandir, Rama Krishan Puram, Sector VI, New Delhi, through Sri Ashok Singhal, Managing Trustee.

22. Shia Central Board of Waqfs, U.P. Lucknow.
**Party mentioned at serial No. 23 has been deleted vide order dated 27.01.1992.**

24. Prince Anjum Quder, Prestrict, All India Shia Conference, Qaomi Ghar, Nadan Mahal Road, Lucknow.

25. All India Shia Conference, through Sri S. Mohammad Hasnain Abidi, Honorary General Secretary, Qaomi

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Ghar, Nadan Mahal Road, Lucknow.

26. Hafiz Mohd. Siddiqui, aged about 46 years son of late Haji Mohd. Ibrahim, resident of Lalbagh Moradabad, General Secretary, Jamaitul Ulema Hind U.P. Jamait Building B.N. Verma Road, Kutchery Road, Lucknow—**Amended vide order dated 15.4.92 r/w order dated 21.4.92**

27. Vakeeluddin aged about 55 years, son of Ismail, resident of Madarpur Pergna and Tehsil Tanda District Faizabad.

.....Defendants

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***Judgment delivered by***
***Hon'ble Dharam Veer Sharma, J.***

This suit was initially filed by Bhagwan Sri Ram Virajman at Sri Ram Janma Bhumi, Ayodhya also called Bhagwan Sri Rama Lala Virajman represented by the then next friend, Sri Deoki Nandan Agarwala, Asthan Sri Ram Janma Bhumi, Ayodhya represented by next friend Sri D. N. Agarwal and Sri Deoki Nandan Agarwala for a declaration that the entire premises of Sri Ram Janma Bhumi at Ayodhya as described and delineated in Annexures 1 and 2 belong to the plaintiff's deities and for a perpetual injunction against the defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of the new temple building at Sri Ram Janma Bhumi after demolishing and removing the existing buildings and structures etc. situate there at, in so far as it may be necessary or expedient to do so for the said purpose. After the death of Sri Deoki Nandan Agarwal, Sri T. P. Verma was substituted as next friend and after his removal Sri Triloki Nath Pandey has been substituted as next friend of plaintiffs no.1 and 2 and defendant no.3 in place of Sri T.P. Verma.

According to the plaint allegations the plaintiffs no. 1 and 2

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,namely, Bhagwan Sri Ram Virajman at Sri Ram Janma Bhumi, Ayodhya also called Sri Ram Lala Virajman, and the Asthan Sri Rama Janama Bhumi, Ayodhya, with the other idols and places of worship situate thereat, are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place. The plaintiff no.3 is a Vaishnava Hindu, and seeks to represent the Deity and the Asthan as a next friend.

The place Sri Rama Janma Bhumi is too well known at Ayodhya need not any description for purposes of identification of the subject matter of dispute in this plaint. Two site plans of the building premises and of the adjacent area known as Sri Rama Janma Bhumi, prepared by Sri Shiv Shankar Lal pleader in the discharge of his duty as a commissioner appointed by the Court of Civil Judge, Faizabad, in Suit No.2 of 1950: Sri Gopal Singh Visharad Versus Sri Zahur Ahmad and Others; along with his report dated 25.5.1950, are being annexed to the plaint and made part of it as Annexures I and II respectively. The Suit No.2 of 1950 was filed on 16.1.1950, by Sri Gopal Singh Visharad against Zahoor Ahmad and other persons. The plaintiff of that suit died recently and his name has been substituted by his son, who has been impleaded as plaintiff No.1/1 in this suit. The five defendants of the suit are dead and their names struck off under the order of this Court. Therefore, they have not been impleaded as defendants no. 7 to 10 respectively in this suit also. In the above suit relief claimed was for a declaration that the plaintiff was entitled to perform the Puja and to have Darshan of Bhagwan Ram Chandra and others Virajman at Asthan Janma Bhumi without any hindrance, dispute or interruption and the permanent injunction restraining the defendant and their successors from ever removing the idols of Sri Bhagwan Ram Chandra and others Virajman at Asthan Janma Bhumi from the place where

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they were, or closing the entrance gate or other passages of ingress and egress, and from interfering or disturbing the Puja or Darshan in any manner whatsoever, was also claimed.

Suit No.25 of 1950, was filed a few months later, by Paramhans Ramchandra Das. This suit has been withdrawn by the plaintiff and the third suit being suit no.26 of 1959 was thereafter filed in the Court of Civil Judge, Faizabad by the Nirmohi Akhara, Ayodhya, who has been impleaded as defendant no.3 in this suit, claiming the relief of removal of Babu Priya Dutt Ram, defendant no.1 thereto from the management and charge of the temple of Janma Bhumi with the idol of Lord Ram Chandra and others installed therein. Babu Priya Dutt was appointed as a Receiver in the year 1950 by the City Magistrate, Faizabad in a proceeding under Section 145 of the Cr.P.C. 1898. The defendants No. 2 to 5 of this suit are defendants no. 7 to 10 of this suit. The other defendants have died and their legal representatives have not been brought on the record obviously because the cause of action did not survive against them.

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Suit no. 12 of 1961 was thereafter filed by the Sunni Central Board of Waqfs, U.P., and 8 other on 18.12.1961 in the Court of the Civil Judge, Faizabad. The reliefs claimed were (a) A declaration that the property indicated by the letters A B C D in the sketch map annexed to the plaint is a “public mosque commonly known as 'Babri Masjid', and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim “graveyard”, and (b) “for delivery of possession of the mosque and graveyard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship”. The Sunni Central Board of Waqfs, U.P. is being impleaded as Defendant No.4 in this suit

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and of the remaining plaintiffs of that suit, the only surviving plaintiffs No. 7 and 9 are being impleaded as Defendants No. 5 and 6 hereto. Of the defendants to that suit, the legal representatives of defendants no. 1, 13 and 15, who have been impleaded therein, are being impleaded as Defendants no.1, 14 and 16 respectively in this suit. The surviving defendants no. 2,3, 5, 6, 7, 8, 10, 11, 12, 14, 17, 18 and 19 of that suit, are being impleaded as defendants no. 2, 3, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18 and 19 respectively herein. Remaining defendants no.4 and 16 have died and have been left out.

It has further been averred in the plaint that the order dated 8.8.1962 of the Court of the Civil Judge, Faizabad, in Suit No.12 of 1961, the plaintiffs thereof were permitted to sue, on behalf of the entire Muslim community, the defendants no.1 to 4 therein as representatives of, and for the benefit of the entire Hindu community. Of them, defendant no.4 has since died. Defendants no. 10 to 19 were impleaded therein later, on their own request of themselves. Defendant no.16 has since died, their legal representatives have not been impleaded in that suit. They have, therefore, been left out in this suit. By an order dated 4.8.1951, suits no. 2 and 25 of 1950 were consolidated together and by an order dated 6.1.1964 all the suits were consolidated and Suit No.12 of 1961 was made the leading case. In suit no.2 of 1950 an ad-interim injunction was issued on 16.1.1950 in the terms prayed for but on an application made by the Defendant District Magistrate, the ad-interim injunction was modified on 19.1.1950 to read as under:

> *“The parties are hereby restrained by means of temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with Puja etc. as at present carried on.”*

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This order was confirmed by order dated 3.3.1951 in the following terms:-

> *" the interim injunction order dated 16.1.50 as modified on 19.1.50 shall remain in force until the suit is disposed of."*

A first appeal from that order, being F.A.F.O No. 154 of 1951, in the High Court at Allahabad, was dismissed by judgment dated 26.4.1955. The Interim injunction continues to remain in force, ever since down to the present day. The plaintiffs went on to aver that more than 25 years ago issues were framed but hearing has not yet commenced. The Sewa and Puja of the plaintiff Deities has in the meanwhile been looked after by a Receiver, to begin with by Babu Priya Dutt Ram, appointed by the City Magistrate and later by Sri K.K. Ram Verma, who worked upto 1970 onwards. He was discharged by the Court of the IIIrd Additional District Judge, Faizabad, by order dated 25.8.1988. Sri L.P.N. Singh was appointed Receiver, who functioned upto 22.11.1988, when by an order of that date Sri Jamuna Prasad Singh was appointed as a Receiver. It was expected that the suits would be disposed of soon after consolidation of the above suits. But for one reason or another, they continued to remain pending, and still continue to remain pending, with a dim prospect of their immediate hearing. Defendant no.20 moved an application in the interest of worshippers, with the prayers for allowing a closer Darshan in the Court of the Munsif Sadar, Faizabad, who refused to pass orders but on appeal therefrom, the court of the District Judge, Faizabad by an order dated 1.2.1986 directed the authorities to remove the barrier by opening the locks on the gates O and P shown in the map.

The plaintiff deities and their devotees are extremely unhappy

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with the prolonged delay in the hearing and disposal of the said suits, and are not satisfied with the working of the Receiver. It is believed that a large portion of the money offered by the worshippers is being misappropriated by the Pujaries and other Temple staff, and the receiver has not controlled the same. The devotees of the plaintiff's deities are desirous of having a new temple constructed, befitting of their pristine glory, after removing the old structure at Sri Ram Janma Bhumi, Ayodhya.

In order to improve the temple administration and to reconstruct a new temple at Sri Ram Janma Bhumi, the sacred duty of managing and performing the Sewa, Archana and Puja of the plaintiff's deities and the task of protecting, renovating, reconstructing and developing the Temple premises, in short, of managing all their estate and all their affairs, was entrusted, by unanimous public opinion, to Jagadguru Ramanandacharya Swami Shivaramacharaya of Kashi, who was the head of the Ramananda Sampradaya to which most of the Sadhus and Vairagis of Ayodhya belong. The Trust was formally declared by the Hindu public by a deed of trust dated 18.12.1985 and registered the same day by Sub-Registrar, S.D.No.1, at Delhi vide No. 16510 in Additional Book No.4, Volume 1156, at pages 64 to 69. A copy of the said Deed of Trust is annexed to and made part of the plaint as Annexure III.

The said Trust Deed apart from declaring himself to be the First Trustee for life and the Pramukh and Dharmakarta of the Trust, which was named Sri Swami Shivaramacharya, and other persons were also made trustees, Sri Vishnu Hari Dalmia, named the Treasurer and Sri Ashok Singhal the Managing Trustee, the power was given to the Marga Darshak Mandal of the Vishva Hindu Parisahd to nominate 4

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Trustees who are Mahatmas from different parts of India, and to its Governing Council to nominate 10 Trustees from among eminent Hindu citizens of India, and in exercise of the said power four persons were appointed Trustees from among the Mahatmas and from among Hindu citizens of India. Sri justice Shiv Nath Katju, Retired Judge, High Court, Allahabad, Sri Justice Deoki Nandan Agarwala, Retired Judge of same Court, Allahabad, Rajmata Srimati Vijae Raje Scindhia of Gwalior, Sri Satish Chandra Dikshit, Retired Director General of Police, Uttar Pradesh, Lucknow and Sri Badri Prasad Toshniwal, Industrialist, New Delhi were made trustees. Further Jagadguru Ramanandacharya Swami Shivaramacharya of Kashi who was the Pramukh and Dharmakarta of the Nyas and Paramhans Mahant Ramchandra Dasji Maharaj of Digambar Akhara, Ayodhya are acting as a Pramukh and Dharmkarta of the Nyas. Sant Pravar Prabhu Duttji Brahamchari, of Sankirtan Bhawan Jhusi, died after the institution of the suit. Two vacancies among the trustees from among the Mahatmas have been filled up with Veetraag Sant Paramhans Pujya Swami Vamdeoji Maharaj and Mahant Dharma Dasji Maharaj were appointed trustees. From among the eminent Hindu citizens of India, four persons, namely, Moropant Pingle, Sri Brahma Deoji, Sri Surya Krishnaji and Sri Yashuvant Bhai Bhatt have been appointed trustees.

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It has further been averred that Sri Rama Janma Bhumi Nyas is directly interested in the Seva, Puja and other affairs of the plaintiff deities. It is being impleaded as defendant no.21 in this suit.

Although the aforesaid suits have been pending trial for such an extraordinarily long number of years, they are inadequate and cannot result in a settlement of the dispute which led to their institution or the problems arising there from, inasmuch as neither the

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presiding Deity of Bhagwan Sri Ram Virajman nor the Asthan Sri Rama Janma Bhumi, the plaintiffs no. 1 and 2 herein, who are both juridical persons, were impleaded therein, although they have a distinct personality of their own, separate from their worshippers and sewaks, and some of the actual parties thereto, who are worshippers, are to some extent involved in seeking to gratify their personal interests to be served by obtaining a control of the worship of the plaintiff deities. The events which have occurred during these four decades, and many material facts and points of law require to be pleaded from the view point of the Plaintiff deities, for a just determination of the dispute relating to Sri Ram Janma Bhumi, Ayodhya, and the land and buildings and other things appurtenant thereto. The plaintiffs have been accordingly advised to file a fresh suit of their own.

It is manifestly established by public records of unimpeachable authority that the premises in dispute is the place where Maryada Purushottam Sri Ramchandra Ji Maharaj was born as the son of Maharaja Dashrath of the solar Dynasty, which according to the tradition and the faith of the devotees of Bhagwan Sri Rama is the place where HE manifested HIMSELF in human form as an incarnation of BHAGWAN VISHNU. The place has since ever been called Sri Rama Janma Bhumi by all and sundry through the ages.

The place itself or the ASTHAN SRI RAMA JANAMA BHUMI as it has come to be known, has been an object of worship as a Deity by the devotees of BHAGWAN SRI RAMA, as it personafies the spirit of the Divine worshipped in the form of SRI RAM LALA or Lord RAMA the child. The Asthan was thus deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the idol of Bhagwan Sri Rama thereat. It has further

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been stated that Hindus do not worship the stone or the metal shaped into the form of their ISHTA DEVATA or the stone of SALIGRAM which has no particular shape at all. They worship the Divine, which has no quality or shape or form, but can be known only when it manifests ITSELF in the form of an incarnation, and therefore, adopt the form of his incarnation as their ISHTA DEVA. They can meditate upon the formless and the shapeless DIVINE which is worshipped by most Hindus, and not its material form or shape in an idol. This SPIRIT of the DIVINE in an idol is invoked by the ritual of pranapratishtha. The SPIRIT of the DIVINE is indestructible and ever remains present everywhere at all times for any one to invoke it in any shape or form in accordance with his own aspiration. Different persons are at different levels of realization of the REALITY. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow BHAKTI MARGA, and BHAGWAN SRI RAMA or BHAGWAN SRI KRISHNA is their ISHTA DEVA.

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According to the faith of the devotees of BHAGVAN SRI RAMA LALA, or Lord Rama the Child, it is the spirit of BHAGWAN SRI RAMA as the Divine Child which resides at Asthan Sri Rama Janma Bhumi and can be experienced by those who pray there and invoke that Spirit for their spiritual uplift. That Spirit is the Deity. An idol is not necessary for invoking the Divine Spirit. Another example of such a Deity is that of KEDARNATH. The temple of KEDARNATH has no idol in it. It is the undulating surface of stone which is worshipped there as the Deity. Still another example of such a Deity is the Vishnupad Temple at Gaya. Similarly at Ayodhya the very Asthan Sri Ram Janma Bhumi is worshipped as a Deity through such symbols of the Divine Spirit as the Charan and the Sita Rasoi. The place is a deity. It has

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existed in this immovable form through the ages, and has ever been juridical persons. The actual and continuous performance of Puja of such an immovable Deity by its devotees is not essential for its existence as a Deity. The deity continues to exist so long as the place exists, and being land, it is indestructible. Thus, Asthan Sri Rama Janma Bhumi is an indestructible and immovable Deity who has continued to exist throughout the ages.

According to the books of history and public records of unimpeachable authenticity, establish indisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya. That temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir Baqi, a commander of Baber's hordes. The material used was almost all of it taken from the Temple including its pillars which were wrought out of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. There was a great resistance by the Hindus and many battles were fought from time to time by them to prevent the completion of the mosque. To this day it has no minarets, and no place for storage of water for Vazoo. Many lives were lost in these battles. The last such battle occurred in 1855. Sri Rama Janma Bhumi, including the building raised during Baber's time by Mir Baqi, was in the possession and control of Hindus at that time. According to the 1928 Edition of the Faizabad Gazetteer published by the Government Press U.P. “Ayodhya is pre-eminently a city of temples. It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ayodhya and little else. These were the Janmasthan temple, the Swargaddwar and the Treta-ka-Thakur. The Janmasthan was in Ramkot and marked the birthplace of

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Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation, they are of close-grained black stone, called by the natives kasauti and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit, both are in persian and bear the date 935 Hijri and again according to the same Gazetteer. “This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On many occasions the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janmasthan in force and then making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made counter-attack and stormed the Janmasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyr's resting place. Several of the king's regiments were present, but their orders were not to interfere. It is further averred that Maulvi Amir Ali of Amethi in Lucknow organized a regular expedition with the object of destroying the Hanuman Garhi, but he and his forces were stopped in the Barabanki district. (Gazetteer of Barabanki, P. 168). It is said that upto this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised

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in the outer one."

The disputed structure could not be a mosque as it was raised by force of arms on land belonging to the plaintiff deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindus gods carved thereon. According to para 24 of the plaint some salient points in this regard have been mentioned.

(a) According to the Koran, ALLAH spoke to the Prophet thus:-

*"And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loved not transgressors. And kill them wherever you find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatory is more grievous than slaughter. Yet fight not against them in the holy temple, until they attack you therein"*

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*(b)* According to all the Muslim authorities and precedents and the decided cases also, ALLAH never accepts a dedication of property which does not belong to the Waqif that is, the person who purports to dedicate property to ALLAH for purposes recognized as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the temple after destroying it by force, Mir Baqi committed a highly un-Islamic act. His attempt to convert the Temple into a mosque did not, therefore, create a valid dedication of property to Allah, whether in fact or in law, and it never became a mosque.

(c) In respect of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and

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they never surrendered their possession over it. Their possession continued in fact and in law. The ASTHAN never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and SITA RASOI, and the idol of BHAGWAN SRI RAM LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the building except after passing through these places of Hindu worship. According to the Muslim religion and law there can be no idol worship within the courtyard of a mosque, and the massage to a mosque must be free and unobstructed and open at all times to the 'Faithful'. It can never be through Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of mosque. His possession must be exclusive.

(d) A mosque must be built in place of peace and quiet, but near to a place where there is a sizeable Muslim population according to the tenets of Islam, and as insisted upon by it, a mosque cannot be built in a place which is surrounded on all sides by Temples, where the sound of music or conch shells or Ghanta Ghariyals must always disturb the peace and quiet of the place.

(e) A mosque must have a minaret for calling the Azan.

(f) According to the claim laid by the Muslims in their Suit No. 12 of 1961, the building is surrounded on all sides by graveyard known as 'Ganj Shahidan'. The building could not be a mosque and could not be used as a mosque for the offering of

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prayers, except the funeral prayers on the death of a person buried therein.

(g) There is no arrangement for storage of water for Wazoo and there are the Kasauti pillars with the figures Hindu Gods and Goddesses.

It has further been averred by the plaintiffs that the worship of the plaintiff deities has continued since ever throughout the ages at Sri Rama Janma Bhumi. The place belongs to the Deities. No valid waqf was ever created or could have been created of the place or any part of it, in view of the title and possession of the plaintiff deities thereon. Neither ALLAH nor any person on his behalf had any possession over any part of the premises at any time whatsoever, not to speak of any adverse possession.

At any rate no prayers have ever been offered in the building at Sri Rama Janma Bhumi, which was recorded as Janmasthan Masjid, during the British times, and confined, after the annexation of Avadh through the area within the boundary wall raised by them adjacent to the arch openings, in the courtyard which is now enclosed by what may now be described as the outer boundary wall. The domes of the building and substantial parts of it were destroyed by the Hindus in the year 1934 during the communal riots which occurred by way of retaliation to cow slaughter by some Muslims at Ayodhya. Although the building was got rebuilt by the Government, no one dared to offer namaz therein. No action was taken by anyone for its use or management as a mosque. Neither of the two Boards of Waqfs in U.P., namely the Sunni Central Board of Waqfs and the Shia Central Board of Waqfs, created on the passing of the U.P. Muslim Waqfs Act in 1936, took any action or positive steps for the establishment of the building

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as a mosque. No one acted as Mutwalli or Khadim of the building as a mosque.

After independence from the British Rule, the Vairagis and the Sadhus and the Hindu public, dug up and levelled whatever graves had been left in the area surrounding Sri Rama Janma Bhumi Asthan and purified the place by Akhand Patha and japa by thousands of persons all over the area. Ultimately, on the night between the 22nd / 23rd December, 1949 the idol of Bhagwan Sri Rama was installed with the ceremony under the central dome of the building also. No resistance was offered by any Muslim to any of these acts, the local authorities found it difficult to get out of their old habits acquired under the British Rule, and a First Information Report was recorded by the Police on their own and proceedings were initiated by the Additional City Magistrate Under Section 145 of the Code of Criminal Procedure, 1898, by recording a Preliminary Order dated 29.12.1949. The Magistrate did not identify any Hindu or Muslim individuals as parties to the dispute, and merely said that he was satisfied on information received from Police sources and other credible sources “that a dispute between Hindus and Muslims in Ayodhya over the question of rights of proprietorship and worship in the building claimed variously as Babri Masjid and Janma Bhumi Mandir is likely to lead to a breach of the peace.” Babu Priya Dutt Ram was appointed Receiver after his death in 1970 Sri K.K.Ram Verma was appointed in his place by the City Magistrate, although the City Magistrate had dropped the proceedings under Section 145 Cr.P.C. by order dated 30.07.1953, with the finding that there was no apprehension of the breach of peace any longer. The Receiver appointed by Magistrate was replaced by civil court Receiver. At the highest, the Receiver

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acted like a Shebait. He did not disturb the possession of the plaintiff Deities. The possession of deities over the building in premises is admitted by all the concerned parties. Ever since the installation of the first plaintiff's idol since the possession of deities continued all along , their possession places the matter of their title beyond any doubt or dispute. Even if there had been any person claiming title to the property adversely to the Plaintiff Deities that would have been extinguished by their open and long adverse possession, which created positively and affirmatively a proprietary title to the premises in the Plaintiff Deities.

Hindu Public and the devotees of the Plaintiff Deities, who had dreamed of establishing Ram-Rajya in Free India, that is, the rule of Dharma and righteousness, of which Maryada Purushottam Sri Ramchandra Ji Maharaj was the epitome, have been keenly desirous of restoring his Janma Asthan to its pristine glory, as a first step towards that national aspiration given to us by Mahatma Gandhi. For achieving this, they are publicly agitating for the construction of a grand Temple in the Nagar style. Plans and a model of the proposed Temple have already been prepared by the same family of architects who built the Somnath Temple. The plaintiff's suit no. 12 of 1961, could not represent the entire Muslims community. Some defendants no. 1 to 4 are not capable of representing the entire World of Hindus. Waqf created by a Shia Waqif would be a Shia Waqf and could not be a Sunni Waqf. Since according to the case of plaintiff other Suit No.4/89, the mosque was built by Mir Baqi and he was Shia, his heirs were Mutwallis one after the other. But the Shia Central Board of Waqfs, U.P. did not agitate the case any further, the judgment of civil court, Faizabad dated 30.03.1946 in Suit No.29/1945 is not binding.

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According to the report dated 10.12.1949 of Mr. Mohammad Ibrahim, Waqf Inspector, and an office note signed by the Secretary of the Sunni Central Board of Waqfs, U.P. and dated 25.11.1948, Sri Javed Husain, the nambardar of village Sahanwa, and in the line of descent, Mir Baqi was the Mutwalli of the Waqf, although it appears, he was not acting as such and did not submit to the jurisdiction of the said Board of Waqfs. The persons of Shia are also being impleaded as defendant no. 22 to 25 in the present suit.

The saint assembled in a meeting held at Ujjain during May, 1992 resolved to start the KAR SEWA for the construction of New Temple at Sri Ram Janma Bhumi from the SHILANYAS site, on July 9, 1992 and that resolve was re-affirmed. In spite of all efforts to the contrary, the KAR SEWAKS climbed up the three domed structure and brought it down with their bare hands, about 5 hours after on 6.12.1992 and the debris was thereafter cleared and carried away by the KAR SEWAKS as holy mementos, leaving the place where the Deity of BHAGWAN SRI RAMA LALA was installed in the Central Dome of the demolished structure flat in the form of a CHABUTRA on which the Deity was immediately re-installed, the place was enclosed by a brick boundary wall and a canopy was also erected for the protection of the Deity, and PUJA was continued as of yore.

Owing full responsibility for the orders that firing shall not be resorted to by the security forces against the KAR SEWAKS and the inability to prevent the demolition, Sri Kalyan Singh, the then Chief Minister of U.P. resigned from that office by the evening of 6.12.1992. The President under Article 356 of the Constitution on the advice of Prime Minister dissolved the Legislative Assembly before midnight that day on 7.1.1993. The President promulgated the ACQUISITION OF

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CERTAIN AREA AT AYODHYA ORDINANCE, NO. 8 of 1993 and simultaneously referred to the Supreme Court, under Article 143(1) of the Constitution for consideration and opinion, the following question:-

*"Whether a Hindu temple or any Hindu religious structure existed prior, to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"*

The said Ordinance was replaced and re-enacted by Parliaments Act No. 33 of 1993, and was published the same day in the Gazette of India Extraordinary but was deemed to have come into force on the 7th January 1993, the day on which the Ordinance was promulgated. The plaintiff deities over the juristic persons in law could not have been, nor do they appear to have been acquired under the said enactment. Nor could the right of the Hindus in general and the devotees of Sri Ram in particular to worship them be acquired or taken away. But the right to manage their property including the arrangements to be made for maintaining their worship on the SHEBAITI rights which in themselves constitute heritable property under the Hindu law, would seem to have been taken away and entrusted for the time being to the Commissioner, Faizabad Division, Faizabad, ex-officio under Section 7 of the Act.

The Authorized person is required by sub-Section (2) of Section 7 of the enactment to maintain status quo as it existed on the 7th January, 1993, in the area in which the disputed structure stood. The validity of the said enactment was challenged in several writ petitions in the Hon'ble Court which were withdrawn by the Supreme Court for hearing and decision along with the hearing of the preliminary

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objection to the maintainability of the Presidential Reference under Article 143(1) of the Constitution. It was sought to be challenged in the connected O.O.S. No. 3 and 4 of 1989 in this Court as well, and in issue “whether the suit has abated or services” was raised thereupon. Notice was also issued thereafter to Attorney General of India, by the Hon'ble Court, but before the hearing of the issue could be taken up by it, it was stayed by the Supreme Court, while ordering the withdrawal of the writ petition against the acquisition from this Court to itself for hearing and decision.

In Dr. M. Ismail Faruqui Vs. Union of India and others case and the Special Reference No.1 of 1993 under Article 143(1) of the Constitution, the Supreme Court has declared the sub-Section 3 of Section 4 of the Act No.33 of 1993, to be unconstitutional and invalid, but upheld the validity of the other provisions thereof subject to the interpretation put thereon by it.

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The cause of action for this suit has been accruing from day to day, particularly since recently when the plans of temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim Communalists. The map prepared by Shiv Shankar Lal, Commissioner has been made part of the plaint as annex Nayas Patrak has also been filed and is appended.

The defendant no.3 has filed written statement wherein it is stated that Sri Deoki Nandan Agarwal posing himself as the Next Friend has filed this long cumbersome suit embracing a wide range of matters and topics, mostly irrelevant collected from alleged many and various records and books and annals of history. The suit was initially instituted in the Court of Civil Judge, Faizabad on 1.7.1989 and has been transferred to this Court. It has further been stated that the

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present suit is malicious suit and is designed to damage the title and interest of the answering defendant. Sri Deoki Nandan Agarwal has no right to act as Next Friend of plaintiffs no. 1 and 2 and plaintiff no.2 is not even a juridical persons. The suit is liable to be dismissed summarily.

It is wrong to say that the Bhagwan Shri Ram is also called Ram Lala Virajman. Bhagwan Shri Ram is installed not at Janma Bhoomi but in the temple known as Janma Bhoomi Temple “Sthan Shri Ram Janma Bhumi” is meaningless phrase Sthan is not a juridical person. Sri Deoki Nandan Agarwal lives at Ayodhya and is not at all interested in Sri Ram Janma Bhumi Temple. The whole world knows that Lord Ram was born in Ayodhya where the temple Ram Janma Bhumi stands.

Denying the averments made in different paras of the plaint in his additional pleas. Defendant no.3 has further stated that the relief sought by the plaintiffs are imaginary and inconsistent. He has also filed additional written statement/supplementary written statement and averred that Annexure 2 attached with the plaint does not bear any plot nos. (settlement or Nazul) nor it is bounded as to give any definite identity of property. Temple Shri Vijay Ragho Ji Sakshi Gopal has never been subject matter of the any of the suit O.O.S. No. 4/1989. Panches and Sadhus of Akhara are living in the surrounding since before the human memory. The outer Sahan consisted little temple of Bhagwan Ram Lala along with other place which are regularly worshipped according to the customs prevailing amongst Rama Nandi Vairagies. The temple of Ram Lala Ji and other deities have ever been in management and charge of Nirmohi Akhara as Sheibait till outer portion with Bhandar was attached u/s 145 Cr.P.C.

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On 18.2.1982 a receiver is appointed there vide order of Civil Judge, Faizabad in Reg. Suit No. 239/82. Sri Rama Nandi Nirmohi Akhara versus K.K. Ram Varma etc. due to lootpat committed by Dharam Das Mr. Deoki Nandan Agarwal has named himself to be witness of Dharam Das. Suit is barred by provision of Section 34 of Specific Relief Act for want of possession and is not maintainable as such.

The outer portion consisting of Bhagwan Ram Lala on Sri Ram Chabutra along with other deities, Chathi Pujan Sthan and Bhandar with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of wall carries the present municipal No.10/12/29 (old 506, 507 and older 647) of Ram Kot ward of Ayodhya City. The attachment made in 1949 is only in respect of main building of Garbh Grahya having three "Shikher" where in the deity of Bhagwan Sri Ram Chandra Ji is installed by Nirmohi Akhara from time beyond the human memory and are since then is management and possession of it till the said property attached. The suit is fully time barred. Sri Deoki Nandan Agarwal is office bearer of VHP. The outer portion with surrounding temples were illegally acquired by VHP. Backed BJP Government which is under challenge in writ petition. The suit is liable to be dismissed.

Second additional written statement has also been filed in which existence of alleged Nyas has been challenged.

Defendant No.4 has filed written statement wherein it is stated that disputed place has always been known as Babri Masjid and the idol in question was stealthily and surreptitiously kept inside the mosque in the night of 22nd /23rd December, 1949 by some mischief-mongers against whom an F.I.R. had also been lodged at the Police Station, Ayodhya on 23rd December, 1949. The report and map

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submitted by Sri Shiv Shankar Lal, Pleader and do not depict the correct portion of the spot and the same cannot be relied upon for identification and description of the property in suit. Denying different paras of the plaint it has been averred that suit no.12 of 1961 was filed in the representative capacity and the application for permission to sue in this capacity was allowed by learned Civil Judge, Faizabad. There is no question of Seva and Puja of the alleged deities as no such deities exist in the building in question and the idols kept therein could not be treated as deities. Defendant no.20 had no right or title or locus standi to move the said application for the opening of the gate of the mosque for closer Darshan. The order passed on 1.2.1986 of the District Judge, Faizabad was patently and manifestly illegal and without jurisdiction against which two writ petitions are pending in this Court.

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The building in dispute is not the Janam Bhoomi of Sri Ram Chandraji and no idols of Sri Ram Chandraji were ever installed in the said building and as such there arises no question of any right or claim of the defendant no.20 or of anyone else to perform Pooja and Darshan over there. The property in suit is an old mosque known as Babri Masjid and the same was constructed during the regime of Emperor Babar. No idol was there prior to the incident of the night of 22nd /23rd December, 1949 in the mosque. Idols were surreptitiously and stealthily kept in the mosque by some mischievous elements as the plaintiff no.1 to 2 cannot at all be treated as deities. The receiver appointed by the Court is not taking proper interest in the maintenance of the building and in spite of the orders of the Court, no repairs of the building have been undertaken for the last several years. The desire of the plaintiff's of removing the mosque and of

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constructing a temple on the site of the said mosque is wholly uncalled for and unwarranted and mischievous and any such attempt will be fraught with very dangerous consequences.

Plaintiffs no.1 and 2 are not juridical persons and the suit filed on their behalf is wholly misconceived and not maintainable. The idol was surreptitiously and stealthily kept inside the mosque in the night of 22nd /23rd December, 1949 has neither been installed in accordance with the tradition and rituals of Hindu Law and nor there have been any ceremonies prescribed by Hindu Law for the installation of the idols and as such the idols kept in the mosque have got no legal entity and that being so there arises no question of impleadment of the same and moreover, the plaintiff no.3 has also got no direct right or title or concern with the property in suit and as such he is also not entitled to institute the present suit. In any case the instant suit having been filed after expiry of more than 39 years since after the attachment of the property in suit the instant suit is heavily barred by time and it is not maintainable.

In the present suit the booklets circulated at Ayodhya by Vishwa Hindu Parisahd and other Hindu organizations and other books of Hindu mythology describe the period of Sri Ram Chandraji as that of Treta Yug meaning thereby that he was born more than 9 lakh years ago. Goswami Tulsidadji had written book of Shri Ramchandraji known as Sri Ram Charit Manas at a place known as Datun Kund situate at a distance of about one kilometre from Ayodhya in District Faizabad and as such had there been any birth place of Sri Ramchanddraji in Ayodhya, Goswami Tulsidasji must have specifically mentioned about the same in his Ram Charit Manas and as a great devotee of Sri Ramchandraji Goswami Tulsidasji cannot be expected to have skipped

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over or concealed or kept quiet over such an important fact regarding the life history of Sri Ramchandraji and had there been any iota of truth in the story of Sri Ram Janam Bhoomi temple being there at Ayodhya at the site of the Babri Masjid prior thereto and had there been any incident of demolition of any such temple and construction of Babri Masjid over the same. Goswami Tulsidasji must have taken up this matter in the Court (Darbar) of Emperor Akbar and Emperor Akbar must have undone the alleged wrong specially so when the Court of Akbar was full of Advisors, councillors and ministers from Hindu community and his own Queen was also Jodha Bai. The description of Ayodhya given in the Balmiki Ramayan does not tally with the present Ayodhya. Mahant Raghubar Das in 1885 had filed a suit against the Secretary of State for India in Council and Mohd. Asgar Mutwalli of the said mosque in the Court of Sub-Judge, Faizabad in which a site plan was also annexed alongwith the plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the said suit was filed for permission to erect temple over the said Chabutra.. The said Mahant could not succeed even in that suit which was dismissed on 24.12.1885 by the Sub- Judge, Faizabad, and the appeal filed against the said judgment and decree dated 24.12.1885 was also dismissed by the District Judge, Faizabad and the second appeal filed against the same had also been dismissed by the Judicial Commissioner of Avadh. The aforesaid suit was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad. As such the plaintiffs cannot claim any portion of the Babri Masjid to have been defied or having become a juridical personality by the name of Asthan Ram Janam Bhoomi and specially so when neither

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there has been any installation of deity and nor any personification of the same in accordance with the tenets of Hindu religion or law. It is further submitted that the plaintiff are even estopped from claiming the mosque in question as the Janam Bhoomi of Sri Ram Chandraji as the plaintiffs' predecessors and specially Mahant Raghubar Das had confined his claim to the Chabutra (platform) of 17' x 21' outside the said mosque is being Janam Asthan of Ram Chandraji and also because there already exists another temple known as Janam Asthan temple situate at a distance of less than 100 yards only from Babri Masjid and on its northern side.

An F.I.R. was lodged about the incident of 22nd /23rd December, 1949 at the Police Station Ayodhya in the morning of 23.12.1949 by a Hindu Officer of the Police Station himself who had mentioned in the said F.I.R. that some mischievous element had kept the said idol in the preceding night in a stealthy and surreptitious manner by sheer use of force and the said building had been attached on 29.12.1949 and Receiver for the care and custody of the said building had also been appointed who had drawn up a scheme of Management and the same was submitted on 5.1.1950 by the Receiver. Sita Rasoi situate outside the premises of the said mosque. It is not correct to say that mosque was constructed after demolishing a temple. It is also not correct to say that the material used in the construction of the said mosque was almost all of it taken from any temple, and it is also incorrect to say that the pillars of the said mosque were wrought out of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. The fact is that such pillars are available at some other place also. Minarets or domes is not at all required for any mosque.An existence of minarets or domes are not at all required for any mosque

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and so also there is no necessity of any place for storage of water for VAZOO for any mosque although in the close vicinity of Babri Masjid a well is very much there for taking out water for the purpose of VAZOO. It is also incorrect to say that any life was lost in any battle fought in respect of Babri Masjid and no battle in respect of Babri Masjid had taken place till 1885.

The expedition of Maulvi Ameer Ali had no concern or connection with the Babri Masjid. Hindus and Muslims both were never in joint possession of the Babri Masjid, nor they worshipped jointly in the disputed structure. Emperor Babar was a Sunni Muslim and the vacant land on which the Babri Masjid was built lay in his State territory and did not belong to anyone and it could very well be used by his officers for the purposes of the mosque and specially so when the Emperor Babar himself consented and gave approval for the construction of the said mosque. Mir Baqi did not destroy any temple at any point of time. Demolition of temple by Mir Baqi has not been mentioned in any book of Mughal history or in any authentic book of history as such it is absolutely false and concocted to suggest that the mosque in question was constructed at the site of any temple and Mosque can not be built at a place which is surrounded by temples, where the sound of music and Konch shell, Ghanta Gharyal disturbs the peace and quiet of the place.

It is reiterated that the mosque in question has been used for offering regular five times prayers upto 22nd December, 1949 and even Friday prayers have been offered in the same till 16th December, 1949. The possession of the Muslims has remained uninterrupted and continuous in the mosque in question since its construction and up to 22.12.1949 any right of any person has ceased to exist. In view of

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these facts five times prayers used to be offered in the said mosque upto 22.12.1949 and Friday prayers were also offered upto 16.12.1949 and 23.12.1949 when the Muslims led by the Imam of the said mosque had approached the authorities of the district to offer Friday prayer in the said mosque. They were persuaded to offer Friday prayer on that date in some other mosque with the specific assurance that they will be allowed to offer Friday prayers in the mosque in question on the next Friday falling on 30.12.1949. But before that the mosque in question had been attached by the Magistrate under Section 145 Cr.P.C. and since then the attachment of the said mosque is continuing some Bairagees had damaged a portion of the mosque and as such the District Magistrate of Faizabad had got the said damaged portion of the mosque repaired through a Muslim contractor thereafter. There has always been Mutwalli or Moazin or Imam or Khatib or Khadim of the said Mosque. His name finds mention even in the Government Gazette of 1944.

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The fact is that Muslims reside not only behind the mosque but also in the localities situated in the southern and eastern site of the mosque. It has further been mentioned in the written statement filed by Sunni Central Board of Waqf of U.P. that there is no justification for the present campaign being carried on for starting construction of Ram Janam Bhumi Temple at the site of the Babri Masjid w.e.f. 9.11.89. There is no question of construction of any such temple at the site of the mosque and Muslims will never permit any such attempt being successful. The judgment of Civil Judge, Faizabad in Suit No. 27 of 45 is binding upon the parties and controversy about the Shia or Sunni nature of the waqf in question has been set at rest by the aforesaid judgment. There is no bar for appointment of Shia

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Mutwalli of a Sunni Waqf; so also a Sunni Muslim can very well be appointed as mutwalli of a Shia Waqf.

It is incorrect to say that any responsible Muslim has ever made a suggestion for the removal of the structure of the mosque to any other place as it is quite foreign to the Muslim law and there is no possibility of any such course being adopted by the Muslims in respect of the mosque in question. The concept of the mosque is that the entire area below as well as above the portion of the mosque remains dedicated to God Almighty and as such it is not the construction or structure of a mosque alone which is important but more important is the land on which the mosque stands constructed because the land also stands dedicated to God Almighty and the same cannot be removed. Suit is barred by time the property in suit has also not been properly described no valid notice under section 80 in C.P.C. has been given to defendants no. 7 to 10. Therefore, this suit could not be filed in absence of the notice. The subject matter of the instant suit is a waqf property and stands registered as a waqf in the Register of Waqf maintained by the Sunni Waqf Board under Section 30 of the Waqf Act and a Gazette notification in respect thereto has also been issued by the State Government in 1944 and the same stands recorded as a mosque even in the revenue record and other Government record and the same is even accepted as a mosque by the State Government and its officers in the written statement filed in Regular Suit No. 2 of 1950 as well in Regular Suit No.25 of 1950. The suit is barred for want of notice under Section 65 of the U.P. Muslim Waqf Act, 1960 and the reports of the Archaeological experts have been to the effect that there appear to be no symptoms of human habitation in the present Ayodhya of more

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than 700 B.C. and also the suit is barred by Section 34 of the Specific Relief Act and is also bad for mis-joinder and non-joinder of the parties.

Defendants no.4 and 5 have also filed additional written statement wherein all the facts mentioned in amended para 35 H I J K have been denied.

Defendant no.6 has adopted the written statement filed by defendant no.5. Defendant no.11 has filed written statement where it is averred that All India Hindu Mahasabha be also included in the trust created for protecting, renovating, reconstructing and developing the temple premises, in short, of managing all their estates and all their affairs. Defendant no.17 Sri Ramesh Chandra Tripathi has supported the plaint allegations.

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Defendant no.23 Jawwad Husain has denied all the plaint allegations in his additional pleas. He has submitted that he has wrongly been impleaded as a party, plaintiff no. 1 and 2 has no right to sue. He has supported the plaint allegations and averred that there is Janma Sthan in the north side of disputed property in the north of the road.

Defendant no.24 has denied the plaint allegations in para-10. He has stated that Muslims of India has the highest regard for Lord Rama. These sentiments of the Muslims are best reflected in the poem entitled " Rama" composed by the greatest Muslim thinker of India of the present century Allama Dr. Sir Muhammad Iqbal, who had summed up in just one verse of the long poem what Muslims of India think of Shri Ram Chandraji:

"Hae Ram ke wajood pa Hindostan ko naaz
Ahl-e Nazar Samajht-e hain usko Imam-e- Hind."

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Meaning- India is proud of the existence of Ram. The intelligent-sia consider him as the leader of India.

Rest of paras of written statement he has supported the written statement filed by defendants no. 4 and 5. An important para 26 has been pertinent to be mentioned of this written statement where in it is averred that para 34 and 35 of the plaint, the answering defendant being a representative of the Shia Muslims of India is deadly against any form of sacrilegious actions. He is of the firm view that no place of worship of any religion should be destroyed and no place of worship should be constructed on the ruins of the destroyed one. The answering defendant firmly believes that the Babri Masjid was certainly not built after destroying the Vikramaditya Mandir or any temple. Yet, at the same time if it is unequivocally proved in this Hon'ble Court in the light of historical archaeological and expert scientific evidence that the Babri Masjid was really built after demolishing any Mandir on the Mandir land, only then this defendant will withdraw his opposition.

Defendant no. 25 has also filed written statement denying the plaint allegations in his additional pleas of General Secretary of India Shia Conference has averred that the premises in question has always been mosque and it is a mosque. In the night of 22nd /23rd December, 1949, certain persons forcibly entered into the mosque and put an idol in the same, against them an F.I.R. was lodged in the Police Station, Ayodhya in the morning of 23rd of December, 1949. A case was registered. A Receiver was appointed. There is no Hindu deity as juristic person in relation to the premises in question nor there is any Hindu deity with the name and style of Asthan Sri Ram Janam Bhumi Ayodhya. Sri Deoki Nandan Agarwal cannot be a next friend to the

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deity. The suit is not maintainable and is liable to be dismissed.

## ISSUES:-

**Following Issues arose for decision:-**

**(1)** Whether the plaintiffs 1 an 2 are juridical persons?

**(2)** Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no. 3 as next friend?

**3(a)** Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.4.92 in their statement under order 10 Rule 2 C.P.C. ?

**3(b)** Whether the same idol was reinstalled at the same place on a chabutra under the canopy?

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**3(c)** "Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated 14.8.1989, 7.11.1989 and 15.11. 91 ?

**3(d)** If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity?"

**(4)** Whether the idols in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no. 3 ?

**(5)** Is the property in question properly identified and described in the plaint ?

**(6)** Is the plaintiff No. 3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account ?

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**(7)** Whether the defendant no. 3, alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no. 3 ?

**(8)** Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Rama installed in the disputed structure ?

**(9)** Was the disputed structure a mosque known as Babri Masjid ?

**(10)** Whether the disputed structure could be treated to be a mosque on the allegations, contained in paragraph-24 of the plaint ?

**(11)** Whether on the averments made in paragraph-25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute is as a mosque ?

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**(12)** If the structure in question is held to be mosque, can the same be shifted as pleaded in paragraphs 34 and 35 of the plaint ?

Deleted vide court order
dated 23.2.96.

**(13)** Whether the suit is barred by limitation ?

**(14)** Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site.

**15.** Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only, regularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22nd December, 1949, as alleged by the defendants 4 and 5 ?

**16.** Whether the title of plaintiffs 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no. 4 ? If yes, have plaintiffs 1 & 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint ?

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**17.** Whether on any part of the land surrounding the structure in dispute there are graves and is any part of that land a Muslim Waqf for a graveyard ?

Deleted vide this Hon'ble Court order dated 23.2.96.

**18.** Whether the suit is barred by Section 34 of the the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no. 3 and also as alleged in paragraph 47 of the written statement of defendant no. 4 and paragraph 62 of the written statement of defendant no. 5 ?

**19.** Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no. 3 ?

**20.** Whether the alleged Trust, creating the Nyas defendant no. 21, is void on the facts and grounds, stated in paragraph 47 of the written statement of defendant no. 3 ?

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**21.** Whether the idols in question cannot be treated as deities as alleged in paragraphs 1, 11, 12, 21, 22, 27 and 41 of the written statement of defendant no. 4 and in paragraph 1 of the written statement of defendant no. 5 ?

**22.** Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama, as alleged in paragraphs 19 and 20 of the plaint ? If so, its effect ?

**23.** Whether the judgment in suit No. 61/280 of 1885 filed by Mahant Raghuber Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata, as alleged by the defendants 4 and 5 ?

**24.** Whether worship has been done of the alleged plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?

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**25.** Whether the judgment and decree dated 30th March 1946 passed in suit no. 29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs ?

**26.** Whether the suit is bad for want of notice under Section 80 C.P.C. as alleged by the defendants 4 and 5?

**27.** Whether the plea of suit being bad for want of notice under Section 80 C.P.C. can be raised by defendants 4 and 5 ?

**28.** Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5 ? If so, its effect?

**29.** Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. state) of the Court of Munsif Sadar, Faizabad?

**30.** To what relief, if any, are plaintiffs or any of them entitled?

**Annexure-I**
**Pages 215-316**

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**Statement under Order X Rule 2 C.P.C. in O.O.S. No. 5 of 1989**

At the instance of Sri R.L. Varma, Sri Deoki Nandan Agarwal makes the following clarification under Order X Rule 2 C.P.C.

---

In the early hours of December, 23, 1949 the idol of Bhagwan Sri Ram Lala, which was already on Ram Chabutra, was transferred to the place where he presently sits, that is, under the central dome of the disputed building. I was not personally present at that time at the place. This information was conveyed to me by Paramhans Ram Chandra Das of Digamber Akhara. This transfer of the idol was done by Paramhans Ram Chandra Das and Baba Abhi Ram Das and certain other persons whose name I do not remember at the moment.

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I will have to look into the record to give their names.

The idol is Chal Vigraha (moveable idol).

Paramhans Ram Chandra Das had informed me that all the due ceremonies were performed when the idol was transferred.

Presently, the property in suit is bounded on three sides by a wall constructed by the State Government recently and on the north by public road.

The entire area enclosed by the aforesaid wall belongs to the deity.

30.04.1992 Sd/-illegible
MHS/- 30.4.92

## FINDINGS

## ISSUES NO. 9, 10, 14 & 22

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**9. Was the disputed structure a mosque known as Babri Masjid ?**

**10. Whether the disputed structure could be treated to be a mosque on the allegations, contained in paragraph-24 of the plaint ?**

**14. Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site?**

**22. Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint ? If so, its effect ?**

## FINDINGS

These issues are interrelated and can be taken up together. I

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have already recorded finding in leading case O.O.S. No.4 of 1989. Copy of the judgment be placed on record. In view of the finding on issues no. 1, 1(a), 1(b), 1-B(b), 11, 19(d), 19(e) and 19(f) no separate finding is required as the issues are identical issues in this case. These issues no. 9, 10, 14 and 22 are decided accordingly.

## ISSUES NO.15, 16 & 24

**15. Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only, regularly for offering Namaz ever since its alleged construction in 1528 A.D. To 22nd December 1949 as alleged by the defendants 4 and 5 ?**

**16. Whether the title of plaintiffs 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no. 4 ? If yes, have plaintiffs 1 & 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint ?**

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**24. Whether worship has been done of the alleged plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?**

## FINDINGS

These issues are interrelated and can be taken up together. I have already recorded finding in leading case in O.O.S. No.4 of 1989. Copy of the judgment be placed on record. In view of the finding on issue no.1B-(c), 2, 4, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 and 28 no separate finding is required as the issues are identical issues in this case. Issues no. 15, 16 & 24 are decided accordingly.

## ISSUES NO.23

**Whether the judgment in suit No. 61/280 of 1885 filed by**

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**Mahant Raghuber Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5 ?**

## FINDINGS

In view of the finding on issue no.8 in O.O.S. No. 4 of 1989, the leading case, the issue is decided against the defendants and in favour of the plaintiffs.

## ISSUES NO. 1, 2 & 6

1. **Whether the plaintiffs 1 an 2 are juridical persons?**
2. **Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no. 3 as next friend?**
6. **Is the plaintiff No. 3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account ?**

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## FINDINGS

Since Issue Nos. 1,2 and 6 are inter connected, they can conveniently be disposed of at one place.

The instant suit has been filed by Bhagwan Sri Rama Virajman at Sri Ram Janma Bhumi, Ayodhya also called Sri Rama Lala Virajman and the Asthan Sri Rama Janma bhumi, Ayodhya through next friend with following reliefs ,

(A) 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,

(B) A perpetual injunction against the Defendants prohibiting them

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from interfering with, or raising any objection to, or placing any obstruction in the construction of the new Temple building at Sri Ram Janma Bhumi, Ayodhya, after demolishing and removing the existing buildings and structures etc. situate thereat , in so far as it may be necessary or expedient to do so for the said purpose.

© Costs of the suit against such of the defendants as object to the grant of relief to the plaintiffs.

(D) Any other relief or reliefs to which the plaintiffs may be found entitled.

On behalf of the Plaintiff, it is submitted that Bhagwan Sri Rama Virajman at Sri Ram Janma Bhumi, Ayodha, also called Sri Ram Lala Virajman, Plaintiff no. 1 and the Asthan Sri Rama Janma Bhumi, Ayodhya with other idols and places of worship situate Plaintiff no.2 are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place. Plaintiff No. 3 is a Vaishnva Hindu and seeks to represent the Deity and the Asthan as a next friend.

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The place itself,or the ASTHAN SRI RAMA JANMA BHUMI has been an object of worship as a deity by the devotees of BHAGWAN SRI RAMA as it personifies the spirit of divine worshipped in the form of SRI RAM LALA or lord RAMA, the child. The Asthan was thus Deified. According to the faith of devotees BHAGWAN SRI RAMA LALA or LORD RAMA, the child has spiritual uplift . It is further averred that at Ayodhya , the very Asthan Sri Ram Janmabhumi is worshipped as a deity. Thus, the place is deified . Thus, it is juridical person. Thus, Asthan Sri Ram Janmabhumi is indestructible and immoveable deity, who has continued to exist throughout ages .

On behalf of the defendants it is averred that the plaintiffs no. 1 and 2 are not juridical persons.

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Persons are classified as a natural and juristic person. A natural person is a being to whom the law attributes personality in accordance with reality and truth. Legal persons are beings, real or imaginary, to whom the law attributes personality by way of fiction. Legal personality is an artificial creation of the law.

Sri K.N. Bhat, learned Senior Advocate has drawn attention of this Court on following passages of "Hindu Law of Religious and Charitable Trusts 5th Edition' by Mukherjea. The relevant extracts are quoted below;

.* "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition there of by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued." You should remember, however, that the juridical 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 Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. ( p.38.)

* From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. (p.39.)

* The early Vedic hymns make no allusion to idol worship, and Max Muller held that idolatry did not exist among them. 'The religion of the Vedas,' he declared, 'knows no idols.' The Jabala Upanishad says, 'Images are meant only as aids to meditation for the ignorant'. (p.149)

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* 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. (p.153.)

* “The idol, deity or religious object,” observed West and Buhler in their *Digest on Hindu Law,* “is looked upon as a kind of human entity.” It is a sacred entity and ideal personality possessing proprietary rights. The Judicial Committee has pointed out on more occasions than one that it is only an ideal sense that property can be said to belong to an idol and the possession and management of it must, in the nature of things, be entrusted to some person as Shebait or manager. The legal principle has thus been summed up in one of the pronouncements of the Judicial Committee:

“A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a ‘juristic entity.’ It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which would, in such circumstances, on analogy, be given to the manager of the ***estate of an infant heir***. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.”( pp.158)

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*** Existence of idol is** (not) **necessary for temple.-** While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that 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***

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***that there is one superhuman power which they should worship and invoke its blessings.*** pp.158-159.

* Moreover, - and this was pointed out by Chatterjee, J., who was a member of the Full Bench – **the conception of Hindu jurists was not that the image of clay or stone constituted the juristic person**. The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated *thakur* become vested in the substituted *thakur*. Thus, a dedication to an idol is really a dedication **to the deity who is ever-present and ever-existent, the idol being no more than the visible image** through which the deity is supposed specially to manifest itself by reason of the ceremony of consecreation. The decision in *Bhupati Smrititirtha v. Ramlal* has been followed by other High Courts in India, and it has been held by the Allahabad High Court in *Mohor Singh v. Het Singh* that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu law. ( pp.162-163)”

He has further invited the attention of this Court on paras 11,12 and 13 of AIR 2000 Supreme Court 1421 **Shiromani Gurdhwara Prabhandak committee Amritsar Vs. Shri Som Nath Dass and others .** They are as under:

11. The very words "Juristic Person" connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person.

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Essentially, every human person is a person. If we trace the history of a "Person" in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman Law a "Slave" was not a person. He had no right to a family. He was treated like an animal or chattel. In French Colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute. Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel.

12. In Roscoe Pound's Jurisprudence Part IV, 1959 Ed. at pages 192-193, it is stated as follows:

> In civilized lands even in the modern world it has happened that all human beings were not legal persons. In Roman law down to the constitution of Antonymous Pius the slave was not a person. "He enjoyed neither rights of family nor rights of patrimony. He was a thing, and as such, like animals, could be the object of rights of property."....In the French colonies, before slavery was there abolished, slaves were "put in the class of legal persons by the statute of April 23, 1833" and obtained a "somewhat extended juridical capacity" by a statute of 1845. In the United States down to the Civil War, the free Negroes in many of the states were free human beings with no legal rights.

13. With the development of society, 'where an individual's interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like

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corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognized in law to be a legal unit.

Corpus Juris Secundum, Vol. LXV, page 40 says:

> Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. definition 'Person' it is stated that the word "person," in its primary sense, means natural person, but that the generally accepted meaning of the word as used in law includes natural persons and artificial, conventional, or juristic persons.

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Corpus Juris Secundum, Vol. VI, page 778 says:

> Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.

Salmond on Jurisprudence, 12th Edn., 305 says:

> A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feats of the legal imagination.... Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually

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recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations. ... If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention...

> 1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members....1
>
> 2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself....
>
> 3. The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - a charitable fund, for example or a trust estate...

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Jurisprudence by Paton, 3rd Edn. page 349 and 350 says:

> It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-duty-bearing units - all entities recognised by the law as capable of being parties to legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties...
>
> ...Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationships, e.g., the signing of a contract: and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities." Analytical and Historical

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Jurisprudence, 3rd Edn. At page 357 describes "person";

> We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed.

14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol, was recognised as a juristic person, it was known it could not act by itself. **As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act.** Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurudwara etc. The entrustment of an endowed fund

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for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an Idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

Shri Ravi Shanker Prasad Senior Advocate has argued that the concept of deity is distinguishing feature of Hindu faith that the concept of deity in Hindu faith has been considered in this outstanding book. The concept of deity is a distinguishing feature of the Hindu faith. The deity is the image of Supreme Being. The temple is the home of the deity. It is enough that Supreme Super Human Being Power i.e. an idol or image of the Supreme Being installed in the temple. The worship of such an image of the Supreme Being is acceptable in Hindu law. Hindus have also the believe that idol represent dignity. In this context, para 1.33 pages 26 and 27 of the Hindu Law of Religious and Charitable Trust by B.K. Mukharjee, 1952 Edition is reproduced as under:-

*4.* The traditional and classical legal literature relating to Hindus has also duly sanctified such belief and faith which has been exalted to a juristic status requiring legal recognition. In this connection, "**the Hindu Law of**

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**Religious and Charitable Trusts" by B.K. Mukherjea** lays down some of the relevant concepts relating to deity and the temple along with concerned page number which are consistently being recognized as judicial authorities, not only in India but also abroad. The concept mentioned therein along with concerned page numbers are being quoted below:

**Page 26-27 – Para "1.33: Idols representing same divinity –** One thing you should bear in mind in connection with image worship viz. That the different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. **The rationale of image worship is thus given in a verse which is quoted by Raghunandan:**

**"***Chinmayasyaadwitiiyasya Naskalashariirina Saadhakaanaam Hinaathayi Brahmanii Roopakalpanaa."*

"**It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."**

**Page 38-Para "1.50. The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests:-** As you shall see later on the decision of the Courts of India as well as of the Privy Council have held uniformly that the Hindu

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idol is a juristic person in whom the dedicated property vests. “A Hindu idol”, the Judicial Committee observed in one of its recent pronouncements, “is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued.” You should remember, however, that the juridical 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 by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests.”

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**Page 38-39-Para “1.51. Deity owner in a secondary sense.-**The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Asutosh Mookerjee in his judgment in Bhupati v Ramlal and I will reproduce such portions of them as are necessary for my present purpose.”

Sulapani, a reputed Brahminical Jurist, in his discourse on Sraddha thus expresses his views regarding the proper significance of gift to God:- “in 'Donation' having for its

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dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz., the offer of the sacrifical fee etc. it has already been remarked in the chapter on the Bratis that such usage as Devagram, Hastigram, etc., are secondary". Sree Krishna in commenting on this passage thus explains the meaning of the expression Devgram: "Moreover, the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas in the term Devagram) figuratively means abandonment for them (the Gods)". Therefore, the expression is used in the sense of "a village which is the object of abandonment intended for the Gods". This is the purport. According to Savar Swami, the well-known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use."

**Page 39-Para "1.52.** These discussions are not free from obscurity but the following conclusions I think can be safely drawn from them:-(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense.

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(2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (Upchaar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. 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 and the correct view is that in the capacity alone the dedicated property vests in it."

Thus, the Hindu concept of deity is worship of his image. It is an admitted case that deities were installed and are being worshiped in the structure. The time of installation has been seen in another issue but the factum is the same that the deities were available inside the structure and the plaintiff has sought the relief of the removal without arraying them as a party. It is not a matter of dispute that deity is a juristic person. The plaintiff is not in a position to say whether Pran

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Pratishtha was performed or not. The Hindu concept is that deities had to be worshipped. Thus the idol is a juristic person but they did not recognize a temple to be so. It is also a settled proposition of law that no decree can be passed against the juristic person without arraying them as a party. Thus, in view of the decision of the Hon'ble Apex Court in 2**000 (4) SSC 146, Shiromani Gurudwara Prabandhak Committee Vs. Somnath Das,** the deities installed and admitted by the plaintiff are the juristic persons. In view of **AIR 1957 SC Page 133, Deoki Nandan Aggarwal vs. Murlidhar** endowment property in favour of an idol is possible as they are juristic persons. On the contrary, that the defendants Hindus' claim that deities were Pran Pratishthit and according to their faith they are being properly worshipped and Muslims cannot claim that the religious performance of Hindus were defective and accordingly they are not juristic persons. In view of **AIR 1966 Patna 235, Ram Ratan Lal Vs. Kashinath Tewari and others** that the actual Sankalp and Samarpan is not necessary. It is always possible that by worship also, the deities acquire divinity. it is admitted between the parties that the prayers were offered to the deities at least from December, 1949 and the suit was filed after a long time even then the plaintiff cannot, at this stage, suggest that there was no Pran Pratishtha in the temple of the deities. It is also a matter of common knowledge that deities are installed with Pran Pratishta. There is no difference between idol and deities. According to Hindu faith the worship is going on for the last 61 years. Accordingly at no stretch of imagination, at this stage, it can be said that without any Pran Pratishtha or Pooja the deities were installed.

Thus, in view of **AIR 1925 Privy Council 139 Pramatha Nath**

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**Mullick Vs. Pradyumna Kumar Mullick** even idol is a juristic person and it can sue and be sued. It is not a property which can be shifted to other place. Thus in this case once the parties accept that idols were placed and the worship was going on in that event there is no difference between deities and idols. The worship/prayers were offered. They were properly being worshipped for the last many decades. Accordingly, at this stage there is no justification to hold that the idol should not be treated as juristic persons. There is no material available on record that deities cannot be supposed to be juristic persons. Thus on hyper technical grounds and for want of any evidence from the side of defendants that Pran Pratishtha of the deities plaintiff nos. 1 & 2 was not done and they are not juristic persons cannot be accepted.

I have given anxious thoughts to the facts in issue. In this context it appears that plaintiff no. 1 and 2 are juridical persons.

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**IDOL – JURIDICAL PERSON**

A Hindu idol is a juristic entity and has a juridical status. The idol itself is not a legal person. The idol is representing and embodying the spiritual purpose of the donor and it is this purpose, which is the juristic person. The purpose of making a gift to person is not to confer benefit on God, but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. The Madras High Court in the case of *Vidyapurana Vs. Vidyanidhi [ILR Mad 435],* Justice Bhashyam Iyengar suggested that the community itself for whose spiritual benefit the Institution is founded or endowed may be more appropriately regarded as a corporate body forming the juristic

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person rather than the idol or presiding deity.

The Privy Council in the case of *Maharaja Jagadindra Nath Roy Bahadur Vs. Rani Hemanta Kumari Debi [ILR 32 CAL 129 : XXXI I.A. 203]* observed:

> "There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held. And probably this is the true legal view when the dedication is of the completest kind known to the law."

In this case it was argued that the period of limitation to file the suit expired when the Sebait was a minor and the Sebait was not entitled to claim the benefit of Section 7 of the Indian Limitation Act for the extension of period of limitation. By virtue of his minority the Privy Council observed that the possession and Management of the dedicated property belong to Sebait. The right to file the suit is vested with the Sebait and not in the idol. The right to sue accrue to the plaintiff when he was under aged and he was entitled to file a suit after attaining majority. In the case of Asthanjanamabhoomi, the claim of adverse possession does not arise for the simple reason that such claim for adverse possession can be made in respect of properties dedicated to a deity and not where the property itself is the deity. Such a claim also arise as the idol was not represented by a Sebait who was competent to take a decision on behalf of the idol. The Supreme Court in the case of *Bishwanath Vs. Sri Thakur Radha Ballabhji [AIR 1967 SC 1044]* has placed reliance on the observation of the Privy Council in the case of Jagad ***estate of an infant*** indra Nath Roy Bahadur. Thereafter it is observed as under:

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> "Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that person who go in only for the purpose of devotion have according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage : See Kalyana Venkataramana Ayyangar Vs. Kasturi Ranga Ayyangar AIR 1917 Mad 112 at page 118".

Thereafter the Supreme Court has observed further that:

> "The question is, can such a person represent the idol when Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an adhoc interest. It is a pragmatic, yet a legal solution to a difficult situation. ……. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment."

The Supreme Court has placed reliance on the observation of B.K. Mukherjee in his book, "The Hindu Law of Religious & Charitable Trust" II Edition, wherein it is observed that, where the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interest of the idol, then there must be some other agency which must have the right to act for the

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idol. It is in this background, the Supreme Court has held the right of a worshipper is to file a suit representing the idol. The principle laid down in this case is applicable to the facts of the present case where the worshippers of Ashtanajanamabhoomi have filed the suit for safeguarding the interest of the deity. The ratio of the said case also supports of a view that a deity can be considered as a perpetual infant, which can only be represented by its next friend. A worshipper can file a suit on behalf of the idol where Shebait is in different or has an adverse interest (*Kissan Bagwan Vs. Suri Morati Sansthan [AIR 1947 Nagpur 253].*

The Supreme Court in the case of *Jogendra Nath Naskar Vs. IT Commissioner* has observed as under:

> "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".

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The Supreme Court in the case of *Ramaraghava Reddy Vs. Seshu Reddy (AIR 1967 SC 436) observed that:*

> *"*Where the Shebait himself is negligent or where the Shebait himself is guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. In such a case suit can be filed by a next friend."

The Supreme Court relied upon the observation in the case of *Pramath Nath Vs. Pradyumna Kumar [AIR 1925 PC 139] wherein it is stated that:*

> *"Will* of the idol on that question must be respected, inasmuch as the idol was not represented otherwise than by Shebaits, it ought to appear through a disinterested next friend appointed by the Court."

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It has been argued that deities are perpetual minors for the purpose of law of contract. However, this argument is not accepted in *Bhopal Shreedar Vs. Shasheebhusan [AIR 1933 Cal 109].* The deity is held to be person or individual for the purpose of Income Tax Act. However the minority status of the deity is not accepted in the matter of holding of property as held by the Full Bench of Madras High Court in *MA Manathounithai Desikar Vs. Sundar (AIR 1971 Mad 1).”*

Thus, there is difference between juristic and legal persons.

**Juristic Person :** Persons are classified or distinguished as natural and legal (or juristic). A natural person is a being to whom the law attributes personality in accordance with reality and truth. Legal persons are beings, real or imaginary, to whom the law attributes personality by way of fiction when there is none if fact. Legal personality is an artificial creation of the law. According to the Supreme Court in ***Som Prakash Rekhi V. Union of India, AIR 1981 SC 212*** “A legal person is any entity other than human being to which law attributes personality” Further, “the very words 'Juristic Person' connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognized in law as such vide ***SGPC V. Som Nath Dass, AIR 2000 SC 1421.***

Thus juristic or legal or artificial person is any subject matter to which the law attributes a fictitious personality. It is a legal creation either under a general law like Companies Act or by a specific enactment or by a decision of the court. Being the creation of law, legal persons can be of as many kinds structure as the law pleases. A legal person is holder of rights and duties, it can own and disposes of property, it can receive gifts and it can sue and be sued in its name in

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the courts.

The Privy Council in ***Pramath Nath Mullick V. Pradyunna Nath Mullic (1925) 52 Indian Appeals 245, 264*** consistently held this view in its words:

> "A Hindu Idol is, according to long established authority founded upon the religious custom of Hindus, and recognition thereof by the courts of law, a juristic entity. It has a judicial status with power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager."

The spiritual and legal aspects of Hindu idol need be distinguished. From the spiritual point of view idol is the very embodiment of the Supreme Being, but with this aspect of the matter law is not concerned, in fact it is beyond the reach of law. In law, neither God nor any supernatural being can be a person. But so far as the deity or idol stands as the representative and symbol of the particular purpose indicated by donor, it can figure as a legal person.

The plaintiffs have specifically pleaded and have given reasons as to why the place believed to be the birth place of Lord Ram is a deity. Reliance has been placed on paras 19,20 and 21 of the plaint. For convenience they are reproduced as below;-

"19. That it is manifestly established by public records of unimpeachable authority that the premises in dispute is the place where Maryada Purushottam Sri Ramchandra Ji Maharaj was born as the son of Maharaja Dashrath of the solar Dynasty, which according to the tradition and the faith of the devotees of Bhagwan Sri Rama is the place where HE manifested HIMSELF in human form as an incarnation of BHAGWAN VISHNU. The place has since ever been called Sri Rama

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Janma Bhumi by all and sundry through the ages.

20. That the place itself, or the ASTHAN SRI RAMA JANMA BHUMI, as it has come to be known, has been an object of worship as a Deity by the devotees of BHAGWAN SRI RAMA, as it personifies the spirit of the Divine worshipped in the form of SRI RAMA LALA or Lord RAMA the child. The Asthan was thus Deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the idol of Bhagwan Sri Rama thereat.

**21.** That it may be here stated that the Hindus do not worship the stone or the metal shaped into the form of their ISHTA DEVATA, or the stone of SALIGRAM which has no particular shape at all. They worship the Divine, which has no quality or shape or form, but can be known only when it manifests ITSELF in the form of an incarnation, and therefore, adopt the form of his incarnation as their ISHTA DEVA. For some even that is unnecessary. They can meditate upon the formless and the shapeless DIVINE and aspire for a knowledge of him through his grace. It is the SPIRIT of the DIVINE which is worshipped by most Hindus, and not its material form or shape in an idol. This SPIRIT of the DIVINE in an idol is invoked by the ritual of pranapratishtha. The SPIRIT of the DIVINE is indestructible and ever remains present everywhere at all times for any one to invoke it in any shape or form in accord with his own aspiration. Different persons are at different levels of realisation of the REALITY. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow BHAKTI MARGA, and BHAGWAN SRI RAMA or BHAGWAN SRI KRISHNA is their ISHTA DEVA."

Shri K.N. Bhat Senior Advocate has further urged that plaintiff nos. 1 and 2 are juristic persons , He has placed reliance on "the

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Hindu Law of Religious and Charitable Trusts" by B.K.Mukherjea. Relevant extracts are reproduced as under:-

" A Hindu place of worship can be deemed to be a deity. Thus, on the basis of aforesaid contentions I hold that deities are juristic persons and they can sue or be sued. On behalf of Hindus it is urged that even by worship and chanting of Mantras Pranprathistha can be done. Accordingly the contentions that without any Pranprathistha deities are not juristic persons is not acceptable. Hindus claim that there was worship and Pranprathistha of the deities and they are juristic persons.

In view of above discussion, there is no doubt that plaintiff no. 1 is a deity and plaintiff no. 2 is worshipped from times immemorial and accordingly it is also a deity and they can sue the defendants through the next friend .

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The aforesaid view is based on the decision of Hon'ble apex court in **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others AIR 1967 S.C.1044,** which reads as under**:**

8 . The second question turns upon the right of a worshipper to represent an idol when the Shebait or manager of the temple is acting adversely to its interest. Ganapathi Iyer in his valuable treatise on "Hindu and Mahomedan Endowments", 2nd Edition at page 226, had this to say in regard to the legal status of an idol in Hindu law :

> "The ascription of a legal personality to the deity supposed to be residing in the image meets with all practical purposes. The deity can be said to possess property only in an ideal sense and the theory is, therefore, not complete unless that legal personality is linked to a natural person."

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It would be futile to discuss at this stage the various decisions which considered the relationship between the idol and its Shebait or Manager qua the management of its property, as the Privy Council in Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi, has settled the legal position and stated thus :

> "There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held."

Dealing with the position of the Shebait of such an idol, the Privy Council proceeded to state :

> "..... it still remains that the possession and management of the dedicated property belong to the Shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the Shebait, not in the idol."

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This was a case where the Shebait filed a suit for eviction from the dedicated property within three years after attaining majority and the Board held that, as he had the right to bring the suit for the protection of the dedicated property, section 7 of the Limitation Act, 1877, would apply to him. The present question, namely, if a Shebait acts adversely to the interests of the idol whether the idol represented by a worshipper can maintain a suit for eviction, did not arise for consideration in that case. That question falls to be decided on different considerations.

9. Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of

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an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have, according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage : see Kalyana Venkataramana Ayyangar v. Kasturi Ranga Ayyangar . In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple.

10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover

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the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment.

11. There are two decisions of the Privy Council, namely Pramatha Nath Mullick v. Pradyumna Kumar Mullick and Kanhaiyat Lal v. Hamid Ali , wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edition, summarizes the legal position by way of the following propositions, among others, at page 249 :

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> "(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said to be merged in that of the Shebait.
>
> (2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings

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on behalf of the idol.

This view is justified by reason as well as by decision.

In view of the aforesaid judgement a Shebait or worshipper can file the suit as next friend for the reasons that an idol is in a position of minor and it has to act through human agency. Thus, in this case the plaintiff no. 3 is the next friend and accordingly he has a right to maintain the suit.

It may further be clarified that plaintiff no. 3 was a Senior Advocate and a retired Judge of the High Court, who filed the suit as next friend and there is no allegation on behalf of the defendant that he was acting adversely to the interest of plaintiff nos. 1 and 2. Consequently, looking to the case from all angles it transpires that plaintiff nos. 1 and 2 are juridical persons and plaintiff no. 3 as a next friend is entitled to maintain the suit on the basis of settled proposition of law as laid down in AIR 1925 Privy Council page 139 Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick and AIR 1933 Privy Council 198(1) KanhaiyaLal Vs. Hamid Ali

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Reliance may be placed on following case laws and relevant portions of the judgements which are given below;

**Official Trustee of West Bengal (For The Trust of Chitra Dassi) V. C.I.T., West Bengal, A.I.R.1974 S.C.1355 (para 3):**

**3.** It was conceded before us on behalf of the appellant that if the word used had been a "person" instead of an "individual" the deity would be a person because a person will include a juristic person. That a Hindu deity is a juristic person is a well established proposition and has been so for a long time. In Maharanee Shibessouree Debia v. Mothooranath Acharjo it was observed:

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> The Talook itself, with which these jummas were connected by tenure, was dedicated to the religious services of the Idol. The rents constituted, therefore, in legal contemplation, its property. The Sahabit had not the legal property, but only the title of Manager of a religious endowment.

In Prosunno Kumari Debya v. Golab Chand Baboo, the above observations were cited with approval. In Manohar Ganesh v. Lakhmiram, a Division Bench of the Bombay High Court observed:

> The Hindu law, like the Roman law and those derived from it, recognises, 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.... It is consistent with the grants having been made to the juridical person symbolized or personified in the idol....

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The Madras High Court in Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami expressed the view:

> 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'.

In Pramatha Nath Mullick v. Pradumna Kumar Mullick

> A Hindu idol is, according to long established authority,

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> founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a "juristic entity'. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on anology, be given to the manger of the estate of an infant heir. It is unnecessary to quote the authorities : for this doctrine, thus simply stated, is firmly established.

In **Shri Kalanka Devi Sansthan vs. the Maharashtra Revenue Tribunal, Nagpur and Ors., [A.I.R.1970 S.C.439]** Apex Court held as under:

4. Now it is well known that when property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. As pointed out in Mukherjee's Hindu Law of Religious and Charitable Trust at pp. 142-43, this view is in accordance with the Hindu ideas and has been uniformly accepted in a long series of judicial decisions. The idol is capable of holding property in the same way as a natural person. "It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir". The question, however, is whether the idol is capable of cultivating the land personally. The argument raised on behalf of the appellant is that under Explanation I in Section 2(12) of the Act a person who is subject to any physical or mental disability shall be deemed to cultivate the land personally if it is cultivated by the servants or by hired labourer. In other words an idol or a Sansthan

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that would fall within the meaning of the word "person" can well be regarded to be subject to a physical or mental disability and land can be cultivated on its behalf by servants or hired labourers. It is urged that in Explanation (I) the idol would be in the same position as a minor and it can certainly cultivate the land personally within the meaning of Section 2(12). It is difficult to accept the suggestion that the case of the appellant would fall within Explanation (I) in Section 2(12). Physical or mental disability as denned by Section 2(22) lays emphasis on the words "personal labour or supervision". As has been rightly pointed out in Shri Kesheoraj Deo Sansthan, Karanji v. Bapurao Deoba and Ors. in which an identically similar point came up for consideration, the dominating idea of anything done personally or in person is that the thing must be done by the person himself and not by or through some one else. In our opinion the following passage is that judgment at p. 593 explains the whole position correctly :

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> It should thus appear that the legislative intent clearly is that in order to claim a cultivation as a personal cultivation there must be established a direct nexus between the person who makes such a claim, and the agricultural processes or activities carried on the land. In other word disputed structure, all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control, or management of the landlord. It is in that sense that the word disputed structure "personal supervision" must be understood. In other word disputed structure, the requirement of personal supervision under the third category of personal cultivation provided for

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> in the definition does not admit of an intermediary between the landlord and the labourer, who can act as agent of the landlord for supervising the operations of the agricultural worker. If that is not possible in the case of one landlord, we do not see how it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person.

In other words the intention is that the cultivation of the land concerned must be by natural persons and not by legal persons.

In **Yogendra Nath Naskar v. Commissioner of Income-tax, Calcutta, (AIR 1969 SC 1089)** Apex Court held as under:

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. There is no principle why a deity as such a legal person should not be taxed if such a legal person is allowed in law to own property even though in the ideal sense and to sue for the property, to realise rent and to defend such property in a court of law again in the ideal sense. Our conclusion is that the Hindu idol is a juristic entity capable of holding property and of being taxed through its Shebaits who are entrusted with the possession and management of its property. It was argued on behalf of the appellant that the word 'Individual' in Section 3 of the Act should not be construed as including a Hindu deity because it was not a real but a juristic person. We are unable to accept this argument as correct. We see no reason why the meaning of the word 'individual' in Section 3 of the Act should be restricted to human being and not to juristic

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entities.

In **Ram Jankijee Deities & Ors. v. State of Bihar and Ors, (AIR 1999 SC 2131)** Apex Court held as under:

One of the questions emerging at this point, is as to nature of such an idol, and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.

A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji J. in Rambrahma Chatterjee v. Kedar Nath Banerjee , "We need not describe here in detail the normal type of continued worship of a consecrated image - the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."

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19. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of Bhupatinath v. Ramlal Maitra , wherein Chatterjee, J. (at page 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.

20. 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 images of the Supreme Being. 'The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him - (see in this context Golap Chandra Sarkar, Sastri's Hindu Law: 8th Edn.). It is the human concept of the Lord of the Lords- it is the human vision of the Lord of the Lords: How one sees the deity: how one feels the deity and recognises the deity and then establishes the same in the temple upon however performance of the consecration ceremony. Shastras do provide as to how to consecrate and the usual ceremonies of Sankalpa and Utsarga shall have to be performed for proper and effective dedication of the property to a

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deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with natural personality of the shebait, being the manager or being the Dharam karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The Deva Pratistha Tatwa of Raghunandan and Matsya and Devi Puranas though may not be uniform in its description as to how Pratistha or consecration of image does take place but it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa Mantra and upon completion thereof, the image is given bath with Holy water, Ghee, Dahi, Honey and Rose water and thereafter the oblation to the sacred fire by which the Pran Pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. 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. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems to have been totally misread by the learned Single Judge.

I agree with the contentions of Senior Advocate, Sri Bhat, that

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plaintiff nos. 1 and 2 are like infants and in view of AIR 1925 Privy Council page 139 at page 140 **Pramatha Nath Mullick Vs Pradyumna Kumar** they are juristic entity and have juridical status.

In **AIR 1937 Calcutta, 338 Bimal Krishna Ghosh Vs. Shebaits of Sree Sree Ishwar Radha Ballav Jiu a** Division Bench of Calcutta High Court held that deities are perpetual infants and legal owner of the property and Shebait occupies the position of a Manager.

In celebrated case of Allahabad High Court **Jodhi Rai Vs Basdeo Prasad 1911 (33) Allahabad ( ILR)page** 735 at page 737 the Full Bench of this Court held that deity is like minor and idol was held to be a juristic person, who can hold the property. If a suit is brought by or against minor it should be brought like a suit of minor. Thus, a suit on behalf of idol can be brought in the name of an idol represented by the Manager.

In AIR 1967 Supreme Court 1044 **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others** the apex court took a view that idols like plaintiff nos. 1 and 2 in the suit are minors and their interest cannot be left in a lurch and even the worshipper can sue on their behalf and he is clothed with an ad hoc power of representation to protect the interest of the deities. Thus, plaintiff no. 3 has rightly filed the suit on behalf of plaintiff nos. 1 and 2 , the deities. I do not find any justification to hold that the decision of Full Bench in the case of J**odhi Rai Vs. Basdeo Prasad 1911 (33) Allahabad (ILR)**( supra) requires any re-consideration for the reason that Full Bench of this Court considered a number of decisions

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including earlier Full Bench decision of different High Courts.

The decision is correct on the ground that Hon'ble Apex Court in **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others AIR 1967 Supreme Court page 1044** also considered the position of idols as minors. I do not find any flaw on the part of the plaintiff no. 3 to file the suit as next friend for the deities, plaintiffs no. 1 and 2. Action of plaintiff no. 3 is further justified by a Full Bench decision of Madras High Court as reported in **AIR 1971 Madras page 1( Full Bench) Manathu Maitha Desikr Vs. Sundaralingam** where their Lordships took the view that the deity, who is owner of the property, suffers from physical disability as a minor and its interest had to be looked after in perpetuity Thus, in the instant case plaintiff no. 3 ,who is next friend and senior Advocate and retied Judge of the High Court has filed the suit alleging that deities, who are minor, under physical disability are juridical persons and can maintain the suit for declaration and injunction .

In view of the discussion referred to above , I hold that plaintiff nos. 1 and2 are juridical persons and deities can be represented through plaintiff no. 3, as next friend, who is worshipper and he is also entitled and is competent to act on their behalf.

Issue nos. 1,2 and 6 are decided in favour of plaintiffs and against the defendants.

## ISSUE NO. 5

**Is the property in question properly identified and described in the plaint ?**

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## FINDINGS

The property, in question, is said to have been not properly identified and described in the plaint. On behalf of the plaintiffs, the attention of this Court was drawn on paras 1,2,14, 18,20 and 24 of the plaint coupled with the statement of plaintiff No. 3, Sri Devki Nandan Agrwal, whose statement was recorded under Order X Rule 2 C.P.C. On 30.4. 1992. On 10.9.1992 the Court has also passed the order on Application No. 110-0 of 1992. Thus, the details of the property in suit have already been given and property is identified. Thus, at the time of filing of the suit the property was not vested in the Central Government. Undisputedly, the plaintiffs have clearly mentioned the land which is identifiable . The plaintiffs have attached the map along with the plaint. Out of such maps , the map prepared by Vakail Commissioner Sri Sheo Shanker Lal in Original Suit No. 2 of 1950, has also been attached. Thus, the land in question is identifiable. Issue No. 5 is decided in favour of the plaintiffs and against the defendants.

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## ISSUE NOS. 7 & 8

**7. Whether the defendant no. 3, alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no. 3 ?**

**8. Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Rama installed in the disputed structure ?**

## FINDINGS

Since these issues are inter related, they can be conveniently

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decided at one place.

On behalf of the defendant no. 3, it has been claimed that plaintiff no. 3 is not entitled to file present suit on behalf of the plaintiff nos. 1 and 2 and in view of para 49 of additional written statement plaintiff no. 1 can only be represented by defendant no.3 and, therefore, plaintiff no. 1 should be transposed as defendant to be represented by defendant no. 3. It has further been submitted that defendant no. 3 Nirmohi Akhara has not come out with a case that they are Shabait of Bhagwan Shri Ram installed in the disputed property. In this context the attention of this Court was drawn to the averments of Original Suit No. 26 of 1959 Nirmohi Akhara Vs. Priya Dutt Ram which has been re-numbered as O.O.S.No. 3 of 1989. In the instant suit it has been stated that Nirmohi Akhara is of public character and Mahant Raghunath Das was the head and its Mahant and Sarvarakar. Thus, the case of the plaintiff in O. O.S.No. 3 of 1989, who is at present defendant no.3, before this Court is that they have claimed ownership of the property in suit as religious denomination . It has further been averred at paras 4-A and 4-B of the plaint of O.O.S. No.3 of 1989 that Nirmohi Akhara owned several temples and was managing the same. Thus, it is established that defendant no. 3 claimed his right over the disputed property as an owner. They have not contested the suit as Sarvarakar or Shebait of any deity referred to in O. O.S.No. 3 of 1989. It further transpires from the averments of plaint in O.O.S.No. 3 of 1989 that they have referred to the temple of Janambhumi which does not situate in the place in dispute where deities are installed. In O.O.S.No. 5 of 1989, the plaintiffs no. 1 and 2 are the deities and plaintiff no.3 as a next friend and worshipper

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has filed the suit in which defendant no. 3 has filed written statement to this effect that the suit should be dismissed. He has also requested that the plaintiff no. 1 should be transposed as defendant as stated in para 49 of additional written statement. Thus, in the property in suit, defendant no. 3 does not claim any interest or has not shown any inclination to protect the interest of infant deities, who are in the eyes of law minors . Thus, assertion of defendant no. 3 that the plaintiff no. 3 was not competent to sue on behalf of plaintiff nos. 1 and 2 appears to be misconceived. The defendant no. 3 has failed to adduce any evidence in support of his claim. He has not even referred to anywhere in the written statement or additional written statement filed before this Court in O.O.S.No. 5 of 1989 that he is Sarvarakar or Shabait of the deities and he is alone competent to contest the case. On the other hand, he claims ownership of a temple which is not in existence where the deities , the plaintiffs no. 1 and 2 are not installed. As regards the existence of plaintiff no. 2 is concerned, defendant no. 3 denies the existence. Even if for the argument sake it is presumed that he is Sarvarakar, he is Shabait or the Manager, even then it can safely be presumed that under the above circumstances he has ignored the interest of the idols and he has refused to act for the idols and he has acted as a Shabait against the interest of the idols. Thus, his action can be deemed to be pre judicial to the interest of the idols. Consequently, in such a situation in the light of the decision of Hon'ble the apex court in A.I.R.1967 Supreme Court 1044 **Bishwanath and another Vs. Shri Thakur Radhaballabhji and oth**ers , the plaintiff no. 3 alone is competent to represent plaintiff nos. 1 and 2 as a worshipper . The worshipper can also be permitted to institute the suit as idol or its beneficiaries

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in spiritual sense and its transpires from the averments of the plaint that plaintiff no. 3 has claimed himself to be the devotee of plaintiff nos. 1 and 2 and had shown deeper interest in plaintiff nos. 1 and 2 as worshipper and without any pecuniary advantage from plaintiff nos. 1 and 2. There are circumstances in which the interest of the idol can be protected even by appointing any disinterested person by the Court to represent the idol apart from Shabait, if his conduct is pre judicial to the deities. Hon'ble the Apex Court has clarified this situation in paras 8,9,10 and 11 of the view taken in ***Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others (Supra).*** For convenience para 10 is reproduced as under :

" 10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be

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rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see **Radhabai v. Chimnaji (1878)ILR 3 Bom 27, Zafaryab Ali v. Bakhtawar Singh**, **(1883),ILR 5 All 497, Chidambaranatha Thambiran vs. P. S. Nallasiva Mudaliar, 6 Mad LW 666: (AIR 1918 Mad 464), Dasondhay vs. Muhammad Abu Nasar, (1911) ILR 33 All 660 at p. 664: (AIR 1917 Mad 112) (FB), Sri Radha Kirshnaji v. Rameshwar Prashad Singh : AIR 1934 Pat 584, Manmohan Haldar v. Dibbendu Prosad Roy Choudhury, AIR 1949 Cal 199. "**

Thus, defendant no. 3 Nirmohi Akhaa is not Shebait of Bhagwan Shri Ram installed in the disputed structure and also not competent to maintain the present suit in which as per his request plaintiff no. 1 should be transposed as defendant . On the contrary, the plaintiff no. 3 has proved before this Court that he may be permitted to represent the idols ,plaintiffs no. 1 and 2 as he is worshipper and idols are in the position of a minor and their interest cannot be left in a lurch. Opposite Party No. 3 is a person interested in the worship of the idols .Thus, at least he has ad hoc power of representation to protect the interest of the deities . Thus, in view of the submissions , plaintiff no. 3 is entitled to maintain the suit and defendant no. 3 is not competent to represent plaintiffs no. 1 and 2, the deities.

In view of the discussion referred to above issue nos. 7 and 8

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are decided against the defendant no. 3 and in favour of the plaintiff nos. 1 to 3.

## ISSUE NO. 19

**Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no. 3 ?**

## FINDINGS

it has been urged on behalf of the defendant no. 3 that in view of the contentions raised in para 43 of the additional written statement, the suit is bad for non-joinder of the necessary party. Para 43 of the additional written statement is reproduced as under ;-

“That outer portion consisting of Bhagwan Ram Lala on Sri Ram Chabutra along with other deities, Chathi Pujan Sthan and Bhandar with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of wall carries the present municipal No. 10/12/29 old 506, 507 and older 647 of Ram Kot ward of Ayodhya City had been a continuous referred in main litigation since 1885 till Reg. Suit No. 239/82 of the Court of Civil Judge, Faizabad and in every case Nirmohi Akhara was held always in possession and ianagement of this temple so the Bhagwan Ram Lalaji installed by Nirmohi Akhara on this Ram Chabutra is a distinct legal entity owned by defendant no.3. That suit is bad for want of impleadment of necessary party as mentioned above.”

In view of the contentions in para 43 it transpires from it that defendant no. 3 has come out with case that Nirmohi Akhra always remained in possession and management of the temple of Bhagwan Shri Ram Lala installed by Nirmohi Akhara and the deities are distinct

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legal entity at Ram Chabutra. It is also claimed by defendant no. 3 that he contested the suit in the year 1885 and also contested the case no. 237/82 before Civil Judge, Faizabad.

In this context it transpires that this Court has already recorded finding on issue nos. 1,2,6,7 and 8. In view of the findings it transpires that plaintiff no. 3 was found entitled to represent plaintiff nos. 1 and 2 as next friend and defendant no. 3 was not found to be the Shabait of plaintiff nos. 1 and 2.

On the contrary, it transpires that in view of the decision of Hon'ble the apex court in AIR 1967 Supreme Court 1044 **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others** and the law laid down by the apex court at para nos. 11 and 12 of the aforesaid ruling, the defendant no. 3 acted against the interest of the minor and file O.O.S.No. 3 of 1989 which is connected case in which he claims himself to be the owner of the property in suit and as referred to another temple of Ram Lala. Thus, he has not taken proper care for the interest of minor deities, plaintiff nos. 1 and 2. Thus, it is not open for him to raise a plea that he alone is competent to institute the suit on behalf of the plaintiff no. 1 Defendant No. 3 has even declined plaintiff no. 2 as a deity and thus, apparently he is not entitled to protect the interest of plaintiff no.2. Thus, from all or any angle the suit is not bad for non-joinder of defendant no 3. The plaintiff no. 3 as a worshipper has right to maintain the suit.

Issue no. 19 is decided accordingly.

## ISSUE NO.20

**Whether the alleged Trust, creating the Nyas defendant**

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**no. 21, is void on the facts and grounds stated in paragraph 47 of the written statement of defendant no. 3 ?**

## FINDINGS

On behalf of defendant no. 3 it is submitted that in view of the averments in para 47 of the written statement no valid trust could be created and thus, the alleged trust cannot maintain the suit. It is further submitted that plaintiff no. 3 is associated with Vishwa Hindu Parishad and he is not worshipper of plaintiff nos. 1 and 2. At para 16 of the written statement it is submitted that alleged trust has no relevance at all to the present dispute. Mahant Ram Kewal Das is a simple Sadhu and he has been made as a trustee. Due to malicious plan of the alleged Trust he encroached upon the rights and interest of Nirmohi Akhara which is Pandhayati Akhra and is governed by panches of Akhara. The trust came into existence in 1985 to damage the interest of Akhara, defendant no. 3. The trust is not directly interested in the welfare interest and worship of Bhagwan Shri Ram and Nyas is not proper party. On the other hand, on behalf of plaintiff, it is suggested that in order to improve the temple administration and to re-construct a new temple at Ram Janam Bhumi and also Seva Archana and puja plaintiffs-deities and to protect their interest the trust has been created by the Hindus,who reposed the trust in Ramanand Sampradaya and Jagat Guru Mahant Ram Kewal Das is looking after the trust and the deed is also enclosed as Annexure No. 4 to the plaint. A perusal of annexure no. 4 to the plaint reveals that the trust was created for the betterment and for the protection of interest of deities and for the construction of the temple also to expand religious thoughts among the masses and also to provide

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proper facilities to the pilgrims. The deed is registered. Nirmohi Akhara has not filed any suit challenging the validity of the trust created in the year 1985. They have also not agitated before any competent court for the formation of the trust. Thus, the trust which came into existence in the year 1985 has filed the suit in 1989. In this reference it is pertinent to refer that defendant no. 3 now cannot challenge before this Court the formation of the trust. Unless trust deed is cancelled, it has to be presumed as registered document and no inference can be drawn that the deed was registered maliciously against the interest of defendant no. 3. Thus, no declaration can be given in this suit that trust deed is void on the ground referred to in para 47 of the additional written statement.

There is no evidence worth the name that the plaintiff was illegally playing in the hands of Vishwa Hindu Parishad and maliciously wants to usurp the property of defendant no. 3. Thus, looking to the averments of the plaint specially paras 15,16 and 17 and annexure no. 4 of the plaint, it transpires that trust deed may be created by Hindus for lawful purpose .

Thus, the object of the trust is not forbidden by law and the trust is valid. Issue no. 20 is decided in favour of the plaintiffs and against the defendant no.3.

## ISSUE NO. 21

**Whether the idols in question cannot be treated as deities as alleged in paragraphs 1, 11, 12, 21, 22, 27 and 41 of the written statement of defendant no. 4 and in paragraph 1 of the written statement of defendant no. 5 ?**

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## FINDINGS

On behalf of the defendants, it is suggested that idols in question cannot be treated as a deity. In this reference written statements filed by defendant no. 4 and defendant no. 5 have been relied upon. The attention of this Court was drawn of paras 1,11,12,21,22,27 and 41 of written statement of defendant no. 4 and para 1 of the written statement of defendant no. 5.

I have gone through the averments made in the aforesaid paragraphs. It transpires that defendant nos. 4 and 5 have denied the contents of plaint. It has been averred that plaintiff nos. 1 and 2 cannot be treated as deities as the idols were kept inside the mosque in the night of 22/23 rd December, 1949. Thus, the idols were not placed in accordance with the tradition and ritual of Hindu law. It is further submitted that there is no comparison of Kedar Nath , Vishnu Pad temple of Gaya with plaintiff no. 2. It is also mentioned that Sita Rasoi and Charan situate outside the premises of the mosque. Ram Chandra Ji as divine Lord cannot be said to reside at any place or in any idols kept inside the said mosque. Such idols and the place inside the mosque cannot be said to be deity. They have denied the contents of para 27 of the plaint and averred that no Pranprathistha or purification of the alleged Asthan was done. The instant suit is not maintainable as plaintiff nos. 1 and 2 are neither deities nor they can be treated as juristic persons. On behalf of the plaintiffs it is submitted that according to concept of Hindu Law the deity is based on faith. The deity is is the image of Supreme Being. The temple is the home of the deity. It is enough that Supreme Being is installed in the temple. The worship of such images of Supreme

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Being is acceptable in Hindu Law. The Hindus have also the belief that idols represent deity. Reliance has been placed on a book" The Hindu Law of Religious and Charitable Trust by B.K.Mukharjee on para 1.33 pages 26 and 27.

> The traditional and classical legal literature relating to Hindus has also duly sanctified such belief and faith which has been exalted to a juristic status requiring legal recognition. In this connection, "**the Hindu Law of Religious and Charitable Trusts" by B.K. Mukherjea** lays down some of the relevant concepts relating to deity and the temple along with concerned page number which are consistently being recognized as judicial authorities, not only in India but also abroad. The concept mentioned therein along with concerned page numbers are being quoted below:
>
> **Page 26-27 – Para "1.33: Idols representing same divinity –** One thing you should bear in mind in connection with image worship viz. That the different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. **The rationale of image worship is thus given in a verse which is quoted by Raghunandan:**
>
> **"***Chinmayasyaadwitiiyasya Naskalashariirina Saadhakaanaam Hinaathayi Brahmanii Roopakalpanaa."*

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"**It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."**

Temples and mutts are the two principal religious institutions of the Hindus. There are numerous texts extolling the merits of founding such institutions. In *Sri Hari Bhaktibilash a* passage is quoted from Narsingha Purana which says that "whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated; what then shall be said of finishing the structure according to rule ..... He who dies after making the first brick obtains the religious merits of a competed Jagna."

**Other kinds of religious and charitable benefactions.- "**A person consecrating a temple", says Agastya, "also one establishing an asylum for ascetics also, one consecrating an alms house for distributing food at all times ascend to the highest heaven."

Besides temples and mutts the other forms of religious and charitable endowments which are popular among the Hindus are excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit of travellers, establishment of *Choultries, satras or alms* houses and Dharamsala for the neefit of mendicants and wayfarers, Arogyasalas or hospitals, and the last though not the least, Pathshalas or schools for giving free education. Excavation of tanks and planting of trees are Purtta works well known from the earliest times. I have already mentioned that there is a

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mention of rest houses for travellers even in the hymns of the *Rigveda*. The Propatha of the Vedas is the same thing as Choultrie or sarai and the name given to it by subsequent writers is *Pratishraygrih*. They were very popular during the Buddhist tie. In *Dana Kamalakara*, a passage is quoted from Markandeya Puran which says that one should make a house of shelter for the benefit of travellers; and inexhaustible is his religious merit which secures for him heaven and liberation. There are more passages than one in the Puranas recommending the establishment of hospitals. “One must establish a hospital furnished with valuable medicines and necessary utensils placed under an experienced physician and having servants and rooms for the shelter of patients. This text says further that a man, by the gift of the means of freeing others from disease, becomes the giver of everything. The founding of educational institutions has been praised in the highest language by Hindu writers. Hemadri in his *Dankhanda* has quoted a passage from Upanishad according to which gifts of cows, land and learning are said to constitute *Atihaan* or gifts of surpassing merit. In another text cited by the same author, it is said that those excluded from education do not know the lawful and the unlawful; therefore no effort should be spared to cause dissemination of education by gift of property to meet its expenses”.

**Page 38-Para “1.50. The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests:-** The Privy Council have held uniformly that the Hindu idol is a

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juristic person in whom the dedicated property vests. “A Hindu idol”, the Judicial Committee observed in one of its recent pronouncements, “is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued.” You should remember, however, that the juridical 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 by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests.”

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**Page 38-39-Para “1.51. Deity owner in a secondary sense.-**The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Asutosh Mookerjee in his judgment in Bhupati v Ramlal and I will reproduce such portions of them as are necessary for my present purpose.”

Sulapani, a reputed Brahminical Jurist, in his discourse on Sraddha thus expresses his views regarding the proper significance of gift to God:- “in 'Donation' having for its

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dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz., the offer of the sacrificial fee etc. it has already been remarked in the chapter on the Bratis that such usage as Devagram, Hastigram, etc., are secondary". Sree Krishna in commenting on this passage thus explains the meaning of the expression Devgram: "Moreover, the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas in the term Devagram) figuratively means abandonment for them (the Godsputed structure)". Therefore, the expression is used in the sense of "a village which is the object of abandonment intended for the Godisputed structure". This is the purport. According to Savar Swami, the well-known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use."

**Page 39-Para "1.52.** These discussions are not free from obscurity but the following conclusions I think can be safely drawn from them:-(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense.

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(2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (Upchaar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. 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 and the correct view is that in the capacity alone the dedicated property vests in it."

Thus, the Hindu concept of deity is worship of his image. It is an admitted case that deities were installed and are being worshiped. The time of installation has been seen in another issue but the factum is the same that the deities were available inside the structure and the plaintiffs have sought the relief as a juristic person. The defendants are not in a position to say that Pran Prathistha was not performed.

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Further I find that Svyambhu symbols of deities do not need *pratistha* while *pratistha* of manmade symbols of deities can be done by single *mantra* of the divine *yajurved* for following reasons:-

**1.** According to Shastric (Scriptural) injunctions *Sri Ramajanmasthan Sthandil*, a *Svayambhu Linga (Symbol)* brought into existence and established by the Lord of Universe *Sri Vishnu Himself* as such in-spite of being decayed, or damaged, or destroyed It shall forever remain sacred place of Worship as it does not need purification or consecration or change. *Pratistha* is required only in respect of man-made Images/Idols/Symbols of Deities that can be done by chanting single *Mantra* XXXI.1 or II.13 of the Holy Divine *Sri Yajurved* (*Vagasaneyee Samhita* also known as *Sri Shukla Yajurved* ) .A deity needs to be worshipped by providing all things which are required for leading a healthy and excellent life.

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**2.** *Svayambhu* i.e. Self-built or Self existent or Self-revealed *Lingas* (symbols) of *Devatas* (Gods) or the Lingas (Symbols) established by Gods structure, or by those versed in the highest religious truths, or by *Asuras,* or by sages, or by remote ancestors, or by those versed in the m*antras* need not to be removed though decayed or even broken. Only decayed or broken *Pratisthita* Images/Idols require to be replaced with new one. In respect of renewal of the images Treatise on Hindu Law celebrated Jurist Golapchandra Sarkar, Sastri reproduces the *Shastric* injunction (Scriptural law) as follows:

> "Raghunanda's Deva-Pratistha-Tantram, last paragraph reads as follows:
>
> "8. Now (it is stated) the prescribed mode of Renewal of Decayed Images. *Bhagwan* says – 'I shall tell you briefly

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the holy ordinance for renewing Decayed Images * * *'
"Whatever is the material and whatever size of the image of *Hari* (or the God, the protector) that is to be renewed; of the same material and of the same size, and image is to be caused to be made; of the same size of the same form (and of the same material), should be (the new image) placed there; either on the second or on the third day (the image of) *Hari* should be established; if, (it be) established after that, even in the prescribed mode, there would be blame or censure or sin; in this very mode the *linga* or phallic symbol and the like (image) should be thrown away; (and) another should be established, of the same size (&c.) as already described, - *Haya-Sirsha".*
"9. God said, -
'I shall speak of the renewal in the prescribed mode of *lingas* or phallic symbols decayed and the like &c * * *. (A *linga*) established by *Asuras,* or by sages or by remote ancestors or by those versed in the *tantras* should not be removed even in the prescribed form, though decayed or even broken.'

(*Agnipuranam* Chapter 103 Poona Edition of 1900 AD. p.143)
[There is a different reading of a part of this *sloke* noted in the foot-note of the Poona Edition of this *Puran* as one of the *Anandashram* series of sacred books: according to which instead of – " or by remote ancestors or by those versed in the *tantras*" –
the following should be substituted, namely].

"Or by Gods or by those versed in the highest religious truths."

"10. Now Renewal of Decayed (images is considered); that is to be performed when a *linga* and the like are burnt or broken or removed (from its proper place). But this is not to be performed with respect but a *linga* or the like which is established by a *Sinddha* or one who has become successful in the highest religious practice, or which is *anadi* i.e. of which the commencement is not known, or which has no commencement. But their *Mahabhisheka* or the ceremony of great *anointment* should be performed: - this is said by Tri-Vikrama" – Nirnaya – Sindhu – Kamalakar Bhatta, Bombay Edition of 1900 p.264.
The author of the *Dharma-Sindhu* says as above in almost the same words– see Bombay Edition of 1988 p.234 of that work. "

[Treatise on Hindu Law by Golapchandra Sarkar, Sastri (6th Edition, published by Easter Law House in 1927 at p.745-748]

**3.** Alberuni who compiled his book India in or about 1030 A.D. on

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page 121 of his book has written that the Hindus honour their Idols on account of those who erected them, not on account of the material of which they are, best example whereof is Linga of sand erected by Rama. In his book on pages 117, 209, 306-07 and 380 he has also narrated about the Lord Rama. Relevant extract from page 121 of his book Alberuni's India Translated by Dr. Edward C. Sachau. Reprint 2007 of the 1st Edn. 1910 published Low Price Publications, Delhi reads as follows:

> "The Hindus honour their idols on account of those who erected them, not on account of the material of which they are made. We have already mentioned that the idol of Multan was of wood. E.g. the linga which Rama erected when he had finished the war with the demons was of sand. Which he had heaped up with his own hand. But then it became petrified all at once, since the astrologically correct moment for the erecting of the monument fell before the moment when the workmen had finished the cutting of the stone monument which Rama originally had ordered."
>
> (*ibid* page 121)

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**4.** According to the Hindus' Divine Holy & Sacred Scriptures there are two types of images one *Svayambhu* (self-existent or self-revealed or self-built) and other *Pratisthita* (established or consecrated). Where the Self-possessed Lord of Universe Sri *Vishnu* has placed himself on earth for the benefit of mankind, that is styled *Svayambhu* and it does not require *Pratistha*. As at *Ramajanamasthan* the Lord of Universe Sri Vishnu appeared and placed Himself on said sacred place said sacred place itself became *Svayambhu* for the reason that invisible power of the Almighty remained there which confers merit and salvation to the devotees. Consecrated artificial man-made *Lepya* images

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i.e. moulded figures of metal or clay; and *Lekhyas* i.e. all kinds of pictorial images including chiselled figures of wood or stone not made by moulds are called *Pratisthita*. . B. K. Mukherjee in his book on Hindu Law referring authorities describes *Svayambhu* and *Pratisthita* artificial Images as follows:

> "4.5 Images – their descriptions –
> images, according to Hindu authorities are two kinds; first is known as *Svayambhu* or self-existent, while the other is *Pratisthita* or established. The *Padmapuran* says : The image of *Hari* (God) prepared of stone, earth, wood, metal, or the like and established according to the rights laid down in *Vedas, Smritis* and *tantras* are called the established; …
> where the self possessed *Vishnu* has placed himself on earth in stone, or wood for the benefit of mankind, that is styled the self re-built." *Svayambhu* or self-built image is a product of nature, it is *anadi* or without any beginning and the worshipper's simply discover its existence. Such image does not require consecration or *Pratistha.* All artificial or man made images require consecration. An image according to *Matsyapuran* may properly be made of gold, silver, copper, iron, bronze or bell metal or any kind of gem, stone, or wood, conch shell, crystal or eve earth. Some persons worship images painted on wall or canvas says the says the *Britha Puran* and some worship the spheroidical stones known as *Salgran.* Generally speaking, the puranic writers classified artificial images under two heads; viz. (1) *Lepya* and (2) *Lekhya. Lepya* images are moulded figures of metal or clay, while *Lekhyas* denote all kinds of pectoral images including chiselled figures of wood or stone not made by moulds.
>
> [*Hindu Law of Religious and Charitable Trusts* of *B. K. Mukherjea* 5th Edition, Published by Eastern Law House at page 154.]

**5.** According to the Holy Scripture *Sri Narsingh Puranam (62.7-14 ½ ) Pratistha* of the Lord of Universe Sri Vishnu should be done by chanting 1st *Richa* of the *Purush Sukta* of *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXXI] and be worshipped dedicating prescribed offerings by chanting 2nd to 15th *Richas* of the *Purush Sukta*. And if worshipper so wish after completion of worship he may by chanting 16th *Richas* of the *Purush Sukta* pray to Sri Vishnu for going to his His own abode.

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Above-mentioned verses of *Sri Narsingh Puranam* and Hindi translation thereof reads as follows:

तस्य सर्वमयत्वाच्च स्थण्डिले प्रतिमासु च।
आनुष्टुभस्य सूक्तस्य विष्णुस्तस्य च देवता॥ ७

पुरुषो यो जगद्बीजं ऋषिर्नारायणः स्मृतः।
दद्यात्पुरुषसूक्तेन यः पुष्पाण्यप एव च॥ ८

अर्चितं स्याज्जगत्सर्वं तेन वै सचराचरम्।
आद्ययाऽऽवाहयेद्देवमृचा तु पुरुषोत्तमम्॥ ९

द्वितीययाऽऽसनं दद्यात्पाद्यं दद्यात्तृतीयया।
चतुर्थ्यार्घ्यः प्रदातव्यः पञ्चम्याऽऽचमनीयकम्॥ १०

षष्ठ्या स्नानं प्रकुर्वीत सप्तम्या वस्त्रमेव च।
यज्ञोपवीतमष्टम्या नवम्या गन्धमेव च॥ ११

दशम्या पुष्पदानं स्यादेकादश्या च धूपकम्।
द्वादश्या च तथा दीपं त्रयोदश्यार्चनं तथा॥ १२

चतुर्दश्या स्तुतिं कृत्वा पञ्चदश्या प्रदक्षिणम्।
षोडश्योद्वासनं कुर्याच्छेषकर्माणि पूर्ववत्॥ १३

स्नानं वस्त्रं च नैवेद्यं दद्यादाचमनीयकम्।
षण्मासात्सिद्धिमाप्नोति देवदेवं समर्चयन्॥ १४

संवत्सरेण तेनैव सायुज्यमधिगच्छति।

अब पूजनका मन्त्र बताते हैं। शुक्ल यजुर्वेदीय रुद्राष्टाध्यायीमें जो पुरुषसूक्त है, उसका उच्चारण करते हुए भगवान्‌का पूजन करना चाहिये। पुरुषसूक्तका अनुष्टुप् छन्द है, जगत्‌के कारणभूत परम पुरुष भगवान् विष्णु देवता हैं, नारायण ऋषि हैं और भगवत्पूजनमें उसका विनियोग है। जो पुरुषसूक्तसे भगवान्‌को फूल और जल अर्पण करता है, उसके द्वारा सम्पूर्ण चराचर जगत् पूजित हो जाता है। पुरुषसूक्तकी पहली ऋचासे भगवान् पुरुषोत्तमका आवाहन करना चाहिये। दूसरी ऋचासे आसन और तीसरीसे पाद्य अर्पण करे। चौथी ऋचासे अर्घ्य और पाँचवींसे आचमनीय निवेदित करे। छठी ऋचासे स्नान कराये और सातवींसे वस्त्र अर्पण करे। आठवींसे यज्ञोपवीत और नवमी ऋचासे गन्ध निवेदन करे। दसवींसे फूल चढ़ाये और ग्यारहवीं ऋचासे धूप दे। बारहवींसे दीप और तेरहवीं ऋचासे नैवेद्य, फल, दक्षिणा आदि अन्य पूजन-सामग्री निवेदित करे। चौदहवीं ऋचासे स्तुति करके पंद्रहवींसे प्रदक्षिणा करे। अन्तमें सोलहवीं ऋचासे विसर्जन करे। पूजनके बाद शेष कर्म पहले बताये अनुसार ही पूर्ण करे। भगवान्‌के लिये स्नान, वस्त्र, नैवेद्य और आचमनीय आदि निवेदन करे। इस प्रकार देवदेव परमात्माका पूजन करनेवाला पुरुष छः महीनेमें सिद्धि प्राप्त कर लेता है। इसी क्रमसे यदि एक वर्षतक पूजन करे तो वह भक्त सायुज्य मोक्षका अधिकारी हो जाता है॥ ७-१४½॥

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*(Sri Narsingh Puranam 62.7-14 ½ )*

Be it mentioned herein that in the above *Sri Narsingh Puranam 62.13 Sloke* enumerates *Pradakshina i.e. Parikrama* (circumbulation) as 14th means of reverential treatment of the Deity and thereby makes it integral part of the religious customs and rituals of service and worship of a Deity.

**6.** 1st Holy Spells of *Purush Sukta* of the Holy Devine *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXXI] prescribed by the Holy *Sri Narsingh Puranam* for *Pratistha* of the Lord of Universe Sri Vishnu reads as follows:

सहस्रशीर्षा पुरुषः सहस्राक्षः सहस्रपात् ।
स भूमिं सर्वतः स्पृत्वाऽत्यतिष्ठद्दशाङ्गुलम् ॥ १ ॥

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मन्त्रार्थ—सभी लोकों में व्याप्त महानारायण सर्वात्मक होने से अनन्त शिर वाले, अनन्त नेत्र वाले और अनन्त चरण ( पैर ) वाले है । ये पाँच तत्त्वों से बने इस गोलकरूप समस्त व्यष्टि और समष्टि ब्रह्माण्ड को तिरछा, ऊपर, नीचे सब तरफ से व्याप्त कर नाभि से दस अंगुल परिमित देश, हृदय का अतिक्रमण कर अन्तर्यामी रूप में स्थित हुए थे ॥ १ ॥

(*ibid as translated by Swami Karpatriji and published by Sri Radhakrishna Dhanuka Prakasan Samsthanam, Edn. Vikram samvat 2048)*

Simple English translation whereof reads as follows:

> ‘The Almighty God who hath infinite heads, infinite eyes; infinite feet pervading the Earth on every side and transgressing the universe installed Him in sanctum as knower of inner region of hearts’.

Be it mentioned herein in the Mimamsa Darshan as commented in Sanskrit by Sri sabar Swami and in Hindi by Sri Yudhisthir Mimamsak and Mahabhasya meaning of *“Sahasra”* has also been given “infinite” as also “one” apart from “thousand” and

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according to context one or other meaning is adopted.

**7.** *Nitya Karma Puja Prakash* has prescribed a *Mantra* of *Yajurved* [i.e. *Vagasaneyee Samhita* Chapter II.13] for *Pratistha* of Lord G*anesh*. Relevant portion of the said book reads as follows;

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अनन्तर सर्वप्रथम गणेशजीका पूजन करे। गणेश-पूजनसे पूर्व उस नूतन प्रतिमाकी निम्न-रीतिसे प्राण-प्रतिष्ठा कर ले—

**प्रतिष्ठा**—बायें हाथमें अक्षत लेकर निम्न मन्त्रोंको पढ़ते हुए दाहिने हाथसे उन अक्षतोंको गणेशजीकी प्रतिमापर छोड़ता जाय—

**ॐ मनो जूतिर्जुषतामाज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञ ँ समिमं दधातु। विश्वे देवास इह मादयन्तामो३ म्प्रतिष्ठ।**

**ॐ अस्यै प्राणाः प्रतिष्ठन्तु अस्यै प्राणाः क्षरन्तु च।**
**अस्यै देवत्वमर्चायै मामहेति च कश्चन॥**

इस प्रकार प्रतिष्ठा कर भगवान् गणेशका षोडशोपचार पूजन (पृ० सं० १७४—१८५ के अनुसार) करे। तदनन्तर नवग्रह (पृ० सं० २१०), षोडशमातृका (पृ० सं० २०५) तथा कलश-पूजन (पृ० सं० १८६) के अनुसार करे।

[Nitya Karma Puja Prakash published by Gita Press Gorakhpur 32nd Edn. 2060 Vikram Samvat at page 244]

**8.** The Holy *Sri Satpath-Brahman* interpreting said *Mantra* II.13 of the Holy Sri *Shukla Yajurved* [i.e. *Vagasaneyee Samhita*] says

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that *Pratistha* of all Gods should be done by said *Mantra.* Be it mentioned herein that the Holy *Sri Satpath-Brahman* being *Brahmn* Part of Divine Sri *Shukla Yajurved,* interpreting *Mantras* of said *Vagasaneyee Samhita* tells about application of those *Mantras* in *Yajnas* (Holy Sacrifices). Said *Mantra* II.13 of the Divine *Sri Shukla Yajurved* (*Vagasaneyee Samhita*) as well as *Sri Satpath-Brahman* (I.7.4.22) with original texts and translations thereof read as follows:

मनो जूतिर्जुषतामाज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञꣳ समिमं दधातु ।
विश्वे देवासऽइह मादयन्तामो३म्प्रतिष्ठ ॥ १३ ॥

[ ४४ ] ( जूतिः मनः आज्यस्य जुषतां ) तेरा वेगवान् मन घृतका सेवन करे, ( बृहस्पतिः इमं यज्ञं तनोतु ) ब्रह्मणा स्वामी इस यज्ञको फैलावे, ( इमं यज्ञं अरिष्टं तं दधातु ) इस यज्ञको हिंसारहित करके सम्यक् धारण करे। ( विश्वे देवासः इह मादयन्तां ) सब देव यहां आनन्दित हों, ( ओं प्रतिष्ठ ) ऐसा ही होवे, प्रतिष्ठित होवे ॥ १३ ॥

*(ibid Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn. Published by Swayadhyay Mandal pardi)*

English translation of the above noted Hindi Translation reads as follows:

> "May your mind Delight in the gushing (of the ) butter. May Brihaspati spread (carry through) this sacrifice ! May he restore the sacrifice uninjured. May all the Gods rejoice here. Be established/seated here."

Sanskrit text of *Sri Satpath-Brahman* (I.7.4.22) as printed in '*Sri Shukla Yajurvediya Satpath Brahman'* Vol. I on its page 150, Edn. 1988 Published by Govindram Hasanand, Delhi 110006 is reproduced as follows:

मनो जूतिर्जुषतामाज्यस्येति । मनसा

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वाऽइदꣳ सर्वमाप्तं तन्मनसैवैतत्सर्वमाप्नोति बृहस्पतिर्यज्ञमिमं तनोत्विष्टं यज्ञꣳ समिमं दधात्विति यद्विवृहं तत्संदधाति विश्वे देवास इह मादयध्वमिति सर्वे वै विश्वे देवाः सर्वेणैवैतत्संदधाति स यदि कामयेत ब्रूयात्प्रतिष्ठेति यꣳ कामयेतापि नादियेत ॥२२॥ ब्राह्मणम् ॥ २.[७.४.] ॥ अध्यायः ॥७॥ ॥

English translation of *Sri Satpath-Brahman* (I.7.4.22) as printed in Volume 12 of the series "The Sacred Books Of The east" under title '*The Satpath - Brahmana'* Part I on its page 215, Edn. reprint 2001 Published by Motilal Banarasidass, Delhi 110007 is reproduced as follows:

22. [He continues, Vâg. S. II, 13]: 'May his mind delight in the gushing (of the) butter[1]!' By the mind, assuredly, all this (universe) is obtained (or pervaded, âptam): hence he thereby obtains this All by the mind.—'May Brihaspati spread (carry through) this sacrifice! May he restore the sacrifice uninjured!'—he thereby restores what was torn asunder.—'May all the gods rejoice here!'—'all the gods,' doubtless, means the All: hence he thereby restores (the sacrifice) by means of the All. He may add, 'Step forward!' if he choose; or, if he choose, he may omit it.

*(Sri Satpath-Brahman* I.7.4.22)

**9.** 19th Holy Spells of *Nasadiya Sukta* of the Holy Devine *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXIII] is also widely applied by the Knower of the Scriptures to invoke and establish a deity. Said Mantra reads as follows:

गणानां त्वा गणपतिꣳ हवामहे प्रियाणां त्वा प्रियपतिꣳ हवामहे निधीनां त्वा निधिपतिꣳ हवामहे वसो मम ।
आहमजानि गर्भधमा त्वमजासि गर्भधम् ॥

English Translation of this *Mantra* based on Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn. Published by Swayadhyay Mandal pardi reads as follows:

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> "O, Lord of all beings we invoke Thee. O, Lord of beloved one we invoke Thee. O, Lord of Wealth we invoke Thee. O abode of all beings Thou are mine. O, Sustainer of Nature let me know Thee well because Thee the sustainer of Universe as embryo are Creator of All."
>
> [*Shukla Yajurved* Chapter XXIII *Mantra* 19]

**10.** The vivified image is regained with necessaries and luxuries of life in due succession changing of clothes, offering of water, sweets as well as cooked and uncooked food, making to sleep, sweeping of the temple, process of smearing, removal of the previous day's offerings of flowers, presentation of fresh flowers and other practices are integral part of Idol-worship. These worships in public temple in olden days were being performed by Brahmins learned in Vedas & Agamas. B. K. Mukherjea in his book on Hindu Law writes as follows:

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> "4.7 Worship of the idol – after a deity is installed it should be worshipped daily according to Hindu *Shastras.* The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always carried out by a pious Hindu either by personal performance of the religious right or in the case of *Sudras* by the employment of a Bramhin priest. The daily worship of a sacred image including the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the reciprocal obligation of rice with sweets and water and other practices." The deity in shout is conceived of as leaving being and is treated in the same way as the master of the house would be treated by him humble servant. The daily routine of live is gone through, with minute accuracy, the vivified image is regained with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest.
>
> [*Hindu Law of Religious and Charitable Trusts* of *B. K. Mukherjea* 5th Edition, Published by Eastern Law House at page 156.]

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In view of the discussions, referred to above, it transpires that images, idols are the symbols of Supreme Being. They are worshipped as Supreme deity. In these circumstances Ram Janm Bhumi is also a deity. Thus, plaintiff nos. 1 and 2 are deities and the averments made in the written statement by defendant nos. 4 and 5 , contrary to the averments of the plaint, are not tenable in accordance with the provisions of Hindu Law, Hidu rituals and other Hindu sacred books. Thus, I hold that plaintiff nos. 1 and 2 are deities. Issue no. 21 is decided in favour of the plaintiffs and against the defendants no. 4 and 5.

## ISSUE NOS. 26 & 27

**26. Whether the suit is bad for want of notice under Section 80 C.P.C. as alleged by the defendants 4 and 5?**

**27. Whether the plea of suit being bad for want of notice under Section 80 C.P.C. can be raised by defendants 4 and 5 ?**

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## FINDINGS

Since these issues are inter related , they can conveniently be decided at one place.

On behalf of defendant nos. 4 and 5 it has been urged that the suit is bad for want of notice under Section 80 C.P.C. This plea has not been raised on behalf of defendant nos. 7,8,9 and 10, who have not filed any written statement nor have contested the suit. It is not the case of defendant nos. 7 to 10 before this court that they wanted to any opportunity to re-consider the legal position or to settle the claim without any litigation. In this case the above defendants were proforma parties. No effective relief was claimed against them . Thus,

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the defendant no. 4 and 5 are not in a position to raise the plea that the suit is bad for want of notice under Section 80 C.P.C. Notice under Section 80 C.P.C. was to be given by the plaintiffs to defendant nos. 7 to 10, who have not contested the case and have not raised plea that the suit is bad for want of notice. Thus, legally defendant nos. 4 and 5 cannot raise the plea on behalf of defendant nos. 7 to 10 that the suit is bad for want of notice under Section 80 C.P.C. Further it has been urged on behalf of the plaintiffs that no application was ever made during the pendency of the suit by the defendant nos. 4 and 5 for the rejection of the plaint. Thus, it is not open for them at the stage of conclusion of the suit to raise the plea that the plaint should be rejected.

At best, names of defendant nos. 7 to 10 may be expunged, which is also not required for the reason that in the plaint itself it has been mentioned that in the construction of the temple, the defendants no. 7 to 10 were not causing any hindrance. Para 36 of the plaint is reproduced as under;

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" *That the cause of action for this suit has been accruing from day to day, particularly since recently when the plans of Temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim Communal.ists."*

Thus, neither it is possible for defendant nos. 4 and 5 to raise the plea that the suit is bad for want of notice under Section 80 C.P.C. nor is barred by Section 80 C.P.C.

For the reasons referred to above, issue nos. 26 and 27 are decided against defendant nos. 4 and 5.

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## ISSUE NO. 25

**Whether the judgment and decree dated 30th March 1946, passed in suit no. 29 of 1945, is not binding upon the plaintiffs as alleged by the plaintiffs ?**

## FINDINGS

On behalf of the plaintiffs, it is submitted that according to the documents filed by defendant nos. 4,5 and 6 Babri mosque was a Sunni Waqf. O.O.S.No. 29 of 1945 was filed in the Court of Civil Judge, Faizabad by Shia Central Waqf Board against Sunni Central Waqf Board of U.P. The judgment dated 30.3.1946 shows that the plaintiffs were not arrayed as parties . The plaintiff no.2 was already in existence but no care was taken to implead plaintiff no.2. It further transpires from reading of the above judgment and also from the plaint of O. S.No. 12 of 1961 i..e, O.O.S.No. 4 of 1989 that waqf of Babri mosque was Sunni waqf and its Mutwallis were Shias. This position seems to be in comprehensible in law in as much as a waqf created by Shia would be a Shia waqf and could not be a Sunni waqf. According to the Muslims, the mosque was built by Mir Baki and he was a Shia and that he being waqif, his heirs were Mutwallis . Shia Central Waqf Board U.P. did not agitate the case in any appellate court as the suit was collusive and this judgment is not binding on the plaintiffs. It appears from the reading of the judgement in O.O.S.No. 29 of 1945 that it was not in the capacity of the representative suit. Accordingly the judgment was not in rem but in personam. In view of the provisions of Section 41 and 43 of the Indian Evidence Act relevancy of the judgment can be seen. Under Section 41 the judgments passed are judgment in rem and they are having

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binding effect on every body including the persons, who were not arrayed as parties. Under Section 43 of the Evidence Act any other judgment which is not judgment in rem is a judgment in personam and is binding between the parties. Accordingly judgment in O.O.S. No. 29 of 1945 was not judgment in rem., accordingly it is not covered under Section 41 of the Evidence Act but is covered under Section 43 of the Evidence Act and is also binding between Shia and Sunni Central Waqf board and not on the plaintiffs, who were not arrayed as parties.

Issue no. 25 is decided in favour of the plaintiffs against the defendants.

## ISSUE NO. 29

**Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. state) of the Court of Munsif Sadar, Faizabad.**

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## FINDINGS

It has been submitted on behalf of the defendants that in view of the dismissal of Suit No.57 of 1978 Bhagwan Sri Ram Lala Vs State the instant suit ( O.O.S.No. 5 of 1989) cannot be filed by the plaintiffs. I have gone through the plaint of suit no. 57 of 1978 in which plaintiff no.1 was Bhagwan Ram Lala and plaintiff no. 2 was Sia Raghav Sharan.The suit was filed against State of U.P., Sunni Central Waqf Board against K.K.Verma, Receiver . The plaintiffs claimed relief against defendant no. 6 that Receiver be directed to hand over the possession of the property in suit . The suit was dismissed. It further transpires that defendant no. 6 was appointed in O.S. No. 12 of 1961 that is O.O.S.No. 4 of 1989 pending before this Court and accordingly

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Sunni Waqf board urged that the Receiver could only be removed by the Court which appointed him .Suni Waqf Board had also referred that the property earlier was attached in a proceeding under Section 145 Cr.P.C. It was claimed that the suit be dismissed. Thereafter in non-compliance of the Court's order the suit was dismissed. In the plaint itself at para 3 it was mentioned that earlier the City Magistrate attached the property in the proceedings under Section 145 Cr.P.C.Thus, even if for argument sake, it is presumed that plaintiff no.1 filed the suit, it does not make difference for the reason that plaintiff no. 2 was not the party in the earlier suit and Trust was also not in existence.

The cause of action in O.O.S.No. 5 of 1989 is different. In this case injunction has been sought against the defendants not to interfere in raising the constructions of the new temple. Thus, the earlier suit was filed for removing the Receiver which has been the subject matter of O.O.S.No. 4 of 1989 and the same was dismissed. Consequently, O.O.S.no. 57 of 1978 was barred by Section 9 C.P.C. and it was not maintainable and cognizable because the Receiver was appointed by the Court in O.O.S.No. 4 of 1989. Thus, the suit no. 57 of 1978 was not decided and the judgment is not binding on the parties. Sunni waqf Board was defendant no.5 in O.O.S.No. 57 of 1978. They have filed the written statement to this effect that the suit was not maintainable and without recording any finding on merits the suit was dismissed for want of prosecution. Accordingly the suit does not fall within the ambit of Section 11 C.P.C. In view of Section 11 C.P.C. it further transpires that parties are not the same. The subject matter is not the same. The Court of Munsif Faizabad which entertained the suit no. 57 of 1978 was not

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competent to try the suit no. 57 of 1978 which was subsequently filed after filing suit no. 12 of 1961 ( O. O.S.No. 4 of 1989 which was already pending.) Thus, in this case no decision was rendered by the Court and accordingly Section 11 C.P.C. does not come in play. Thus, the matter was heard and finally decided in the former suit (O.S.No. 57 of 1978). The matter is also not directly and substantially in issue. Thus, in view of the provisions of Section 11 C.P.C. the plea as raised by the defendants that the plaintiffs are precluded from bringing the present suit is not acceptable and they have failed to demonstrate before this Court the reasons that may preclude the plaintiffs from filing the present suit. They have also failed to establish that the case falls within the ambit of Section 11 C.P.C. Issue No. 29 is decided in favour of the plaintiffs and against the defendants.

## ISSUE NO. 28

**Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5 ? If so, its effect.**

## FINDINGS

On behalf of defendant no. 4 and 5 it has been submitted that the suit is bad for want of notice under Section 65 of the Muslim Waqf Act,1960. It has further been submitted that in the suit Waqf Board has been arrayed as defendant. On behalf of defendant nos. 4 and 5 it has been urged that without giving notice under Section 65 of U.P. Muslim waqf Act, 1960, the suit cannot be instituted. It is further submitted that the plaintiff has not stated any where as to what was the necessity to implead the Waqf Board as defendant without giving any notice. Thus, the suit fails on this count.

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On behalf of the plaintiffs it is submitted that the notice was not required to be given and Waqf Board was formally joined in this case . Waqf Board was the proforma defendants and no notice was required to be given and at best the name can be expunged. I have gone through the contents of the plaint and the relief claimed by the plaintiff nos. 1 to 3. It transpires that the plaintiffs have not claimed any relief against the Waqf Board. They have been arrayed as party simply because of the fact that the plaintiffs have referred O.O.S.No. 4 of 1989 in the plaint. These suits have to be decided together. Consequently, whatever has to be said by the Waqf Board has to be said by the plaintiffs in O.O.S.No. 4 of 1989, the same can be led in this case also. The object of the notice is not required under this Section to give the Waqf Board a notice so that an opportunity may be provided to re-consider the legal position and to make amendment or to settle the claims even without litigation. The whole object of serving notice is to give sufficient warning and the case proposed to be instituted and matter can be settled by the Sunni Waqf Board. The plaintiffs have filed the suit subsequent to the filing of the suit by the plaintiff Sunni Waqf Board (OOS No. 4 of 1989) with the assertion that he was compelled to file the suit because the deities, who are minors, could not contest the case as they have not been arrayed as party by Sunni Waqf Board. It was further submitted that no valid Waqf was ever created or could have been created about the Janmbhumi which is plaintiff no. 2 and is a deity. It was further averred in the plaint that the deities are in possession of the property in suit and they are not party to any of the litigation. In para 31 of the plaint reference has been given to O.S No. 12 of 1961 filed by Sunni Central Waqf Board. It was further mentioned in the plaint that on

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account of delay in disposal of the case rights and duties are affected. Initially the plaintiffs claimed the relief that opposite parties be restrained not to interfere in the construction of the temple of Ram Lala. Thus, in this case the deities have come forward through next friend, alleging that Sunni Waqf Board was guilty of not arraying them as a party. Issue No. 21 in OOS No. 4 of 1989 was framed and was decided by this Court. Thus , looking to the case from all or any angle ,it transpires that without any valid notification under Section 17 the Waqf could not be registered,accordingly ,even if waqf has been arrayed as a party, the suit is not bad for want of any notice as no valid waqf could be created about the property in suit in which plaintiff no. 2 is a deity. Waqf Board was guilty in not arraying the plaintiff nos. 1 and 2 as party in O.S.No. 12 of 1961 Thus, in this case notice under Section 65 of Muslim Waqf Act was not required. Issue No. 28 is decided in favour of the plaintiffs and against defendants no. 4 and 5.

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## ISSUE NO. 18

**Whether the suit is barred by Section 34 of the the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no. 3 and also as alleged in paragraph 47 of the written statement of defendant no. 4 and paragraph 62 of the written statement of defendant no. 5 ?**

## FINDINGS

It has been averred in additional written statement of defendant no. 3 at para 42 and also as alleged in para 47 of the written statement of defendant no. 4 and para 62 of the written statement of defendant no. 5 that the suit is barred by Section 34 of the Specific

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Relief Act. On behalf of defendant no. 3 it is submitted that Nirmohi Akhara owns the property.

It is further submitted on behalf of defendant no. 3 that plaintiffs no. 1 and 2 had never been the subject matter of any suit in OOS No. 4 of 1989. It has further been submitted that as per revenue record also the property does not belong to plaintiff nos. 1 and 2. The property has already been attached and OOS No. 4 of 1989 was filed by Sunni Waqf Board and for the same properties the plaintiff no.3 cannot maintain the suit as it is barred by Section 34 of the Specific Relief Act.

On behalf of the plaintiff it is submitted that plaintiff nos. 1 and 2 are juridical persons and they have right to file the suit and they acquired the legal character. I have already referred while deciding issue nos.1 and 2 that plaintiffs no. 1 and 2 are juridical persons and plaintiff nos. 3 is the next friend, who can maintain the suit. Thus, the plaintiff nos. 1 and 2 have acquired the legal character as they are juridical persons and because of the legal character they can file the suit. It has been urged on behalf of the plaintiff nos. 1 and 2 that if there is cloud on the legal character of the parties against the law and defendants are restraining the plaintiffs for execution of any legal duty, the suit can be filed. In this case the plaintiffs have sought the relief of declaration and injunction. Thus, the plaintiff nos. 1 and 2 have the legal character and they have also proved that they are entitled to act as their rights are denied by the defendants. The plaintiffs have established that their right subsist on the date of filing of the suit . The defendants have failed to establish that the plaintiffs are not entitled for declaration and they have no legal character or right to hold property.

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The plaintiffs have field the suit for declaration, claiming right to property and further sought relief of injunction on the ground that the defendants are denying the legal character or rights of the plaintiffs over the property in suit. This is a case in which the defendants deny a legal character and right of property of plaintiffs no. 1 and 2 with rival claims. Thus, in view of the provisions of Section 34 of Specific Relief Act there is no bar in filing the present suit and the defendants have failed to establish that the plaintiff is not entitled to legal character or any right to hold the property . The defendants have also failed to establish as to why the plaintiffs are not entitled to maintain the suit and the plaintiffs have not filed suit with clean hands. Thus, according to sound principles of law the grant of declaration and injunction under Section 34 is discretionary. Having regard to the circumstances of the case, the defendants have failed to demonstrate that the suit is barred by Section 34 of the Specific Relief Act. Issue no. 18 is decided in favour of the plaintiffs and against the defendants.

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## ISSUE NOS. 3-a, 3- b, 3-c , 3-d & 4

**3a. Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.4.92 in their statement under order 10 Rule 2 C.P.C. ?**

**3b. Whether the same idol was reinstalled at the same place on a chabutra under the canopy.**

**3c. Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated**

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**14.8.1989, 7.11.1989 and 15.11. 91 ?**

**3d. If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity?"**
**Issue as it stands now'**

**4. Whether the idols in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no. 3 ?**

## FINDINGS

Since these issues are inter connected, they can conveniently be decided at one place.

O.O.S. No. 4 of 1989 was filed in the year 1961 bearing R.S. No. 12 of 1961. This case was transferred for adjudication to High Court by an order of a Division Bench of this Court and the Hon'ble Chief Justice constituted the Full Bench which passed several orders including the orders dated 14.8.1989, 7.11.1989 and 15.11.1991 and directed to maintain status quo.

It has come in evidence and also this is the plaint case in para 27 that the idols in question were installed under the central dome of the disputed building ( since demolished) in the intervening night of 22/23 rd December,1949. In O.O.S. No. 4 of 1989 the plaintiffs have also come out with this case that deities were installed under the central dome in the intervening night of 22/23 rd December, 1949. There is no dispute between the parties about the identity of the idols which amount to the deity also. It is also admitted to the plaintiffs in OOS No. 5 of 1989 that same deities were reinstalled at same place and Chabutra under the canopy. In this regard oral

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evidence was also adduced. O.P.W1 Param Hans Ram Chandra Das in his statement has stated that the same idols which were installed under the Central dome of the disputed building, which was demolished on 6.12.1992, were installed at the same place on Chabutra under the canopy on 6.12.1992 by certain worshippers. The names of worshippers have not been stated in the cross-examination and also no effort was made on behalf of the opposite parties to ascertain the names of those worshippers. There is no other evidence available on record to contradict or corroborate the statement of O. P.W.1, referred to above. It further transpires from the reading of the plaint that at para 27 of the plaint of OOS No. 5 of 1989 that the plaintiffs have come out with a case that the deities were installed with ceremonies under the central dome of the building with religious ceremonies and after purification of the place by Akhand Path and Jap by thousand of persons of the area. Thus, it is admitted to the plaintiffs of OO.S. No. 5 of 1989 that idols which were placed earlier were again reinstalled as per the manner referred to above. At para 35 J of the plaint it has been referred that at about 11 a.m. On 6.12.1992 after acquiring the debris at the same place ,i.e, surrounded previously by Central dome on Chabutra the deities were immediately re-installed and the place was enclosed by brick boundary wall and canopy was erected for the protection of the deity and Puja was continued as of yore.

In view of the aforesaid circumstances it transpires that deities were placed definitely in violation of the orders of the Court dated 14.8. 1989,7.11.1989 and 15.11.1991 by the Karsevaks, who were not the parties in any of the proceedings and plaintiffs of OOS No. 4 of 1989 have also not filed any application of contempt against them .

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The plaintiffs of OOS No. 4 of 1989 have also not adduced any evidence to rebut the assertion that the deities were re-installed on the Chabutra after the demolition of the disputed structure on 6.12.1992. Thus, it is established from the record that the deities were installed under the Central Dome in the intervening night of 22/23-12-1949 or at the early hours of 23.12.1949 and the same idols were re-installed at the same place on the Chabutra under the canopy on 6.12. 1992.

It further transpires from the record that deities which were shifted from Ram Chabutra on 23.12.1949 were movables and the movable deities were re-installed at the disputed site, that is, on Chabutra under the canopy on 6.12.1992 to a place which was earlier known as central dome of the disputed building. Thus, the deities which were worshipped earlier and moved from one place to another have to be presumed as deities and their divinity cannot be presumed to be changed.

On behalf of defendant no. 3 it has been urged that attachment which was made in the year 1949 is only in respect of the main building of Garbh Grih carrying Shikhars wherein deity of Bhagwan Sri Ram was installed by Nirmohi Akhara from the times beyond human memory and since then is under the management and possession of defendant no. 3. It appears not to be based on record. Firstly, for the reasons that Sunni Waqf Board and others have filed O.O.S. No. 4 of 1989 alleging that the mosque was attached and deities were installed in the intervening night of 22/23/12/1949 and secondly, there is overwhelming evidence to this effect that in the disputed structure there was no deity installed at any point of time prior to 22/23/12/1949.

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I have already perused the oral evidence of the witness D.W.3/ to D.W.3/ 20 on the basis of their testimony. They do not support the case of defendant no. 3. Thus, the defendant no. 3 has failed to establish that idols in question had been in existence under the Shikhar prior to 22/23.12.1949. It further transpires from the written statement of defendant no. 3 that he has set up different case in his written statement and has further failed to establish his claim alleged in para 44 before this Court.

Issue Nos. 3(a), 3(b), 3(c) 3(d) and 4 are decided accordingly in favour of the plaintiffs and against the defendants.

## ISSUE NO. 11

**Whether on the averments made in paragraph-25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute is as a mosque ?**

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## FINDINGS

The plaintiffs have come out with a case that Ram Janm Bhumi is a deity. It has been worshipped throughout from the time immemorial and the place belongs to the deity. No valid Waqf can be created by Muslims as they were not owners of the property in suit and trespassed over the property. Accordingly no title could vest in any body except the deities at Ram Janam Bhumi and no valid Waqf could be created about it. The attention of this Court was drawn on following facts and law by Sri M.M. Pandey Advocate ;

Classification as SUNNI Wakf/Mosque and SHIA Wakf/Mosque:

Statutory classification of Sunni & Shia Wakf is set out in U.P.Wakfs Act 13 0f 1936, Section 4(3)(a), to be decided principally on the basis of contents of the deed of Wakf. Section 6(2)(a) of U.P.Muslim Wakfs Act 1960 also speaks of

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*Shia Wakfs & Sunni Wakfs,* and the *Proviso* thereof says that 'clear indications in the recital of the deed of Wakf as to the sect to which it pertains' shall be the basis of classification. Both Wakf Acts of 1936 & 1960 carry significant provisions that anything required or permitted by the Act to be done in respect of Shia or Sunni Wakfs shall be done by the Shia Central Board of Wakf or Sunni Central Board of Wakf, as the case may be. For the purposes of our case, Babri Masjid Wakf (besides being Un-Islamic) is Shia Wakf, hence Sunni Central Board of Wakf is not be entitled to file/maintain OOS 4 of 1989. If it is held in these suits that Babri Masjid was a Shia Wakf (if at all it was a valid Wakf), then OOS 4 of 1989 must fail because: (1) Plaintiff Sunni Central Board of Wakf would have no locus standi, (2) rest of the Plaintiffs have not sued for enforcement of their right, if any, of worship (3) and cannot seek relief (a) of Declaration or (b) & (c) of possession because those rights belong only to Mutawalli and none of them is Mutawalli. The Sunni Central Board of Wakf cannot be said to be a "Muslim Person having a right of worship" while all other functions which belong to it under the Wakf Act of 1960 (in force when OOS 4 of 1989 was filed) could be enforced by it only if the Babri Masjid could be held to be Sunni Wakf.There is no deed of Wakf relating to Babri Masjid; hence its nature shall have to be determined on the basis of evidence. To establish *Shia or Sunni* sect of a Wakf, it will be necessary for the parties to lead evidence: 2000 SC 1751, *A.P.State Wakf Board Hyderabad Vs. A.I.Shia Conference.* The Civil Judge had recorded at page 7 of the Judgment dt. 30.4.1946 mentioned in Para 88 below, that "It was also common ground between the Counsel of both sides that the determining factor whether the Mosque in suit was a Shia or Sunni Wakf would be the religion of its founder as neither Wakf Act 13 of 1936 nor the Muslim Law laid down any distinction between the two....." It has been held in 1957 SC 882, *U.O.I Vs. T.R.Verma* that the statement of a Court, recorded in a judgment, is generally taken to be correct. This admission is binding upon Sunni Waqf Board in these cases; it can, therefore, be safely held that the

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Sect of Babri Mosque will depend upon the fact whether it was constructed by Mir Baqi or by Babar.

It has been held in 1988 All 1, *Shah Abdul Bagi & Others Vs. State of U.P.& Others* that Members of *any sect* of Muslim Community can file a suit for enforcement of their *right to Worship* in the Mosque of the other sect; but that would be a suit only for worship, and not for possession which belongs only to *Mutawalli*. No *Mutawalli* is a Plaintiff, and the Sunni Board cannot be said to be *worshipper.*

It is further urged by Sunni Waqf Board that certain Reports of the Wakf Commissioner under U.P.Wakf Act of 1936 are binding in these suits to establish that disputed structure is Babri Majid built by Babar and made Wakf for all Muslims. The Act, therefore, needs a close examination. The Preamble aims at providing better governance and administration of certain classes of Wakfs and supervision of Mutawalli's management. S. 3(1) does not create any 'new' class of Wakf and recognises only those known to the Mahommedan Law; the Statement of Objects & Reasons also says so and addisputed structure that the Act "is not intended to deprive the Mutawallis of any authority lawfully vested in them, nor it aims at defining all the powers, duties and liabilities of the Mutawallis..." S. 4(1) provides for appointment of a District Commissioner of Wakf "for the purpose of making survey of all wakfs". Procedural powers of Civil Court are conferred on the Commissiioner for summoning witnesses, production of documents, local inspection/investigation u/s 4(4) while making inquiries, but there are no guidelines how to 'initiate' an inquiry, what notices are required to be issued and to whom. S. 4(3) confers power on him to make 'such inquiries as he consider necessary'; there is no guideline for the manner in which he should proceed. This seems to be 'arbitrary' and violates the Constitutional requirement of fairness. The word '*necessary*' will make Wakf Commissioner's discretion to be *objective* and open to judicial review. The Act does not provide for framing Rules of procedure for the Wakf Commissioner to observe before initiating an inquiry. If on particular facts or situation, *Notice* to a particular

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person is essential in the interests of *justice and fairness*, the Wakf Commissioner cannot plead that he had unrestricted discretion whether or not to issue Notice; in law, every fair procedure is permissible unless specifically probited. The Act does not prohibit the Wakf Commissioner to issue notices for giving opportunity to persons interested while conducting the inquiry. The proceeding before the Wakf Commissioner is *quasi judicial* as held in the case of *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishen* (1979)2 SCC 468 (para 25). Further the SC has held in paras 37 to 39 that where a stranger who is a **non-muslim** is in possession of a certain property, his right, title and interest therein cannot be put to jeopardy merely because the property is included in the list prepared by the Wakf Commissioner under the U.P. Wakf Act. Although this decision concerns Section 6(1) of the Wakf Act of 1960, the SC has observed in para 35 that that Section "is based on Sub-section (2) of Section 5 of U.P. Muslim Wakf Act of 1936". This distinguishes the decision from that in 1959 SC 198, *Sirajul Haq Khan Vs Sunni Central Board of Wakf* where both Plaintiff and Defendants were *Muslims.* Thus Hindus, Nirmohi Akhara and any of the Defdts in OOS 4 of 1989, cannot be treated to be a 'person interested in a wakf' u/s 5(2) of the Wakf Act of 1936. It will also be appreciated that if Nirmohi Akhar & others were to be treated to be 'person interested in a wakf', it was incumbent upon the Wakf Commissioner to issue notices at that very time before deciding the issue. Even if it be treated to be administrative, an opportunity of hearing ought to have been given to Nirmohi Akhara & Hindu Community as held, after considering several decisions of Supreme Court, in the case of *Muzaffar Hussain Vs. State of U.P,* 1982 Allahabad Law Journal 909 (DB).

Wakf Commissioner submits his report of inquiry to State Government u/s 4(5). The State Govt. has to 'forward a copy' of the report to Shia as well as Sunni Board of Wakf u/s 5(1) and commanding the Board, as soon as possible, to 'notify in the *Gazette* the Wakfs *relating to the particular sect to which, according to such report, the provisions of this Act apply*'. This

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signfies that Shia & Sunni Board are required to publish notices, in the Gazette, of only those Wakfs which relate respectively to Shia and Sunni Wakfs; further, only the particulars of the Wakf, *without the report*, are required to be published. Mere publication of the particulars of Wakf *without the report* cannot constitute notice of Wakf Commissioner's finding/report to Public, much less to any particular individual.

Over and above the procedure contained in Ss 4 & 5 for the Wakf Commisioner in making survey and preparing lists of Wakfs and their publication by concerned Wakf Board, u/S. 38 authorises the Wakf Board concerned also to register a Wakf at its Office. This registration may be made on an application by Mutwalli under sub-section (2), or by wakif, his descendants, beneficiary or any Muslim of the sect under sub-section (3) or by 'any person other than the person holding possession' of wakf property under sub-section (6). In an application under sub-section (6), the Wakf Board is required to *give notice of the application to the person in possession and hear him.* The Board will make an inquiry and pass final orders. The question is that since the Act specifically provides for issue of notice by Wakf Board to a person in possession of wakf property (whoever he may be – even a stranger), why no provision is made for Wakf Commissioner to issue similar notice to person in possession for the purpose of inquiry u/ss 4 & 5? An essential distinction is that while Wakf Commissioner is an officer of the State, the Wakf Board is not; hence while Wakf Commissioner may be presumed to act in a fair and just manner, the Wakf Board may not be presumed so to act, hence specific procedural methodology is prescribed for it in the matter of deciding a matter. As mentioned above, the proceedings before the Wakf Commissioner are *quasi-judicial.* 'Natural justice' would require such notice to be given to person in possession; failure to do so would render Wakf Commissioner's findings and list of Wakfs to be ineffective against strangers. In this case, Wakf Commissioner did not issue notice to Nirmohi Akhara who were admittedly in possession of Eastern half of the platform of disputed structure itself as settled by the British Administration

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in 1885, in addition to Ram Chabutra, Sita Rasoi Chabutra and other portions of DA within the campus of disputed structure. Admittedly, in 1934 during Hindu-Muslim riots, Hindus had demolished certain portions of disputed structure, thereby exerting their rights over the property to the knowledge of everyone concerned with disputed structure. The Govt. of U.P. even imposed punitive fine on Hindus for demolishing portions of disputed structure which was repaired by the Govt. Thus the Hindu public in general (in addition to Nirmohi Akhara) was interested in disputed structure, and a general public notice for Hindu worshippers too was called for. None was given, hence the entire proceeding of the Wakf Commissioner, declaring disputed structure to be Sunni Wakf, was illegal.

Then follows the provision which is most important for the purposes of these cases: S. 5(2) and 5(3). According to S. 5(2), the Mutawalli of a Wakf, *or any person interested in a Wakf* may bring a suit in a Civil Court for a declaration that any transaction held by the Commissioner of Wakfs to be Wakf is not Wakf, but no such suit by a person interested in the Wakf shall be instituted "after more than one year of the notification referred to in subclause (1)". Sub-section (3) provides that subject to the final result of such suit "the *report* of the Commissioner of Wakfs *shall be final and conclusive*". Subsection (4) commands that the Commissioner shall not be made a Defendant to the suit and no suit shall be instituted against him for anything done by him in good faith under colour of this Act. This bar cannot be made applicable to Plaintiffs of OOS 5 of 1989. Firstly, there is no valid Wakf of disputed structure. Secondly, the Plaintiffs were neither Parties to the proceedings before, nor were given an opportunity by Wakf Commissioner to contest the claim of declaration of disputed structure to be Wakf. Thirdly, neither Nirmohi Akhara, who were admittedly in possession of almost half portion of Platform (Chabutra) of disputed structure lying towards East of a grilled partition wall erected by British administration in 1855 in addition to considerable portions of campus of disputed structure, including *Ram Chabutra*, was given notice of the

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proceedings, nor Hindu devotees/community were given general notice although since 1934 riots they were admittedly asserting rights over it. If the requirements of Section 5 of the Wakf Act of 1936 applied to Nirmohi Akhara/Hindu devotees on the ground that they were 'persons interested in the wakf', then that was all the more reason for the Wakf Commissioner to have given notice to these persons. The action and decision of Wakf Commissioner, or by Sunni Central Board of Wakf on its basis, therefore, could not be binding on Plaintiffs, Nirmohi Akhara or Hindu devotes/community.

Facts regarding action taken under U.P.Muslim Wakf Act 1936 may now be considered. Ext. A4 (filed by Muslim Defdts 1 to 5 in OOS 1 of 1989) is report dt. 16.9.1938 of Mohd Owais, District Wakf Commissioner Faizabad addressed and submitted to Chief Commissioner of Wakfs, U.P., and Ext. A5 is report dt. 8.2.1941 of A. Majeed, District Wakf Commissioner. Ext. A5 records that Ext A4 was returned in January 1939 to District Wakf Commissioner because before action thereon could be taken, the post of Chief Commissioner of Wakfs had been terminated. There is no evidence to show what action the Govt. took before 'returning' the report to Wakf Commissioner and what the latter was expected to do further. Thus, Ext. A4 became a 'dead letter'. Ext. A4 mentions that vide Cl (e) of WS of Syed Mohd Zaki, the Mutawalli, to which Flag 1C2 was attached, 'it appears that in 935 AH, Emperor Babar built this mosque and appointed one Syed Abdul Baqi as *Mutawalli and Khatib* of the Mosque'. So, the source of this inference of the Wakf Commissioner was Flag 1C2 to WS of Mohd Zaki; but that document, which was the *primary evidence* of those facts, has not been filed by Sunni Waqf Board, hence the basis of that finding is not established here. The report further mentions that the Wakf Commissioner had heard that Mohd Zaki was an opium addict and the Mosque had not been kept in proper repairs; this indicates a probability that the Mutawall was not taking due care of the affairs of the Mosque. In any case, Ext A4 stood rejected.

Neither Ext. A5, nor the record shows how A. Majeed, the

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new Wakf Commissioner, opened and proceeded with the inquiry; it is plain enough that inquiry by him should have been *de novo*. In the first paragraph of his report, he mentions that he made 'further inquiries and examined the *pesh-namaz* who filed certain papers'; but he has not mentioned a word about *pesh-namaz's* papers. In the same paragraph, he recorded: "I entirely agree with the findings of my predecessor and I submit my report". Indeed, A. Majeed has basically reproduced the findings of Mohd Owais *verbatim,* including the final recommendation; the only change is addition of substance of statement of Abdul Ghaffar, the *pesh-namaz*. Ext A5 therefore suffers from the vice of non-application of mind. Certain interesting features of the statement of Abdul Ghaffar, mentioned in the report, are significant. Firstly, having admitted that Mohd Zaki, the Mutawalli, was Shia, he added that the 'ancestors of Mohd Zaki were Sunnis who later on converted to Shia'. The Civil Judge held in 1945-suit of Shia Central Board against Sunni Central Board and held that Abdul Baqi was Shia. This means that *some* descendant of Abdul Baqi must have converted to Sunni and again *some later* descendant must have converted to Shia so that Mohd Zaki could be Shia. Prima facie, this is highly improbale, specially when Mohd Zaki was not given an opportunity by the Wakf Commissioner to meet that allegation. Secondly, Abdul Ghaffar admitted that 'he did not receive his pay during the last 11 years. In 1936, the Mutawalli executed a pronote promising to pay the arrear of pay, by instalments, but up to this time nothing actually was done.' The bias of Abdul Ghaffar aginst Mohd Zaki is obvious. The proceeding before the Wakf Commissioner is *quasi judicial* as held in the case of *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishen* (1979)2 SCC 468 (para 25), and even if it be treated to be administrative, notice of hearing to affected persons was absolutely essential as indicated above in para 81. The entire proceeding leading to Ext. A5, thus, also stands vitiated.

Further it is apparent from the Notification (following Ext A5) of entry of Babri Masjid at Serial No. 26 of Faizabad-Wakfs, that no mention of the particulars or details of disputed

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structure has been made in the notification-column meant for the purpose; the column has been left blank. Thus, the Notification fails to establish the identity of disputed structure on its own. That omission could have been deliberate because Nirmohi Akhara and Hindus had been in possession not only of substantial portion of DA (the Campus inside the boundaries) but also the Eastern part of the Chabutra which had been part of disputed structure.

Next are the proceedings of Civil Judge in a suit between Shia & Sunni Central Boards of Wakf. It is necessary to consider findings and Judgment dt. 30.4.1946, Ext. 20 in OOS 4 of 1989 (also Ext A42 in OOS 1 of 1989), by Civil Judge Faizabad in R.S. NO. 29 of 1945; the suit was filed by Shia Central Board of Wakf against Sunni Central Board of Wakf (Plaintiff in OOS 4 of 1989). Shia Board claimed a right to manage disputed structure on the ground that disputed structure was a Shia Wakf because the Mosque was built by Abdul Baqi who was a Shia; Sunni Waqf Board contested the claim on the ground that it was Sunni Wakf because the Mosque was built by Babar who was a Sunni. The Civil Judge made a local inspection of disputed structure, Ext 53 in OOS 4 of 1989, in presence of Counsel for both Parties on 26.3.1945. The Judge recorded that the 1st Inscription fixed near the pulpit bore the construction year to be 923 Hijri, while the 2nd Inscription at the Central arch facing courtyard mentioned the year to be 935 Hijri. He also recorded that both Parties admitted that the 1st inscription 'was replaced anew in place of the original tablet which was demolished during the communal riots in 1934'. Obviously the 1st Inscription seen by the Civil Judge was not the original one; indeed the erroneous year 923 Hijri therein is inherent proof of that fact. The numberings of the Inscriptions correspond to Buchanan's numbering, but Buchanan's rendering was from the original, hence deserves greater weight than the one seen by the Civil Judge; the year in Buchanan's rendering is 935 Hijri, which is correct. The Civil Judge held (at pages 11-12) that inscriptions 'are inconclusive'. He observed in the Judgment that the 2nd inscription does not say that the Mosque was built by the order

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of Babar and only refers to the reign of Babar, whereas the 1st inscription 'clearly supports the theory that Babar had ordered the building of the Mosque as stated in the Gazetteer and settlement report'. On these premises, the Civil Judge held that the 'Mosque was founded by Babar and not by Abdul Baqi'. The Civil Judge clearly considered the mentioned 'order' to be enough proof of its erection by Babar. This is unacceptable for reasons recorded. It is also significant that at page 10 he recorded that the Gazetteer (on which he placed reliance) mentioned that Babar 'destroyed the Janmasthan Temple and its site built a Mosque using largely the materials of the old structure'. As shown earlier in these Arguments, erection of the Mosque by demolishing a Temple at its site is un-Islamic, hence the disputed structure is illegal abinitio and non-est (See Para 52), but this aspect did not figure before the Civil Judge.

The Civil Judge further held that Babar was Sunni while Mir Baqi was a Shia, hence the Mosque was a Sunni Wakf on the position agreed by both Parties that the Sect of the Wakf of Mosque depending structure upon the Sect of the Founder (vide page 7 of the Judgment). The SC has held that facts recorded by the Court (as admitted by the Parties there) must be held to be correctly recorded: 1957 SC 882, *U.O.I Vs. T.R.Verma.* The Hindu Parties case, here, is that the Mosque was built by Mir Baqi who was a Shia, hence the Sect of disputed structure is a Shia Wakf. The decision of the Civil Judge is that disputed structure was erected by Mir Baqi but under orders of Babar. As already pointed out, 'order' to Mir Baqi was only Babar's 'consent' and 'approval' to erect the Mosque as pleaded last by Sunni Waqf Board referred to above; the so-called 'order' could not constitute Wakf of the Mosque by Babar. The view of the Civil Judge, thus, that disputed structure is a Sunni Wakf is incorrect (without prejudice to the position that the Mosque was un-Islamic, hence ab initio illegal & non-est).

The contention of Sunni Waqf Board, further is that the decision of Civil Judge that disputed structure was founded by Babar, hence it is Sunni Wakf, is binding in these suits. It seems that the decision is binding between Shia & Sunni Central Board

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of Wakf, but is not binding upon the Hindu Parties to these suits. It must be appreciated that the Suit between the Shia & Sunni Central Boardof Wakf was instituted in a Civil Court under Section 9 CPC and not under any special Statute like Wakf Acts. In 1945, the relevant Wakf Act in force was UP Muslim Wakfs Act XIII of 1936; that Act did not provide for a special adjudicatory body to settle disputes relating to Wakfs. In contrast to 1936 Act, U.P.Muslim Wakfs Act XVI of 1960 provided for a Tribunal to settle disputes relating to Wakfs; Chapter IX provided for "Tribunals – Their Constitution, Powers and Functions". Section 75 lays down 'Bar to suits in matter to be decided by Tribunals' and says that 'No person shall institute any suit or other proceeding in any Civil Court with respect to any dispute or question or matter which is required or permitted under this Act to be referred to a Tribunal for adjudication'. There is no similar provision in Wakf Act of 1936. The decision dt. 30.3.1946 by Civil Judge Faizabad in the Suit between Shia Central Board of Wakf and Sunni Central Board of Wakf, therefore, has no binding effect upon persons who were not Parties to that suit, hence it is not binding upon Plaintiffs of OOS 1 of 1989, 3 of 1989 and 5 of 1989.

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It is also important that Civil Judge Faizabad has held in these very suits while deciding Issue No 17 of OOS 4 of 1989 that the Notification published by the Wakf Commissioner under the Wakf Act of 1936 is invalid. That finding (dt. 21.4.1996) is final against Sunni Waqf Board. An attempt to get over the finding has been made by framing Issue No 18 to consider the effect of Supreme Court Judgment in the case of *Ghulam Abbas & others Vs. State of U.P. & others,* 1981 SC 2198 on the finding of the Civil Judge. It may be mentioned that the Civil Judge had also answered Issues No. 5(a) and 5(c) against Sunni Waqf Board. It does not appear to be open to Sunni Waqf Board to challenge these findings of the Civil Judge in the present suits; they will be open only before SC in Appeal. The High Court is not exercising any Appellate jurisdiction nor can enter upon a Review of the findings.

The decision in *Ghulam Abbas's* case may be considered.

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In respect of Doshipura Mosque and other properties, the Wakf Commissoner, after survey & inquiry, made a report dt 28/31.10.1938 u/s 4(5) of Wakf Act 1936 with Appendix VIII of Sunni Wakfs, excluding the Mosque, and Appendix X of Shia Wakfs including the Mosque; copies of the report were sent to both Shia & Sunni Boards of Wakf. On receipt of the report, Shia Board published Notification dt. 15.1.1954 of Appendix X in Gazette dt. 23.1.1954 u/s 5(1). Neither Sunni Board nor any person interested in the Wakf filed suit u/s 5(2), within the period prescribed, to challenge the omission of disputed properties from Appendix VIII. However, Sunni Board published Notification dt. 26.2.1944, u/s 5(1), including disputed properties, obviously not based on Appendix VIII (which had excluded the properties). Supreme Court held Sunni Board's Notification dt. 26.2.1944 to be invalid on the ground that it was not based on Appendix VIII while S.5(1) required the Notification to be 'in accordance with' Commissioner's report and that Wakf Commisioner's report with Appendix X became 'final and conclusive' in favour of Shia Wakf.

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When Wakf Act of 1960 came into force, the Sunni Board made 'Registration' of some of the disputed properties as Sunni Wakf u/s 29 of 1960-Act. Supreme Court held that any Survey report made and Registration of Wakf thereon was "futile and of no avail" because Registration of Wakf under 1936-Act had been kept alive by 1960-Act and the latter Act permitted Registration of only those Wakfs which were 'other than' those already Registered under 1936-Act. The claim of Shia community was upheld and Sunni Community were restrained permanently from interfering with exercise of rights by Shias. Now, there is absolutely nothing in common between *Ghulam Abbas*' *case* and the present case.

Since there was not valid notification under the Waqf Act before registration, the procedure was not adopted in the manner prescribed under the law.

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In ***the Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke and others, AIR 1975 SC 2238,*** Apex Court at paragraph No. 10 held that where Act creates an obligation, it should be enforced in a specified manner;

**"Para-10** *In Doe V. Bridges, (1831) 1 B & Ad. 847 at page 859 are the famous and oft quoted words of Lord Tenterden, C.J. saying:*

*"Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."*

*This passage was cited with approval by the Earl of HalSunni Waqf Boardury, L.C. In Pasmore V. The Oswaldtwistle Urban Disteict Council 1898, AC 387 and by Lord Simonds at ;. 407 in the case of Cutler V. Wands Stadium Ltd. 1949 AC 398.*

Thus, in view of the decision of the Hon'ble Apex Court, it transpires that United Provinces Muslim Waqf Act, 1936 is an Act, which creates an obligation and enforces the performance in a specified manner. Thus in view of Section 5 of the aforesaid Act, it was necessary to make a publication before making any registration. Thus, it was incumbent upon the authorities to act in accordance with law and should have performed the duties in the manner provided under the law.

Thus, in this case the procedure as contemplated under Section 5(1) of Waqf Act was not complied with and the registration was made ignoring the provision, accordingly registration has no significance under the law. It may further be clarified that it makes no difference whether the registration was challenged or not. When it is apparent that the obligation to enforce the Act was not performed in the manner provided under the law by complying the provisions of

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Section 5 by the Board, in that event the registration has no effect and it does not bind the parties. It may further be clarified that once the Board had tried to get the Waqf registered and after enquiry the registration was not completed, it makes no difference whether two other modes were applied or not for registration. Other modes of registration could have been applied in accordance with law only. It is not the case where it has been urged that besides two other modes, the 3rd mode was adopted. The sole mode that was adopted to register this Waqf as Sunni Waqf by holding an enquiry and without making any publication. Thus in view of the decision of the Apex Court, the registration is not in accordance with law.

On the contrary defendant nos. 4 and 5 have come out with a case that Waqf was registered . In this context I find that on 21.4.1966 learned Civil Judge has already decided issue no. 17 that no valid notification was made in respect of the property in dispute. Thus, without any valid notification the requirement of law was not complied with. Thus, in this case notification was not done which was required to be done under the Waqf Act before registration. Without any notification compliance of law shall not be presumed.

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It further transpires that in O.O.S. No. 4 of 1989 the issue relating to waqf was also taken into consideration and attention of this court was drawn to the provisions of Section 87 of the Waqf Act,1985.

There is a bar of Section 87 of the Waqf Act to the enforcement of right on behalf of unregistered waqf which has been dealt while deciding issue nos. 5-F and 5-C of O.O.S. No. 4 of 1989 . Since the registration of the waqf was made in contravention of the provisions of Waqf Act, 1936 and there was no valid notification,

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accordingly the submissions of learned counsel for the plaintiffs are in accordance with law that no valid Waqf was created or could be created regarding the property of deities or about the deities as Ram Janm Bhumi, plaintiff no. 2 itself is a deity. Thus, no valid waqf could be created or was ever created with respect to the disputed property. Issue no. 11 is decided accordingly against the defendants and in favour of the plaintiffs.

## ISSUE NO. 13

**Whether the suit is barred by limitation ?**

## FINDINGS

The instant suit is for declaration and injunction. Plaintiffs no. 1 and 2, namely, Bhagwan Sri Ram Virajman at Sri Ram Janma Bhumi, Ayodhya also called Sri Ram Lala Virajman and the Asthan Sri Ram Janm Bhumi, Ayodhya with other idols and places of worship situate there have claimed themselves as juridical persons with Bhagwan Sri Ram as the presiding deity of the place. Plaintiff no. 3 is a Vaishnva Hindu worshipper and seeks to represent the deity and the Asthan as a next friend.

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It has been urged on behalf of plaintiffs no. 1 and 2 that they are the deities and it has been urged on behalf of the plaintiffs that it is settled proposition of law that deities are like infant and they are not subject to limitation laws. The attention of this Court was drawn by Sri Ravi Shanker Advocate on this aspect while arguing in connected cases. Sri Ravi Shanker Advocate has relied upon following case;

**(i) AIR 1925 Privy Council, Page 139, at Page 140 – Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick: "**One of

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the questions emerging at this point, is as to the nature of such an idol and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quota the authorities; for this doctrine, thus simply stated, is firmly established."

**(ii) AIR 1937 Calcutta, 338 (Division Bench) Bimal Krishna Ghosh v. Shebaits of Sree Sree Ishwar Radha Ballav Jiu – at Page 340 - "**This observation is entitled to the highest respect and it is necessary, therefore, to look into the facts of the case closely to find out what their Lordships actually meant. It is clear from the facts set out in that judgment that in this case there was no gift of the idols but the property was given to one Udoy who was made a trustee in the legal sense of the word and upon whom were cast certain duties both religious and secular in their nature. He was to perform the worship of a certain idol with the income of a particular property and the remainder of the income was given to three people whose names were given in the will. In a case like this, where a private trust was created not of a purely religious character and the ownership of the property was vested in the trustee in the legal sense of the word, the Court could not possibly frame

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a scheme for the administration of the trust estate. In a religious endowment, however, where the deity who is a perpetual infant is the legal owner of the property and the Shebaits occupy the position of managers or guardians, the position is different. In Manohar Mookerjee v. Peary Mohan Mookerjee AIR 1920 Cal 210, it was held by Asutosh Mookerjee, J. sitting with Panton, J. that:

In respect of a Debutter in this country, the founder or his heirs may invoke the assistance of a judicial tribunal for the proper administration thereof on the allegation that the trusts are not properly performed.

6. Mookerjee, J. invoked the analogy of the rule of English law according to which in case of a charitable corporation where the founder was a private person he and his heirs became visitors in law and in case such heirs were extinct or were incompetent the visitatorial powers devolved on the crown. It is true that in England such trusts are regarded as matters of public concern and the Attorney-General who represents the Crown takes proceedings on his behalf for protection of these charities: vide Att.Gen. v. James Brown (1816) 1 Swans 265 at p. 291. In India, the Crown is the constitutional protector of all infants and as the deity occupies in law the position of an infant, the Shebaits who represent the deity are entitled to seek the assistance of the Court in case of mismanagement or maladministration of the deity's estate and to have a proper scheme for management framed which would end the

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disputes amongst the guardians and prevent the debutter estate from being wasted or ruined. This principle was reiterated in Rabindra Nath v. Chandi Charan : AIR1932Cal117 . The Privy Council itself directed the framing of a scheme, in case of a private debutter in Pramatha Nath v. Pradhyumna Kumar Mullick and the case was remanded to the trial Court expressly for that purpose. The same directions were given by this Court in the case in Prasad Das Pal v. Jagannath Pal : AIR1933Cal519 which was also a case of private debutter and we are unable to uphold the extreme contention raised by Mr. Biswas that a civil Court is incompetent to entertain a suit the object of which is to have a scheme established for the administration of a private debutter.

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7. Mr. Biswas's second argument which he put forward in the alternative is that even if such a suit was cognizable by a Court of law, the deity is a necessary party to such a proceeding and it should be represented by a disinterested person as was done in Pramatha Nath v. **Pradhyumna Kumar Mullick** referred to above."

**(iii) 1911 (33) Allahabad (ILR), Page 735 (Full Bench) – Jodhi Rai v. Basdeo Prasad – Page 737 –** *Deity described like a minor " With* great respect we are unable to agree with the learned Judges. An idol has been held to be a juristic person who can hold property. Therefore, when a suit is brought in respect of property held by an idol, it is the idol who is the person bringing the suit or against whom the

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suit is brought, the idol being the person beneficially interested in the suit. No doubt, in every suit the party bringing it or the party against whom it is brought must, when he is suffering from an incapacity, be represented by some other person, as in the case of an infant or a lunatic. Therefore, when a suit is brought on behalf of or against an idol, there must be on the record a person who represents the idol, such as the manager of the temple in which the idol is installed. The manager of the idol is not personally interested in the suit, any more than is the next friend or guardian of a minor. As a suit by a minor should be brought in the name of the minor and not of his next friend, so should a suit on behalf of the idol be brought in the name of the idol as represented by the manager, and in a suit against the idol the defendant should be similarly..... It is true that every pleading must be signed by a .... being; but this can be done by the manager, just in the same way as in the case of an infant the pleadings are signed by his next friend or guardian for the suit. The first defendant in this suit was, therefore, properly described in the plaint, and the view of the learned Judge in this respect is in our judgment erroneous. If there is any defect in the description of the defendants in suit of this kind, it is nothing more than an irregularity or mis-description. If, for instance, a suit on behalf of an idol is brought in the name of the manager of the idol that would not warrant the dismissal of the suit; but the plaint may be amended by correcting the description. Similarly, in the case of a defendant. Such an amendment

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would not have the effect to introducing a third party on the record, and no question of limitation would, in our opinion, arise. “

(iv) **AIR 1967 Supreme Court 1044, Vishwanath Vs. Radha Pal, Paragraph 10, at Page 1047 –** *An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest :*

“10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps

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to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see Radhabai v. Chimnaji, (1878) ILR 3 Bom. 27, Zafaryab Ali v. Bakhtawar Singh, (1883) ILR 5 All 497, Chidambaranatha Thambiran v. P. S. Nallasiva Mudaliar, 6 Mad LW 666: (AIR 1918 Mad. 464), Dasondhay v. Muhammad Abu Nasar, (1911) ILR 33 All 660 at p. 664 : (AIR 1917 Mad. 112) (FB), Radha Krishnaji v. Rameshwar Prasad Singh, AIR 1934 Pat 584, Manmohan Haldar v. Dibbendu Prosad Roy, AIR 1949 Cal 199.

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11. There are two decisions of the Privy Council, namely Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App 245 : (AIR 1925 PC 139) and Kanhaiya Lal v. Hamid Ali , 60 Ind App 263 : (AIR 1933 PC 198(1), wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edition, summarizes the legal position by way of the following

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propositions, among others, at page 249 :

"(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol."

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This view is justified by reason as well as by decisions.

**(v)** In **AIR 1971 Madras, Page 1 (Full Bench), Manathu Maitha Desikar Vs. Sundaralingam** it has been held that **s**ince deity who is the owner of property suffers form physical disability, its interests have to be looked after in perpetuity. Paragraphs 19 and 20 are reproduced as under :

"19. In Rajah Vurmah Valia's case, (1876-78) ILR 1 Mad. 235 (PC) just now referred to, the Judicial Committee having regard to the usage of the institution, would infer that the founder prescribed a method of devolution under which the

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senior most members for the time being of four different families should be managers or trustees of the temple. If the managership or the office of Urallars is regarded as right in property manifestly the rule of devolution prescribed goes against the principle laid down in Tagore case, 1872-73 Ind App Supp Vol. 47 and the succession to the office provided for is not according to the ordinary law of descent of private property. Mrishnaswami Pillai v. Mookayi Ammal, 31 Ind Cas 35 = (AIR 1916 Mad. 1143 (1) is a case where this court recognized the validity of an arrangement with reference to a charity wherein the family had no beneficial interests for the management of the charity by the head of the family in each branch, females being excluded."

"20. What strikes us as the governing principle behind these decisions is that in the scheme of devolution of the office for administration of a public, religious or charitable institution when the dedication of property is of the completed character, no rights in the property are dealt with, the Dharmakartha or manaver provided thereunder having no proprietary interest in the dedicated property or profits therefrom. Else it must be held that Hindu Law by usage invests the founder with power to lay down the scheme of succession he considers it best in the interests of the foundation he endows. The founder when the dedication is complete divests himself of all proprietary rights in the property endowed. The deity, a juristic entity is the proprietor who never dies but labours under physical disability which renders it necessary that its interests should

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be looked after in perpetuity. As a concomitant a power has been recognised in the founder to appoint and provide for a manager to look after the affairs of the deity which has become the owner of the property. The office which he creates for attending to the affairs of the deity is a thing of his own creation and if it is bare office without perquisites, there is no property in it in the Hindu Law sense of the term. There is one observation of their Lordships of the Judicial Committee in Tagore case, 1872-73 Ind App. Supp. Vol 47, which is significant in this context they stated:-

"The power of parting with property once acquired, so as to confer the same property upon another, must take effect either by inheritance or transfer, each according to law."

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22. In 71 Mad. LJ 740 = (AIR PC 318) the Judicial Committee referred to the Full Bench decision with approval. Their Lordships said:-

"In (1900) ILR 23 Mad 271 it was held by this Board that the second ruling in the Tagore case, 1872-73 Ind App. Supp Vol. 47 above referred to is applicable to a hereditary office and endowment as well as to other immoveable property. This decision was followed in ILR 60 Cal. 452 = (AIR 1932 Cal. 791)

In Manohar Mukerji's case, ILR 60 Cal., 452 = (AIR Cal. 791) the question involved was as to the right to the shebaitship of two family deities and the validity of the Will of the founder who dies in 1840 providing for a life of succession providing for a life of succession to

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the shebaitship at variance with the ordinary Hindu law of inheritance. The case is clearly distinguishable as it proceeds on the premise that Shebaitship is property."

Mr. Bhat Senior Advocate has made following submissions ;

"Suit No.5/1989 is for obtaining a declaration that "the entire premises of Shri Ram Janmabhumi at Ayodhya described and delineated in Annexures I, II and III belong to the plaintiff deities". The prayer is now restricted to the land occupied by the disputed structure Babri Masjid that was demolished.

The suit filed in July 1989 is governed by the **Limitation Act, 1963** and **Art.58** is relevant. It deals with "to obtain any other declaration". The period of limitation is three years and the time from which the period begins to run is "**when the right to sue first accrues**".

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The period prescribed is subject to the provisions contained in Sections 4 to 24. The plaintiffs are seeking the protection of Section 6(1) which deals with legal disability and the relevant provision reads: "Where a person entitled to institute a suit …at the time from which the prescribed period is to be reckoned is a minor…he may institute the suit…within the same period after **the disability** has ceased".

The expressions "minor", "insane" or "idiot" have not been defined in the Limitation Act. Even the General Clauses Act does not define these expressions. Insanity may be for an indefinite period of time and so is the case with an idiot. Can a person lying in a coma following a stroke or accident be regarded as insane – he has lost his sanity. A state of coma can last for many years. The person surely is under a disability, but can he be brought under the protection of S.6

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or is he to be denied the protection altogether? The dictionary meaning of any of these expressions may provide some guidance but do not provide tests for determining whether a person is insane or an idiot.

In the case of a **minor**, the dictionary meaning is "a person under the age of full legal responsibility". The Majority Act of 1875 – S.3 defines the age of majority as 18 years. S.2 thereof makes some exceptions. However, the Legislature has the power to change this age. It is possible that the competent legislature may reduce the age of majority, say to 15 years, in which case the protection given under Sec.6 of the Limitation Act is reduced by that many years. In other words, the undefined expression "minor" occurring in Sec.6 cannot operate by its own force. Its meaning may depend upon sources outside the Limitation Act.

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The expression "minor" for the purpose of Order 32 does not depend upon the age alone. The commentaries have noted that : "But if before the expiry of the age of eighteen a guardian for the person or for the property or for both, of the minor has been appointed or declared by a Court of Justice (apart from the provisions of O.32 of the Code), or the minor's property is taken charge of by a Court of Wards, then the period of minority is extended till the completion of the age of twenty-one vide (1907) 29 All.672 (FB), AIR 1976 Mad.235 (236) (DB), (1907) 31 Bom. 590 (603), ARI 1925 Cal.513 (514) (DB)" (See AIR Manual 6th Ed. Page 1045).

It is also pointed out that a Muslim girl who has attained puberty can sue for dissolution of marriage without a next friend. A Muslim girl who is major according to her personal law, but is not a major according to the Majority Act may institute a suit, without a

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next friend, for a declaration that she is not the wife of the defendant vide AIR 1964 J&K p.60.

Once the Supreme Court has declared in the case of ***Vishwanath and Anr. V. Shri Thakur Radhaballabhji and Ors. AIR 1967 SC 1044,*** that an idol or a deity **is in the position of a minor**, that idol or deity is entitled to all the benefits that the minor gets under the laws including the Limitation Act. It may be noted that under many of the special Acts, the expression "minor" is defined. For example, the Hindu Minority and Guardianship Act defines a 'minor' as a person who has not completed the age of 18 years. However, the definitions under special Acts are meant for the purpose of those Acts.

The expressions "insane" and "idiot" also do not have any particular definition and the Courts will have to decide whether a person is insane or an idiot based upon external aid. The Law Lexicon by T.P. Mukherjee, 4th Ed. under the term "lunatic" based on a judgment of the Andhra Pradesh High Court defines the term as follows:-

> "The words "idiot" and "unsoundness of mind" both indicate an abnormal state of mind as distinguished from weakness of mind or senility following old age. A man of weak mental strength cannot be called an idiot or a man of unsound mind. The intellectual competency of the human mind is of varying degrees. It fluctuates between brilliance and dullness. Sometimes in the same individual brilliance in one field surprisingly appears in juxtaposition with sub-normal practical apprehension in an allied field. The Act is not intended to protect dull witted people but only those who suffer from a mental disorder on derangement of the mind. (See Lunacy Act, 1912, Sec.3(5)) – Ganga Bhavanamma v. Somaraju, AIR 1957 A.P. 938 at 939."

Lunacy Act of 1912 had some attempted definition of a lunatic –or insane. However, that Act has been repealed by the Mental Health Act of 1987 – the new Act has no fresh definitions. In any case, as already stated, the special definitions in any of these Acts are

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intended for the purpose of that particular Act.

Article 141 of the Constitution of India is categorical that the law declared by the Supreme Court is binding on all courts and tribunals. In Bishwanath v. Shri Thakur Radhaballabhji, AIR 1967 SC 1044, the Court has laid down as a matter of law the following proposition: “The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. **On principle** we do not see any justification for denying such a right to the worshipper. **An idol is in the position of a minor;** when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an *ad hoc* power of representation to protect its interest. **It is a pragmatic, yet a legal solution to a difficult situation.”** The law declared, therefore, is that an idol is in the position of a minor. In that particular case it was for the purpose of permitting the worshipper to file a suit as a guardian or next friend - to safeguard the interest of the deity. It is submitted that by extending the benefit under Section 6 to a deemed minor –ie a deity - the cause of justice is not prejudiced; but only advanced. In a situation where the expression ‘minor’ is not defined, the deity who is in the position of a minor should receive the protection of S.6 – as if the deity is a minor. It may be that the duration of the disability could be long and indefinite - in the case of a insane or an idiot it could be life long.

There are no special provisions in the Limitation Act to deal with recognized juristic persons like a deity. Can it be the intention of the legislature not to apply the Limitation Act to a deity? Extending the benefit available to a minor to a deity can do no injustice to the world at large. It may be noted that in the majority of cases there is a

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shebait to take care of the idol or deity – in such cases S.6 does not come in to play. Cases dealing with the applicability of O.32 CPC have found that the said set of provisions may not be sufficient to protect the interest of a deity.

Thus, deity is a minor for the purpose of S.6 of the Limitation Act.

In the case of Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi – **31 IA 203, p.210**, it was held :

"And in the present case the right to sue accrued to the plaintiff when he was under age. The case therefore falls within the clear language of S.7 of the Limitation Act, which says that, "if a person entitled to institute a suit.... Be, at the time from which the period of limitation is to be reckoned, a minor," he may institute the suit after coming of age within a time which in the present case would be three years.

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"It may be that the plaintiff's adoptive mother, with whom the settlement of 1877 was made as sebait, might have maintained a suit on his behalf and as his guardian. This is very often the case when a right of action accrues to a minor. But that does not deprive the minor of the protection given to him by the Limitation Act, when it empowers him to sue after he attains his majority."

Similarly, the law declared by a Division Bench of this Hon'ble Court Musi Imran v. Collector of Bijnore AIR 1934 All.434, Sulaiman, CJ, held at p.435 as under : "Now, if time began to run against the lunatic from the 29th of August, 1920, when the defendant was discharged, then the three years would certainly have expired before the institution of the present suit. But it is admitted that the lunatic is still under a disability, and it must, therefore, be held that he is protected under Section 6 of the Indian Limitation Act. The mere fact,

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that there was a guardian on his behalf who could have sued earlier, would not deprive him of the protection given by that Section."

In a decision reported in the Electricity Board, U.P. State v. Sheo Nath Singh AIR 1976 All. 118, it has been held : "The plaintiff Sheo Nath Singh was a minor both on the date of the accident and the date of the institution of the suit. Hence unless the provisions of Section 7 of the Limitation Act were applicable, the suit filed on his behalf during the continuance of the disability but after the expiry of the ordinary period of Limitation will be saved under the provisions of Section 6".

In the case reported in AIR 1938 Pat.92, it has been held as follows : " Section 6 applies **to every minor whether he has a guardian or not**, and the existence of a guardian competent to sue is immaterial. Under S.6(1) a minor is entitled to institute a suit or make an application for the execution of a decree within the statutory period of three years after attaining his majority and **it was never intended by the Legislature to restrict the protection given to a minor by the acts of his guardian in the matter of making an application for execution.[P 93 C2]**

Where therefore a guardian for minor applies for execution of a decree obtained on behalf of the minor, and the application is held to be barred by limitation, the minor is not precluded from applying for execution of the decree within the statutory period of three years from the date of attaining majority and the order in the previous execution proceedings is not binding on him : 7 CWN 594 and 32 Cal. 129 (PC), Rel. on; AIR 1935 Pat. 526

The above sample decisions have been cited to show that even if there was a guardian during the period when the plaintiff was a

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minor, he is entitled to protection of Sec.6 of the Limitation Act.

Under Art.58 of the Limitation Act, the period of three years is to start when the right to sue first occurs; in the long history of this case on what date according to the defendants the period began to run?. Unless the defendants prove otherwise the plaint averments as to the cause of action should be the basis for applying the provisions about limitation. Plaint paragraph 18 explains why the present suit was filed despite the pendency of several other suits. In paragraph 30, it is pleaded, among others, that the Hindus were publicly agitating for the construction of a grand temple in the Nagar style. “Plans and a model of the proposed Temple have already been prepared by the same family of architect who built the Somnath temple. The active movement is planned to commence from September 30, 1989 and foundation stone of the new temple building, it has been declared, shall be laid on November 9, 1989.” The plaint also sets out the details fo the pending proceedings under Sec.145 Cr.P.C. and before any of the steps mentioned in paragraph 30 could be taken like laying of the foundation stone, the title of the plaintiffs had to be declared. That is why on July 1, 2989, the suit was filed. Paragraph 36 of the plaint has to be read along with the other relevant averments. The defendant No.4 in response to the above paragraphs have asserted that the whole Rama temple was imaginary. It is no longer imaginary. It is a matter of public knowledge that the agitation for building a temple at the disputed area had gathered momentum throughout India, particularly from about the year 1989 culminating in the destruction of the structure on December 6, 1992. The averment that in 1989, there was a particular reason why the suit had to be filed is properly pleaded and justified.

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Therefore the suit is within the prescribed period of limitation."

Shri M.M. Pandey Advocate on behalf of the plaintiffs has submitted that plaintiff nos. 1 an 2 are juristic persons. They are infant in perpetuity and they are not subject of law of limitation. It is settled proposition of Hindu law that deities cannot be deprived of their properties and their claim cannot be barred by time and thus their title can not extinct by dispossession also. His submissions are as under;

Sri M.M. Pandey, counsel for the plaintiffs submitted as under:-

1. As a Juristic Person, the 'Hindu Deity' is a Class by Himself with no exact parallel. "The Deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy, the vivified Image is regaled with necessities and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and retirement to rest" [p. 156; 36 CLJ 478= 1923 Cal 60 (Mookerjee J.), *Ram Bramh Chatterji* Vs. *Kedar Nath Banerjea* – this observation was approvingly quoted by PC in 1925 PC 139*, Pramatha Nath* Vs *Pradyumna Kumar*; *see also,* ILR 8 Bom 432, *Thackersay* Vs. *Harbhum*]*.*
2. Endowment in favour of Deity is a perpetual estate; it is capable of receiving and holding property, but it does not possess a power of alienation, hence endowment in favour of Deity is necessarily a tied up or perpetual estate; absolute gifts of lands or money *perpetually* to an Idol or for other religious purposes have been held to be valid in Hindu Law from early times (p.137). In *Thyrammal* Vs.*Kanakammal* (2005) 1 SCC 457 (para 15,16 & 17), the Supreme Court has held that a religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose *for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use* ***is itself raised to the***

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***category of a Juristic Person and such a property vests in the property itself as a Juristic Person***. This special legal status *squarely applies to Asthan Ram Janma Bhumi,* Plaintiff No.2 in OOS 5 of 1989; the spot where Ram was born, and all properties appurtenant thereto belong to and vest in the spot itself as juristic person. No body else, not even the *Shabait* can become owner of the Deity or property of Deity (p. 248-249; ILR 12 Bom 247, *Manohar Ganesh Tambekar Vs. Lakhmiram Govindram* relied upon in ILR (1896) 23 Cal 645, *Girijanand* Vs. *Shailja* (at pages 655-656).

3. Since such vesting of the property *is a perpetual estate* and the Deity itself does not possess the power of its alienation (*Prosonno Kumari Vs. Golab Chand* LR 2 IA 145 at 150-151, & *Palaniappa Vs. Devasikamony,* 44 IA 147)), it follows that no law can divest the Deity of its property under any circumstance whatsoever. A *Temple is the 'house' of the Deity* (p.153 of B.K.Mukherjea's book); by destroying the house, neither the Deity nor Deity's property, on which the house stood, could cease to belong to Deity. Indeed, Section 18 of Transfer of Property Act recognises that the rule against perpetuity under that Act, does not apply to transfer of property for the benefit of public; such exclusion is in-built in Hindu Law itself.
4. Vide, page 19-20 of *Mulla's* "*Principles of Hindu* Law, 1958 Edn, some of the important recognised *Dharmashastras* are known as *Smritis* of *Manu* (200 BC)*, Yajnavalkya* (1st Century AD –p. 24))*, Narad* (200 AD –p. 26))*, Parashara, Brihaspati, Katyayana* (4th-5th Century AD – p.32) *etc*; they are of universal application, not in substitution for another but all treated as supplementary to each other (-p.20). At page 33, Mulla records: "*Katyayana* maintains unimpaired the distinctive qualities of *Smriti of Brahaspati* to which he freely refers. His exposition is authoritative and remarkable for its freshness of style and vigorous approach. There can be little doubt that this *Smriti* must have been brought into line with the current law. It must have commanded a wide appeal as may readily be gathered from the profuse manner in which it has been quoted in all leading commentaries.....The arduous task of collecting

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all the available texts of Katyayana from numerous commentaries and digests *was accomplished by Mahamahopadhyaya Kane* who collated and published in 1933 about one thousand verses of the *Smrtiti on Vyavahara* (Procedure) with an English translation". As shall appear hereafter, statement of law in *Katyayana Smriti* is of special significance in these suits. The force, sanctity and King's duty relating to Temples has been strongly emphasised in the Hindu Law from ancient times. *Apararka* [held to be an Authority under Hindu Law by PC in *Buddha Singh* Vs. *Laltu Singh,* 42 I.A. 208 = ILR (1915) 37 All 604, *see Mulla* p.51-52 acknowledged by Banares School] says that King should not deprive Temples of their properties ( *History of Dharam Shastra – Government Oriental Series - by P.V. Kane,* Volume II Part II page 913). At page 911 *Kane* quotes *Yagnavalkya* that it is part of King's duty to prosecute and fine persons interfering with or destroying the property of Temples; he cites *Manu* (IX/280) requiring the King to pronounce death sentence on who breaks a Temple, and him who breaks an image to repair the whole damage and pay a fine of 500 *pannas.* The Deity and Temple not only served the object of Worship of Divine, but also served social purpose. Historian *Romila Thapar* writes in 'A History of India' Vol.I (Pelican Books 1990, 13th Impression 2001), at Page 279 that the Temple had long been the centre of Hindu social life in the village, place where Hindus congregated; it 'was the Bank, the Landowner, the administrative centre for the village and place of major entertainment in the form of festivals'. Mentioning *Katyayana* (4th-5th Century AD – vide *Mulla* at page 14) on judicial process, Romila Thapar writes at page 154 that Judgments were based *either on legal texts or social usage or edict of the King which could not contradict the legal text or Usage;* at page 160, she writes *Social Law based on man-made* ***Tradition had already become the sacred law.*** That is why Temples were immune from influence of the King. Page 28 of B.K.Mukherjea's authority mentions *Yajnavalkya:* 'Customary Law as well as Usages established by Kings should be carefully upheld, if not inconsistent with the revealed law'. *Vijnaneswara*

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commented upon this text as follows: Duties arising under any Custom, such as preservation of pastures for cow and of water and *management of Temples* (Devgriha) and the like should also be carefully observed without infringing the duties prescribed by *Shrutis and Smritis .....* The same view finds expression in *Shukra-Niti where the duty of protecting endowments has been spoken of as one of the primary duties of the King*. Thus the duty of Kings to protect endowments rested on the basis of immemorial customs which were as sacred as written texts". In Appendix I (Summary of Pran Nath Saraswati's "Hindu Law of Endowments") at page 507, mention is made that "*On conquest the Temples should be respected*". In *D.F.Mulla's* 'Principles of Hindu Law', Chapter II on Sources of Hindu Law, Text No. 3 mentions: "Whatever Customs, Practices and Family Usages prevail in a Country shall be preserved intact *when it comes under subjection by* (conquest) – *Yajnavalkya* I, 343". At page 81 of "Yajnavalkyasmriti", translated by Manmatha Nath Dutt, published by Parimal Publications Delhi (1st Edn 2005), verse no.343 reads as follows: 'When a foreign kingdom is brought under subjection, he should observe the conduct, law and family practices obtaining in the same kingdom'. In Chapter 7 of the "Laws of Manu" (Penguin Classics, Edn 2000) at page 149, *Manu's edicts* nos. 201 to 203 lay down that on conquest, the King-conqueror "should make authoritative their own laws (i.e. of the vanquished) as they have been declared....." In a very early decision, PC held: "The *important principle* to be observed by Courts in dealing with constitution and rules of religious brotherhoods attached to *Hindu Temples is to ascertain, if possible, the special laws and usages* governing the particular community whose affairs have become subject of litigation": *Raja Muttu Ramalinga Setupati Vs. Perianayagum Pillai*, 1 IA 209; at page 234, it goes on to say: "The subject of devastanum lands *is of a great importance to the happiness of the people,* and the attention paid to the interest of the pagodas ..... has been attended with *most beneficial consequences to the people* in different parts of peninsula" (i.e India).

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5. Such has been the Hindu Law since ancient times. There has been no change of that law either by any Emperor or by any Legislature, hence the law as found originally in India relating to Hindu Deity must be applied. In the case of *S. Darshan Lal Vs. Dr. R.S.S Dalliwall,* 1952 All 825 (DB), it is stated in para 16: "In an inhabited country, obtained by conquest or cessation, law already prevailing therein continues to prevail except to the extent English Law has been introduced, and also except to the extent to which such law is not civilised law at all……." The Court reiterated that view in para 18. This dictum which was laid down in the context of applicability of English Law in Indian territories conquered/ceded, constitutes a reasonable premise for application of then prevailing Hindu law at the time of conquest by Babar. Indeed, Privy Council held in *Mosque known as Masjid Shahid Ganj Vs. Shiromani Gurdwara Prabandhak Committee, Amritsar,* 1940 PC 116 at page 120 Col. 2, that "There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property". It is nobody's case nor any evidence that during the Muslim rule commencing from late 12th/early 13th Century (*Mohd Ghauri/Qutubbin Aibak* who established 'Slave Dynasty' from 1206 AD) modified any of these laws. Similarly, it is nobody's case nor any evidence that during Mughal rule from *Babar* till the advent of governance by East India Company (from 1757 with the Battle of Plassey) or that of *British* rule from 1858 (with Queen's Proclamation), any modification in these provisions of Hindu Law was made. The British had established regular COURTS to administer justice; it was by OUDH LAWS ACT 18 of 1876 that the British provided what laws were to be administered in OUDH which includes *Ayodhya* and Faizabad; that Statute holds good even today by virtue of Article 372(1) of Constitution of India. A number of Acts were framed governing various relationships and situations in the Hindu Society, like Hindu Women's Right to Property Act, Hindu Succession Act, Hindu Marriage Act, Hindu Minority & Guardianship Act etc., both during the British times and post-independence of India, but none was framed to set out the

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rights, obligations and antecedents of Hindu Deity; hence Hindu Law as known to *Dharma Shastras* continue to apply to Hindu Deities. The Code of Civil Procedure covers a variety of Suits, e.g. relating to persons of *Unsound Mind*, *Minors*, *Corporations, State Agencies* but is *totally silent on Hindu Deities.*. The general provisions of Limitation Act could not over-ride the special & clear Hindu Law found in the *Dharma Shastras* which had ensured the rights of Deity to hold good in perpetuity, without interference by the State (King). Only those provisions of period of limitation laid down by *Dharma Shastras* could be affected by Limitation Act which were modified by any statute law on specific subjects of *Dharma Shastra provisions*; there has never been any statute law governing Hindu Deity & Deity's property including the Temple which is 'His house'. The rights of Deities, *Ram Janma Bhumi and Bhagwan Shri Ramlala*, have to be determined **exclusively/solely** on the basis of the Hindu Law as known to *Dharma Shastras* and not *imperfect analogies* drawn from *imperfect comparisons*. In *Bhyah Ram Singh Vs. Bhyah Ujagar Singh*, 13 MIA 373, PC ruled firmly that where there is a text of Hindu Law directly on a point, nothing from any foreign source should be introduced into it, *nor should Courts interpret the text by application to the* ***language of strained analogies*** ( p. 41 of *Mukherji*).

6. It is pointed out at pages 67 to 69 of Mulla's "Principles of Hindu Law" that in a very early decision (4 MIA 97-98) Privy Council conceded that *'it is quite impossible for us* to feel any confidence in our opinion…….founded upon authorities (Hindu *Dharmashastras*) to which we have access only through translations, and when the doctrines themselves, and the reasons by which they are supported or impugned, are drawn from religious traditions, ancient usages and more modern habits of Hindoos, with which we cannot be familiar". These suits are very different from any litigation which figured in the past; they are admittedly of National importance and must be dealt with on a thorough scrutiny of what the true law is. With the adoption of Constitution of India, with promises contained in Articles 13, 14 and Preamble, the decisions of PC have only

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'persuasive' rather than 'binding' effect: *See* 1968 SC 1165, *Nair Service Society Vs. K.C.Alexandar.* Full effect must be given to Hindu *Dharmashastras*, specially in the light of Oudh Laws Act in these cases.

7. Preamble to Oudh Laws Act of 1876, "declares and amends the laws to be administered in Oudh" and only in Oudh (Section1). So far as it goes, therefore, it is *exhaustive* of the Laws which the Courts of Oudh must apply in matters covered by the Act. This position continues even today by virtue of Article 372(1) of the Constitution of India. Section 3(b)(1) lays down what laws are to be applied in questions regarding 'any religious usage or institution, and requires the Courts to apply "any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, or has not been by this or any other enactment, altered or abolished and has not been declared to be void by any competent authority". Section 3(b)(2) requires to apply "the Muhammadan law in cases where parties are Muhammadans, and the Hindu law in cases where parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to". Reading the two clauses together, the Section sets out the laws which must be applied to '*parties concerned*'. In rights/obligations concerning Muhammadans, the Muslim law must be applied; in those concerning Hindus, the Hindu Law must be applied and after determination of those rights/obligations, if rights/equities have to be judged between Muhammedans and Hindus, then Equity, Justice and Good Conscience have to be applied for determination of the 'Relief'. Section 3(f) requires to apply ".....all enactments for the time being in force and expressly, or by necessary implication, applying to ..... Oudh or some part of Oudh". This demands that the Statute Law in force for the time being must be applied. It would be appreciated that this provision itself is *Statutory,* so that the provision makes the Hindu/Mohammedan Law, so to say, to be a Statutory Law akin to '*referential legislation*'. Instead of incorporating specific provisions of Hindu/Mohammedan Law into the Oudh Laws Act,

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it simply requires those laws to be applied, wherever they may be found. In the case of *Bajya Vs. Gopikabai,* 1978 SC 793, two categories of referential incorporation are recognised: (1) provision of another Statute is incorporated and (2) the 'law concerning a particular subject as a genus' is incorporated; in case (2), the legislative intent is to include all subsequent amendments made from time to time in the general law on the adopted subject. Oudh Laws Act belongs to 2nd category; the important point is that there has never been any legislation on Hindu Deities, hence the original *Dharmashastra* law continues to apply.

8. Section 3(g) requires that "in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience". Section 4 says that "all local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience……." Simply put, the provision accords primacy to 'personal law' (subject to any other law for the time being in force) and applies justice, equity and good conscience only when there is no personal law and that although local custom shall be deemed to be valid, yet Custom will have to stand the test of justice, equity and good conscience. Fundamentally, therefore, Hindu Law has to be applied on the rights/property and incidental matters concerning Hindu Deity and Temples unless such law has been modified by any statute or Custom; no such statute was ever enacted and no case of any modifying Custom ever arose in these cases.
9. However, Section 16 of Oudh Laws Act lays down the "Rule of Limitation" and applies Act XIV of 1859 to Oudh with effect from 4.7.1862. Act XIV of 1859 provided for one uniform law of limitation for all Courts in British India, but had not provided for extinction or acquisition of rights/title on the basis of possession. Section 16 of Oudh Laws Act goes no further. Even so, Section 3(f) mentioned that "all enactments for the time being in force and expressly or by necessary implication applying to the territories…….of Oudh or some part of Oudh"

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will be applied by the Courts; Limitation Act of 1871 could fall within this category but for its exclusion as shall appear shortly. Extinction/acquisition of rights came to be provided for the first time by Sections 27 to 29 of Limitation Act IX of 1871 (vide page 8 of Vol. 1 of "Obhrai's Limitation and Prescription" on Limitation Act IX of 1908 published by Eastern Law House, Lahore and page 7 of Vol. 1 of Sanjiva Row's "Limitation Act 1963" Edn 1987 published by Law Book Co, Allahabad). Since the substantive rights of Deity under Hindu Law clearly provided that its rights are perpetual and cannot be extinguished under any circumstance, it must be treated to be a Statute Law under the Oudh Laws Act; it has only to be found out whether the provision for extinction under Act IX of 1871 is such as falls within the restrictive clauses of Section 3(b)(2) of the Oudh Laws Act. The only restrictive stipulation in that clause is: "except insofar as *such law* has been, by this or any other enactment, *altered or abolished*". Firstly, an Act of 1871 cannot *alter or abolish* any provision of 1876 Act. It is also significant that although Limitation Act 1871, which had provided for extinction/acquisition of ownership right on the basis of possession, was already on the Statute Book when Oudh Laws Act was enacted 4 years later and gave Statutory status to Hindu Law by 'referential legislation', Oudh Laws Act did not make a specific provision to curtail the *substantive right* of the Deity under Hindu Law. Secondly, the provision of 'altering/abolishing' enactment must alter or abolish *the Hindu Law*, it is not enough to provide for alteration/abolition of rights 'generally.' Limitation Acts of 1877 and 1908 similarly contained provison for extinction of rights similar to Act of 1871, which is not enough to alter or abolish the Hindu Law regarding *Hindu Deities.* The Hindu Law of Deities and law of limitation under these enactments need to be harmoniously construed. In this exercise, the procedure provided in a Statute for enforcement of substantive rights conferred thereby should be construed as far as possible so as to give effect to and not nullify those rights: 1941 Mad 158, *Palani Goundan Vs. Peria Gounden.* Procedural enactments should be construed in such a manner as to render

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the enforcement of substantive rights effective: 1959 SC 422 (426), *Velluswami Vs. Raj Nainar;* 1989 SC 2206, *M.V.Vali Press Vs. Fernandee Lopez.* Finally, stipulations of Hindu Law regarding Deity, recognised by Section 3(b)(2) of Oudh Laws Act are 'particular' and 'special'; they shall over-ride the 'general' stipulation of Limitation Acts. There is no essential Jurisprudential or Constitutional requirement that for every right/remedy a period of limitation must be enacted; more so in respect of Hindu Deity which is conceived of by Hindu *Dharmashastra Law* as Immortal, Indefeasible, Timeless, Omnipresent & Eternal. After all, Transfer of Property Act or Indian Trusts Act admittedly does not apply to Hindu Deity. Hence, provisions of extinguishing rights under any of the Limitation Acts would be ineffective over the perpetual rights of Deity under Hindu Law. Here, notice may be taken of *Manu's edict* no. 200 of Chapter 8 (at page 174 of "The Laws of Manu", Penguin Classics, Edn 2000) which lays down: 'If a man is seen to be making use of something, but no title at all is to be seen, then the title is the proof (of ownership), not the use; this is a fixed rule'. Thus, according to Hindu Law, 'title' not 'possession' establishes ownership and that concept cannot be disturbed summarily through vague interpretations of general provisions relating to Limitation.

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10. Same result seems to flow from the principle of <u>*Reading Down*</u> a general provision in the context of the law as a whole, vide *All Saints High School* Vs. *Govt of A.P*. (1980) 2 SCC 478 para 112. Since the plain meaning of Section 3(b)(2) of Oudh Laws Act specifically confines the laws of Hindu religious institutions to the Hindu Personal Law, i.e., the *Dharmashastra Law*, which unmistakably confers absolute perpetual and indefeasible rights on Deity and His property, a mere general provision that the law of limitation would apply to any suit instituted in respect of 'any' property which may also include Deity and/or His property, thereby denying right of suit after expiry of a certain period of limitation will have to be '*Read Down*' to prevent deprivation of Deity's clear perpetual rights.

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Sri M.M Pandey, Advocate, further submitted that *Ram Janmabhumi* continued to exist as a Swayambhu Deity, owning Itself and the Temple, hence no question of extinction of title by Limitation or dispossession could arise. The important aspect of Hindu Law relating to Deities, thus, is that the Deity is never divested of its rights in its property; in the case of self-revealed Idol, coupled with the faith of its followers, there is no independent consecration and the real owner of the property dedicated to a Temple, is deemed to be God Himself represented through a particular Idol or Deity which is merely a symbol: *Gokulnath ji Maharaj* Vs.*Nathji Bhogilal,* 1953 All 552. Alternatively, from the angle of Limitation Act, since the Deity who is the owner of the property, *suffers from physical disability, its interests have to be looked after* ***in perpetuity***, *Manathu Naitha Desikar* Vs. *Sundarlingam* 1971 Mad 1(FB – para 20). In a bunch of WPs, decided by a DB of Rajasthan High Court, *Ram Lal & another Vs. Board of Revenue & Others,* 1990 (1) RLR 161, the DB held in para 8: 'It will not be out of place here to mention that there are series of judgments of Hon'ble Supreme Court and the Hon'ble Supreme Court has held that the Deity or Idol should ordinarily be considered as minor in perpetuity'. In para 10, the High Court again said: 'For the reasons mentioned above, we are of the view that the deity/idol should be treated as a minor in perpetuity.....When the offerings are offered to the deity, the offerings become the property of the deity and not of the temple. Deity owns the offerings and the Pujari or the Shebait shall not be the owner of the offerings and the property of the deity'. This decision was followed in *Temple of Thakurji Vs. State of Rajasthan & others,* 1998 Raj 85 (para 11). These decisions also laid emphasis on the obligation of the State to protect the interests of the Deity as a perpetual minor. In *Sri Banamali Neogi & others Vs. Sri Asoke Kumar Chattopadhyayay & others,* 96 CWN 886 (para 10), Calcutta High Court held Deity to be a perpetual minor. Similarly, in *Trilochan Das Adhikari & another Vs. Simanchal Rath & others,* 1994(II) OLR 602, Orissa High Court held Deity to be perpetual minor. In foot-note (j) at page 12 of *Mulla's Principles of Hindu Law*, it is stated that grounds of disability were recognised in Hindu Law, for instance *there was exemption from limitation in case of minors, property of King and deposits involving the element of Trust*;

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obviously, dedication to Deity involves "Trust"; Indian Trusts Act does not apply, vide Section 1 of the Act. In *Bishwanath Vs. Radha Ballabh ji*, 1967 SC 1044, it was held that an Idol is in the position of a minor and when the person representing it leaves it in a lurch, a *person interested in the* ***worship*** *can certainly be clothed with an adhoc power of representation to protect its interests.*

11. According to *Katyayana,* Temple property is never lost even if it is enjoyed by strangers for hundreds of years (P.V.Kane Volume III page 327-328); even the king cannot deprive temples of their properties (*see* para 43 above). In *Ramareddy Vs. Ranga (*1925 ILR 49 Mad 543) it is held that managers and even purchasers from them for consideration could never hold the endowed properties adversely to the Deity and there could be never adverse possession leading to acquisition of title in such cases. The Idol/Deity which is an embodiment of Supreme God and is a Juristic Person, represents the 'Infinite – the Timeless' cannot be confined by the shackles of Time. *Brihadaranakya Upanishad* (referred to in Mulla's Principles of Hindu Law at page 8) lays down: *Om Purnam adah, purnam idam, purnat purnam udachyate; purnasaya purnam adaya, purnam evavasisyate* ['That is Full, this is Full. From the Full does the Full proceed. After the coming of the Full from the Full, the Full alone remains' – at page (v) of *Brihadaranyaka Upanishad by Krishnanand, pubished by the Divine Life Society, P.O. Shivananadanagar, District Tehri-Garhwal UP- 1984 Edn.*] In *Mahant Ram Saroop Das Ji Vs. S.P.Sahi, Special Officer-in-charge of Hindu Religious Trusts,* 1959 SC 951 (para10), it recognised that "a Deity is immortal and it is difficult to visualise that a Hindu private *debutter* will fail ..... Even if the Idol gets broken, or is lost or is stolen, another image may be consecrated, and it cannot be said that the original object has ceased to exist". In *Idol of Thakurji Govind Deoji Maharaj Jaipur Vs. Board of Revenue Rajasthan, Jaipur,* 1965 SC 906 (para 6), it is laid down: "An Idol which is juridical person is not subject to death because the Hindu concept is that the Idol lives for ever ....." Timelessness, thus, abounding in the Hindu

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Deity, there cannot be any question of the Deity losing its rights by lapse of time. Jurisprudentially also, there seems to be no essential impediment in a provision which protects the property rights of disabled persons, like a Deity, to remain outside the vicissitudes of human frailties for ensuring permanent sustenance to it and therefore to keep it out of reach of human beings, including the King. Every law is designed to serve some social purpose; the vesting of rights in Deity, which serve the social purpose indicated above since ancient times, is quite in order to serve social good (See Para 43).

12. A significant recent decision of English Courts has recognised the concept of Hindu Idol's disability and representation by 'next friend', namely (1991) 4 All E.R. 638, *Bumper Development Corporation Ltd Vs. Commissioner of Police of the Metropolis & Others (including Union of India and other Indian Parties)*; a decision rendered by the Trial Court was upheld by Court of Appeal and House Lords refused Leave to Appeal against CA decision, popularly known as *Nataraj Case.* In Tamil Nadu, near a 12th Century Temple which had laid in ruins since 13th Century, (called *Pathur Temple*), and remained un-worshipped since centuries (at pages 643 & 640), a bronze Hindu Idol, known as *Siva Nataraj*, was found by a labourer, Ramamoorthi, in 1976 during excavation of the ruins. The Nataraj Idol was sold through several hands and ultimately reached London market; criminal investigation for offence of theft of Idol was started and London Metropolitan Police seized it. *Bumper Development Corporation* laid claim to it as purchaser and sued for its possession and damages. Several *other* Claimants were impleaded to the suit: these included Union of India, State of Tamil Nadu, Thiru Sadagopan (Claimant No 3) as "*the fit person*" *of the Temple* and Temple itself (Claimant No. 4) through Claimant No3. (The concept of "fit person" is same as "Next Friend" at page 643). During pendency of the proceedings, a Sivalingam (which too was found buried in the ruins of the Temple) was reinstated as an object of worship at the site of the Temple. The Trial Judge, relying upon B.K.Mukherjea's Hindu Law of Religious and

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Charitable Trusts (page 646 of Report) held that Claimant No4 (Temple) suing through Claimant No. 3 as 'fit person, or custodian or next friend' (page 643 of Report) had proved his title superior to that of *Bumper* and 'the pious intention of 12th Century notable who gave the land and built the Pathur Temple *remained in being* and was personified by the Sivalingam of the Temple which itself had a title superior to that of *Bumper*'. The Court of Appeal upheld the finding of the Trial Court Judge that under Hindu Law, the *Temple was a juristic entity* and Claimant No. 3 (next friend Thiru Sadagopan) had the right to sue and be sued on behalf of the Temple. The right of the Temple through the Next Friend to possess the *Nataraj Idol* was upheld (page 648 of Report); House of Lords refused Leave to Appeal (page 649 of Report). This 20th Century decision of English Courts has striking similarity with the present Ram Janmabhumi case: 12th Century Temple remained in ruins & un-worshipped through centuries (in our case it was 11th-12th Century Vishnu-Hari Temple which was demolished in 1528 and Babri Mosque, DS was erected at its place, so that the Temple/Deity 'remained in ruins with existing foundations'). During the pendency of *Bumper Development Corporation* case, a Shivalingam, found buried in the ruins of the Temple was 'reinstated'. In our case, ASI found an ancient 'Circular Shrine' embedded in disputed area, DS was destroyed on 6.12.1992, and at its place a make-shift Temple was erected at Ram Janma Bhumi with Bhagwan Shri Ramlala installed in it; so both Deities Plffs 1 & 2 of OOS 5 of 1989 got into position. In *Bumper* case, the 'pious intention of 12th Century' dedication was held by the Trial Court '*to remain in being*' as personified by the Sivalingam of the Temple, a juristic entity, which was represented by 'Next Friend. The same concept is laid down in the case of *Adangi Nageswara Rao Vs. Sri Ankamma Devatha Temple,* 1973 Andhra Weekly Reporter 379 (paras 6 & 8 – *see para 36 of these Arguments*). So also, in our case, Vishnu-Hari Temple of 11th-12th Century must be deemed 'to remain in being' on erection of make-shift Temple coupled with Circular Shrine and the Deity/Temple – Plaintiffs 1 & 2 must be held to be duly represented through

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Plaintiff No. 3 in OOS 5 of 1989 as Next Friend.

13. As mentioned earlier, a Hindu Deity *is a Class by itself* (See Para 40), there is no exact analogy or parallel. Its affairs are managed by a *Shebait*, but the Shebait is neither owner nor trustee of the Deity or its property as known to Indian Trusts Act (Section 1). 'Beneficiary' of the dedication (actual or assumed) is the Deity and every *Worshipper/Devotee;* the latter has interest enough to force the Shebait to perform his functions duly even through a Court action, if necessary. Supreme Court has held in the case of *Bishwanath Vs. Sri Thakur Radha Ballabhji* (1967 SC 1044) that *worshippers* of an Idol are its beneficiaries, though only in a spiritual sense, and persons who go in only for the purpose of devotion have, *according to Hindu Law and religion,* a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage; it goes on to say: "That is why decisions have permitted a worshipper in such circumstances to represent the Idol and *to recover the property for the Idol".* It is the duty of the State (King) to protect the Deity and its property – a shade of this duty is found in Section 92 CPC. [In para 40 of *Guruvayur Devasom Managing Committee Vs. C.K.Rajan,* 2004 SC 561, the Supreme Court has held, "In any event, as a Hindu Temple is a juristic person, the very fact that *S. 92 of the Code of Civil Procedure, seeks to protect the same,* for the self-same purpose, Arts. 226 and 32 could also be taken recourse to."] Shebait cannot alienate the property of the Deity. In *Thyrammal* Vs.*Kanakammal* (2005) 1 SCC 457 (para 15,16 & 17), the Supreme Court has held that a religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose *for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use* ***is itself raised to the category of a Juristic Person and such a property vests in the property itself as a Juristic Person***. This special legal status *squarely applies to Asthan Ram Janma Bhumi,* Plaintiff No.2 in OOS 5 of 1989; the spot where Ram was born, and all properties

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appurtenant thereto belong to and vest in the spot itself as juristic person. In *Acharya Maharaishi Narendra Prasad ji Vs. State of Gujarat,* (1975) 1 SCC 2098 (para 26), while upholding the right of State to acquire the property of Deity under Article 31 of the Constitution, laid down an exception by holding: "*If on the other hand, acquisition of property of religious denominations by the State can be proved to be such as to destroy or completely negative its right to own or acquire movable and immovable property for even the survival of a religious institution, the question may have to be examined in a different light*". This dictum was reaffirmed by SC in *Ismail Farooqui's case*, 1995 SC 605 (para 79); it was further held in para 77: "The protection under Article 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion"; the law stated in para 78 is: "While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential part of such religious practice *unless the place has a particular significance for that religion so as to form an essential or integral part thereof.* Places of worship of any religion having particular significance for the religion, **stand on a different footing and have to be treated differently and more reverentially**". This decision of the Supreme Court is *in this very case and has to be respected fully.* In the summary contained in para 82, the Supreme Court observed: "*Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger public purpose* ***keeping in view that such acquisition should not result in extinction of the right to practice the religion, if the significance of that be such***". Undoubtedly, *Asthan Ram Janma Bhumi* , Plaintiff No. 2 of OOS 5 of 1989, belongs to this very category of Deity – *Class entirely by itself*; hence the State can not acquire either the Deity or its property.

14. Oudh Laws Act has laid emphasis on application of principles of equity, justice and good conscience; but it is necessary to appreciate in what fields or areas, the Act requires

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those principles to be applied. Clause (g) of Section 3, lays down the broad principle that "in cases not provided for by the former part of this section or by any other law for the time being in force", Court has to act in accordance with justice, equity and good conscience. Section 3(b)(2) clearly stipulates that in matters relating to Hindu religious institutions, the Hindu Law shall apply; hence Clause (g) will not apply. Justice, equity and good conscience is made applicable to 'Custom' under Section 3(b)(1), but the law regarding Deity is part of 'personal law' under Section 3(b)(2) as distinguished from 'customary law'. *Mulla* mentions at page 65, that principles of Equity, Justice & Good Conscience were invoked *only in cases for which no specific rules existed.* In *Gurunath Vs.Kamalabai* 1955 S.C. 206, it has been held that *in the absence of any clear Shastric text,* Courts have authority to decide on principles of justice, equity and good conscience.

15. It is a settled principle that 'Equity' follows 'Law', i.e. where Law is applicable, considerations of Equity do not come into play (vide, Halsbury's Laws of England 4th Edn, Vol 16, para 1204). Since Hindu Law specifically prescribes that the rights of Deity are not destroyed by another's possession howsoever long, 'equity' cannot be applied to deprive the rights of Deity on the basis of possession.

16. On facts in these cases, justice, equity and good conscience are in favour of Plaintiffs of OOS 5 of 1989 rather than Plaintiffs of OOS 4 of 1989. In para 1204 of Halsbury's Laws of England (*supra*) it is stated that 'equity implies a system of law which is more consonant than the ordinary law with opinions current for the time being as to just regulation of mutual rights and duties of men living in a civilised society. When Babar became Emperor as a conqueror and did not frame any law governing Hindu Deities/Temples, the Hindu Law prevailing at that time had to be applied by him as indicated above.

17. In general, when the word 'conscience' was used, this denoted the conscience of the Defdt., and the Court by decree *in personam* prevented him making an *unconscionable use* of

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his rights at common law. The correction of Defendant's conscience was the ground of the interference of equity in case of fraud, breach of trust and '*wrong and oppression generally* (Ft.Note 1, HLE *Supra*). The special imperfections of medieval common law, as to its administration were that its judgments were not capable of being adapted to *meet special circumstances* or were *turned into a means of oppression*. The Court of Chancery, in so far as it remedied these defects, afforded an improved system of attaining justice, but this was the difference between law and equity. Law and equity have both the same end, which is to do right. Where it differed from the law, this was in order to moderate its rigour, to supply its omissions, to assist the legal remedy, or to relieve against the evasion of the law or *the abuse of legal rights*; it supplied its omissions *by exacting conscientious conduct from the defendant* when the law recognised no binding obligation (Ft. Note 3, HLE *Supra*). Babar could not be permitted, in equity or good conscience, arbitrarily to deprive the Deity of its rights and possession at the DA. (*See* also paras 50, 51 and 52 of these Arguments).

18. An application of these principles of equity to the present suits, entitles the Plaintiffs of OOS 5 of 1989 to the relief sought. The pith and substance of the plaint case in OOS 5 of 1989 is that DS/DA is the birthplace of Bhagwan Shri Ram, that before Babar's invasion, a *Temple* stood there, that worship of the birthplace and the temple by Hindu public had been going on since ancient/immemorial time, that the temple was destroyed by the hordes of Babar and at its site Babri Masjid was constructed, that a structure raised by force of arms on Deities' land after destroying their temple, could not be treated to be a legal/valid mosque according to *Islam,* and the *Quran* as shown above. In view of this command of Quran, conversion of Temple into Mosque did not create a valid dedication of the property to *Allah* in fact or in law (para 24 of Plaint). In reply to these pleadings, Sunni Central Boards of Wakf, Defdt. No 4, stated (in para 24 of WS) that the quotation of Quran was 'out of context', 'not correct' 'nor complete'; but SB *did not set out*

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*any context, nor the 'correct' or 'complete' quotation in WS or anywhere in evidence*. Regarding Plaintiff's case of failed dedication to *Allah*, the reply is that Babar was the Emperor, "*the vacant land on which the Babri Masjid was built lay in the State territory and did not belong to anyone and it could very well be used for the purpose of the Mosque and specially so when the Emperor himself consented and gave approval for construction of the said Mosque*". This is incorrect. Babar never became Emperor – See Para 33A. The land was a Hindu Deity as birthplace of Bhagwan Shree Ram, hence was owned by the Deity, whose Temple was standing thereat, as Deity's *House in possession* of Bhagwan Shree Ram; therefore it could not vest in the Conqueror/Emperor. As conqueror, it was Babar's duty to protect the birthplace/temple. A significant fact stated by Supreme Court in *Ismail Farooqui's case,* (1994) 6 SCC 360 (para 11) is that in the *White Paper* (Chapter II, para 2.8) of the Central Government preceding the Acquisition of Certain Areas at Ayodhya Ordinance No. 8 of 1993, re-enacted as Central Act No. 33 of 1993, Muslim leaders had stated that if it was proved that a Hindu Temple had existed on the site of the Disputed Structure and was demolished on Babar's orders for construction of Babri Masjid, the Muslims would voluntarily hand over the disputed shrine to Hindus. It is also important that according to para 4 of the Supreme Court Judgment, the Acquisition "Bill was introduced in the Parliament leading to the above enactment and the said Reference to this Court *was made in the historical background set out in the White paper*". The legal effect is that since these facts stand proved, the Central Govt. itself would be *estopped* from denying the remedy sought by the Plaintiffs in OOS 5 of 1989, and would have to *feed the estoppel by grant* by the equitable doctrine of *Estoppel*, vide, *Renu Devi V. Mahendra Singh & Others* (2003)10 SCC 200.

19. Further, these very established facts would amount to "*wrong and oppression*" and "*unconscionable use*" of his rights as Emperor, if at all, in as much as he violated settled Usage/Custom of Hindu Community which Babar was bound to

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protect as 'conqueror' enjoined by Hindu Law (the Law of the '*Subject*"). In the case of *S. Darshan Lal Vs. Dr. R.S.S Dalliwall,* 1952 All 825 (DB), it is stated in para 16: "In an inhabited country, obtained by conquest or cessation, law already prevailing therein continues to prevail except to the extent English Law has been introduced, and also except to the extent to which such law is not civilised law at all……." Earlier, PC had ruled in *Mosque known as Masjid Shahidganj Vs. Shiromani Gurdwara Parbandhak Committee,* 1940 PC 116 at page 120, 'There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property'. It also constituted violation of injunctions of Babar's own religion contained in the Quran, and equity would require Babar to purge his own conscience of the 'wrong, oppression, and violation of Holy Laws of his own Subjects and those of his own religion'. Similar equities would prevail between the present parties to these suits in as much as 'wrongs' committed by Babar, could not become 'right' by mere lapse of time, and would continue to be wrongs even today. The 'general law' of extinction of rights contained in the Limitation Act is not enough to over-ride the substantive rights of the Deity under 'special' Hindu Law; no law of limitation can apply to the rights and property of Deity as discussed earlier.

As an independent special Class of person, there is no constitutional impropriety or illegality in having laws exclusively applicable to the Plaintiff-Deities of OOS 5 of 1989. A recent analogy is provided by The Public Waqfs (Extension) of Limitation Act, 1959 which accords a privilege to all the Muslim Public Waqfs in the period of limitation for certain types of civil suits upto 31st day of December 1970 for the only reason that in the wake of the partition of India Mutawallis of certain properties had migrated to Pakistan or those who stayed behind could not institute civil proceedings for recovery of possession of these properties. On this basis limitation has been extended in

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respect of all Public Waqfs. Similarly, laws exclusively applicable to Hindu deities could be had and read in the light of Oudh Laws Act, 1876, could apply the Hindu *Dharma Shastra Law*, which contains *substantive as well as provisions relating to Limitation qua Hindu Deities.* The legal position under the Hindu *Dharma Shastra Law* being as the one indicated above, destruction of Hindu Temple at the site of DS or erection of Babri Masjid over it could never deprive the two Deities, *Ram Janma Bhumi & Bhagwan Shri Ramlala* of their ownership of the disputed property/area; the Indian Law of Limitation is not applicable at all. Decision of Supreme Court in *Shah Bano's case* was upset by the Parliament on the ground of sensitivities of Muslim Community for Muslim Personal Law. Muslim Personal Law (*Shariat*) Application Act, 1937 was framed to apply personal law to Muslims. Sensitivities of Muslims stand even today in the way of adoption of a Common Civil Code for India envisaged by Article 44 of Directive Principles of State Policy in our Constitution. The Constitutional protection, if any, for such laws should also support special laws in the case of Hindu Deity, on principles of equality, particularly in view of Oudh Laws Act 1876 and Article 372(1) of the Constitution.

On behalf of the defendants only this much has been said that plaintiff nos. 1 and 2 are not the deities. They are not infants. The suit for limitation has been filed beyond limitation and Section 6 of Limitation Act does not come in operation in this case. Accordingly the suit is liable to be dismissed being barred by limitation. In this regard.

At the cost of repetition, I would crave to refer that while

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deciding issue nos. 1 and 2 I have given findings that plaintiff nos. 1 and 2 are juridical persons. I have already referred extracts of Hindu Law on Religious and Charitable Trust on the point of Hindu idols, the deity and religious faith. In this regard certain cases have also been referred to establish that Asthan and Chabutra and deities,the plaintiffs (no. 1 and 2) are juristic persons and they will be deemed under the law law as child and for the reasons that deity is a child. It is not disputed that in view of the decision, referred to above, the idols are minors. Thus, I am referring the finding on issue nos. 1,2 and 6 for the sake of brevity. Thus, in view of the findings of this Court on issue nos. 1,2 and 6, plaintiff nos. 1 and 2 are the juridical persons.

I agree with the view of Sri Ravi Shanker and Sri Bhat Senior Advocates that no limitation runs against deities which are perpetual minors. In this context, I have also to add that the deities are perpetual infants and Hindu idol being juridical person is capable of holding properties. Thus, the benefit of Section 6 of Limitation Act is all the time available to minors I.,e, deities in this case. They are considered to be under disability . Under Section 6 of the Limitation Act the ground for extension of limitation are minority, lunacy, and idiocy of the person . In the instant case plaintiff nos. 1 and 2 will be deemed to be disable on account of of their minority. Even in England church has been regarded as under age. Right from 1903 to 1967 and thereafter also the Indian Courts have always treated idols as infants perpetually. In this regard decision of Hon'ble the apex court in AIR 1967 S.C. Page 1044 Bishwanath and another Vs. Shri Thakur Radhaballabhji and others which has considered the earlier decisions of Privy Council and different High Court of this country held that an

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idol is in a position of minor. Consequently, in view of Section 6 of Limitation Act for the purpose of Limitation Act provisions of Section 6 would be made applicable. In this case benefit of Section 6 is not limited to the period after the cessation of the disability but applies also to the period during which disability exists. The plaintiff can only sue through next friend . During the continuance of the disability whether the period of limitation expired or not, Section 6 applies to every minor including the deities. It is a settled proposition of law that a person entitled to bring the suit can claim benefit of Section 6. The plaintiffs have claimed this benefit. Section 6 of the Limitation Act prescribes that the plaintiff or applicant must be under the disability on the date from which the period of limitation is reckoned. In this case the defendants have not pointed out and have not opposed the claim of deities,i,e, plaintiff nos. 1 and 2 that they were not under the disability. Once it is proved that plaintiffs no. 1 and 2 are the deities, they are required to sue on behalf of the next friend either he may be Shebait or worshipper vide AIR 1967 Supreme Court 1044 Bishwanath and another Vs. Shri Thakur Radabhallabhji and others . Accordingly the worshipper P.W.3 , the next friend filed the suit on behalf of the deities. Thus, the disability is starting point of limitation. In this regard it would also be expedient to mention as a general rule the infancy is a personal privilege of which no one can take advantage but the infants themselves**.** In this context **AIR 1956 MADRAS 15 (V. 43 C. 6 JAN.), Thayammal vs. Rangaswami Reddy and others,para 9 i**s reproduced as under;

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“It is well established that the special provision of Section 6, Limitation Act confers a purely personal exemption on a certain class

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of persons, and the exemption as such cannot be taken advantage of by the transferee from the person under disability. It is sufficient to refer to two of the leading authorities, the decision of the Full Bench of the Calcutta High Court in – 'Rudra Kant Surma Sircar vs. Nobo Kishore Surma Biswas', 9 Cal. 663 (FB) (A), and the decision of our Court in – 'Rangaswami Chetti vs. Thangavelu Chetti, AIR 1919 Mad 317 (B).”

Further **AIR 1962 PATNA 182 (V. 49 C 43), Lalji Sah & Others Vs. Sat Narain Bhagat & Others** Para 22 is reproduced as under. This view is based on the decision of Privy Council.

“This section provides that the period of limitation prescribed for a person who does not suffer from any legal disability shall be computed in the case of a minor, from the date of cessation of his minority : see Batuk Prasad vs. Rudra Das, AIR 1950 Pat 206. It is also well settled that the privilege given to a minor under this section is not one that could be availed of by him only, but while the minor's disability lasts his guardian or next friend also can bring a suit or make an application though the ordinary period of limitation for such a suit or application has run out (see Phoolbas Koonwar vs. Lala Jogeshwar Sahay, ILR 1 Cal 226 (PC): Khodabux vs. Budree Narain Singh, ILR 7 Cal 137; Jagadindra Nath Roy vs. Hementa Kumari Devi, ILR 32 Cal 129 (PC) and Satyendra Narain Sinha vs. Pitamber Singh, AIR 1938 Pat 92). Hence the plea of limitation fails.”

**AIR 1971 MADRAS 1 (V 58 C 1), K. Manathunainatha Desikar Vs. Sundaralingam (Minor represented by his next friend M. Swaminathan) & Ors.** Para 20 is reproduced as under:-

“The founder, when the dedication is complete divests himself of all proprietary rights in the property endowed. The deity, a

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juristic entity, is the proprietor who never dies but labours under physical disability which renders it necessary that its interests should be looked after in perpetuity. As a concomitant a power has been recognised in the founder to appoint and provide for a manager to look after the affairs of the deity which has become the owner of the property. The office which he creates for attending to the affairs of the deity is a thing of his own creation and if it is bare office without perquisites, there is no property in it in the Hindu law sense of the term. There is one observation of their Lordships of the Judicial Committee in Tagore case, 1872-73 Ind App. Supp. Vol.47, which is significant in this context. They stated:-

"The power of parting with property once acquired, so as to confer the same property upon another, must take effect either by inheritance or transfer, each according to law."

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On the basis of the aforesaid proposition of law the deities are entitled to the benefit of Section 6 by their next friend in this case and the suit will not be deemed to be barred by limitation.

Personal privilege given to the minor under Section 6 of Limitation Act has been availed in this case by the next friend, plaintiff no. 3. I further find that the defendants have failed to point out any circumstance under which the benefit of Section 6 should not be given to plaintiff nos. 1 and 2.

Hon'ble the apex court in Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others AIR 1967 S.C. 1044 recognized the rights of a worshipper and a person interested in the worship of idol was found to be clothed with an ad hoc power of representation to protect its interest. Thus, plaintiff no. 3 has come out with a case

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that as per trust deed the worshippers have decided in the interest of worship of idol to remove the disability of the idols as there is dereliction of deities by the person responsible not managing the affairs of the idols in their interest. Consequently, in view of the decision of the apex court in AIR 1967 SC 1044 (Supra) referred to above even this Court is competent to appoint a next friend to look after the interest of plaintiff nos. 1 and 2 by appointing next friend to safeguard the interest of the deity as some human being is required to represent the deity before the court of law. Thus, definitely plaintiff nos. 1 and 2 , the deities,the idol in person have properly been represented by next friend, plaintiff no.3 and plaintiff nos. 1 and 2 have proved their disability and sufficient cause of not filing the case within the time and have further proved that their case is not barred by Secretion 6 of the Limitation Act and against them being infants according to the principle of personal privilege the provisions of period of limitation do not apply.

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To sum up I hold that plaintiff nos. 1 and 2 are infant juridical persons and they are entitled for the benefit of Section 6 of the Limitation Act. Accordingly the suit is not barred by limitation.

Issue no. 13 is decided in favour of the plaintiffs and against defendants.

## ISSUE NO. 30

**To what relief, if any, are plaintiffs or any of them entitled ?**

## FINDINGS

In view of my findings on issues nos. 1 to 29, it transpires that

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in leading O.O.S. No. 4 of 1989 and also in this case it is manifestly established by public record, gazetteers, history accounts and oral evidence that the premises, in dispute, is the place where Lord Ram was born as son of Emperor Dashrath of solar dynasty. According to the traditions and faith of devotees of Lord Ram, the place where He manifested Himself has ever been called as Sri Ram Janmbhumi by all and sundry through ages. Thus, the Asthan, Ram Janmbhumi, plaintiff no. 2 has been an object of worship as a deity by the devotees of Lord Ram as it personifies the spirit of divine worshipped in the form of Ram Lala or Lord Ram, the child. I have already observed that Ram Janmbhumi is also a deity and a juridical person. I am also of the opinion that the Hindus worship the divine place in the form of an incarnation and, therefore adopt the form of incarnation as their Ishtdeo. The Hindus can mediate upon the formless and shapeless divine, I,e, plaintiff no. 2. The spirit of Divine is indestructible. Birth place is sacred place for Hindus and Lord Ram, who is said to be incarnation of God, was born at this place.The Hindus since times immemorial and for many generations constantly hold in great esteem and reverence the Ram Janmbhumi where they believe that Lord Ram was born. It is established by tradition and classical legal literature relating to the Hindus and according to their belief and faith that the place is regarded as a deity. This place, according to Hindu religion is symbol and embodiment of spiritual purpose and the property is dedicated and vested with plaintiff no. 2. This place being worshipped as idol from times immemorial and dedicated property vests in idol as juristic person. According to the religious customs of Hindus and recognition established by courts of law, plaintiff no. 1 is a juristic entity and it has juridical status. Its

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interests are attended by the person ,i.e, next friend. According to the Smirit, if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity and properties vested in the lost or mutilated idol becomes vested in the substituted deity .Thus, the place according to the Smirit have to be considered as a deity like Agni and Vayu being worshipped. They are shapeless and formless but they attain the divinity. If the public go for worship and consider that there is divine presence then it is temple which has already been held by Hon'ble apex court in 1999(5) **SCC page 50 Ram Janki Deity Vs. State of Bihar.**

In view of the findings referred to above and the assertions in the plaint, the plaintiff no. 2 is the deity and public is going for worship from times immemorial with a feeling of presence of deity divine. Therefore, it is deemed to be a temple. Even if the temple is destroyed, it would not change the character of the deity and the place will remain a juridical person. Nature of Hindu religion is monism. It believes in one supreme being , who manifests Himself in many form. This is the reason why Hindus start adoring in deity.According to Hindu notion, what is worshipped in a temple , it is not stone image or image made of wood. It is the God behind image which is the object of worship. The real owner of the property dedicated to a temple is deemed to be God himself represented through a particular idol or deity which is merely a symbol vide **Gokul Nath Ji Mahraj Vs. Nathji Bhogilal AIR 1953 Allahabad 552.** Thus, after the length of time it is impossible to prove byl affirmative evidence that there was any consecration ever by faith and belief. It is believed that the place is the place which was

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considered by all time as a deity and is being worshipped like a deity. Accordingly Asthan is personified as the spirit of divine worshipped as the birth place of Ram Lala or Lord Ram as a child . Spirit of divine ever remains present every where at all times for any one to invoke at any shape or form in accordance with his own aspirations .

In view of the aforesaid circumstances, the plaintiffs are entitled for the relief claimed.

## Order

Plaintiffs' suit is decreed but with easy costs. It is hereby declared that the entire premises of Sri Ram Janm Bhumi at Ayodhya as described and delineated in annexure nos. 1 and 2 of the plaint belong to the plaintiff nos. 1 and 2, the deities. The defendants are permanently restrained from interfering with, or raising any objection to, or placing any obstruction in the construction of the temple at Ram Janm Bhumi Ayodhya at the site , referred to in the plaint.

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***(D.V. Sharma)***

S.P.Tripathi/Tanveer/Akhilesh
Padam P. Srivastava/Raghvendra

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# I N D E X
# ANNEXURE-I

| S. No. | Particulars | Page no. |
|---|---|---|
| 1 | Judgment in Dr. M. Ismail Faruqui and others Vs. Union of India and others (Transferred Case (C ) No. 41, 43 and 45 of 1993) connected with three other transferred Cases. | 1 to 50 |
| 2 | Plaint in O.O.S. No. 4/89 | 51 to 63 |
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| 7 | Issues in O.O.S. No. 4 of 1989 | 207 to 214 |
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**(1994) 6 Supreme Court Cases 360**

(Before M.N. Venkatachaliah, C.J. And A.M. Ahmadi,

J.S. Verma, G.N. Ray, and S.P. Bharucha, JJ.)

Transferred Case (C) Nos. 41, 43 and 45 of 1993

**Dr. M. Ismail Faruqui and Ors. ..... Petitioners**

**Vs.**

**Union of India and Ors. ..... Respondents**

**With**

**Writ Petition (Civil) No. 208 of 1993**

**Mohd. Aslam ..... Petitioner**

**Vs.**

**Union of India and others ....., Respondents**

**With**

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**Special Reference No. 1 of 1993 with I.A. No. 1 of 1994 in**

**T.C.No. 44 of 1993**

**Hargyan Singh ..... Petitioner**

**Vs.**

**State of U.P. And Ors. ..... Respondents**

**With**

**Transferred Case (C) No.42 of 1993**

**Thakur Vijay Ragho Bhagwan**
**Birajman Mandir and Another .... Petitioners**

**Vs.**

**Union of India and Others .... Respondents**



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**J. S. VERMA, J**. (for Venkatachaliah, C.J., himself and Ray, J)- "We have just enough religion to make us hate, but not enough to make us love one another."

- Jonathan Swift

Swami Vivekananda said -

"Religion is not in doctrines, in dogmas, nor in intellectual argumentation; it is being and becoming, it is realisation."

This thought comes to mind as we contemplate the roots of this controversy. Genesis of this dispute is traceable to erosion of some fundamental values of the plural commitments of our polity.

2. The constitutional validity of the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993) (hereinafter referred to as "Act No. 33 of 1993" or "the Act") and the maintainability of Special Reference No. 1 of 1993 (hereinafter referred to as "the Special Reference") made by the President of India under Art. 143(1) of the Constitution of India are the questions for decision herein. The background in which these questions are to be answered is contained in the facts stated in the White Paper on Ayodhya, February 1993, issued by the Government of India.

3. Certain undisputed facts emerging at the hearing may also have relevance for this purpose. These questions are answered on this basis, eschewing facts which are in the area of controversy and have yet to be adjudicated.

**BACKGROUND**

4. The Bill was introduced in Parliament leading to the above enactment and the said Reference to this Court was made in the historical background set out in the White Paper. Indeed, the two simultaneous acts are an



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indication of the legislative intent for enactment of the statute, the reference being made as a part of the same exercise with a view to effectuate the purpose of the enactment. This is how, they have to be viewed.

5. The "Overview" at the commencement of the White Paper in Chapter 1 states thus:-

"1.1 Ayodhya situated in the north of India is a township in District Faizabad of Uttar Pradesh. It has long been a place of holy pilgrimage because of its mention in the epic Ramayana as the place of birth of Shri Ram. The structure commonly known as Ram Janma Bhoomi-Babri Masjid was erected as a mosque by one Mir Baqi in Ayodhya in 1528 A. D. It is claimed by some sections that it was built at the site believed to be the birth-spot of Shri Ram where a temple had stood earlier. This resulted in a long-standing dispute.

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1.2 The controversy entered a new phase with the placing of idols in the disputed structure in December, 1949. The premises were attached under S. 145 of the Code of Criminal Procedure. Civil suits were filed shortly thereafter. Interim orders in these civil suits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December, 1949 till December 6, 1992 the structure had not been used as a mosque."

6. The movement to construct a Ram temple at the site of the disputed structure gathered momentum in recent years which became a matter of great controversy and a source of tension. This led to several parleys the details of which are not very material for the present purpose. These parleys involving the Vishva Hindu Parishad (VHP) and the All India Babri Masjid Action Committee (AIBMAC), however, failed to resolve the



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dispute. A new dimension was added to the campaign for construction of the temple with the formation of the Government in Uttar Pradesh in June 1991 by the Bhartiya Janata Party (BJP) which declared its commitment to the construction of the temple and took certain steps like the acquisition of land adjoining the disputed structure while leaving out the disputed structure itself from the acquisition. The focus of the temple construction movement from October 1991 was to start construction of the temple by way of 'kar-sewa' on the land acquired by the Government of Uttar Pradesh while leaving the disputed structure intact. This attempt did not succeed and there was litigation in the Allahabad High Court as well as in this Court. There was a call for resumption of kar sewa from 6th December, 1992 and the announcement made by the organisers was for a symbolic kar sewa without violation of the court orders including those made in the proceedings pending in this Court. In spite of initial reports from Ayodhya on 6th December, 1992 indicating an air of normalcy, around mid-day a crowd addressed by leaders of BJP, VHP, etc., climbed the Ram Janma Bhumi-Babri Masjid (RJB-BM) structure and started damaging the domes. Within a short time, the entire structure was demolished and razed to the ground. Indeed, it was an act of "National shame". What was demolished was not merely an ancient structure; but the faith of the minorities in the sense of justice and fair play of majority. It shook their faith in the rule of law and constitutional processes. A five hundred year old structure which was defenceless and whose safety was a sacred trust in the hands of the State Government was demolished.

7. After referring to the details on this tragedy, the White Paper in Chapter 1 on "OVERVIEW" concludes thus :-



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"1.35. The demolition of the Ram Janma Bhoomi-Babri Masjid structure at Ayodhya on 6th December, 1992 was a most reprehensible act. The perpetrators of this deed struck not only against a place of worship, but also at the principles of secularism, democracy and the rule of law enshrined in our Constitution. In a move as sudden as it was shameful, a few thousand people managed to outrage the sentiments of millions of Indians of all communities who have reacted to this incident with anguish and dismay.

1.36 What happened on December 6, 1992 was not a failure of the system as a whole, nor of the wisdom inherent in India's Constitution, nor yet of the power of tolerance, brotherhood and compassion that has so vividly informed the life of independent India. It was, the Supreme Court observed on that day, "a great pity that a Constitutionally elected Government could not discharge its duties in a matter of this sensitiveness and magnitude." Commitments to the Court and Constitution, pledges to Parliament and the people, were simply cast aside. Therein lay the failure, therein the betrayal.

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1.37 Today India seeks to heal, and not reopen its wounds; to look forward with hope, and not backwards with fear; to reconcile reason with faith. Above all, India is determined to press ahead with the National Agenda, undeterred by aberrations."

8. It may be mentioned that a structure called the Ram-chabutra stood on the disputed site within the courtyard of the disputed structure. This structure also was demolished on 6th December, 1992 (Appendix-V to the White Paper). Worship of the idols installed on the Ram-chabutra by Hindu devotees in general, it appears, had been performed for a considerable period of time without any objection by the Muslims to its worship at that place,



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prior to the shifting of the idols from the Ram-chabutra to the disputed structure in December 1949. As a result of demolition of Ram-chabutra also on 6th December 1992, the worship by Hindus in general even at that place was interrupted. Thereafter, the worship of idols is being performed only by a priest nominated for the purpose without access to the public.

9. A brief reference to certain suits in this connection may now be made. In 1950 two suits were filed by some Hindus; in one of these suits in January 1950, the trial court passed interim orders whereby the idols remained at the place where they were installed in December 1949 and their Puja by the Hindus continued. The interim order was confirmed by the High Court in April 1955. On 1st February, 1986, the District Judge ordered the opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine in the disputed structure and permitted Puja by the Hindu devotees. In 1959, a suit was filed by the Nirmohi Akhara claiming title to the disputed structure. In 1961, another suit was filed claiming title to the disputed structure by the Sunni Central Wakf Board. In 1989, Deoki Nandan Agrawal, as the next friend of the Deity filed a title suit in respect of the disputed structure. In 1981, the aforementioned suits were transferred to the Allahabad High Court and were ordered to be heard together. On 14th August, 1989, the High Court ordered the maintenance of status quo in respect of the disputed structure (Appendix-I to the White Paper). As earlier mentioned, it is stated in para 1.2 of the White Paper that :

"....interim orders in these civil suits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December, 1949 till December 6, 1992 the structure had been used as a mosque."



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10. Prior to December 1949 when the idols were shifted into the disputed structure from the Ram-chabutra, worship by Hindu devotees at the Ram-chabutra for a long time without any objection from Muslims is also beyond controversy. A controversy, however, is raised about use of the disputed structure as a mosque from 1934 to December 1949. One version is that after some disturbances in 1934, the use of the disputed structure as a mosque had been stopped from 1934 itself and not merely from December 1949. The other side disputes the alleged disuse of the mosque for prayers prior to December 1949. The stand of the Uttar Pradesh Government in the suits was that the place was used as a mosque till 1949.

11. As a result of the incidents at Ayodhya on 6th December, 1992, the President of India issued a proclamation under Art. 356 of the Constitution of India assuming to himself all the functions of the Government of Uttar Pradesh, dissolving the U.P. Vidhan Sabha. The White Paper in Chapter II mentions the "BACKGROUND" and therein it is stated as under :

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"2.1 At the centre of the RJB-BM dispute is the demand voiced by Vishwa Hindu Parishad (VHP) and its allied organisations for the restoration of a site said to be the birth place of Sri Ram in Ayodhya. Till 6th December, 1992 this site was occupied by the structure erected in 1528 by 'Mir Baqi' who claimed to have built it on orders of the first Mughal Emperor Babar. This structure has been described in the old Government records as Masjid Janmasthan. It is now commonly referred to as Ram Janma Bhumi-Babri Masjid.

2.2 The VHP and its allied organisations base their demand on the assertion that this site is the birth place of Sri Ram and a Hindu temple commemorating this site stood here till it was destroyed on Babar's



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command and a Masjid was erected in its place. The demand of the VHP has found support from the Bhartiya Janata Party (BJP). The construction of a Ram temple at the disputed site, after removal or relocation of the existing structure, was a major plank in BJP's campaign during elections held in 1989 and 1991. Other major political parties, however, had generally opposed this demand and had taken the stand that while a temple should be built, the issues in dispute should be resolved either by negotiations or by orders of the Court.

2.8 During the negotiations aimed at finding an amicable solution to the dispute, one issue which came to the fore was whether a Hindu temple had existed on the site occupied by the disputed structure and whether it was demolished on Babar's orders for the construction of the Masjid. It was stated on behalf of the Muslim organisations, as well as by certain eminent historians, that there was no evidence in favour of either of these two assertions. It was also stated by certain Muslim leaders that if these assertions were proved, the Muslims would voluntarily handover the disputed shrine to the Hindus. Naturally, this became the central issue in the negotiations between the VHP and AIBMAC.

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2.12 The historical debate has thus remained inconclusive although much progress has been made in identifying the areas of agreement and difference. Conclusive findings can be obtained only by way of reference to a competent authority. However, as brought out elsewhere in this Paper the negotiations were disrupted at a crucial phase. Now, the entire evidence has disappeared along with the disputed structure. It is tragic and ironical that the Ram-chabutra and Kaushalya Rasoi, which continued as places of



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worship during periods of Muslim and British rule have disappeared along with the RJB-BM structure at the hands of people professing to be 'devotees' of Lord Ram.

PLACING OF IDOLS IN THE DISPUTED STRUCTURE

2.13 As has been mentioned above, Hindu structures of worship already existed in the outer courtyard of the RJB-BM structure. On the night of 22nd/23rd December, 1949, however, Hindu idols were placed under the central dome of the main structure. Worship of these idols was started on a big scale from the next morning. As this was likely to disturb the public peace, the civil administration attached the premises under Section 145 of the Code of Criminal Procedure. This was the starting point of a whole chain of events which ultimately led to the demolition of the structure. The main events of this chain have been summarised in Appendix-I.

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2.14 Soon after the installation of the idols two civil suits were filed by Hindu plaintiffs seeking to restrain the Administration from removing the idols from the disputed structure or placing any restrictions in the way of devotees intending to offer worship. Interim injunctions were issued by the civil court to this effect. These injunctions were confirmed by the Allahabad High Court in 1955.

2.15 The Hindu Idols thus continued inside the disputed structure since 1949. Worship of these idols by Hindus also continued without interruption since 1949 and the structure was not used by the Muslims for offering prayers since then. The controversy remained at a low ebb till 1986 when the District Court of Faizabad ordered opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine. An organisation called the Babri Masjid Action Committee (BMAC), seeking restoration of the



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disputed shrine to the Muslims came into being and lunched a protest movement. The Hindu organisations, on the other hand, stepped up their activities to mobilise public opinion for the construction of a Ram temple at the disputed site."

12. After the imposition of President's rule in the State of Uttar Pradesh as a consequence of the events at Ayodhya on 6th December, 1992, action taken by the Central Government is detailed in Chapter VIII of the White Paper with reference to the communal situation in the country which deteriorated sharply following the demolition of the RJB-BM structure on 6th December, 1992 and spread of communal violence in several other States. Para 8.11 in Chapter VIII relating to the "ACTION TAKEN BY THE CENTRAL GOVERNMENT" is as under :-

"8.11 Mention has been made above (Overview) of the decisions taken on 7th December by the Government to ban communal organisations, to take strong action for prosecution of the offences connected with the demolition, to fix responsibilities of various authorities for their lapses relating to the events of December 6, to rebuild the demolished structure and to take appropriate steps regarding new Ram Temple. The last two decisions were further elaborated on 27th December as follows :

"The Government has decided to acquire all areas in dispute in the suits pending in the Allahabad High Court. It has also been decided to acquire suitable adjacent area. The acquired area excluding the area on which the disputed structure stood would be made available to two Trusts which would be set up for construction of a Ram Temple and a Mosque respectively and for planned development of the area.



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"The Government of India has also decided to request the President to seek the opinion of the Supreme Court on the question whether there was a Hindu temple existing on the site where the disputed structure stood. The Government has also decided to abide by the opinion of the Supreme Court and to take appropriate steps to enforce the Court's opinion. Notwithstanding the acquisition of the disputed area, the Government would ensure that the position existing prior to the promulgation of the Ordinance is maintained until such time as the Supreme Court gives its opinion in the matter. Thereafter the rights of the parties shall be determined in the light of the Court's opinion."

In pursuance of these decisions an Ordinance named 'Acquisition of Certain Area at Ayodhya Ordinance' was issued on 7th January, 1993 for acquisition of 67.703 acres of land in the Ram Janma Bhoomi-Babri Masjid complex. A reference to the Supreme Court under Art. 143 of the Constitution was also made on the same day. Copy of the Ordinance is at Appendix-XV and of the Reference at Appendix-XVI."

13. The Acquisition of Certain Area at Ayodhya Ordinance, 1993 (No. 8 of 1993) has been replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993), the constitutional validity of which has to be examined by us.

14. The said Ordinance, later replaced by Act No. 33 of 1993, and the Special Reference under Art. 143(1) of the Constitution of India were made simultaneously the same day on 7th January, 1993. It would be appropriate at this stage to quote, in extenso, the Statement of Objects and Reasons for this enactment, the said Act No. 33 of 1993, and the Special Reference under Art. 143(1) of the Constitution:



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"STATEMENT OF OBJECTS AND REASONS

There has been a long-standing dispute relating to the erstwhile Ram Janma Bhumi-Babri Masjid structure in Ayodhya which led to communal tension and violence from time to time and ultimately led to the destruction of the disputed structure on 6th December, 1992. This was followed by wide-spread communal violence which resulted in large number of deaths, injuries and destruction of property in various parts of the country. The said dispute has thus affected the maintenance of public order and harmony between different communities in the country. As it is necessary to maintain communal harmony and the spirit of common brotherhood amongst the people of India, it was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities can be set up.

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2. The Acquisition of Certain Area at Ayodhya Ordinance, 1993 was accordingly promulgated by the President on 7th January, 1993. By virtue of the said Ordinance the right, title and interest in respect of certain areas at Ayodhya specified in the Schedule to the Ordinance stand transferred to, and vest in, the Central Government.

3. The Bill seeks to replace the aforesaid Ordinance.

S. B. CHAVAN.

NEW DELHI,

The 9th March, 1993."

SPECIAL REFERENCE



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WHEREAS a dispute has arisen whether a Hindu temple or any Hindu religious structure existed prior to the construction of the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, in the area in which the structure stood in village Kot Ramachandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

2. AND WHEREAS the said area is located in Revenue Plot Nos. 159 and 160 in the said village Kot Ramchandra;

3. AND WHEREAS the said dispute has affected the maintenance of public order and harmony between different communities in the country;

4. AND WHEREAS the aforesaid area vests in the Central Government by virtue of the Acquisition of Certain Area at Ayodhya Ordinance, 1993;

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5. AND WHEREAS notwithstanding the vesting of the aforesaid area in the Central Government under the said Ordinance the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion;

6. AND WHEREAS in view of what has been hereinbefore stated it appears to me that the question hereinafter set out has arisen and is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

7. NOW, THEREFORE, in exercise of the powers conferred upon me by clause (1) of Art. 143 of the Constitution of India, I, Shanker Dayal Sharma, President of India, hereby refer the following question to the Supreme Court of India for consideration and opinion thereon, namely :



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Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?

Sd/-

President of India

New Delhi:

Dated 7th January, 1993."

THE ACQUISITION OF CERTAIN AREA AT AYODHYA ACT, 1993 (NO. 33 OF 1993)

(3rd April, 1993)

An Act to provide for the acquisition of certain area at Ayodhya and for matters connected therewith or incidental thereto.

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WHEREAS there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramachandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

AND WHEREAS the said dispute has affected the maintenance of public order and harmony between different communities in the country;

AND WHEREAS it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

AND WHEREAS with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;



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BE it enacted by Parliament in the Forty fourth Year of the Republic of India as follows :-

CHAPTER I

PRELIMINARY

1. Short title and commencement. -(1) This Act may be called the Acquisition of Certain Area at Ayodhya Act, 1993.

(2) It shall be deemed to have come into force on the 7th day of January, 1993.

2. Definitions. -In this Act unless the context otherwise requires,-

(a) "area" means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;

(b) "authorised person" means a person or body of persons or trustees of any trust authorised by the Central Government under S. 7;

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(c) "Claims Commissioner" means the Claims Commissioner appointed under sub-section (2) of Section 8;

(d) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

ACQUISITION OF THE AREA IN AYODHYA

3. Acquisition of rights in respect of certain area. - On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

4. General effect of vesting.-(1) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties and all other rights and interests in, or



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arising out of, such properties as were immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature relating thereto.

(2) All properties aforesaid which have vested in the Central Government under S. 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect.

(3) If, on the commencement of this Act, any suit, appeal of other proceeding in respect of the right, title and interest relating to any property which has vested in the Central Government under S. 3, is pending before any court, tribunal or other authority, the same shall abate.

5. Duty of person or State Government in charge of the management of the area to deliver all assets, etc.- (1) The Central Government may take all necessary steps to secure possession of the area which is vested in that Government under S. 3.

(2) On the vesting of the area in the Central Government under S. 3, the person or State Government of Uttar Pradesh, as the case may be, in charge of the management of the area immediately before such vesting shall be bound to deliver to the Central Government or the authorised person, all assets, registers and other documents in their custody relating to such vesting or where it is not practicable to deliver such registers or documents,



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the copies of such registers or documents authenticated in the prescribed manner.

6. Power of Central Government to direct vesting of the area in another authority or body or trust.- (1) Notwithstanding anything contained in Ss. 3, 4, 5 and 7, the Central Government may, if it is satisfied that any authority or other body, or trustees of any trust, set up on or after the commencement of this Act is or are willing to comply with such terms and conditions as that Government may think fit to impose, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust either on the date of the notification or on such later date as may be specified in the notification.

(2) When any right, title and interest in relation to the area or part thereof vest in the authority or body or trustees referred to in sub-sec. (1), such rights of the Central Government in relation to such area or part thereof, shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust.

(3) The provisions of Ss. 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government and for this purpose references therein to the "Central Government" shall be construed as references to such authority or body or trustees.

CHAPTER III

MANAGEMENT AND ADMINISTRATION OF PROPERTY

7. Management of property Government.- (1) Notwithstanding anything contained in any contract or instrument or order of any court, tribunal or



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other authority to the contrary, on and from the commencement of this Act, the property vested in the Central Government under S. 3 shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by that Government in this behalf.

(2) In managing the property vested in the Central Government under S. 3, the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood in village Kot Ramachandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh is maintained.

CHAPTER IV

MISCELLANEOUS

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8. Payment of amount,- (1) The owner of any land, building, structure or other property comprised in the area shall be given by the Central Government, for the transfer to and vesting in that Government under S. 3 of that land, building, structure or other property, in cash an amount equivalent to the market value of the land, building, structure or other property.

(2) The Central Government shall, for the purpose of deciding the claim of the owner or any person having a claim against the owner under sub-sec. (1), by notification in the Official Gazette, appoint a Claims Commissioner.

(3) The Claims Commissioner shall regulate his own procedure for receiving and deciding the claims.



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(4) The owner or any person having a claim against the owner may make a claim to the Claims Commissioner within a period of ninety days from the date of commencement of this Act;

Provided that if the Claims Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of ninety days, the Claims Commissioner may entertain the claim within a further period of ninety days and not thereafter.

9. Act to override all other enactments,- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act or any decree or order of any court, tribunal or other authority.

10. Penalties.- Any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person any asset, register or other document in his custody relating to such area or, as the case may be, authenticated copies of such register or document, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both.

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11. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against the Central Government or the authorised person or any of the officers or other employees of that Government or the authorised person for anything which is in good faith done or intended to be done under this Act.

12. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.



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(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule:

13. Repeal and saving.- (1) Subject to the provisions of sub-section (2), the Acquisition of Certain Area at Ayodhya Ordinance, 1993 (Order 8 of 1993), is hereby repealed.

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(2) Notwithstanding anything contained in the said Ordinance,-

(a) the right, title and interest in relation to plot No. 242 situated in village Kot Ramachandra specified against Sl. No. 1 of the Schedule to the said Ordinance shall be deemed never to have been transferred to, and vested in, the Central Government;

(b) any suit, appeal or other proceeding in respect of the right, title and interest relating to the said plot No. 242, pending before any court, tribunal or other authority, shall be deemed never to have abated and such suit, appeal or other proceeding (including the orders or interim orders of any court thereon) shall be deemed to have been restored to the position existing immediately before the commencement of the said Ordinance;



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(c) any other action taken or thing done under that Ordinance in relation to the said plot No. 242 shall be deemed never to have been taken or done.

(3) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See Section 2(a))

DESCRIPTION OF THE AREA

xxx xxx xxx"

15. At the hearing, it was strenuously urged that the question of fact referred under Article 143(1) of the Constitution is vague; the answer to it is by itself not decisive of the real controversy since the core question has not been referred; and it also gives no definite indication of the manner in which the Central Government intends to act after the Special Reference is answered, to settle the dispute. It was urged that the question referred is, therefore, academic, apart from being vague, and it does not serve any constitutional purpose to subserve which the advisory jurisdiction of this Court could be invoked; that the real object and purpose of reference is to take away a place of worship of the Muslims and give it away to the Hindus offending the basic feature of secularism; and that, therefore, we should decline to answer the Special Reference. The learned Solicitor General who appeared for the Union of India was asked to clarify the stand of the Central Government on this point. Initially, it was stated by the learned Solicitor General that the answer to the question would provide the basis for further negotiations between the different groups to settle the controversy and the Central Government would then be able to decide the effective course



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available to it for resolving the controversy. On being asked to further clarify the stand of the Central Government about the purpose of the Special Reference, the learned Solicitor General made a statement in writing on behalf of the Union of India on 14th September, 1994 as under :-

"Government stands by the policy of secularism and of even-handed treatment of all religious communities. The Acquisition of Certain Area at Ayodhya Act, 1993, as well as the Presidential Reference, have the objective of maintaining public order and promoting communal harmony and the spirit of common brotherhood amongst the people of India.

Government is committed to the construction of a Ram temple and a mosque, but their actual location will be determined only after the Supreme Court renders its opinion in the Presidential Reference.

Government will treat the finding of the Supreme Court on the question of fact referred under Art. 143 of the Constitution as a verdict which is final and binding.

In the light of the Supreme Court's (sic) opinion and consistent with it, Government will make efforts to resolve the controversy by a process of negotiations. Government is confident that the opinion of the Supreme Court will have a salutary effect on the attitudes of the communities and they will no longer take conflicting positions on the factual issue settled by the Supreme Court.

If efforts at a negotiated settlement as aforesaid do not succeed, Government is committed to enforce a solution in the light of the Supreme Court's opinion and consistent with it. Government's action in this regard will be even-handed in respect of both the communities. If the question referred is answered in the affirmative, namely, that a Hindu temple /



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structure did exist prior to the construction of the demolished structure, Government action will be in support of the wishes of the Hindu community. If, on the other hand, the question is answered in the negative, namely, that no such Hindu temple / structure existed at the relevant time, then Government action will be in support of the wishes of the Muslim community."

This statement in writing made by the learned Solicitor General on behalf of the Union of India forms a part of the record and has to be taken into account to indicate the purpose for which the Special Reference under Art. 143(1) has been made to this Court.

16. The dispute and its background are mentioned in paras 2.1, 2.2, and 2.3 of Chapter II of the White Paper quoted earlier. This is the backdrop in which the constitutional validity of Act No. 33 of 1993 and the maintainability of the Special Reference made under Art. 143(1) of the Constitution of India have to be examined.

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VALIDITY OF ACT NO. 33 OF 1993

17. Broadly stated, the focus of challenge to the statute as a whole is on the grounds of secularism, right to equality and right to freedom of religion. Challenge to the acquisition of the area in excess of the disputed area is in addition on the ground that the acquisition was unnecessary being unrelated to the dispute pertaining to the small disputed area within it. A larger argument advanced on behalf of some of the parties who have assailed the act with considerable vehemence is that a mosque being a place of religious worship by the Muslims, independently of whether the acquisition did affect the right to practise religion, is wholly immune from the State's power of acquisition and the statute is, therefore, unconstitutional as violative of



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Articles 25 and 26 of the Constitution of India for this reason alone. The others, however, limited this argument of immunity from acquisition only to places of special significance, forming an essential and integral part of the right to practise the religion, the acquisition of which would result in the extinction of the right to freedom of religion itself. It was also contended that the purpose of acquisition in the present case does not bring the statute within the ambit of Entry 42, List III but is referable to Entry 1, List II and, therefore, the Parliament did not have the competence to enact the same. It was then urged by learned counsel canvassing the Muslim interest that the legislation is tilted heavily in favour of the Hindu interests and, therefore, suffers from the vice of non-secularism and discrimination in addition to violation of the right to freedom of religion of the Muslim community. It was also urged by them that the Central Government, after the Prime Minister's statement made on 7th December, 1992, to rebuild the demolished structure (para 1.22 in Chapter I of the White Paper) resiled from the same and by incorporating certain provisions in the statute has sought to perpetuate the injustice done to the Muslim community by the act of vandalism of demolition of the structure at Ayodhya on 6th December, 1992. On behalf of the Muslim community, it is urged that the statute read in the context of the content of the question referred under Article 143(1) of the Constitution, as it must be, is a mere veiled concealment of a device adopted by the Central Government to perpetuate the consequences of the demolition of the mosque on 6th December, 1992. The grievance of the Hindu opponents is that the mischief and acts of vandalism committed by a few are being attributed to the entire Hindu community the majority of whom is equally hurt by, and critical of, the shameful act. They urge that this



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disapproval by the majority community is evident from the result of the subsequent elections in which the Bhartiya Janata Party was rejected at the hustings by the Hindu majority. They also submit that the fact of demolition of Hindu structures like the Ram-chabutra and Kaushalya Rasoi which stood since ages in the disputed site resulting in interruption of even the undisputed right of worship of Hindus within that area is being ignored. It is also contended that there is no justification for acquisition of any property in excess of the disputed area and, therefore, the acquisition at least of the excess area belonging, admittedly, to Hindus is invalid.

18. On behalf of the Central Government, it is urged that in the existing situation and in view of the widespread communal flare-up throughout the country on account of the events at Ayodhya of 6th December, 1992, the most appropriate course, in the opinion of the Central Government, was to make this acquisition along with the Special Reference to decide the question which would facilitate a negotiated solution of the problem, and if it failed, to enable the Central Government to take any other appropriate action to resolve the controversy and restore communal harmony in the country. It was made clear that acquisition of the disputed area was not meant to deprive the community found entitled to it, of the same, or to retain any part of the excess area which was not necessary for a proper resolution of the dispute or to effectuate the purpose of the acquisition, it was submitted that an assurance of communal harmony throughout the country was a prime constitutional purpose and avoidance of escalation of the dispute in the wake of the incident at Ayodhya on 6th December, 1992 was an essential step in that direction, which undoubtedly promotes the creed of secularism instead of impairing it. It was submitted that the charge levelled



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against the Central Government of discrimination against any religious community or of anti-secularism is wholly unwarranted.

19. Another argument advanced on behalf of the Muslim community was that the defences open to the minority community in the suits filed by the other side including that of adverse possession by virtue of long possession of the disputed site for over 400 years since its construction in 1528 A. D. have also been extinguished by the acquisition, giving an unfair advantage to the other side. It was also urged that the core question in the dispute between the parties was not the subject-matter of the Special Reference made under Article 143(1) of the Constitution and, therefore, answer to the same would not result in a resolution of the dispute between the parties to the suits. It was accordingly urged, there is deprivation of the judicial remedy for adjudication of the dispute without the substitution of an alternate dispute resolution mechanism, which is impermissiable under the Constitution.

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20. It is appropriate at this stage to refer to the provisions of the statute before we deal with the arguments challenging its constitutional validity. The Statement of Objects and Reasons says that there is a long-standing dispute relating to the disputed structure in Ayodhya which led to communal tension and violence from time to time and ultimately has led to the destruction of the disputed structure on 6th December, 1992 followed by widespread communal violence resulting in loss of many lives and destruction of property throughout the country. The said dispute has thus affected the maintenance of public order and communal harmony in the country. Obviously, it is necessary to maintain and promote communal harmony and fraternity amongst the people of India. With this objective in view it was considered necessary to acquire the site of the disputed structure



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and the requisite adjacent area to be utilised in an appropriate manner to achieve this object. For this purpose, the Acquisition of Certain Area at Ayodhya Ordinance, 1993 was promulgated by the President on 7th January, 1993 and, simultaneously, on the same day, this Reference was also made by the President to this Court under Article 143 (1) of the Constitution. The said Ordinance was replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993) to the same effect, and Section 1(2) provides that the Act shall be deemed to have come into force on the 7th January, 1993. The provisions of the said Act are now considered.

21. Section 3 provides for acquisition of rights in relation to the area defined in Section 2(a). It says that on and from the commencement of this Act the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government. It is well-settled that the meaning of vest takes colour from the context in which it is used and it is not necessarily the same in every provision or in every context. In Maharaj Singh v. State of U.P., it was held: (SCR p. 1081 : SCC pp. 164-65, para 16)

"Is such a construction of 'vesting' in two different senses in the same section, sound? Yes. It is, because 'vesting' is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions...."

The meaning of vest in Section 3 and in Section 6 is of significance in the context of the constitutional validity of the statute. It can vary in



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different parts of the statute or even the same Section, depending on the context of its use.

22. Section 4 then provides the general effect of vesting. Obviously, the effect of vesting will depend on the meaning of the word vest used in Section 3 and the kind of vesting in the present context. Sub-section (1) of Section 4 provides that the area shall be deemed to include all assets, rights, etc. specified therein of whatever nature relating thereto. Sub-section (2) further says that all properties aforesaid which have vested in the Central Government under Section 3 shall, by force of such vesting, be freed and discharged from all encumbrances affecting them and any attachment, injunction, decree or order of any Court of tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of the property shall cease to have effect. In other words, the effect of such vesting is to free all properties aforesaid which have vested in the Central Government under Section 3 of all encumbrances and the consequence of any order of any Court or tribunal of any kind restricting their user in any manner. Sub-section (3) of Section 4 provides for abatement of all pending suits and legal proceedings. The meaning of the word vest in Section 3 has a bearing on the validity of this provision since the consequence of abatement of suits etc. provided therein is relatable only to absolute vesting of the disputed area which is the subject-matter of the suits and not to a situation where the vesting under Section 3 is of a limited nature for a particular purpose, and is of limited duration till the happening of a future event. Section 5 indicates the duty of the person or State Government in charge of the management of the area to deliver all assets etc. to the Central Government on such vesting. Sub-section (1)



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empowers the Central Government to take all necessary steps to secure possession of the area which is vested in the Central Government under Section 3. Sub-section (2) obliges the person or State Government of Uttar Pradesh, as the case may be, in charge of the management of the area immediately before such vesting to deliver to the Central Government or the authorised person all assets etc. in their custody relating to such vesting. In short, Section 5 provides the consequential action to be taken by the Central Government with the corresponding obligation of the person or State Government in charge of the management of the area to deliver possession of the area, together with its management, to the Central Government, on such vesting.

23. Then comes Section 6 which is the last Section in Chapter II, to which detailed reference would be made later. At this stage a general reference to its contents is sufficient. Section 6 contains the power of Central Government to direct vesting of the area in another authority or body or trust. Sub-section (1) provides that the Central Government may, notwithstanding anything contained in Sections 3, 4, 5 and 7, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust from the specified date, if it is satisfied that the same is willing to comply with such terms and conditions as the Central Government may think fit to impose. In short, sub-section (1) empowers the Central Government to transfer its right, title and interest or any of them in the area or any part thereof to any authority or other body or trustees of any trust on such terms and conditions as it may think fit to impose, instead of continuing



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to retain the same itself. Sub-section (2) provides for the consequences of the action taken under sub-section (1) giving recognition to the statutory transfer effected by the Central Government to effectuate the purpose of such transfer by the Central Government by declaring that the transferee would then step into the shoes of the Central Government acquiring the same right, title and interest in the area or part thereof which by virtue of the enactment had earlier vested in the Central Government. Sub-section (2) is another consequence of the action taken under sub-section (1) and provides that Sections 4, 5, 7 and 11, so far as may be, would apply to such transferee as they apply in relation to the Central Government. It may here be recalled that Section 4 relates to the effect of vesting under Section 3; Section 5 to the duty of the person or State in charge of the management of the area to deliver possession etc. to the Central Government or the authorised person; Section 7 to the management and the administration of property by the Central Government on its vesting; and Section 11 gives protection to action taken in good faith by the Central Government or the authorised person or any one acting on its behalf under this Act.

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24. Chapter III contains Section 7 alone which would be considered at length later in view of the serious challenge made to its constitutional validity. This Section deals with the management and administration of the property by the Central Government, on its vesting. Sub-section (1) provides for management of the property vested in the Central Government under Section 3 by the Central Government or by any authorised person, on such vesting, notwithstanding anything to the contrary contained in any contract or instrument or order of any Court, tribunal or other authority. In other words, inspite of any contrary provision in any contract or instrument or



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order of any Court, tribunal or other authority, from the commencement of this act, the management of the property vested in the Central Government under Section 3 shall be by the Central Government or by an authorised person, so authorised by the Government in its behalf and none else. This provision expressly supersedes any earlier provision relating to the management of the property so vested in the Central Government, Sub-section (2) then provides for the manner of the management of the property by the Central Government or the authorised person. It mandates the Central Government or the authorised person, in managing the property vested in the Central Government under Section 3, to ensure that the position existing before the commencement of this Act "in the area on which the structure(including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood" is maintained. This means that the power of management of the Central Government or the authorised person under sub-section (1) of Section 7 is coupled with the duty contained in the mandate given by sub-section (2). The mandate is that in managing the property so vested in the Central Government, the Central Government or the authorised person shall ensure maintenance of the status quo "in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood". There was some debate as to the meaning of the word area in this context. One construction suggested was that the word area used in this expression has the same meaning as in the definition contained in Section 2(a), that is, the entire area specified in the Schedule to the Act. Section 2 itself says that the definitions therein give the meaning of the words defined "unless the context



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otherwise requires". The context in which the word area is used in the expression in Section 7(2) gives the clear indication that its meaning is not the same as in Section 2(a) to mean the entire area specified in the Schedule since the words which follow qualify its meaning confining it only to the site on which this structure, commonly known as the Ram Janma Bhumi-Babri Masjid stood, which site or area is undoubtedly smaller and within "the area specified in the Schedule".

25. Chapter IV contains the miscellaneous provisions. Therein Section 8 provides for payment of amount equivalent to the market value of the land, building, structure or other property by the Central Government for the transfer to, and vesting of the property in, the Government under Section 3, to its owner. Remaining part of Section 8 contains the machinery provisions for payment of the amount. Section 9 gives the overriding effect of the provisions of this Act on any other law or decree or order of any Court, tribunal or other authority. Section 10 provides for penalties. It says that any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person the possession etc. required under this Act shall be punishable in the manner provided. Section 11 gives protection to the Central Government or the authorised person or any one acting on its behalf for anything done or intended to be done under this act in good faith. Section 12 contains the rule-making power of the Central Government to carry out the provisions of this Act and the manner in which the rules are to be made. Section 13 is the last section of the Act providing for repeal of the earlier Ordinance and savings.

26. The foregoing is a brief resume of the provisions of Act No. 33 of 1993, the constitutional validity of which has to be examined in the light of



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the grounds of challenge. The meaning of the word vest in Section 2 and the kind of vesting contemplated thereby, the effect of vesting including abatement of all pending suits and legal proceedings, according to Section 4, the power of Central Government to direct vesting of the area or any part thereof in another anauthority or body or trust and its effect according to Section 6, and Section 7 providing for management of property by the Central Government or the authorised person are the provisions of particular significance for deciding the question of constitutionality. Section 8 also is of some significance in this context.

27. We may now proceed to consider the merits of the grounds on which the Act is assailed as constitutionally invalid.

**LEGISLATIVE COMPETENCE**

28. The legislative competence is traceable to Entry 42, List III and the State of Uttar Pradesh being under President's rule at the relevant time, the legislative competence of the Parliament, in the circumstances, cannot be doubted. That apart, the pith and substance of the legislation is "acquisition of property" and that falls squarely within the ambit of Entry 42, List III. Competing entry set up is Entry 1, List II relating to "public order". "Acquisition of property" and not "public order" is the pith and substance of the statute.

29. In State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, 1952 SCR 889 : (AIR 1952 SC 252), it was pointed out that where the dominant purpose of the act was that of transference to the State of the interests of the proprietors and tenure holders of the land, the pith and substance of the legislation was the transference of ownership to the State Government and it was an "acquisition" Act. In Dy. Commissioner and



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Collector v. Durga Nath Sarma, (1968) 1 SCR 561 : (AIR 1968 SC 394), Bachawat, J. pointed out that a law for permanent acquisition of property is not a law for promotion of public health etc. since only the taking of temporary possession of private properties can be regarded as a law for promotion of public health.

30. It is significant to bear in mind that Entry 42, List III, as it now exists, was substituted by the Constitution (Seventh Amendment) Act to read as under :-

"Acquisition and requisitioning of property."

Before the Constitution (Seventh Amendment) Act, the relevant entries read as follows:-

List I, Entry 33 :

"33. Acquisition or requisitioning of property for the purposes of the Union."

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List II, Entry 36 :

"36. Acquisition or requestioning of property, except for the purposes of the Union, subject to the provisions of Entry 42 of List III."

List III, Entry 42 :

"42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose, is to be determined, and the form and the manner in which such compensation is to be given."

By the amendment so made, Entry 42, List III reads as extracted earlier while Entry 33, List I and Entry 36, List II have been omitted. The comprehensive Entry 42 in List III as a result of the Constitution (Seventh Amendment) Act leaves no doubt that an acquisition Act of this kind falls



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clearly within the ambit of this Entry and, therefore, the legislative competence of the Parliament to enact this legislation cannot be doubted. This ground of challenge is, therefore, rejected.

45. Section 7 as we read it, is a transitory provision, intended to maintain status quo in the disputed area, till transfer of the property is made by the Central Government on resolution of the dispute. This is to effectuate the purpose of that transfer and to make it meaningful avoiding any possibility of frustration of the exercise as a result of any change in the existing situation in the disputed area during the interregnum. Unless status quo is ensured, the final outcome on resolution of the dispute may be frustrated by any change made in the disputed area which may frustrate the implementation of the result in favour of the successful party and render it meaningless. A direction to maintain status quo in the disputed property is a well-known method and the usual order made during the pendency of a dispute for preserving the property and protecting the interest of the true owner till the adjudication is made. A change in the existing situation is fraught with the danger of prejudicing the rights of the true owner, yet to be determined. This itself is a clear indication that the exercise made is to find out the true owner of the disputed area, to maintain status quo therein during the interregnum and to hand it over to the true owner found entitled to it.

46. The question now is whether the provision in Section 7 containing the mandate to maintain the status quo existing at the disputed site as on 7th January, 1993 is a slant in favour of the Hindu community, intended to perpetuate an injustice done to the Muslim community by demolition of the mosque on 6th December, 1992 and, therefore, it amounts to an anti-secular



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or discriminatory act rendering the provision unconstitutional. For this purpose it is necessary to recall the situation as it existed on 7th January, 1993 along with the significant events leading to that situation. It is necessary to bear in mind the comparative use of the disputed area and the right of worship practised therein, by the two communities on 7th January, 1993 and for a significant period immediately preceding it. A reference to the comparative user during that period by the two communities would indicate whether the provision in Section 7 directing maintenance of status quo till resolution of the dispute and the transfer by the Central Government contemplated by Section 6 is slanted towards the Hindu community to render the provision violative of the basic feature of secularism or the rights to equality and freedom of religion.

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47 As earlier stated, worship by Hindu devotees of the idols installed on the Ram Chabutra which stood on the disputed site within the courtyard of the disputed structure had been performed without any objection by the Muslims even prior to the shifting of those idols from the Ram Chabutra into the disputed structure in December 1949; in one of the suits filed in January 1950, the trial court passed interim orders whereby the idols remained at the place where they were installed in 1949 and worship of the idols there by the Hindu devotees continued; this interim order was confirmed by the High Court in April 1955; the District Judge ordered the opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine in the disputed structure on 1st February, 1986 and permitted worship of the idols there to Hindu devotees; and this situation continued till demolition of the structure on 6th December, 1992 when Ram Chabutra also was demolished.



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It was only as a result of the act of demolition on 6th December, 1992 that the worship by the Hindu devotees in general of the idols at that place was interrupted. Since the time of demolition, worship of the idols by a pujari alone is continuing. This is how the right of worship of the idols practised by Hindu devotees for a long time from much prior to 1949 in the Ram chabutra within the disputed site has been interrupted since the act of demolition on 6th December, 1992 restricting the worship of the idols since then to only by one pujari. On the other hand, at least since December 1949, the Muslims have not been offering worship at any place in the disputed site though, it may turn out at the trial of the suits that they had a right to do so.

49. The narration of facts indicates that the acquisition of properties under the Act affects the rights of both the communities and not merely those of the Muslim community. The interest claimed by the Muslims is only over the disputed site where the mosque stood before its demolition. The objection of the Hindus to this claim has to be adjudicated. The remaining entire property acquired under the Act is such over which no title is claimed by the Muslims. A large part thereof comprises of properties of Hindus of which the title is not even in dispute. The justification given for acquisition of the larger area including the property respecting which title is not disputed is that the same is necessary to ensure that the final outcome of adjudication should not be rendered meaningless by the existence of properties belonging to Hindus in the vicinity of the disputed structure in case the Muslims are found entitled to the disputed site. This obviously means that in the event of the Muslims succeeding in the adjudication of the dispute requiring the disputed structure to be handed over to the Muslim



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community, their success should not be thwarted by denial of proper access to, and enjoyment of rights in, the disputed area by exercise of rights of ownership of Hindu owners of the adjacent properties. Obviously, it is for this reason that the adjacent area has also been acquired to make available to the successful party, that part of it which is considered necessary, for proper enjoyment of the fruits of success on the final outcome to the adjudication. It is clear that one of the purposes of the acquisition of the adjacent properties is the ensurement of the effective enjoyment of the disputed site by the Muslim community in the event of its success in the litigation; and acquisition of the adjacent area is incidental to the main purpose and cannot be termed unreasonable. The "Manas Bhawan" and "Sita ki Rasoi", both belonging to the Hindus, are buildings which closely overlook the disputed site and are acquired because they are strategic in locations in relation to the disputed area. The necessity of acquiring adjacent temples or religious buildings in view of their proximity to the disputed structure area, which forms a unique class by itself, is permissible. [See M. Padmanabha Iyengar v. Government of Andhra Pradesh and Akhara Shri Braham Buta Vs. State of Punjab). We approve the principle stated in these decisions since it serves a larger purpose.

51. It may also be mentioned that even as Ayodhya is said to be of particular significance to the Hindus as a place of pilgrimage because of the ancient belief that Lord Rama was born there, the mosque was of significance for the Muslim community as an ancient mosque built by Mir Baqi in 1528 A.D. As a mosque, it was a religious place of worship by the Muslims. This indicates the comparative significance of the disputed site to



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the two communities and also that the impact of acquisition is equally on the right and interest of the Hindu community. Mention of this aspect is made only in the context of the argument that the statute as a whole, not merely S.7 thereof, is anti-secular being slanted in favour of the Hindus and against the Muslims.

52. Section 7(2) of the Act freezes the situation admittedly in existence on 7th January, 1993 which was a lesser right of worship for the Hindu devotees than that in existence earlier for a long time till the demolition of the disputed structure on 6th December, 1992; and it does not create a new situation more favourable to the Hindu community amounting to conferment on them of a larger right of worship in the disputed site than that practised till 6th December, 1992. Maintenance of status quo as on 7th January, 1993 does not, therefore, confer or have the effect of granting to the Hindu community any further benefit thereby. It is also pertinent to bear in mind that the persons responsible for demolition of the mosque on 6th December, 1992 were some miscreants who cannot be identified and equated with the entire Hindu community and, therefore, the act of vandalism so perpetrated by the miscreants cannot be treated as an act of the entire Hindu community for the purpose of adjudging the constitutionality of the enactment. Strong reaction against, and condemnation by the Hindus of the demolition of the structure in general bears eloquent testimony to this fact. Rejection of Bhartiya Janata Party at the hustings in the subsequent elections in Uttar Pradesh is another circumstance to that effect. The miscreants who demolished the mosque had no religion, caste or creed except the character of a criminal and the mere incident of birth of such a person in any particular



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community cannot attach the stigma of his crime to the community in which he was born,

61. Sub-section (3) of Section 4 provides for abatement of all pending suits and legal proceedings in respect of the right, title and interest relating to any property which has vested in the Central Government under Section 3. The rival claims to the disputed area which were to be adjudicated in the pending suits can no longer be determined therein as a result of the abatement of the suits. This also results in extinction of the several defences raised by the Muslim community including that of adverse possession of the disputed area for over 400 years since construction of the mosque there in 1528 A.D. by Mir Baqi. Ostensibly, the alternate dispute resolution mechanism adopted is that of a simultaneous Reference made the same day under Article 143(1) of the Constitution to this Court for decision of the question referred. It is clear from the issues framed in those suits that the core question for determination in the suits is not covered by the Reference made, and it also does not include therein the defences raised by the Muslim community. It is also clear that the answer to the question referred, whatever it may be, will not lead to the answer of the core question for determination in the pending suits and it will not, by itself, resolve the long-standing dispute relating to the disputed area. Reference made under Article 143(1) cannot, therefore, be treated as an effective alternate dispute resolution mechanism in substitution of the pending suits which are abated by Section 4(3) of the Act. For this reason, it was urged, that the abatement of pending suits amounts to denial of the judicial remedy available to the Muslim community for resolution of the dispute and grant of the relief on that basis in accordance with the scheme of redress under the rule of law envisaged by



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the Constitution. The validity of Sub-section (3) of Section 4 is assailed on this ground.

68. In British India, the right to worship of Muslims in a mosque and Hindus in a temple had always been recognised as a civil right. Prior to 1950, the Indian Courts in British India had maintained the balance between the different communities or sects in respect of their right of worship.

69. Even prior to the guarantee of freedom of religion in the Constitution of India, Chief Justice Turner in Muthialu Chetti v. Bapun Saib, (1880) ILR 2 Madras 140, had held that during the British Administration all religions were to be treated equally with the State maintaining neutrality having regard to public welfare. In Sundram Cheti v. The Queen, (1883) ILR 6 Madras 203 (FB) approving ILR 2 Madras 140, Chief Justice Turner said : "...But with reference to these and to other privileges claimed on the ground of caste or creed, I may observe that they had their origin in times when a State religion influenced the public and private law of the country, and are hardly compatible with the principles which regulate British administration, the equal rights of all citizens and the complete neutrality of the State in matters of religion... When anarchy or absolutism yield place to well ordered liberty, change there must be, but change in a direction which should command the assent of the intelligence of the country."

70. In Mosque known as Masjid Shahid Ganju v. Shiromani Gurdwara Prabandhak Committee, Amritsar, AIR 1938 Lahore 369 (FB), it was held that where a mosque has been adversely possessed by non-Muslims, it lost its sacred character as mosque. Hence, the view that once a consecrated mosque, it remains always a place of worship as a mosque was not the



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Mahomedan Law of India as approved by Indian Courts. It was further held by the majority that a mosque in India was an immovable property and the right of worship at a particular place is lost when the right to property on which it stands is lost by adverse possession. The conclusion reached in the minority judgment of Din Mohd., J. is not the Mahomedan Law of British India. The majority view expressed by the learned Chief Justice of Lahore High Cour was apaproved by the Privy Council in AIR 1940 PC 116, in the appeal against the said decision of the Lahore High Court. The Privy Council held :

"..... It is impossible to read into the modern Limitation Acts any exception for property made wakf for the purposes of mosque whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with the religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely to the wake, or that it is not so possessed so long as it is referred to as "mosque" or unless the building is razed to the ground or loses the appearance which reveals its original purpose." (at page 121)

71. It may also be indicated that the Land Acquisition Act, 1894 is applicable uniformly to all properties including places of worship. Right of acquisition thereunder was guided by the express provisions of the Land Acquisition Act, 1894 and executive instructions were issued to regulate acquisition of places of worship. Clause 102 of the Manual of Land Acquisition of the State of Maharashtra which deals with the acquisition of



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religious places like churches, temples and mosques, is of significance in this context.

72. The power of acquisition is the sovereign or prerogative power of the State to acquire property. Such power exists independent of Article 300A of the Constitution or the earlier Article 31 of the Constitution which merely indicates the limitations on the power of acquisition by the State. The Supreme Court from the beginning has consistently upheld the sovereign power of the State to acquire property. B. K. Mukherjee, J. (as he then was) held in Chiranjitlal Chowdhuri v. Union of India, 1950 SCR 869 at pages 901-902 : (AIR 1951 SC 41 at pp. 53-54) as under :

" It is a right inherent in every sovereign to take any appropriate private property belonging to individual citizens for public use. This right, which is described as eminent domain in American law, is like the power of taxation, an off-spring of political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner....."

73. Patanjali Sastri, C.J., in the State of West Bengal v. Subodh Bose, 1954 SCR 587 at page 605 : (AIR 1954 SC 92 at p. 98) held as under :

"..... and among such powers was included the power of "acquisition or requisitioning of property" for Union and State purposes entry No. 33 of List I and No. 36 of List II respectively. Thus, what is called the power of eminent domain, which is assumed to be inherent in the sovereignty of the State according to Continental and American jurists and is accordingly not expressly provided for in the American Constitution, is made the subject of an express grant in our Constitution. "



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74. It appears from various decisions rendered by this Court, referred later, that subject to the protection under Articles 25 and 26 of the Constitution, places of religious worship like mosques, churches, temples etc. can be acquired under the State's sovereign power of acquisition. Such acquisition per se does not violate either Article 25 or Article 26 of the Constitution. The decisions relating to taking over of the management have no bearing on the sovereign power of the State to acquire property.

75. Khajamian Wakf Estates v. State of Madras, (1971)2 SCR 790 at page 797 :(AIR 1971 SC 161 at p. 165), has held :

"It was next urged that by acquiring the properties belonging to religious denominations the legislature violated Art.26(c) and (d) which provide that religious denominations shall have the right to own and acquire movable and immovable property and administer such property in accordance with law. These provisions do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own or acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own that property. Thereafter their right to administer that property ceases because it is no longer their property. Art.26 does not interfere with the right of the State to acquire property."

76. Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. State of Gujarat, (1976) 2 SCR 317 at pages 327-328 : (AIR 1974 SC 2098 at p. 2103), has held :

" One thing is, however, clear that Article 26 guarantees inter alia the right to own and acquire movable and immovable property for managing



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religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property .....If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light.:" (Emphasis supplied)

77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.

**78.** While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. **Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.**



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79. A five-Judge Full Bench of the Allahabad High Court, in Raja Suryapalsingh v. U.P. Govt., AIR 1951 All 674, held :.

"Arguments have been advanced by learned Counsel on behalf of certain waqfs and Hindu religious institutions based on Articles 25(1) and 26, cl.(c) of the Constitution.....

It is said that a mutawallis's right to profess his religion is infringed if the waqf property is compulsorily acquired, but the acquisition of that property under Art.31 (to which the right conferred by Art. 25 is expressly subject) has nothing to do with such rights and in no way interferes with this exercise."

80. It has been contended that a mosque enjoys a particular position in Muslim Law and once a mosque is established and prayers are offered in such a mosque, the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque and any person professing Islamic faith can offer prayer in such a mosque and even if the structure is demolished, the place remains the same where the Namaz can be offered. As indicated herein before, in British India, no such protection was given to a mosque and the mosque was subjected to the provisions of statute of limitation thereby extinguishing the right of Muslim to offer prayers in a particular mosque lost by adverse possession over that property.

81. Section 3(26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 367 of the Constitution adopts this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to protection under Articles 25 and 26. Every immovable property is liable to



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be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions.

82. The correct position may be summarised thus. Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (See Mulla's Principles of Mahomedan Law, 19th Edn. by M. Hidayatullah - S.217 and AIR 1940 PC 116). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and Namaz (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the



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right to worship be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.

.....

.....

**96.** As a result of the above discussion, our conclusions, to be read with the discussion, are as follows:-

(1)(a) Sub-section (3) of Section 4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute resolution mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of rule of law. Sub-section (3) of Section 4 of the Act is, therefore, unconstitutional and invalid.

(1)(b) The remaining provisions of the Act do not suffer from any invalidity on the construction made thereof by us. Sub-section (3) of Section 4 of the Act is severable from the remaining Act. Accordingly, the challenge to the constitutional validity of the remaining Act, except for sub-section (3) of Sec. 4, is rejected.

(2) Irrespective of the status of a mosque under the Muslim law applicable in the Islamic countries, the status of a mosque under the Mahomedan Law applicable in secular India is the same and equal to that of any other place of worship of any religion; and it does not enjoy any greater immunity from acquisition in exercise of the sovereign or prerogative power of the State, than that of the places of worship of the other religions.

(3) The pending suits and other proceedings relating to the disputed area within which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi -



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Babri Masjid, stood, stand revived for adjudication of the dispute therein, together with the interim orders made, except to the extent the interim orders stand modified by the provisions of Section 7 of the Act.

(4) The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited, as a statutory receiver with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein under sub-section (2) of Section 7 of the Act. The duty of the Central Government as the statutory receiver is to handover the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired.

(5) The power of the courts in making further interim orders in the suits is limited to, and circumscribed by, the area outside the ambit of Section 7 of the Act.

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(6) The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Sec. 6 of the Act has to be made at the time and in the manner indicated, in view of the purpose of its acquisition.

(7) The meaning of the word "vest" in Section 3 and Section 6 of the Act has to be so understood in the different contexts.

(8) Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which



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is not in dispute being in excess of the disputed area which alone is the subject matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits.

(9) The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on adjudication of the dispute, must be restored to the undisputed owners.

(10) Rejection of the challenge by the undisputed owners to acquisition of some religious properties in the vicinity of the disputed area, at this stage is with the liberty granted to them to renew their challenge, if necessary at a later appropriate stage, in cases of continued retention by Central Government of their property in excess of the exact area determined to be needed on adjudication of the dispute.

(11) Consequently, the Special Reference No. 1 of 1993 made by the President of India under Art. 143(1) of the Constitution of India is superfluous and unnecessary and does not require to be answered. For this reason, we very respectfully decline to answer it and return the same.

(12) The questions relating to the constitutional validity of the said Act and maintainability of the Special Reference are decided in these terms.



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**O.O.S.No.4 of 1989 (Reg. Suit No.12-61)**

1. The Sunni Central Board of Waqfs U.P.
Lucknow, Moti Lal Bose Road, Police Station Kaiserbagh, City Lucknow through Shah Ghyas Alam, Secretary.

2. Molvi Mohammad Qasim, aged about 53 years, son of Sheikh Abdul Razzaq, General Secretary, Jamiatul Ulami Hind, U.P. Bagh Gunge Nawab, Police station Kaserbag, Lucknow
(Deleted vide order dated 9.12.91)
Sd./- 9.12.91

2/1. Mohd. Siddiq alias Hafiz Mohd. Siddiq, aged about 46 years, s/o late Haji Mohd. Ibrahim, resident of Lal Bagh, Moradabad, General Secretary, Jamiatul Ulemai Hind, Uttar Pradesh, Jamiat Building, B.N. Verma Road (Katchehry Road), Lucknow

3. Haji Mohammad Ehtram Ali, aged about 70 years son of Munshi Mohammad Ehtisham Ali deceased, resident of Khayaliganj, police station Kaiserbagh, City Lucknow (Struck off under Court's order D/ 14.3.70. Sd/-)

4. Molvi Mohammad Faiq aged about 55 years, son of Haji Ramzan R/o Mohalla Tehri Bazar, Ajodhiya, pergana Haveli Avadh, Ditt. Faizabad.
(Deleted vide court's order dated 9.12.91)
Sd./- 9.12.91

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5. Molvi Mohammad Naseer aged about 58 years, son of Ashiq Ali, resident of village : Ponthar, Pergana Tanda Tahsil Tanda, District Faizabad.
(Deleted vide court's order dated 16.11.92
Sd./- 16.11.92

6. Shahabuddin aged about 42 years, son of Haji Munney Sahib, resident of Angoori Bagh, City Faizabad.
(Deleted vide Court's order dated 9.12.91)
Sd./- 9.12.91

6/1 Ziauddin aged about 46 years, son of Haji Shahabuddin (deceased) resident of Mohalla Angoori Bagh, pergana Haveli Oudh,City and District Faizabad.
(Amended as per court's order dated 23.8.90)
Sd./- 31.8.90

7. Mohammad Hashim aged about 40 years, son of Karim Bux, resident of Mohalla Kutya, Paji Tola, Ajodhiya Pergana Haveli Avadh, Distt. Faizabad.



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8. Vakiluddin aged about 55 years son of Ismail, resident of Madarpur, pegana and Tahsil Tanda, District Faizabad.

"8/1. Maulana Mahfoozurahman, aged about 52 years son of late Maulana Vakiluddin, Resident of Village Madarpur, Pergana and Tahsil Tanda, District Faizabad."

(Amended & Added as per Court's order dated 9.5.95)

Sd./- 9.5.95

9. Mahmud/Ahmad aged about 30 years son of Ghulam Hasan, resident of Mohalla Rakabganj, City Faizabad

(Added under Court's order dated 4.2.63

Sd./- 5.2.63

10. Zahoor Ahmad, S/o Noor Mohd. Aged about 80 years r/o Mohalla Nau Ghazi Qabar, Ayodhya District Faizabad.

(Deleted vide court's order dated 9.12.91)

Sd./-9.12.91

10/1 Farooq Ahmad, son of Sri Zahoor Ahmad, R/o Mohalla Naugazi Qabar, Ayodhya City, Ayodhya, Distt. Faizabad.

(Added vide court's order dated 9.12.91)

Sd./- 9.12.91

….....Plaintiffs

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**Versus**

1. Gopal Singh Visharad, aged about 53 years, son of Thakur Girdhari Singh, resident of Sargaddwar, Ajodhiya, District Faizabad.

(Deleted vide court's order dated 9.12.91)

Sd./-9.12.91

2. Sri Param Hans Ram Chander Das, resident of Ajodhia, Faizabad.

3. Nkirmohi Akhara situate in Mohalla Ram Ghat City Ajodhiya, District Faizabad, through Mahant Raghunath Dass Chela Mahant Dharm Dass Mahant Raghunath Dass Chela Mahant Dharam Mahant Raghunath Das Chela Mohant Dharam Das Mahant Rameshwar Das Mahnat Sarbarkar, resident of Nirmohi Akhara Mohalla Ramghat, City Ajodhiya Distrit Faizabad.

(Substituted dated 23.7.66) Sd./- 30.7.66

Mahant Pram Dass Chela Mahant Gobardhan Dass

4. Mahant Raghunath Dass Chela Mahant Dharam Dass Mahant and Sarbarakhar Nirmohi Akhaara Mohalla Ram Ghat, city Ajodhiya, District Faizabad.



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(Substituted under Court's order dated 23.7.66)
Sd./- 30.7.66

5. The State of Uttar Pradesh through Chief Secretary to the State Government, U.P.
(Amended under court's order dated 8.7.67)
Sd./- 20.7.67
Corrected under court's order
dated 30.1.62 Sd./-

6. The Collector, Faizabad.

7. The City Magistrate, Faizabad.

8. The Superintendent of Police, Faizabad.

9. B. Priya Dutt Son of R.B. Babu Kamlapat Ram, resident of Rakabganj, Faizabad.

10. President, all India Hindu Maha Sabha, Read Road, New Delhi.

Maha Pradeshik Sabha,
11. President All India Arya/ Samaj, Delhi (Dewan Hall)
Baldan Bhawan, Shradhanand Bazar, Delhi.
(Added under court's order dated 20.3.63)
Corrected as per court's order
dated 17.9.92 Sd./- 17.9.92

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12. President, All India Sanatan Dharm Sabha, Delhi.
(Added under Court's order dated 20.3.1963)

13. Abhiram Das age 54 years, Sadhak Shesh Sri Baba Sarin Das, R/o Hanuman Garhi, Ayodhya.
(Added under court's order dated 26.4.48 Sd./-
(Deleted vide court's order dated 9.12.91
Sd./- 9.12.91)

13/1 Dharam Das alleged Chela Baba Abhiram Das, R/o Hanuman Garhi, Ayodhya, Faizabad. (Sd./- 27.1.92)

14. Pundrik Misra, age 33 years, s/o Raj Narain Misra, R/o Balrampur Sarai, Rakabganj, Faizabad.

15. Baba Bajranj Das, Chaile Baba Ram Bharan Das, Hanuman Garhi, Ayodhya, Faizabad
(Substituted under order of court dated 14.2.89)

15. Sri Ram Lakhan Saran, member, Ram Janam Bhumi, Seva Samiti, Faizabad.



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15. Sri Ram Dayal Saran, Chela of late Ram Lakhan Saran, resident of town Ayodhya, District Faizabad.

16. Shab Narain Das Chaila Baba Badri Das Ji Sankatwali, r/o Sri Hanuman Garhi, Ayodhya, Faizabad.
(Deleted vide court's order dated 9.12.91)
Sd./-9.12.91

17. Ramesh Chandra Tripathi aged about 29 years, son of Sri Parsh Rama Tripathi, Resident of village Bhagwan Patti, Pargana Minjhaura, Tahsil Akbarpur, District Faizabad.
(Added under court's order dated 30.4.69)
Sd./- 14.5.69

18. Mahant Ganga Das aged about 45 years, (Chela of Mahant Sarju Dass R/o Mandir Ladle Prasad, City Ayodhya, Faizabad.
Do-

19. Shri Swami Givindacharya, manas martand putra Balbhadar Urf Jhallu, R/o Makan No.735, 736, 737, Katra Ayodhya, Pergana Haveli Audh Tahsil and Zila Faizabad.

20. Madan Mohan Gupta, convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samti, E-7/45 Bangla T.T. Nagar, Bhopal.
(Amended vide order dated 27.1.92) Sd./-27.1.92
(Added by order of court's dated 23.10.89) Sd./-

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21. Prince Anjum Qadar, President All India Shia conference, Registered, Qaumi Ghar, Nadan Mohal Road, F.S. Chowk, Lucknow
(Amended vide order dated 27.1.92) Sd./-27.1.92
(Added by court's order dated 8.12.89)

22. Umesh Chandra Pandey, son of Sri R.S. Pandey, R/o Ranupalli, Ayodhya, Distt. Faizabad.
(Added in court's dated 20.1.92) Sd./-23.1.92
……Defendants

The plaintiff's named above beg to state as under:-

Amendment made on para 1 &
11 (A) of plaint vide order dated 30.9.2002

1. That in the town of Ajodhiya, pergana Haveli Oudh there exits an ancient historic mosque, commonly known as Babri Masjid, built by Emperor Babar more than 433 years ago, after his conquest of India and his occupation of the territories including the town of Ajodhiya, for the use of the Muslims in general, as a place of worship and



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performance of religious ceremonies.

2. That in the sketch map attached herewith, the main construction of the said mosque is shown by letters A B C D and the land adjoining the mosque on the east, west, north and south, shown in the sketch map attached herewith, is the ancient graveyard of the Muslims, covered by the graves of the Muslims, who lost the lives in the battle between emperor Babar and the previous ruler of Ajodhiya, which are shown in the sketch map attached herewith. The mosque and the graveyard is vested in the Almighty. The said mosque has since the time of its construction been used by the Muslims for offering prayers and the graveyard has been used as graveyard. The mosque and the graveyard are in Mohalla Kot Rama Chander also known as Rama Kot Town, Ayodhya, The khasra number of the mosque and the graveyard in suit are shown in the schedule attached which is part of the plaint.

Corrected under Court's
Order dated 2.1.62

3. That for the upkeep and maintenance of the mosque and other connected expenses, a cash grant used to be paid from the Royal Treasury which was continues by the Emperor of Delhi and by Nawab Saadat Ali Khan, the Nawab Wazir of Oudh.

4. That after the annexation of Oudh, the British Government also continued the case Nankar till 1864, in which years instated of cash Nankar grant of revenue free land in village Sholapur and bahoranpur, in the vicinity of Ajodhiya, was made by the British Government.

5. That in the mosque, but outside the main building of the mosque, there was Chabutra 17' x 21' on which there was a small wooden structure in the form of a tent which is still there.

6. That in 1885, one Mahant Rghbuar Dass alleging himself to be the Mahant of Janam Asthan instituted a suit (original Suit No.61/280 of 1885) against the Secretary of State for India in Council and Mohammad Asghar, Mutawalli of the Babri Mosque, for permission to build a temple on the Chabutra 17' z 21 mentioned in para 5 above, in the court of the learned Civil, Judge, Faizabad which was dismissed and an appeal from the said decree was also dismissed by the learned



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district Judge, Faizabd (C ivil Appeal No.27 of 1885). In the sketch map filed alongwith the plaint in Suit No.61/280 of 1885 the entire building, with the exception of the Chabutra 17' x 21' was admitted to be mosque and was shown as such.

Para 6A,6B,6C, 6D, 6E and 6F are added by the orders of the Court dated 22.12.62 these paper are written on separate sheets marked page 13. 14,15 and they are annexed in the end of the plaint.

6A. That the cause of action for the suit in Suit No.61/280 of 1885 in the Court of the Civil Judge, Faizabd, arose on the refusal of the Dy. commissioner of Faizabad on the representation of some Muslims to grant permission to Mahant Raghubar Dass, Mahant of janam Asthan for the construction of a temple on the ground that a temple could not be permitted to be built on land adjoining the mosque (meaning thereby the Babri Masjid).

6B. "In that suit Regular Suit No.61/280 of 1885 of the Court of Civil Judge, Faizabad Mahant Raghubar Dass was suing on behalf of himself, on behalf of Janam Asthan, and on behalf of the whole body of persons interested in Janam Asthan and Mohd. Asghar, Mutawalli of the Babri Masji was made a defendant."

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6C. Mohammad Asghar defendant Mutawalli of Babri Masjid contested the suit interalia on the ground that the land on which the temple is sought to be built is not the property of the plaintiff or of the Asthan, that the said land lies within the Ahata of Babri Masjid and is the property of the Masjid.

6D. That in the suit mentioned above the matter directly and substantially in issue was:-

(i) the existence of the Babari Masjid.

(ii) the right of the Hindus to construct a temple on land adjoining the Masjid.

The existence of the mosque was admitted by the plaintiff in that suit and the suit if the plaintiff was dismissed on the further ground of public policy.



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6E. If the building was not a Masjid but a temple as alleged in the present suit the matter might and ought to have been pleaded by Mahant Raghubar Dass in the former suit (suit No.61/280 of 1885 mentioned above) and shall be deemed to have been a matter directly and substantially in issue in that suit and the plea that the building is not a Masjid but a temple cannot be raised in the present suit. For the reasons mentioned above the decision in the former suit operates as res judicata in the present suit.

6F. That on the admission contained in the plaint of Regular Suit No.61/280 of 1885mentioned in the preceding paragraphs it must be taken an established fact that the building now claimed by the Hindus as the temple of Janam Asthan was and is a mosque and not a temple.

7. That the suit mentioned above was a sensational case, in which the entire Hindu public and more specially all the Mahants of Ajodhiya and other respectable Hindus of Ajodhiya and Faizabad were deeply interested.

8. That in 1934 during a communal riot in Ajodhia, portions of Babri Mosque were damaged. The damaged portions, were however, rebuilt and reconditioned at the cost of the Government through a Muslim Thekadar.

9. That in 1936 the U.P. Muslim Wakfs Act XIII of 1936 was passed and under the provisions of the said Act, the Commissioner of Wakfs made a complete enquiry and held that Babri Masjid was built by emperor Babar who was a Sunni Mohammadan and that the Babari Mosque was a public wakf. A copy of the Commissioner's report was forwarded by the State Government to the Sunni Central Board of Wakfs and the Sunni Central Board of Wkfs published the said report of the Commissioner of Wakfs in the Official Gazette dated 26.2.1944.

10. That, no suit, challenging the report of the Commissioner of Wakfs was filed by the Hindus or by any person interested in denying the correctness of the report of the Commissioner of Wakfs, on the ground that it was not a Muslim Wakf or that it was a Hindu temple.

11. That the Muslims have been in peaceful possession of the aforesaid mosque and used to recite prayer in it, till 23.12.1949 when a large



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crowd of Hindus, with the mischievous intention of destroying, damaging or defiling the said mosque and thereby insulting the Muslim religion and the religious feelings of the Muslims, entered the mosque and desecrated the mosque by placing idols inside the mosque. The conduct of Hindus amounted to an offence punishable under Sections 147, 295 and 448 of the Indian Penal Code.

11(a). That assuming, though not admitting, that at one time there existed a Hindu temple as alleged by the defendants representatives of the Hindus on the site of which emperor Babar built the mosque, some 433 years ago, the Muslims, by virtue of their long exclusive and continuous possession beginning from the time the mosque was built and continuing right upto the time some mosque, some mischievous persons entered the mosque and desecrated the mosque as alleged in the preceding paragraphs of the plaint, the Muslims perfected their title by adverse possessions and the right, title or interest of the temple and of the Hindu public if any extinguished.

12. That the incident stated in the preceding paragraph was immediately reported by the constable on duty (Mata Prasad) to the police station Ajodhiya and the Sub-Inspector registered the report and proceeded to the spot for making enquiries in the matter.

13. That the City Magistrate, Faizabad-cum Ajodhiya started proceedings under Section 145 Criminal Procedure Code and by his order dated 29.12.1949 attached the said mosque and handed over possession of the same to Sri Priya Dutt Ram defendant no.9 as Receiver, who still continues in possession and the Muslims are deprived of their legal and constitutional right of offering prayers in the said mosque.

14. That the above action, taken by the City Magistrate, Faizabad, is not only illegal but is fraught with injustice to the plaintiffs, and has the effect of depriving a large section of Muslim citizens of India from exercising their legal rights guaranteed by the Constitution of India.

15. That on 16.1.1950 defendant no.1 filed Regular Suit No.2 of 1950 in the court of Civil Judge, Faizabad, in his personal capacity, for declaration and injunction, on the false allegation that the building in suit was a temple and thus deities are installed in it.



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16. That some time after, defendant no.2 filed Suit No.25 of 1950 in the court of Civil Judge, Faizabad against the same set of defendants, and for identical reliefs, with this difference that while the first suit was filed without notice under Section 80 C.P.C. to the State Government and its officers, Suit no.25 of 1950 was filed with notice to them.

17. That a third Suit No.26 of 1960 has been filed by Nirmohi Akhara and Mahant Raghunath Dass, defendants 3 and 4 against defendants nos.5 to 9, and certain Muslim Community under Order 1 rule 8 C.P.C. The suit purports to be for the removal of defendant no.9 from the management of building which the Hindu public call 'Temple of Janam Bhum" and for its delivery to Mahant Raghunath Dass, defendant no.4.

18. That on the application of the plaintiff in Suit no.2 of 1950 temporary injunction was served restraining the defendants of that Suit from removing the idols from the mosque in dispute, and for interfering with Puja etc. of the Hindus. The result of the injunction order of the learned Civil Judge is that while Hindus are permitted to perform Puja of the idols, placed by them in the mosque, the Muslims are not allowed even to enter the mosque, are deprived of their just and legal rights and are not allowed even to enter the mosque, which was constructed about 433 years back and has been declared to be a public wakf and has been used by Generations of Muslims Since then, as a mosque, for reciting prayers therein. The order of injunction is fraught with injustice, hence the necessity of the institution of suit on behalf of Muslim public under order 1 rule 8 C.P.C. against the Hindu public so that the decision in the case may be binding on the Hindu community at large.

19. The present suit is filed by the plaintiffs, on behalf of and for the benefit of the entire Muslim community and an application for necessary permission under Order 1 Rule 8 C.P.C. is filed alongwith the plaint. Similarly the defendants are sued as representing the entire Hindu Community and an application for necessary permission under order 1 Rule 8 C.P.C. is filed alongwith the plaint.

Corrected under Court's Order dated



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today Sd./-21.12.61
Amended under Court's order dated
today Sd./-21.12.61

20. That the building in suit claimed by the plaintiffs as Muslim wakf is in the possession of Receiver holding for the real owner and would be released in favour of the plaintiffs in case the plaintiffs' suit succeeds but if for any reason in the opinion of the court, a suit for possession is the proper relief to be claimed, the plaintiffs in the alternative pray for recovery of possession.

21. That two months notice of the suit under Section 80 of the Code of Civil Procedure has been given to the defendants 5 to 9 by Registered Post on 19.6.1961. the notices were delivered to the defendants 5 to 8 on 20.6.1961 and defendant no.9 refused to take the delivery of the notice on 23.6.1961. The two months; period from the service of the notice has expired, but no reply has been received.

21-A, 21-B & 21-C
Added vide Court's
order dated 25.5.95/1.8.95
Sd.//7.9.95

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21-A. That in violation of the orders of the Hon'ble Supreme Court, dated 15th November, 1991 passed in three Writ Petitions and in violation of the orders of this Hon'ble Court dated 3.2.1986, 14.8.1989 and 7.11.1989 etc. the Babri Masjid was demolished on 6th December, 1992. The idols wrongly placed in the premises of the Babri Masjid between the night of 22nd-23rd December, 1949 were removed by the destructors of Babri Masjid and thereafter an illegal structure was created on 7th December, 1992 in violation of all the orders of the courts mentioned above and the undertakings given in the Hon'ble Supreme Court. These acts of demolition and destruction of the mosque were carried out by the miscreants and criminals with the connivance of the then State Government of the B.J.P. As the demolition and change in the position of the spot was made in defiance and flagrant violation of the various orders of this Hon'ble court and the Hon'ble Supreme Court, the plaintiffs are entitled for the



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restoration of the building as it existed on 5.12.1992.

21-B. That under the Muslim Law mosque is a place where prayers are offered publicly as a matter of right and the same neither requires any structure and nor any particular mode of structure is provided for the same. Even the open space where prayers are offered may be a mosque and as such even after the demolition of the mosque building by the miscreants, the land over which the building stood is still a mosque and Muslims are entitled to offer prayers thereon.

21-C. That by means of ordinance No.8 of 1993 promulgated on 7th January, 1993, the land of the mosque and the entire land appurtenant thereto including the land in suit was sought to be acquired and the said Ordinance was later on substituted by an Act of Parliament, namely, Act No.33 of 1993. However, in the cases challenging the said ordinance and the Act, the Hon'ble Supreme Court by its judgment dated 24th October, 1994, has held the Union of India to be the statutory Receiver of the land covered by the said mosque and has further provided that the land of the appurtenant and adjacent area will be provided for the enjoyment of the crucial area of mosque portion as per requirement in accordance with the judgment of the suits. The Commissioner, Faizabad Division, Faizabad, is presently working as Authorised person on behalf of the Government of India."

22. That the valuation of the suit for purposes of jurisdiction and payment of court-fees is Rs.22,000/- as follows:-

Valuation of the mosque Rs.21,000/- and that of graveyard is Rs.1,000/- on which a court fee of Rs.2,057.50 is paid.

23. That cause of action for the suit against the Hindu public arose on 23.12.1949 at Ajodhiya District Faizabad within the jurisdiction of this Hon'ble Court when the Hindus unlawfully and illegally entered the mosque and desecrated the mosque by placing idols in the mosque thus causing obstruction and interference with the rights of the Muslims in general, of saying prayers and performing other religious ceremonies in the mosque. The Hindus are also causing obstructions to the Muslims gang in the graveyard, (Ganj-Shahidan) and reciting Fatiha to the dead persons buried therein. The injuries so caused are



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continuing injuries are the cause of action arising therefrom is renewed de-die-indiem and as against defendants 5 to 9 the cause of action arose to the plaintiffs on 29.12.1949 the date on which the defendant No.7 the City Magistrate Faizabad-cum-Ajodhiaya attached the mosque in suit and handed over possession of the same to Sri Priya Dutt Ram defendant no.9 as the receiver, who assumed charge of the same on January 5, 1950.

The State Government and its officials defendants 6 to 8 failed in their duty to prosecute the offenders and safeguard the interests of the Muslims.

24. The plaintiffs claim the following reliefs:-

Corrected under Court's
Order dated 2.1.62
Sd./-
3.1.62
Corrected under
Court's Order dt.2.1.62
Sd./- 3.1.62

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(a) A declaration to the effect that the property indicated by letters A B C D in the sketch map attached to the plaint is public mosque commonly known as 'Babari Masjid' and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim grave yard as specified in para 2 of the plaint may be decreed.

(b) That in case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of possession of the mosque and grave yard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship be passed in plaintiff's favour, against the defendants.

Amendment/Addition
made as per Court's
order dt.25.5.95 Sd./-

(bb) That the statutory Receiver be commanded to hand over the property in dispute described in the Schedule 'A' of the Plaint by removing the unauthorised structures erected thereon."

(c) Costs of the suit be decreed in favour of the plaintiffs.



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(d) Any other or further relief which the Hon'ble Court considers proper may be granted.

Faizabad Dated:
18.12.1961

Sd./- illegible
Plaintiffs

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**Written Statement on behalf of Ram Chander Dass and Shri Gopal Singh Visharad defendants No.1 & 2 is as follows:-**

1. That para 1 of the plaint is wrong and is not admitted.
2. That para 2 of the plaint is absolutely wrong and is denied. There was never any battle between Babar and the rule of Ajodhya on any grave yard or mosque built as dictated by the said Babar.
3. That para 3 of the plaint is wrong and is denied.
4. That para 4 of the plaint is wrong and is not admitted.
5. That para 5 of the plaint is wrong and is not admitted.
6. That defendant No.1 and 2 has no knowledge of the facts mentioned in para 6 of the plaint, hence the para 6 is denied.
7. That para 7 of the plaint is not admitted.
8. That para 8 of the plaint is absolutely wrong and is not admitted.
9. That the defendants No.1 & 2 have no knowledge of the allegations made in para 9 of the plaint, hence it is denied.
10. That para 10 of the plaint is denied.
11. That para 11 of the plaint is wrong, all the allegations made therein are denied.
12. That para 12 of the plain is not admitted.
13. That the defendants No.1 & 2 have no knowledge about the allegations made in para 13 of the plaint. Only this much is admitted that Shri Priyadutt Ram was appointed Receiver of the Janamsthan temple Ajodhya by the learned City Magistrate.
14. That para 14 of the plaint is denied.
15. That para 15 of the plaint is only so far admitted that the defendants No.1 & 2 did file true cases against a few Muslims and certain Government officials for injunction and declaration that case was filed in this Hon'ble Court on true and correct allegations.
16. That the defendants No.1 & 2 admit only this much that the defendant No.2, Shri Ram Chandra Pram Hans did file a suit in this Hon'ble Court, which is true and correct.
17. That the defendants No.1 & 2 have no knowledge of the allegations



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made in para 17 of the plaint, hence that is denied.

18. That only this part of the para 18 of the plaint is admitted that Hindus do Puja etc. in the Janam Bhumi temple and the Muslims are not allowed to go near that temple, which they wrongly and maliciously described as mosque, the rest of the allegations of this para are denied.

19. That para 19 of the plaint is denied. The plaintiffs have no right to make the defendant contest the suit in a representative capacity as a self appointed representative of the Hindu community which extends from Madras to Kashmir and from Dwarka to Calcutta. None of the defendants represent all the Hindus in India. The Janam Bhumi temple is a public charitable institution and the defendant No.1 contests this suit to his previously instituted in his individual capacity.

20. That para 20 of the plaint is not admitted.

21. That the defendant No.1 has no knowledge of the facts mentioned in para 21 of the plaint hence it is denied.

22. That para 22 of the plaint is denied. According to some plaintiffs, previous assertions and allegations made in the civil suit of the defendant No.1 pending against them in this court. The suit is undervalued, hence the court is deficient.

23. That para 23, of the plaint is wrong. The suit is hopelessly time barred. The Muslims have not been in possession of the property in dispute since 1934 and earlier.

24. That plaintiffs are not entitled to any relief and the suit deserves to be rejected with costs.

**Further Pleas**

25. That the Muslims were never in possession of the temple called Ram Janam Bhumi. If ever they were in possession of the so-called Babri mosque, there possession ceased thereon in 1934, and since then Hindus are holding that temple in their possession and their possession has repened into statutory adverse possession thereon since 1934. Prior to 1934, continuous daily Hindu Puja is being done in that temple and the Muslims have never said their prayers since 1934 in the temple falsely describe as Babri Mossque.



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26. That the said temple in dispute is a public charitable institution. It does not belong to any sect, group, math or individual or Mahant or any Akhara and it is a public place of worship open to all the Hindus. No individual Hindu or Mahant can be said to represent the entire Hindu community as far as this ancient temple is concerned.

27. That the suit is time barred as no action was taken in time from the orders of the City Magistrate u/s 145 Cr.P. Code.

28. That the suit is time barred as the plaintiffs were never in possession over the temple in dispute since 1934, and the Hindus were holding it adversely to them, overtly and to their knowledge.

29. That on equitable grounds as well the suit deserves to be rejected because the Hindu Puja is going on in the said temple from the past at best 28 years i.e. 1934 and admittedly from January, 1950 when the City Magistrate directed the defendant No.9 to carry on puja as usual in the said temple.

30. That on equitable basis the suit deserve to be stayed as in a previously instituted suit the same issues are being tried in this very Hon'ble Court in suits No.2 of 1950 of 25 of 1950, in which practically the parties are the same.

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31. That suit under Order 1 Rule 8, Civil Procedure Code is bad as no one representing the Hindu community has been made a defendant in the suit, hence the suit deserves to be rejected.

32. That the suit be rejected with special costs as the plaints have impleaded the defendant No.1,2,3,4 and 9 knowing full well that they do not represent the Hindu community but their individual interests only.

Sd./- Shri Gopal Singh Vasharad
Defendant No.1
12.3.1962



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**Additional Written Statement to the Oral plea made U/Order X C.P.C.**

That plaintiff or plaintiff No.1 who claims rights under Act XIII of 1936, have no such right for the following among other reasons:-

(a) That the U.P. Muslim Wakf Act No.XIII of 1936, is ultra vires, the Government of India Act, 1935, which had come into force before the passing of the above Act. It does not come under any of the items of list II of the Provincial list or list III, the concurrent legislative list. Item No.9 of the concurrent list or item No.34 of the provincial list cannot also come to save the above legislation even on the principle of Pith and substance. Item No.28 of list III of the constitution has therefore been remoddled.

(b) That any section under sub/section (3) of Section 80 of the former Government of India Act will not validate the legislation after the repeal of the former Government of India Act by means of Section 478 of the Government of India Act, 1935.

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(c) That in case the Act is considered to be intra-vires the suit not being one, relating to administration of wakf, taking of accounts, appointment and removal of mutwallis, putting the Mutwallis in possession of settlement or modifications of any scheme of management for which powers and duties have been specified u/s 18 (2) clause (e) of Act XIII of 1936, the present suit on behalf of the plaintiff No.1 is misconceived and not maintainable. The plaintiff No.1 can only do things required or permitted by the Act to be done by the Board (sec.6(3).

(d) That the Act containing privileges based on classification of Waqfs on the ground of religion particularly Section 5(3) of the Act is hit by article 14 and 19 of the constitution and is void under Article 13(1) of the Constitution.

(e) That by Act XVI of 1960, Section 85(2) the above Act has been repealed. The saving clause contained in the proviso only saves the operation of the repealed Act in regard to any suit or proceedings pending in any court or to an appeal or application in revision against



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any orders that may be passed in such suit or proceeding subject thereto anything done or any action taken in exercise of powers conferred by or under those Acts, shall, unless expressly required by any provision of Act 16 of 1960 be deemed to have been done or taken in exercise of the powers conferred by the new Act as if the new Act were in force on the day on which such things was done or action taken.

Sec. 9 (2) of Act 16 of 1960 only saves the finality of decision of Commissioner of Waqfs from being affected by provisions of Chapter I of Act 16 of 1960 but when there is no saving clause with regard to decision u/s 5(3) in the proviso to sec. 85 (2), the finality attached by section 5(3) will vanish after the repeal of the enactment.

(f) That the building and land in suit lying in the province of Oudh became subject of Lord Canning proclamations and all previous rights became non existent. No fresh grant in respect of the property in suit having been made after the proclamation, to the plaintiff or to the Muslim community, have no right to sue.

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(g) That the Commissioner of Wakf only has to make an enquiry about number of Shia and Sunni Waqfs in the district the nature of each waqf, the gross income of property transferred in the waqf, the Govt. revenue, the expenses and whether it is one recepted u/s 2. The Commissioner of Wakf has only to see whether any transaction is waqf or not and that to which sect. the Waqf belongs and further whether such waqf is or is not exempted by sec.2 of the Act. All these things he has to do in accordance with the definition of Waqf in section 3(1) of the Act XIII of 1936, an Act which is exclusively meant for certain clauses or Muslim Waqfs. The finality and conclusiveness in inteded to give effect to the scheme of administration under the Muslim Waqfs Act and does not and cannot confer jurisdiction to decide question of title as against non-Muslims. The legislature u/s 5(3) does not say that the court shall take judicial notice of the reports of the Commissioner of Waqfs and shall regard them as conclusive evidence that the Waqf mentioned in such reports are Muslim Wqafs, as was done in Section 10 of the O.E.Act.



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(h) That there has been no legal publication of alleged report and hence no question of any finality arises.

(i) That purpose of publication is only to show to which sect. the Waqf belongs. It does not call upon objections or suit by persons not interested in what is held to be a Waqf or not viz. by non muslims.

Dated:31.10.1962

Defendants.
Sd./- Gopal Singh
Through:
Counsel for Defendants No.2 and 1

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O.O.S.No.4 of 1989 (Reg. Suit No.12-61)

**Written Statement U/order 8 Rule 1 C.P.C.**

**Written Statement on behalf of Shri Gopal Singh Visharad & defendant No.2 is as follows:-**

1. That para 1 of the plaint is wrong and is not admitted.
2. That para 2 of the plaint is absolutely wrong and is denied. There was never any battle between Babar and the ruler of Ajodhya on any graveyard or mosque alleged to be built (as dictated) by the said Babar.
3. That para 3 of the plaint is wrong and is denied.
4. That para 4 of the plaint is wrong and is not admitted.
5. That para 5 of the plaint is wrong and is not admitted.
6. That defendant No.1 has no knowledge of the facts mentioned in para 6 of the plaint, hence the para 6 is denied. The additional paras added by amendment as A- to P.F.are wrong and denied see further pleas.
7. That para 7 of the plaint is wrong and not admitted.
8. That para 8 of the plaint is absolutely wrong and is not admitted.
9. That defendants No.1 & 2 have no knowledge of the allegations made in para 9 of the plaint, hence it is denied, see additional pleas.
10. That para 10 of the plaint is denied. See further pleas.
11. That para 11 of the plaint is wrong, all the allegations made therein are denied.
12. That para 12 of the plain is not admitted.
13. That the defendants No.1 & 2, have no knowledge about the allegations made in para 13 of the plaint. Only this much is admitted that Shri Priyadutt Ram was appointed Receiver of the Janamasthan temple Ajodhya by the Hon'ble Court of the City Magistrate, Faizabad.
14. That para 14, of the plaint is denied.
15. That para 15 of the plaint is only so far admitted that the defendants No.1 & 2 did file true cases against a few Muslims and certain Government officials for injunction declaration. The cases were filed in this Hon'ble Court on true and correct allegations.
16. That the defendants No.1 & 2 admit only this much that the defendant



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No.2, Shri Ram Chandra Pram Hans did file another suit in this Hon'ble Court, which is true and correct.

17. That the defendants No.1 & 2 have no knowledge of the allegations made in para 17 of the plaint, hence that is denied.

18. That only this part of the para 18 of the plaint is admitted that Hindus do Puja etc. in the Janam Bhum temple and the Muslims are not allowed to go near that temple, which they wrongly and maliciously described as mosque, the rest of the allegations of this para are denied.

19. That para 19 of the plaint is denied. The plaintiffs have no right to make the defendant contest the suit in a representative capacity as self appointed representatives of the Hindu community which extends from Madras to Kashmir and from Dwarka to Calcutta. None of the defendants represent all the Hindus in India. The Janam Bhum temple is a public charitable institution and the defendants No.1 & 2 contest this suit as in their previously instituted suits in their individual capacity.

20. That para 20 of the plaint is not admitted.

21. That the defendants No.1 & 2 have no knowledge of the facts mentioned in para 21 of the plaint hence it is denied.

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22. That para 22 of the plaint is denied. According to some plaintiffs, previous assertions and allegations made in the civil suits of the defendants No.1 & 2 pending against them in this court, the suit is undervalued, hence the court fee is deficient.

23. That para 23, of the plaint is wrong. The suit is hopelessly time barred. The Muslims have not been in possession of the property in dispute since 1934 and earlier.

24. That plaintiffs are not entitled to any relief and the suit deserves to be rejected with costs.

**Further Pleas**

25. That the members of the Hindu community have from time immemorial been worshiping the site of the Janam Bhum upto this time by virtue of their right and the Muslims were never in possession of the temple called Ram Janam Bhum. If ever they were in possession of the so-called Babri mosque, there possession ceased thereon in 1934, and since then Hindus



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are holding that temple in their possession, and their possession has ripened into statutory adverse possession thereon since 1934. Prior to 1934, continuous daily Hindu Puja is being done in that temple and the Muslims have never said their prayers since 1934 in the temple falsely described as Babri Mossque.

26. That the said temple in dispute is a public charitable institution. It does not belong to any sect, group, math or individual or Mahant or any Akhara and it is a public place of worship open to all the Hindus. No individual Hindu or Mahant can be said to represent the entire Hindu community as far as this ancient temple is concerned.

27. That the suit is time barred as no action was taken in time from the orders of the City Magistrate u/s 145 Cr.P.Code.

28. That the suit is time barred as the plaintiffs were never in possession over the temple in dispute since 1934, and the Hindus were holding it adversely to the Muslims, overtly and to their knowledge.

29. That the suit deserves to be rejected because the Hindu Puja is going on in the said temple from the past at least 28 years i.e. 1934 and admittedly from January, 1950 when the City Magistrate directed the defendant No.9 to carry on puja as usual in the said temple.

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30. That the suit under Order 1 Rule 8, C.P.C. is bad and no one representing the Hindu community has been made a defendant in the suit, hence the suit deserves to be rejected.

31. That the suit be rejected with special costs as the plaints have impleaded the defendants No.1,2,3,4 and 9 knowing full well that they do not represent the Hindu community but their individual interests only.

32. That the plaintiff or plaintiff No.1 who claim rights under Act XIII of 1936 have no such right for the following among other reasons:-

(a) That the U.P. Muslim Waqf Act No.XIII of 1926 is 1936 is ultra vires, the Govt. of India Act 1935 which had come into force before the passing of the above Act. It does not come under any of the items of list ii of (the Provincial list or List III of the concurrent legislative list. Item no.9 of the concurrent list or item no.34 of the Provincial list cannot also come to save the above legislative even on the Principle of Pith and substance. Item no.28 of list III of the Constitution has



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therefore been remoddled.

(b) That any sanction under sub-section (3) of section 80-A of the former Govt. of India Act will not validate the legislation after the repeal of the former Govt. of India Act by means of section 478 of the Govt. of India Act 1935.

(c) That in case the act is considered to be intra vires the suit not being one relating to administration of Waqf, taking of accounts, appointment and removal of Mutwallis, putting the Mutwallis in possession or Settlement or modifications of any scheme of management for which powers and duties have been specified under Section 18 (2) clause (e) of Act XIII of 1936 the present suit on behalf of plaintiff no.1 is misconceived and not maintainable. The plaintiff no.1 can only do things required or permitted by the Act to be done by the Board (sec.6(3).

(d) That the Act containing privelages based on classification of Waqfs on the ground of religion, particularly Section 5(3) of the Act is hit by article 14 and 19 of the constitution and is void under article 13 (1) of the Constitution.

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(e) That by Act XVI of 1960 Section 85 (2) the above Act has been repleaded. The saving clause contained in the provision only saves the operation of the repealed Act in regard to any suit or proceedings pending in any court or to an appeal or application in revision against any orders that may be passed in such suit or proceeding subject there to anything done or any action taken in exercise of powers conferred by or under those Acts, shall, unless expressly required by any provision of Act 16 of 1936 be deemed to have been done or taken in exercise of the powers conferred by the new act as if the new Act were in force on the day on which such thing was done or action taken.

Sec. 9 (2) of Act 16 of 1960 only saves the finality of decision of Commissioner of Waqfs from being affected by provisions of Chapter I of Act 16 of 1960 but when there is no saving clauses with regard to decision u/s 5 (3) in the provision to sec.85 (2), the finality attached by Section 5 (3) will vanish after the repeal of the enactment.

(f) That the building and land in suit lying in the province of Oudh



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became subject of Lord Canning proclamations and all previous rights became non existent. No fresh grant in respect of the property in suit having been made after the proclamation, the plaintiff or the Muslim community, have no right to sue.

(g) That the Commissioner of Waqf only has to make an enquiry about number of Shia and Sunni Waqfs in the district the nature of each Waqf, the gross income of property comprosed in the Waqf, the Govt. Revenue, the expenses and whether it is one excepted u/s 2. The Commissioner of Wakf has only to see whether any transaction is waqf or not and that to which sect. the Waqf belongs and further whether such waqf is or is not exempted by sec.2 of the Act. All these things he has to do in accordance with the definition of Waqf in section 3(1) of the Act XIII of 1936, an Act which is exclusively meant for certain clauses of Muslim Waqfs. The finality and conclusiveness is inteded to give effect to the scheme of administration under the Muslim Waqfs Act and does not and cannot confer jurisdiction to decide question of title as against non-Muslims. The legislatures u/s 5(3) does not say that the court shall take judicial notice of the reports of the Commissioner of Waqfs and shall regard them as conclusive evidence that the Waqf mentioned in such reports are Muslim Wqafs, as was done in Section 10 of the O.E.Act.

(h) That there has been no legal publication of alleged report and hence no question of any finality arises.

(j) That the purpose of publication is only to show to which sect. the Waqf belongs. It does not call upon objections or suit by persons not interested in what is held to be a Waqf or not viz. by non muslims.

33. That the allegation made in the amended para 6 A to 6 F are altogether wrong. Neither the plaintiff of that suit was suing in a representative capacity on behalf of the entire Hindu Community nor could he represent the Hindu community when he was persuing his personal interest to the determent of the interest of Hindu community at large. The defendant of that suit was also not representing the Muslims or the Sunnis and the plaintiff of this suit cannot be legally considered as claiming through that defendant of that suit. The points now in issue were never directly and



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substantially in issue in the former suit and there is no resjudicate. There is no question of constructive resjudicata as the dispute of the defendant that the Hindu's are worshiping the land in dispute (the site of Janam Bhoom) from the immomerial and that they are entitled to continue worshiping and the other matters were not in issue in that suit and the matters of the present suit were foreign to that suit.

Hence no question of resjudicate either actually or constructing arises in this suit.

Sd./-
Shri Gopal Singh Visharad
and Ram Chandra Dass Param Hans
Defendant No.1 and 2.
25.01.1963

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**Replication to the written Statement of the defendant No.1 & 2**

Paras 1 to 24. The allegations in paras 1 to 24 of the plaint are true and contrary allegations made by the defendants are denied.

Para 25. The allegations contained in para 25 of the written statement are denied. The Hindu public never held the mosque and Ganje-Shahidan in their possession nor did Puja therein since 1934 as alleged by them.

Para 26. Denied. The property has not been a temple as alleged by the defendants.

Para 27. Denied.

Para 28. Denied. The Muslim public has been in possession of the property in suit as mosque for the last 450 years when the mosque was constructed.

Para 29. Denied. The property has been placed in possession of a Receiver appointed by the court of the City Magistrate Ist Class, Faizabad.

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Para 30. Denied.

para 31. Denied.

para 32. Denied.

para 33. Allegations in paras 6-A to 6-E of the plaint are correct and reiterated and contrary allegations in the defendants' written statement are denied.

**Additional Pleas**

Para 34. That it is absolutely wrong that the Hindu Public took possession of the property in dispute in 1934 and is holding possession of it as temple since then and have thus completed title by adverse possession. The possession of the Muslims community continued as ever and they have been saying their prayers in the mosque as such. The Hindu Public, of course in 1934, did some mischief to destroy the mosque and damage was caused to some extent, which was got repaired by the Government at the cost of the Government and the Hindu Public



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was charged with punitive tax. It is absolutely baseless that the Hindu Public came in possession much less peaceful possession of the property in suit.

para 35. That the Muslim public as representative of the wakf has been in continuous possession of the property in suit for last 450 years i.e. since the time the mosque was constructed and even if the Hindu public had any interest whatsoever in the property in suit before that period the Muslim public representing the wakf perfected his title to the property in suit by their long undisturbed open possession against the interest of the Hindu Public which amounts to adverse possession of the wakf and thus title or interest if any, of Hindu Public has extinguished.

Dated:
Lucknow: 11/12.09.1963

Sd./-
Ehtram Ali
Plaintiff

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O.O.S.No.4 of 1989

The Sunni Central Board of Wakf U.P. & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

**Reg. Suit No.12 of 1961**

**Replication to the written statement of defendant 3 and 4**

Para 1 to 24. The allegations in para 1 to 24 of the plaint are true. Contrary allegations are denied.

Para 25. The sketch map attached to the plaint is correct. Allegations against it are denied. The sketch map attached to the written statement is wrong and denied.

Para 26. Wrong and Denied.

Para 27. Denied. The property in suit is not a temple as alleged and has never been in possession of the defendants as alleged.

Para 28. Denied.

Para 29. Denied.

Para 30. Denied. The Muslim Public has always been saying prayers and visiting the Mosque and Ganje-Shahidan which is the property in suit for last 450 years when the mosque was built.

Para 31. Only this much is admitted that in 1950 the mosque in suit was attached under Section 145 Cr.P.C. and Sri Priadutta Ram was appointed Receiver and was placed in possession of the attached property as such. He is still continuing as Receiver. The rest of the allegations of this para are absolutely wrong and denied.

Para 32. Denied. The defendants have never been in possession or in-charge of the property in suit as alleged. The filing of the suit mentioned in this para is admitted. Rest is denied.

Para 33. Filing of the suit in the court of the Addl. Civil Judge Faizabad is admitted. The said suit has since been transferred to this Hon'ble Court and is pending.

Para 34. Denied. The plaintiffs and Muslim Public have been in possession for last 450 years.



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Para 35. Denied. The plaintiffs have been in possession of the property in suit as Mosque and Ganje-shahidan for last 450 years and it is absolutely wrong that the Hindu public ever had possession of any sort over the property in suit as temple, as alleged by the defendants in this para.

Para 36. Denied. The Sketch map and the list given as part of the written statement is wrong and denied.

**Additional Pleas**

Para 37. That the Muslim public had been in continuous and open possession of the mosque and Ganje-Shahidan for last 450 years, i.e. the time when the mosque was built. In 1934 of course the Hindu Public out of mischief attempted to destroy the mosque and in their attempt they damaged the mosque at places which damage was repaired by the Government at the expense of the Government and Hindus Public was penalized by punitive tax for their unlawful actions.

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Para 38. That the possession of the Muslim public was not disturbed and they remained in possession of the property as mosque and saying their usual prayers continuously upto December 1949 when Hindu Public by force entered the mosque, by breaking open the lock of the mosque and desecrated the mosque by placing idols inside the mosque which being made by the police proceedings under Section 145 Cr.P.C. were started and to avoid apprehension of breach of peace the mosque was placed in custody of a Receiver. The Receiver is still holding the property for the benefit of Muslim Public.

Para 39. That the Muslim Public as representative of Wakf has been in continuous possession of the property in suit for las 450 years i.e. since the mosque was built and even if the Hindu Public had any interest whatsoever in the property in suit before that period of 450 years the Muslim Public as representative of wakf has perfected title to the property in suit by their long undisturbed open possession against the interest of Hindu Public to their



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knowledge which amounts to adverse possession of the wakf and thus the title or interest, if any, of the Hindu Public has been extinguished.

Lucknow Dated:
September 11/12.1963

Sd./-
Ehtram Ali
Plaintiff

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O.O.S.No.4 of 1989

The Sunni Central Board of Wakf U.P. & Ors. …Plaintiffs

Registered Addresses

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

**Written Statement on behalf of Nirmohi Akhara and mahant Raghunath Dass defendants 3 & 4.**

Para 1. The allegations contained in para one of the plaint are totally incorrect and are denied. There does not exist any mosque known as 'Babri Majid' in Ajodhya- Nor was any mosque built by Emperor Baber in Ajodhya more than 460 years ago as alleged- Nor did Babar make any conquest or occupation of any territory in India at the time alleged in the plaint- The story of the mosque as narrated in plaint para 1 is a pure fiction.

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Para 2. The allegations contained in Para 2 of the plaint are totally incorrect and are denied. The alleged sketch map is entirely false and imaginary and is the outcome of the plaintiffs fancy- On the khasra no mentioned in the sketch map there stands neither any mosque nor any grave- The story of alleged battle between emperor Babar and any previous ruler of Ajodhya, whose name the plaintiffs are unable to mention in the plaint is a pure canard- Neither did any muslim lose his life in any battle on the land of the said khasra Nos. nor is there any grave or grave yard of any Muslim at the said place- In the circumstances, there arises no question of any mosque or grave yard having been vested or vesting in the Almighty- The allegations of any Muslim offering prayer or using the land covered by the said Khasra numbers as grave yard are altogether false and concocted - The real facts are that the said khasra numbers pertain to the Temple of Janam Bhumi' and other land appurtenant thereto-

Para 3. The allegations contained in para 3 of the plaint are incorrect and are totally denied- There has been no such mosque as alleged and the



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question of its upkeep and maintenance does not arise-

Para 4. The allegations contained in para 4 of the plaint are totally denied-

Para 5. The contents of para 5 of the plaint are denied- The existence of any mosque as alleged is denied- There never was a Chabutra as alleged nor do the plaintiffs give any correct or definite location nor the time of existence of any such Chabutra-

Para 6. The contents of para 6 of the plaint are denied. The answering defendants are not aware of any suit having been filed by any person known as Mahant Raghubar Dass styling himself to be the Mahant of Janam Asthan- Janam Asthan is situate in the north of temple of Janam Bhumi across the road passing between Janam Bhumi and Janam Asthan- Any sketch map filed by the said Raghubar Dass along with the alleged plaint would be false and fictitious and is not binding on the answering defendant-

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Para 7. That the contents of para 7 of the plaint are totally false and are denied-

Para 8. The allegations contained in para 8 of the plaint are denied. The answering defendants deny the existence of the alleged Babri Mosque and the allegation of its being damaged and of its being rebuilt and re-constructed at any body's cost or through any Thekedar is altogether fictitious- Even if any communal riot be proved to have occurred in Ajodhya in 1934, no mosque whatsoever was damaged in Ajodhya in 1934-

Para 9. That the contents of para 9 of the plaint are totally denied except that U- P. Muslim Waqf Act 1936 was passed by the U-P- Legislature- The answering defendants deny the inquiry of the report alleged in the said plaint para and its publication in the Gazette- Even if any such inquiry were proved to have been held and its report published, it was totally an ex-parte inquiry secretly and surreptitiously made without any intimation and information to



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the answering defendants and the same is not binding upon them.

Para 10. That the contents of para 10 of the plaint as stated are not admitted since the answering defendants had no notice of the alleged inquiry or report, if any, nor had they any knowledge of the same, they could not file any suit to challenge the same- But the absence of any such suit cannot convert a Hindu Temple into a Muslim Mosque-

Para 11 That the contents of para 11 of the plaint are totally false and concocted- The alleged mosque never existed nor does it exist even now and the question of any Muslim or the Muslim community having been in peaceful possession of the same and having recited prayers till 23-12-49 does not arise- The building which the plaintiffs have been wrongly referring as Babari Mosque is and has always been the Temple of Janam Bhumi' with idols of Hindu Gods installed therein- The plaint allegation regarding placing of idols inside any mosque is a pure falsehood-

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Para 12. That the contents of para 12 are altogether wrong and are totally denied- No such incident as mentioned in the plaint para even took place- Even if any report were proved to have been made by any Constable as alleged it must have been with the mischievous connivance of the plaintiffs-

Para 13. That the contents of para 13 of the plaint are distorted and are denied- The fact is that the said City Magistrate started proceedings under section 145 Cr.P.C by attaching the tmeple of Janam Bhumi and placing it under the custody of Shri Priya Dutt Ram defendant no.2 as Receiver who still continues as such but the Puja pat of the deity in the said temple are regularly performed on behalf of the answering defendants- the Muslims have no right to offer prayer in the said Temple.

Para 13A,B,C added vide separate sheet per orders of Hon'ble H.C.
dated 21.8.95 Sd./- 01.09.95

Para 13 (A) That property in the suit after decision of the Hon'ble Supreme Court of India has been taken over by the Central Govt. only as statutory receiver.



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Para 13 (B)That subsequent event which took place after framing of the issues in above suit are necessary to be given which follows as below:-

(I) That on 7/10 Oct 1991, the U.P. State Govt. issued a notification for acquisition of disputed property described in the said declaration under the said land Acquisition act 1894 as below:-

| Settlement Plot Nos | Area in Acres | Village |
|---|---|---|
| 159 (Part) | 0.3600 | Kot Ram Chandra |
| 160 (Part) | 1.0706 | -do- |
| 171 (Part) | 0.4375 | -do- |
| 172 (Part) | 0.9063 | -do- |
| Total: | ---------- | |
| | 2.7744 Acres. | Perg. Haveli Oudh |
| | ---------- | Distt. Faizabad |

Amended per orders of
the Hon'ble Court dt.21.08.95
Sd./-
11.09.95

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(IV) That on 22.3.1992 BJP Govt. in U.P. in active connivance of local administration demolished the Temple known as Sumitra Bhawan Temple.

(V) That Bhagwan Ramlala Birajman in temple known as Sita koop carries the deity of Bhagwan Ramlala. Mahant Dwarika Das having the famous payas well known as Sita koop in existence from the time beyond the human memory.

(VI) That Bhagwan Ramlalaji Birajman at Mandir Loomarsh Chabutra is situated in Plot No.160 and part No.159.

(VII) That a Big platears known as Laxman Thekri is also existed over the disputed property.

(VIII) That according to customs of Ramanandiya Akhara Pancha of Nirmohi Akhara use to live in vicinity of Shri Ram Janam Bhoomi Temple and that is why these holy places of worship like Sumitra Bhawan. Sita koop, Laxman Tekri, Loomarsh Chabutra which were in existence from time immemorial before its demolition, all these places of



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worship was situate with in the disputed property marked by letter E F G H I of the seachmap which was been filed already with W.S.

(X) That the said notification of acquisition by U.P. Govt. was struck down by Hon'ble High Court of Allahabad Lucknow Bench, Lucknow on 11.12.92, and thus the act of demolition of B.J.P.Govt. in U.P. was totally illegal.

"Para 13(c) That before the judgment of above writ petition dated 11.12.92 on 6.12.92 the temples of Nirmohi Akhara along with Chatti pujan Asthan and Panches residential place were all demolished by some miscreants who ha no religion, caste or creed. The said Temple Ram Chabutra had an history of Judicial scanning since 1885 A.D. and it existence and possession over temple Ram Chabutra was ever since in possession of Nirmohi Akhara and no other but Hindus allowed to enter and worship there and put offering in form of money sweets, fruits flowers etc. which has always been received by panches of Nirmohi Akhara.

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Para 14. That the contents of para 14 of the plaint are altogether wrong and are totally denied- The Muslim citizens of India are not entitled to exercise any right in respect of the Temple of Janam Bhumi-

Para 15. That the Answering Defendant are not parties to the suit referred to in para 15 of the plaint and are not fully aware of the facts of any such suit- But this much is correct that the building in the present suit is a temple-

Para 16. That the Answering Defendants are not parties to the suit referred to in para 16 of the plaint and are not fully aware of the fact of any such suit-

Para 17. That the contents of para 17 of the plaint are substantially correct with this modification that the suit no.25 of 1958 is filed against the entire Muslim Community under Order 1 Rule 8 C.P.C. and not against "certain Muslim Community" as alleged in the plaint para an that the



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building in question in that suit is in fact and in reality the temple of Janam Bhumi.

Para 18. That so far as the contents of the first sentence of para 18 of the plaint is concerned the answering defendants are not aware of the proceedings on the record of suit no.2 of 1950 as they are not parties to that suit- The Answering defendants are not aware of any order of injunction or any result thereof- But the allegations made in the remaining part of the plaint para are totally incorrect, fictitious and without foundation and are denied- The temple Janma Bhoom is under attachment and is placed in the custody of the Receiver- Only the Pujaries of the Answering Defendants are allowed to perform the Puja of the idols of the temple but the Hindu public is not allowed to enter the inner compound of the Temple which is guarded by armed police. The Muslims have no right to enter the Temple and the contents of the plaint para regarding the building being a Mosque, its construction its declaration as a public Waqf and the Muslims using it as a mosque for prayers are totally incorrect and are denied. There was absolutely no necessity of the present suit-

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Para 19. That the contents of para 19 of the plaint are denied- The Sunni Board cannot represent the Shia Community- The suit as contemplated under Order 1 Rule 8 C.P.C. is misconceived- The Answering defendants are informed and believes that all the individual plaintiffs are sunnies and cannot represent the Shia Community- It is said that Babar was a Shia and not a Sunni.

Para 20. That regarding plaint para 20 only this much is admitted that the building in question i.e. the temple of Janam Bhoom is at present in the custody and management of the receiver- The rest of the contents of the para are denied- The plaintiffs are not entitled to any relief.

Para 21. The Answering defendants are not aware of any notice being served to other defendant and the contents of para 21 of the plaint are denied.



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Para 22. That the contents of the para 22 of the plaint are denied. The answering defendants deny the existence of any mosque and of any graveyard. The valuation has been exaggerated. The valuation of the building in question which is the temple of Janam Bhoom is not more than Rs.10000/-. The suit has been overvalues and the court fee paid is excessive.

Para 23. That the plaintiffs have got no cause of action. The allegations made in para 23 against the Hindus in regard to the alleged mosque are totally fictitious and are denied. The allegations against the State Government and officials are also false and are invalid for the purposes of the suit.

Para 24. That the plaintiffs are not entitled to any relief:-

**A D D I T I O N A L P L E A S**

Para 25. That the sketch map attached to the plaint is totally incorrect and is misleading. The details given in the map are wrong and imaginary. A correct sketch map of the property in dispute is annexed with this written statement as Annexure 'A' and which correctly shows the various constructions and places in their relative positions.

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Para 26. That there exists in Ayodhya since the days of yore, an ancient math or Akhara of Ramanand-Varagis called Nirmohis with its seat at Ramghat known as Nirmohi Akhara, the defendant no.3, which is a religious establishment of public character, whereof the defendant no.4 is the present head as its Mahant and Sarbarahkar.

Para 27. That the temple in question known as Janam Bhoomi, the birth place of Lords Ram Chandra situate in Ayodhya belongs and has always belonged to the defendant no.3 who through its reigning Mahant and Sarbarahkar has ever since been managing it and receiving offerings made there at in form of money, sweats, flowers and fruits and other articles and things.



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Para 28. That the said Asthan of Janam Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown in sketch map appended hereto as Annexure 'A' within which stands the temple building of Janma Bhumi shown therein with the main temple of Janma Bhumi wherein is installed the idol of Lord Ram Chandra with Lakshmaji, Hanumanji and shaligramji.

Para 29. That the said temple has ever since been in the possession of the defendant no.3 and none others but Hindus have ever since been allowed to enter or worship therein and offerings made there, which have been in form of money sweats, flowers and fruits and other articles and things, have always been received by the defendants 3 and 4 through their pujaris.

Para 30. That no Mohammedan could or ever did enter in the said temple building. But even if it be attempted to be proved that any Mohammedan ever entered it which would be totally wrong and is denied by the answering defendants, no Mohammedan has ever been allowed to enter it or has ever attempted to enter it at least ever since the year 1934.

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Para 31. That in the year 1950, The City Magistrate, Faizabad the defendant no.7 without any lawful cause and with the active connivance of defendants nos.5,6 and 8 and under the wrong persuasion of some of the plaintiffs attached the main temple of Janam Bhoom in a proceeding under Section 145 Cr.P.C. and placed it under the charge of defendant no.1 as receiver on 5.1.50 with all the articles mentioned in list B appended hereto.

Para 32. That the answering defendants have been wrongfully deprived of their management and charge of the said temple and have ever since the said wrongful attachment been waiting for the delivery of the charge and management of the same to them but since the defendant no.7 consigned the proceedings with a direction to take them out again after the temporary injunction in suit no.2 of 1950 mentioned in the plaint is vacated, while retaining the attachment and the Receiver, who refused to hand over charge and management of the temple to the answering defendants the latter had to file suit no.25 of 1959 for delivery of charge and management of the temple



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by removing the Receiver.

Para 33. That the said suit of the answering defendant was filed against the Muslim public under Order 1 Rule 8 C.P.C. making some of the plaintiffs and defendants of the present suit as parties and the said suit is pending in the court of the Additional Civil Judge, Faizabad.

Para 34. That the suit is time barred and the plaintiffs for the Muslim community or any of its members have not been in possession within limitation over the property in dispute.

Para 35. That even if the plaintiffs succeed in showing that any Muslim ever said prayers in the building in question or used the same as a Mosque, or that the possession of the answering defendant and the deity (Shri thakur Ram Janki) was for any period of time disturbed by the Muslims or any of them, the answering defendant and the Deity, have again matured their title by continuos and adverse possession, open and hostile to the plaintiff and their community by remaining in continuous possession of the said building, that is the temple of Janam Bhoomi for more than 12 years and in any case ever since 1934, during which period the Hindus have been continuously doing worship and making offerings to the deity installed therein and the answering defendant have been managing the said temple and taking offerings made thereat.

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Para 36. That the sketch map Annexure 'A' and the list of articles Annexure 'B' are made part of the written statement.

Faizabad Dated:
22nd August 1962/24.08.1962

Nirmohi Akhar Defendant No.3
Mahant Reghunath Dass
Defendant No.4
Sd./- Mahant Raghunath Dass
through:
Sd./- Counsel for the defendant no.4

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O.O.S.No.4 of 1989

The Sunni Central Board of Wakf U.P. & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

**Additional written statement on behalf of Nirmohi Akhara and Mahant Raghunath Dass, defendants 3 and 4.**

Para 37. The contents of paragraphs 6A to 6D of the plaint are denied. Even if it were proved that any person known as Mahant Raghubar Dass made any admissions or statements or averments in the said suit the answering defendants are not bound by the same and their title and interest in the temple of Janam Bhoom can in no way be affected.

Para 38. The contents of paragraph 6E are denied. The building in dispute in the present suit is certainly a temple and not a mosque. The decision if any in the above noted suit of 1895 cannot and does not operate as Resjudicata in the present suit, nor is the said decision any piece of evidence in the present suit.

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Para 39. The contents of para 6-F of the plaint are denied. The building in question in the present suit is a temple of Janam Bhoom and not a mosque as alleged by the plaintiff.

Para 40. That the contents of paragraphs 6A to 6F do not form part of pleading but contain argument and references to evidence.

Para 41. That the answering defendants do not derive any title from the said Mahant Raghbar Dass of suit No.61/280 of 1885 and are not bound by any actions or conduct of the said Raghubardass in the said suit.

Dated:25.01.1963 Sd./- Mahant Raghunath Dass



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O.O.S.No.4 of 1989
Reg. Suit No.12 of 1961

The Sunni Central Board of Wakf U.P. & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

**Additional written statement on behalf of Nirmohi Akhara and Mahant Raghunath Dass, defendants 3 and 4.**

Para 37. The contents of the amended paragraph 11(a) of the plaint are totally wrong concocted and are denied.

Para 38. The building in question was always a temple as shown in the written statement of the answering defendants Emperor Babar never built a mosque as alleged by the plaintiffs and Muslims or were never in possession of the building in question.

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Para 39. The allegation of the plaintiffs in their amended paragraph 11(a) of the plaint that "some mischievous persons entered the mosque and described" it is only a mischievous concoction. No question of the Muslims perfecting their title by adverse possession or of the extinction of the right, title or interest of the temple and of the Hindu public at all arises as the Muslims were never in possession.

Dated:28/29,11-1963. Sd./- Mahant Raghunath Dass



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O.O.S.No.4 of 1989
Reg. Suit No.12 of 1961

The Sunni Central Board of Wakf U.P. & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

**Additional written statement on behalf of Nirmohi Akhara, defendant No.3 Dated 21.08.1995.**

Para 1. That the contents of original written statement filed by the answering defendant No.3 are ret riated and are confirmed again.

**Additional Written Statement**

Para 2. That the contents of para 20 of the plaint is evasive and plaintiffs who are not in possession nor they were in possession ever over the disputed inner or outer site. The narration of Receiver's possession in this para by plaintiffs can only be clubbed with the inner disputed site i.e. the main temple bounded by letters B, B1, B2 B3 D2 D1 & Letters D.C. B. shown in annexure A map to this additional w.s.

The outer part of disputed sites comprises with Sri Ram Chabutara temple, Chhatti Pujan Sthal, Panch Mukhi Shankar Ganesh Ji Kirtan Mandap, Bhandar House of Panches of Nirmohi Akhara. All belonging to Nirmohi Akhara and has ever been in the possession of Nirmohi Akhara through panches of Nirmohi Akhara from before the human memory. Even on the date of attachment under the order of Additional City Magistrate, Faizabad dated 29.12.1949 an attachment Fard was prepared. A true copy is being attached as Annexure 'C' to this Additional Written statement.

Para 3. That contents of amended plaint para 21 A is denied except the factum of demolition. The real fact regarding Sri Ram Chabutara temple, Chhatti Pujan, etc. as narrated above has been concealed and purposely not adverted in this paragraph against the following existing facts and established



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fact chronologically as follows

(1) The Sub Judge, Faizabad while holding that 'CHARAN' (feet) is embossed on the Chabutara which is being worshipped. On a Chabutara over that Chabutara of Idol of Thakurji is installed. The Chabutara is in possession of the defendant No.3. Nirmohi. The District Judge, vide his Judgment while holding that it is most unfortunate that a Masjid should have been built on a land specially held sacred by the Hindues, Judge's Judgment.

(2) In regular suit No.256 of 1922 between Mahanth Narottam Das and Mahant Ram Swaroop Das (representing Nirmohi Akhara) with regard to realising dues from the hawkers in the area belonging to the parties following statement was made by the counsel on behalf of Mahant Narottam Das, which reads as under:-

"The land marked red in the map was all along parti land till the defendant made the constructions in dispute. The land belongs to the Nazul and the plaintiff as Mahant of the Janam Asthan and his predecessor have all along been in possession and has basis of his title on possession. No lease from Nazul has been taken. They have been holding the land under an Iqrarnama from the Shahi times. There has been no settlement decree"

Defendant's pleader says:-

"I admit para 1 of the W.S. the land never belonged to Nazul department.

(3). In a suit No.95 of 1941 between Mahant Nirmohi Akhara namely Ram Charan Das and Raghunath Das a Commission report was prepared. In the said report at item No.2 Description of Temple Ram Janam Bhumi belonging to Nirmohi Akhara was specifically mentioned. At item No.3 of the said report name of Sita Koop belonging to Nirmohi Akhara (Annexure-A).

Para 4. That the main temple of Sri Ram Janam Bhumi has ever been so surrounded by the holy pious places of religious importance like Sumitra Bhawan, Temple Sita Koop temple, etc. as narrated above. Sita Koop is the pious well, had a legend behind it. Its pious water had ever since been a source of peniral inspiration of religious faith and therefore Muslim



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community had no way to access the inner structure of suit property since long.

Para 5. That the temples Sri Ram Chabutara, Chhatti Pujan, Gufa temple of Chabutara etc. shown in the map in the outer part of disputed site with main structure demolished by miscreants, it is only defendant no.3 is entitled to get it restructured as it existed on 5.12.92 and the defendant no.3 is also entitled to get restored the other pious places of temples of defendant no.3 as narrated above, which was demolished on 22.3.1992 by U.P.Government.

Para 6. That the contents of para 21-B are denied. The full description of outer courtyard has not been given by the plaintiff purposely.

Para 7. That contents of para of para 21/c is admitted which deals with notification and appointment of statutory receiver. The other part of para is denied.

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Para 8. That Nirmohi Akhara defendant No.3 is the Panchayati Math of Rama Nandi sect of Vairagies and as such is a religious denomination following its own religious faith and pursuit according to its own custom prevalent in Vairagies sect of Sadhus. The custom of Akhara Nirmohi Akhara have been reduced in writing on 19.3.1949 by registered deed.

Para 9. That plaintiff Nirmohi Akhara owns several temples in it and manages all of such temples through Panches and Mahanth of Akhara. The whole temple and properties vest in Akhara i.e. defendant No.3. The defendant No.3 being a Panchayati Math acts on democratic pattern. The management and right to managnement of all temples of Akhara vest absolutely with Panches of Akhara and Mahanth being a formal head of institution is to act on majority opinion of Panches.

Para 9A. That on 23.2.1992 contrary to the direction passed by Hon'ble Supreme Court dated 15.11.91 and the order of High Court dated 7.11.89 the State of Uttar Pradesh committed contempt of court and demolished various



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temples including Sumitra Bhawan temple, Lomash Chabutara temple, and Sita Koop temples surrounding the eastern and southern place of main Ram Janam Bhumi temple and Sri Ram Chabutara temple belonging to Nirmohi Akhara filed contempt of court petition in the Hon'ble High Court, initiating contempt proceeding against the B.J.P State Government and its employees and others and also filed application under order 39 Rule 2 A C.P.

Para 10. That on 6.12.1992 the outer portion which included Chabutara Ram Temple Chhatti Pujan, Sita Rasoi, Bhandar grah of Nirmohi Akhara were also demolished along with main temples.

Para 11. That since in view of judgment of Apex Court of India dated 24.10.94 the successful party having title over the disputed site will be entitled to have obtained other properties. As such the defendant no.3 is entitled to have the delivery of charge of all properties even including the offering made to the deity of Nirmohi Akhara and a mandate be issued to statutory Receiver for handing over all the properties and offering to defendant no.3.

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Dated: Nirmohi Adhara

Through Sd./- Mahant Bhaskar Das



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In the Hon'ble High Court of Judicature, at Allahabad, Lucknow Bench, Lucknow

In re:

**O.O.S.No.4/1989**

The Sunni Central Board …Plaintiff

Versus

Sri Gopal Singh Visarad ….Defendants

AFFIDAVIT

I Mahant Bhaskar Dass Chela M.Baldeo Das aged 68 years Resident of Naka Muzaffra Hanuman Garhi, Faizabad do hereby solemnly state and affirm as oath as below:-

1. That deponent is sarpanch and the General Attorney of defendant No.3 and is fully conversant with the fact of the case.
2. That contents of application from para 1,7 and 4 to 10 are ture best of my knowledge and contents of para 3,9A,11 are believed to be true.

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Sd./-Mahant Bhaskar Dass

Deponent

Lucknow

Dated 21-8-1995

VERIFICATION

I, the above named deponent do hereby verify the contents of para 1 to para 2 are ture to my knowledge and part of para 2 of it to my belief. Nothing material has been cocealed so help me God.

Verified this day of 21 August 1995 at Lucknow

(Mahant Bhaskar Dass)

I Indentify and personally known that the deponent who has signed before me.

(R.L.Verma)

ADVOCATE

Solemnly affirmed before me on the day of 21.08.1995 at about 10.30 A.M.the deponent has been Identified by Shri R.L.Verma (Advocate). I have



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satisfied myself by examining the deponent who has been understands its contents of this affidavit which has been read over and explained to him.

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O.O.S.No.4 of 1989
Reg. Suit No.12 of 1961

The Sunni Central Board of Waqfs U.P. & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visharad & Or. ….Defendants

The petitioners Defendants beg to submit as follows:-

1. That the Govt. is not interestted in the properties is dispute and as such the petitioners don't propose to contest the suit.
2. That the petitioners, in the circumstances be exempted from costs.
3. That the petitioner defendants 6 to 8 are State officials and their actions in respect of the properties in dispute were bonafide in due discharge of their official duties.
4. That the petitioner defendants don't contest plaintiffs application u/o 1 & 8 C.P.C.

In the circumstances it is prayed that the petitioner defendants be exempted from costs of the suit.

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Place on record
now W.S. filed

Sd./-
Narayan Das Khattry
D.G.C(C)
for defendants 5 to 8
23.04.1962/28.05.1962



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O.O.S.No.4 of 1989
Reg. Suit No.12 of 1961

**Written statement on behalf of defendant No.9 u/order 8 rule I.C.P.Code**

The Sunni Central Board & Ors. …Plaintiffs

Versus

Sri Gopal Singh & Ors. ….Defendants

**Claim for declaration and recovery of possession.**

The defendant No.9 submits as follows:-

1. Has no knowledge.
2. Has no knowledge.
3. Has no knowledge.
4. Has no knowledge.
5. Denied subject to the additional pleas.
6. Has no knowledge.
7. Has no knowledge.
8. Has no knowledge.
9. Has no knowledge.
10. Has no knowledge.

1. Has no knowledge.
2. Has no knowledge.
3. Only this much is admitted that answering defendant was appointed as receiver of the building under dispute by the City Magistrate under an order under Sec.145 Cr.P.C. The building with its contents was delivered to the answering defendant on January 5th 1950.

Para 14. Denied.

1. Has no knowledge.
2. Has no knowledge.
3. Admitted.
4. Has no knowledge.

19. Denied



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20. Denied

21. Denied

22. Need not replied.

23. Has no knowledge.

24. Plaintiffs are not entitled to any relief against the answering defendant.

**Additional Pleas**

25. The tent shape structures are alleged in para 5 perhaps refer to small temple with idols- installed belonging to the Nirmohi Akhara which stands outside the walls of the building in dispute and its existence is admitted.

Dated Faizabad:
July 28, 1962

Sd./-
Priyadutt Ram
Receiver,
answering defendant No.9

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O.O.S.No.4 of 1989
O.S.No. 12 of 1961
Reg. Suit No.12 of 1961

Central Sunni Central Wakf Board & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad through L.R. & Ors. ….Defendants

**Written statement of defendant No.10 President Akhil Bharat Hindu Mahasabha.**

1. The contents of para 1 of the plaint are not correct and as such are denied.
2. The contents of para 2 of the plaint are not correct and as such are denied.
3. The contents of para 3 of the plaint are not correct and as such are denied.
4. The contents of para 4 of the plaint are not correct and as such are denied.
5. The contents of para 5 of the plaint are not correct and as such are denied.

6A. The contents of para 6A of the plaint are not correct and as such are denied.

6B. That the contents of para 6B of the plaint are matter of record in the knowledge of the plaintiff as such not admitted.

6C. The contents of para 6C of the plaint are not correct and as such are denied.

6D. The contents of para 6D of the plaint are incorrect and as such are not admitted.

6E. The contents of para 6E of the plaint are incorrect and as such not admitted.

6F. The contents of para 6F of the plaint are not correct and as such are



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denied.

1. The contents of para 7 of the plaint are correct and admitted except that the case is sensational. It is made sensational by the plaintiffs and their community for no cause of action.
2. The contents of para 8 of the plaint are false and strictly denied.
3. The contents of para 9 of the plaint are wrong and as such are denied. The passing of the U.P.Wakf Act (XIII) of 1935 was itself an atrocity committed by the British Rules and after regaining independence by a part of India on unauthorized and unconstitutional division of India, on two nation theory, the part of India, now known as Bharat is Hindu Nation in which no such Act is ever acceptable unless adapted by a lawfully constituted Government of the Union of India.
4. The contents of para 10 of the plaint are wrong and misconceived and as such are denied.
5. The contents of para 11 of the plaint are false and strictly denied.

11(a) The contents of para 11(a) of the plaint are false and strictly denied.

12. The contents of para 12 of the plaint are wrong and denied.

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13. The contents of para 13 of the plaint are admitted so far as they concern record, the rest thereof is denied.

14. That the contents of para 14 of the plaint are wrong and denied. On regaining independence the original Hindu Law have revived, the constitution itself having been imposed by misrepresentation is voidable ab initio and the country is to be ruled totally according to Hindu Law and cannons and Hindu Jurisprudence under which the question of alleged legal and constitutional right of the plaintiffs does not arise.
15. That the contents of para 15 of the plaint are not correct and as such are not admitted except the filing of the suit by defendant No.1.
16. That the contents of para 16 of the plaint are matter of record to be proved by the plaintiffs and need no reply.
17. That the contents of para 17 of the plaint are matter of record to the knowledge of the plaintiff and as such not admitted.
18. That the contents of para 18 of the plaint are not correct and as such are not admitted except the matter of record of concerned court.



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19. That the contents of para 19 of the plaint contain question of law which need no reply.
20. That the contents of para 20 of the plaint are quite false and as such are strictly denied.
21. That the contents of para 21 of the plaint concern record within the custody of the plaintiff, and not in knowledge of this defendant, nor any notice was given to this defendant as such the suit is liable to fall down on this ground alone.
22. That the contents of para 22 of the plaint are not correct, the suit is not properly valued. The property values more than millions of rupees and proper court fee is not paid.
23. That the contents of para 23 of the plaint are wrong and as such denied. The plaintiffs have got no cause of action any locus standi to file this suit.
24. That the contents of para 24 of the plaint are wrong and misconceived. The plaintiffs are entitled to no relief and the suit is liable to be dismissed with heavy and special costs.

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**ADDITIONAL PLEAS**

25. That the plaintiffs have never been in possession of the property in dispute, nor they have any right to take possession thereof or make any constructions thereon, under the law of the country as aforesaid.
26. That the land and property in dispute has been throughout in uninterrupted possession of the Hindu community as a whole and in the ownership of Lord Sri Ram, and the plaintiffs never had or have any concern with the land and property in dispute.
27. That the plaintiffs have no locus standi to file this suit.
28. That the suit is liable to be dismissed for non-joinder of necessary parties.
29. That the suit is prima facie time barred and is liable to be dismissed on this ground as well.
30. That the suit is quite undervalued and no proper court fee has been paid for the reliefs claimed.
31. That the national community of the Hindus is being harassed by the plaintiffs for no fault of theirs i.e the Hindus by way of this suit.



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32. That the matter involving a national question of the nation regaining independence on division of the count two nation theory i.e. the Hindu Nation and the Muslim Nation the question of removal of atrocities or grant of any national claims of the plaintiffs can be settled by Union of India represented by a lawfully constituted Government only by enacting a law regarding thereto. and as such is beyond the scope of jurisdiction of the court.

Amended and added on
separate sheet vide Court's
order dated 28.10.1991
Sd./- 11.11.1991

33. That the President of India promulgated Ordinance No.9 of 1990, known as Ram Janma Bhoomi Babri Masjid (Acquisition of Area) Ordinance, 1990, hereinafter referred to as the First Ordinance.

34. That the President of India promulgated Ordinance No.10 of 1990, known as Ram Janma Bhoomi Babri Masjid (Acquisition of Area) withdrawal Ordinance 1990, hereinafter referred to as the Second Ordinance.

35. That it may be mentioned here that the first Ordinance was issued by Sri V.P.Singh's Government as three point formula was chalked out to resolve the controversy, under which the land was to be acquired by the Central Government and status quo was to be maintained as existing on that date and thereafter the matter was to be referred to the Supreme Court under Article 143 of the Constitution to seek opinion on the relevant points.

36. That the said formula was appreciated by the citizens and political as well as religious leaders of both the community. In T.V. and A.I.R., interviews with political and religious leaders were broadcast and the nation was told by the Government that the matter has been resolved.

37. That immediately after the issuance of the First Ordinance, the Central Government appointed Commissioner of Faizabad Division as authorised person to take over the charge of the properties concerned as required by Section 7 of the First Ordinance and consequently charge of the entire property was taken over by the Commissioner, Faizabad Division on 20.10.1990.

38. That in view of the above facts, the First Ordinance was implemented in facts and spirit both and hence the land covered by the First Ordinance



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vested in the Central Government free from all encumbrances and charges, and the receiver of the property was freed from all liabilities and the interim orders passed in the case came to an end.

39. That it is submitted that the First Ordinance was implemented and carried out and no part of the same remained to be complied with.

40. That as a consequence of issuance of First Ordinance, the following things happened.

(k) That the First Ordinance was implemented fully.

(ii) That the land in question vested in the Government and the same was freed and discharged from any trust obligation, mortgage, charge, lien and all other encumbrances affecting them.

(iii) That any order of attachment, injunction, decree or any order of court restricting the use of such property in any manner and also the order appointing the receiver in respect of the whole or in par of such property were withdrawn.

(iv) That with the commencement of the First Ordinance the pending suits, appeal or any other proceedings of whatever nature in relation to the property in question pending before any Court stood abated.

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(v) That the Central Government took the management of the property in question also and also appointed authorised person who took charge of the property in question under Section 7 of the First Ordinance.

(vi) That the Commissioner of Faizabad Division was appointed as authorised person to take possession of all the properties in question under Section 7 of the First Ordinance as also the entire management from the receiver and in consequence of that, the possession as well as the management of the property in question was taken over by and on behalf of authorised person.

41. That to the utter surprise of the citizens, Sri V.P.Singh, the then Prime Minister decided to withdraw the First Ordinance under pressure of certain fundamentalists and consequently the Second Ordinance was issued withdrawing the First Ordinance. It is submitted that Sri V.P.Singh decided to withdraw the First Ordinance so that the issue may be kept alive and may be utilized as a weapon in the election.

42. That by the Second Ordinance, it has been provided that:-



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(a) Right, title and interest in relation to the area acquired shall be deemed never to have been transferred and vested in the Central Government;

(b) Suit, appeal or other proceeding of whatever nature relating to property in question pending before any court has to be deemed as restored to the position existing immediately before the commencement of the First Ordinance;

(c) The appointment of any receiver in respect of the property in question shall be deemed never to have been withdrawn;

(d) Any other action taken or thing done under the First Ordinance shall be deemed never to have been taken or done;

43. That it is respectfully submitted that it is not within the power of the President to restore the property to its original position, which has vested in the Government free from all charges encumbrances etc. by virtue of the First Ordinance. Once the property vests in the Government, it cannot be retransfered to original owner or owners specifically when the owners have not been named in the ordinance.

44. That the President can issue any Ordinance which is within law making powner of the parliament, but he cannot pass judicial orders restoring the suits and the proceedings which have abated as a consequence of acquisition of the property in dispute, nor can be revive the interim orders passed by the Court.

45. That even though doctrine of separation of powers has not been strictly applied in the Constitution of India but in pith and substance, there is separation of powers. There are three organs of the State viz. the Executive, the Legislature and the Judiciary. The Executive functions are performed by the President in consultation with the Council of Ministers being the Executive Head of the Union. The president also exercises Legislative powers by issuing Ordinances under Article 123 of the Constitution and within the meaning of Article 79 of the constitution, the President is an integral part of the Parliament. The president exercises judicial functions in a very narrow compass i.e. only under Article 72 of the Constitution by deciding the matters of grant of pardon, suspension, remittance and computation of sentences. Apart from the said judicial power the President has no other judicial power under the Constitution.



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46. That when the President issues Ordinance under Article 123 of the Constitution, he exercises Legislative powers. The Legislative power of the president is coextensive with the power of the parliament to enact laws. Therefore, the president cannot make any law by Ordinance which is not within the power of the parliament. Article 123(3) of the Constitution clearly provides that if and so far as an Ordinance under this Article makes any provision which the Parliament would not under this Constitution be competent to enact, it shall be void.

47. That it is respectfully submitted that the parliament can enact law only on the subjects numerated in the union List or the Concurrent List or otherwise is competent to enact any law which is specifically provided for the Constitution. It is submitted that once a property is acquired and as a consequence of vesting in the government, the suits and the proceedings in respect of that property abate, interim orders come to an end and receiver's appointment is nullified, the parliament cannot change its view later on and declare that the things happened as mentioned above, may be deemed not to have happened. The parliament cannot revive a matter once abated. The consequential orders have to be passed by the Court in view of the new facts and circumstances and it is not within the Legislative competence of the Parliament to pronounce any judgment, grant any interim order or revive an abated suit.

48. That revival or abatement of suits, passing of interim orders and appointment of receiver, all are done by the Court and as such they are judicial functions and not legislative functions. It is not open to the parliament to enter into all these controversies. The Parliament is a law making Institution and as mentioned above, it cannot pronounce any judgment on any issue even though the same may be due to revival of an enactment.

49. That since the president has exercised judicial powers of the State which are not vested in him or in the Parliament, the revival of the appointment orders of receiver becomes illegal. Once a receiver is discharged from his liability, he cannot again be appointed as receiver by the Parliament. He can again be appointed receiver only in accordance with Order 40 of the C.P.C. Thus once a receiver is out of office, he cannot perform such



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functions unless he is appointed by any competent court. It is submitted that under Order 40 Rule 3 of the C.P.C., every receiver appointed by the Court has to furnish such security as the court thinks fit. It is certain that as soon as the appointment of receiver is revoked, the security furnished by him comes to an end. Every term and condition imposed by the Court at the time of appointment on receiver comes to an end as soon as he is removed from office. The duty and powers of the receiver cannot be revived by a legislation. it is only for the Court to pass appropriate orders. Thus the revival of the appointment of the receiver by the Second Ordinance is void ab initio.

50. That there is no provision in the Second Ordinance for the authorised person to hand over charge of the properties to the original receiver. In the instant case, the authorised person took over charge of the properties in question from the receiver and as such he can restore the things or property to the receiver only when there was any provision in the Second Ordinance. Therefore, the authorised person is still legally custodian of the properties taken by him from the receiver and as such the receiver originally appointed cannot start function automatically in pursuance of the Second Ordinance.

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51. That it is clear that at the time of issuance of the Second Ordinance, the suit and the proceedings had already abated. Interim orders passed by the Court had come to an end and the appointment of receiver was nullified from the date the First Ordinance came into force. Therefore, the things which were not existing or were not in operation or in force, could not be revived by the Second Ordinance.

52. That it is respectfully submitted that after enacting any law or issuing any Ordinance, it cannot be said that the same shall be deemed to never have been issued or passed. If this practice is adopted, there will be confusion and injustice with the public. Suppose by one Ordinance, for certain offences death sentence is provided and in trial summary procedure is applied and in pursuance of that Ordinance, a person is tried and sentenced to death and he is executed. Whether it will be open for the president to say that the said Ordinance be deemed to have never taken effect. The simple answer is no. If this is allowed to be done, the very



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purpose of doctrine of rule of law would have no meaning and by issuing any Ordinance, the president may exercise the powers which are not vested in him and may undo many things which was not the intention of the Constitution-makers.

53. That this case is glaring example of the misuse of Ordinance making power by the President. It is clear that because of mala fide and extraneous considerations, the Government of Sri V.P. Singh conceded to the demand of certain disgruntled persons and advised the President to withdraw the First Ordinance.

54. That it is strange that in the First Ordinance it is mentioned that the circumstances exist which render it necessary to take immediate action, and the same very words are repeated in the Second Ordinance too. The submission is whether the circumstances which were existing for issuing the First Ordinance, went just reverse within a couple of days which necessitated issuance of the Second Ordinance withdrawing the First Ordinance.

55. That it has been held that separation of powers, rule of law and equality are the basic features of the Constitution and the Parliament cannot exercise judicial functions and cannot declare judgment as mentioned above or pass interim orders. Passing of interim orders and their revival, the abatement of suits and their revival, the appointment of receiver, all are judicial functions which are not to be performed by the Parliament; otherwise there would be no use of classification of powers of different organs of the State and there will be overlapping of powers and as such the Second Ordinance is void.

56. That the impugned Second Ordinance hits the basic structure of the Constitution and the ratio decindi of the cases of Keshwanand Bharti, Indira Nehru Gandhi and Minerva Mill is applicable in this case.

57. That it may be mentioned here that the impugned Second Ordinance was promulgated on 23.10.1990 and the same was to be laid before the Parliament in view of the provisions of Article 123 of the Constitution.

58. That both the Houses of the Parliament assembled on 27.12.1990 and six weeks, which means 42 days, have expired on 6.2.1991.

59. That during the said session of the Parliament which commenced on



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27.12.1990, the First Ordinance was not laid before any House of the Parliament. The matter was not discussed in the Parliament.

60. That till the dissolution of Lok Sabha also, the First Ordinance was not laid before any House and the matter was not discussed by any House of the Parliament.

61. That the Second Ordinance has not become an Act so far and as such under Article 123 of the Constitution, the second Ordinance ceased to operate from 7.2.1991.

62. That the Second Ordinance had been promulgated under Article 123 of the Constitution and it also makes certain provisions while withdrawing the First Ordinance. Therefore, Article 123 of the Constitution prescribes that every such Ordinance "shall cease to operate at the expiration of six weeks from the reassembly of the Parliament or before the expiration of said period, resolutions disapproving the same are passed." It is submitted that the words "every such Ordinance" are very significant and they require that every Ordinance promulgated under Article 123 of the constitution will be life-less after six weeks of the date of reassembly of the parliament. There is no exception to this provision and the same is mandatory and to be construed strictly. In view of these facts, the Second Ordinance has ceased to operate with effect from 7.2.1991.

63. That it is note-worthy that the First Ordinance has not been repealed by the Second Ordinance but the same has been withdrawn. There is difference between repeal and withdrawal.

64. That it is respectfully submitted that the First Ordinance was withdrawn by the Second Ordinance and it was the second Ordinance which was to be laid before the parliament within six weeks, but it was not done as a result of which the Second Ordinance ceased to operate with effect from 7.2.1991.

65. That it is submitted that due to not following the procedure established by law and the law declared under Article 123 of the Constitution, the government failed to lay the second Ordinance before the Parliament within the time prescribed, the result of which is that the provisions of Second Ordinance cannot be deemed to be in force with effect from 7.2.1991.



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66. That by the Second Ordinance, the First Ordinance was withdrawn subject to the provisions made under Section 2. Section 2, sub clauses (a), (b), (c) and (d) create legal fiction and certain things are to be deemed under the said provisions. Since the Second Ordinance has ceased to operate, the provisions of Section 2 are no longer in force and deeming clause comes to an end.

67. That it is respectfully submitted that a legal fiction was created by the Second Ordinance by using the word "deemed". The simple meaning of the word "deemed" is that 'by operation of law it is to be presumed though not actually happened' and in view of this fact the deeming comes to an end with the cessation of the Second Ordinance.

68. That the Second Ordinance is a withdrawal Ordinance and not repealing Ordinance. The First Ordinance was withdrawn subject to the provisions of Section 2 of the Second Ordinance. A legal fiction was also created viz. 'deemed'. since the Second Ordinance has ceased to operate with effect from 7.2.1991, the deeming clause also comes to an end and new the things done by the First Ordinance have become final.

69. That the effect of the cessation of the Second Ordinance is that the Second Ordinance has no legal existence now and the things happened under the First Ordinance have become final and operative and the withdrawal of the First Ordinance has come to an end. Hence the First Ordinance stood revived.

70. That in view of the facts mentioned above, it is respectfully submitted that the suit filed by the Sunni Central Board of Waqfs and others cannot be tried as it has already bated by operation of law.

Amended vide Court's order
dated 23.11.92

"71. That the suit filed by the plaintiffs is not maintainable as the provisions of Section 92 of the C.P.C. and Section 14 of the Religious Endowment Act have not been complied with.

72. That the instant suit filed by the plaintiffs is not maintainable as no person of the Waqf Board (plaintiff No.1) has verified the suit. The suit has been verified by plaintiff No.4 without any sanction, authority or power from the Waqf Board, plaintiff No.1.



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73. That under Section 64 of the Waqf Act, only Waqf Board can file a suit. Since the instant suit has not been filed by the Waqf Board as the same has not been verified by any authorised person of the Waqf Board, the same is not maintainable and liable to be dismissed.

74. That the Waqf Board cannot file suit with private persons. In the suit filed by the Waqf Board, individual plaintiffs cannot be impleaded. The instant suit filed by the plaintiffs, therefore, cannot be said to be a suit filed by the Waqf Board and so in view of Section 64 of the Waqf Act, the suit is not maintainable.

75. That the Waqf Board is an instrumentality of the State within the meaning of Article 12 of the Constitution. It being the State agency, cannot file a suit against the State itself under whose control it functions.

76. That nobody or authority which is a State within the meaning of Article 12 of the Constitution can file any suit in representative capacity sponsoring the cause of one particular community. Every such 'State' has to function impartially and it should have no concern with the interest of a particular community.

77. That no State authority can indulge in any manner in communal activities and cannot file suit against any community. Therefore, plaintiff No.1 had no authority or power to file the instant suit in representative capacity on behalf of Muslim community and against Hindu community.

78. That the Waqf Board is not a person within the meaning of Order I Rule 8 of the C.P.C. and therefore, it cannot file a suit invoking the said provision. As such the instant suit filed in representative capacity and the permission granted by the court to sue as such is inoperative and void.

79. That the suit as framed is a suit for declaration only and the relief for delivery of possession is in the words that "In case in the opinion of the court…" which means that the plaintiffs are not seeking relief of possession and leave it to the court to grant possession suo motu. The reason is obvious that the suit was barred by limitation and so specific prayer has not been made."



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80. That vide gazette notifications dated 7th and 10th October, 1991, the U.P. Government has acquired 2.77 acres of land for the purposes of providing amenities to the pilgrims and also to develop the same for tourism purposes around the area where Lord Rama, the principal deity sits. The Waqf Board and one Mohammad Hashim have challenged the said notifications alleging that the said acquired land is part of the property in dispute and as such the suit cannot proceed unless appropriate amendment is made by the plaintiffs as the suit will stand abated so far as it relates to the acquired land."

Sd./-

H.S.Jain
Advocate
for Defendant No.10
25.11.92

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Original Suit No.4 of 1989
Reg. Suit No.12 of 1961

Sunni Central Board of Wakfs & Ors. …Plaintiffs

Versus

Gopal Singh Visharad & Ors. ….Defendants

**ADDITIONAL WRITTEN STATEMENT UNDER ORDER VIII RULE 9 C.P.C. BY DEFENDANT NO.10 HINDU MAHASABHA.**

The defendant, above named, respectfully begs to submits as

1. That the contents of para 21A of the amended plaint are not admitted. No Masjid or Babri Masjid ever existed at the land in question, and as such no Masjid was demolished on 6.12.1992. It is further false to allege that idols were placed only in the night of 22nd/23rd December, 1949, but the fact is that idols were in existence at the place in question from the time immemorial. It may be mentioned here that Babar was an invader and he had no legal authority to construct any Masjid at the sacred place of Hindus i.e. the birth place of Lord Shri Ram. Mughal invader Babar through his commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question, but he could not succeed in his mission. After the riot in 1934, the three domes of the temple were damaged. It is submitted that before the said date, the outlook of the building was of pure Hindu temple, but while carrying out repair works, the Britishers tried to give it the shape of mosque and three domes were constructed over kasauti pillars which were of temple. The Hindus have all along been in possession over the entire area of Shri Ram Janma Bhoomi. The land in question has all along been in possession of Hindus and devotees of Lord Shri Ram. The worship of Lord Shri Ram Lala Virajman is going on since the time immemorial. It is further submitted that with a view to rennovate the old temple and to construct a new one, Kar Sewa was performed and the said action cannot be said to be in violation of any order passed by any Court. There was no order in



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force against Hindus in respect of the temple property/structure. it is submitted that the people of the State had voted for Bhartiya Janata Party in the election as it was committed to fulfil the aspirations of the people to construct a glorious Shri Ram Temple at the place in question. It is true that the Bhartiya Janata Party Government did not resort to firing and barbarian action which was adopted earlier by the Government headed by Sri Mulayam Singh Yadav on 30.10.1990 and 2.11.1990. It is further submitted that the Government cannot suppress the Will of the people and it has to honour and fulfil aspirations of the people in the democratic set up. The Bhartiya Janata Party has neither abetted for demolition of the structure, nor did anything in violation of law. The devotees of Lord Shri Ram who were present in lacs decided to demolish the old structure. In fact no offence was committed and no law was violated in demolishing the structure of Hindu temple with an intent to construct a big temple. At this place, it may be mentioned here that the Hindus have never been fanatic; they allowed every religion to flourish in Bharatvarsh. There is no evidence in history to show that the Hindus ever demolished any mosque or place of worship of any other religion. The history speaks otherwise. Every Mughal invader and ruler from Mohammad-bin-Qasim to Aurangzeb and even thereafter demolished, destroyed and looted the temples of Hindus. The plaintiffs never had/have any concern with the land in question and also they are not entitled for restoration of the building or its possession.

2. That the contents of para 21-B of the amended plaint are not admitted. The Muslim law cannot be made applicable in Bharatvarsh. Muslim law is also subject to the provisions of Constitution; it is the Constitution which is supreme and not any personal law, muchless Muslim law. Muslims cannot use any open piece of land in question for offering prayers and they also cannot encroach upon the land of religious places of Hindus. Under Shastrik law applicable to Hindus, the property once vested in the deity continues to remain of the deity. It is specifically submitted that the entire property in question belongs to Shri Ram Lala Virajman who is in the existence from the time



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immemorial and is being worshipped by His devotees at the place in question without any interruption till date. According to the own averments of the plaintiffs, the place in dispute has got no significance for them as they can offer prayers at any place, even in open.

It would be appropriate and in consonance with the principles of 'secularism' that the Muslims do not offer prayers within the vicinity of the birth – place of Lord Shri Ram Lala Virajman, which is sacred for Hindus and offer their prayers beyond the area of Panchkoshi parikrama. That will create brotherhood and peace everywhere. The para under reply itself shows that the alleged mosque was unnecessary and meaningless for Muslims too. It is further submitted that over the land in question, no mosque ever existed and the Muslims are not entitled to encroach upon the land in question or offer prayers at that place.

3. That the contents of para 21-C of the amended plaint are not admitted. It is further submitted that no mosque existed over the land in question and no property or land belonging to mosque has been acquired. The entire area covered under the Ordinance No.8 of 1993 and Act No.33 of 1993 belongs to Hindus and the devotees of Shri Ram Lala Virajman. The judgment of the Hon'ble Supreme Court is being misinterpreted and nowhere Hon'ble Supreme Court has held that the area covered by the Act belongs to any mosque or adjacent area will be provided for enjoyment of the crucial area of mosque portion as per requirement.

4. That the relief clause 24-BB of the amended plaint cannot be granted to the plaintiffs. It is further submitted that the said relief has not been allowed to be added by this Hon'ble Court vide its order dated 25.5.1995. It is further submitted that the property in dispute has not been described in Schedule-A to the plaint. The description in Schedule A of the plaint cannot be termed as suit property as no dimensions, width, the statement of survey numbers etc. have been given for identifying the property as required by Order VII Rule 3 C.P.C. and hence the property described in Schedule-A of the plaint cannot be termed as suit property being vague and unidentifiable on



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the spot. The plaintiffs are not entitled for the possession of the structure standing at the site as the land in question and the adjacent area belongs to Hindus and devotees of Lord Shri Ram. Please also see additional pleas.

**ADDITIONAL PLEAS**

5. That it is worth to mention here that Bharatvarsh was divided on the basis of the religion and Pakistan was created for Muslims and the rest part of Bharatvarsh remained for Hindus. Secularism was adopted in the Constitution as it is one of the pillars of Vedic religion. No religion of the World preaches religious tolerance and secularism except the Vedic scriptures. No other community or religious group can claim any privilege or additional rights in derogation of the rights of Hindus. The rights of other religious group or community are subject to the rights of Hindus.

6. That it is an undisputed fact that Lord Ram, Lord Krishna and Lord Shiv are cultural heritage of India which has been recognized by Constituent Assembly. In the original constitution, on which the members signed, the pictures of our recognized cultural heritage may be found which include the scene from Ramayana (conquest over Lank and recovery of Sita by Lord Ram). Thus the citizens of this country are entitled to pay homage to their Lord at His birth-place and it being sacred place for Hindus cannot belong to Muslims or any other community or religious group. Therefore, the claim of Muslims over the land in question is unconstitutional and is also against Islamic laws and in the circumstances, the plaintiffs cannot claim themselves to be Muslims entitled to file the suit.

7. That it may be mentioned here that even according to the plaintiffs, the devotees of Lord Shri Ram and Hindus in general came into possession of the disputed structure on 22nd/23rd December, 1949 i.e. before the commencement of the Constitution on 26th January, 1950. If it is so, it cannot be said that the Hindus have committed any wrong. They have rectified the curse of Mughal Slavery before the commencement of the Constitution. The said action of invaders had



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no sanction of law and after independence, it is the right of citizens to nullify every misdeed and wrong action of the invaders.

8. That the entire area including the place in question belongs to deity Lord Shri Ram Lala Virajman and his devotees and worshippers are entitled to offer prayers, Pooja, Arti, Bhog etc. and to pay homage to their Great Lord. They have also right to construct a glorious temple.

9. That it is remarkable to mention here that under the debris of demolished temple structure, a lot of signs and materials concerning temple have been found. The answering defendant believes that under the orders of this Hon'ble Court, they would be in safe custody. It may be mentioned here that a very big Chabutara beneath the present structure exists which also reveals that there existed a glorious and big temple of Lord Shri Ram. There is no evidence, signs or material at all to show that there was any mosque.

10. That the statutory receiver has not been arrayed as party to the suit and as such the plaintiffs cannot claim any relief against the receiver.

11. That Sunni Central Board of Waqfs has no legal authority to file the suit and as such the suit is liable to be dismissed.

12. That the (amended) relief as prayed for by the amendment has also become time-barred.

13. That the amended relief cannot be granted to the plaintiffs as the same is not permissible under the law.

14. That the case is to be decided on the principles of justice, equity and good conscience. Prayer for injunction has to be refused if the case of the plaintiff does not come within the four corners of the said principles. Since the plaintiffs have failed to prove that their case comes within the ambit of justice, equity and good conscience, the suit is liable to be dismissed, as no relief can be granted.

Lucknow: Dated:
Sept. 12,1995

Sd./-
Defendant No.10



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Original Suit No.4 of 1989

Written Statement Under Order VIII Rule 1 C.P.C.

In Re:-

The Sunni Central Board of Waqf & Ors. …Plaintiffs

Versus

Sri Gopal Singh Vishrad & Ors. ….Defendants

**Written Statement on behalf of Baba Abhiram Dass and Pundarik Mishra, Advocate Bajrandas and Satyanarayan Das defendant no. is as follows:-**

Para 1. The contents of Para 1 of the plaint is wrong and is denied.

Para 2. That the contents of para 2 of the plaint are absolutely wrong and are denied. There was never any battle between Babar and the Ruler of Ayodhya on any graveyard or Mosque alleged to be built (as alleged) by the said Babar.

Para 3. It is wrong and denied.

Para 4. It is wrong and not admitted.

para 5. It is wrong and not admitted.

Para 6. That the answering defendant has no knowledge of the facts mentioned in para 6 of the plaint hence the contents of para 6 are denied. The additional Paras added by the amendment as A to P are wrong and denied. See further pleas.

Para 7. It is denied.

Para 8. The contents of Para 8 are absolutely wrong and not admitted.

Para 9. The answering defendant has no knowledge of the allegations made in para 9 of the plaint hence they are denied. See Additional pleas.

Para 10. The contents of para 10 is denied. See further pleas.

Para 11. Para 11 is wrong and all the allegations made therein are denied.



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Para 12. Denied.

Para 13. The answering defendant has no knowledge about the allegations made in Para 13 of the plaint. Only this much is admitted that Babu Priya Dutt Ram was appointed Receiver of the Janam Astahn Temple at Ajodhya by this Hon'ble Court.

Para 14. Denied.

Para 15. Para 15 is so far admitted that the defendant no.1 did file a true case against a few Muslims and certain Government Officials for injunction and declaration. The case was filed in this Hon'ble Court on true and correct allegations.

Para 16. That the answering defendant admits only this much that Parmahans Ram Chander Dass did file another suit in this Hon'ble Court which is true and correct.

Para 17. That the answering defendant has no knowledge of the allegations contained in para 17 of the plaint hence denied.

Para 18. That only this part of the Para 18 of the plaint is admitted that Hindus do Puja etc. in the Janam Bhum temple and the Muslims are not allowed to go near that temple, which they wrongly and maliciously described as Mosque. The rest of the allegations of this para are denied.

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Para 19. Denied. The plaintiffs have no right to make the defendants to contest the suit in a representative capacity as a self appointed representative of the Hindu Community which extends from Madras to Kashmir and from Dwarika to Calcutta. None of the defendants represent all the Hindus in India. The Janam Bhum temple is a public charitable Institution and the answering defendant contest this suit in his individual capacity, there are Hindu living in various parts of the world outside India.

Para 20. Denied.

para 21. That the answering defendant has no knowledge of the facts mentioned in para 21 of the plaint, hence it is denied.

Para 22. Denied.

Para 23. That the contents of para 23 are wrong. The suit is hopelessly time barred. The Muslims have not been in possession of the



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property indispute since 1934 and earlier.

Para 24. That the plaintiffs are not entitled to any relief and suit is liable to be rejected with costs.

**FURTHER PLEAS**

Para 25. That the members of the Hindu Community have from time immemorial been worshipping the site of Janam Bhum upto this time by virtue of their right and the Muslims were never in possession of the temple called as "Ram Janam Bhawan" If ever they were in interrupted possession of the falsely called "Babri Mosqu" their possession ceased there on in 1934 and since then Hindus are holding that temple in their possession and their possession has ripened into statutory adverse possession thereon since 1934. Even prior to 1934 continuous daily Hundu Puja is being done in that temple and the Muslims have never offered their prayers since 1934 in the temple falsely described as 'Babri Mosque'.

Para 26. That the said temple in dispute is a public charitable institution. it does not belong to any sect, group, math or individual or Mahanth or any Akhara and it is a public place of worship open to all the Hindus. No individual Hindu or Mahanth can be said to represent the entire Hindu Community as far as this ancient temple is concerned.

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Para 27. That the suit is time barred as no action was taken in time from the orders of the City Magistrate under Section 145 Cr.P.C.

Para 28. that the suit is time barred and the plaintiffs were never in possession over the temple in dispute since 1934 and the Hindus were holding it adversely to them to their knowledge.

Para 29. That the suit deserves to be rejected because the Hindu Puja is going on in the said temple from the past at least 34 years i.e. 1934 and admittedly from January 1950 when the City Magistrate directed the defendant no.9 to carry on Puja as usual in the said temple.

Para 30. That the suit under Order 1 Rule 8 C.P.C. is bad as no one representing the Hindu Community has been made a defendant



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in the suit hence the suit deserves to be rejected.

Para 31. That the suit be rejected with special costs as the plaintiffs have impleaded the defendants 1 to 4 and 9 knowingly fully well that they do not represent the Hindu Community but their individual interest only.

Para 32. That the plaintiff or plaintiff no.1 who claim rights under Act XIII of 1936 have no such right for the following among other reasons:-

(a) That the U.P. Muslim Waqf Act No.XIII of 1936 is ultra vires, the Govt. of India Act 1935, which had come into force before the passing of the above Act. It does not come under any of the items of list II of the Provincial list or list III of the concurrent legislative list, item no.9 of the concurrent list or item no.34 of the Provincial list cannot also come to save the above legislature even on the principle of Pith and substance. Item No.28 of list III of the Constitution has therefore been remodled.

(b) That any sanction under sub section (3) of Section 80 A of the former Government of India Act will not validate the legislation after the repeall of the former Government of India Act by means section 321 of the Government of India Act 1935.

(c) That in case the Act is considered to be ultra vires the suit is not being one relating to administration of Waqf, taking of accounts, appointment and removal of Mutwali, putting the Mutwalli in possession or settlement or modifications of any scheme of management for which powers and duties have been specified under section 18 (2) clause (e) of Act



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XII of 1936, the present suit on behalf of the plaintiff No.1 can not be filed as required or permitted by the Act to be done by the Board (Sec.6(3).

(d) That the Act containing privileges based on classification of Waqfs on the ground of religion, particularly section 5 (2) of the Act is hit by article 14 and 19 of the constitution and is void under Article 13 (1) of the Constitution.

(e) That by Act XII of 1960, section 85 (2) of the above Act has been repleaded. The saving clause contained in the provision only saves the operation of the repealed Act in regard to any suit or proceedings pending in any court or to an appeal or application for revision against any orders that may be passed in such suit or proceedings subject thereto any thing done or any action taken in exercise of powers conferred by or under those Act shall unless expressly required by any Provision of Act XIII of 1936, be deemed to have been done or taken in exercise of the powers conferred by the new Act as if the new act were in force on the day on which such thing was done or action taken. Section 9(2) of the Act XV of 1960 could not save the finality of decision of Commission of Waqfs from being affected by provisions of Chapter I of Act XVI of 1960 but when there is no saving clause with regard to the decision u/s 5(2) in the provision to section 83 (2) the finality attached by section 5(3) will vanish after the repeal of the enactment.



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(f) That the building and land in suit lying in the Province of Oudh become subject of Lord Canning Proclamations and all previous rights become non-existent. No fresh grant in respect of the property in suit having been made after the proclamation, the plaintiff or the Muslim Community have no right to sue.

(g) That the Commissioner of Waqf only has to make an enquiry about number of Shia and Sunni Waqfs in the District, the nature of each Waqf, the Government revenue, the expenses and whether it is one accepted under Section 2. The Commissioner of Waqf has only to see whether any transaction is Waqf or not, and that, to which sect the Waqf belongs and further whether such Waqf is or is not exempted by Section 2 of the Act. All these things he has to do in accordance with the definition of Waqf in Sec 3(1) of the Act XIII of 1936, an Act which exclusively meant for certain clauses of Muslim Waqfs. The finality conclusiveness is intended to give effect scheme of the administration under the Muslim Waqf Act and does not and cannot confer jurisdiction to decide the question of title as against non Muslim. The legislature under section 5(3) does not say that the court shall take judicial notice of the reports of the Commissioner of Waqfs and shall regard them as conclusive evidence that the waqf mentioned in such reports are Muslim waqfs as Waqfs done in Section 10 of the Taluq

(h) There has been no legal publication of alleged report and hence no question of any finality.



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(i) That the purpose of publication is only to show to which section the Waqf belongs. It does not call upon objections or suit by persons not interested in what is held to be waqf or not vis by non Muslims.

Para 33. That the allegations made in the amended para 6A to 6e are all together wrong. Neither the plaintiff of the suit was suing in a representative capacity on behalf of the entire Hindu Community nor could represent the Hindu Community when he was perusing his personal interest to determine not the interest of Hindu community at large. The defendants of that suit was also not representing the Muslims or the Sunnis and the plaintiff of this suit cannot be legally considered as claiming through that defendant of that suit. The points now in issue were now directing and substantially in issue in the former suit and here is no resjudicata. There is no question of resjudicata as the dispute of the defendant that the Hindu's are worshipping the land in dispute (the site of Janam Bhum) from time immemorial and that they are entitled to continue worshipping and the other matters were not in issue in that suit and the matters of the present suit were foreign to that suit. Hence no question of resjudicata either actually or constructive arises in this suit.

Para 34. That the building in suit does not possess the required mosque.

20.7.68

Sd./
Baba Abhiram Dass
Answering defendant.

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**40A1/1**

Written Statement
(Under Order VIII, Rule 1, of the Code of Civil Procedure)
In

Other Original Suit No.4 of 1989

Sunni Central Board of Waqfs & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

**Written Statement of Dharam Das, Chela Baba Abhiram Das, resident of Hanuman Garhi, Ayodhya, District Faizabad, impleaded as Defendant No.13, by order dated the 3rd May 1989, of the Lucknow Bench of the High Court in Miscellaneous Case No.29 of 1987, for withdrawal of the suit along with connected suits, under section 24 of the Code of Civil Procedure, for original trial by the High Court.**

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1. That the contents of paragraph 1 of the plaint are denied. It is submitted that Babar was not a fanatic but a devout Muslim who did not believe in destroying Hindu temples. It was Mir Baqi, who was a Shia and commanded Babar's hordes, who demolished the ancient Hindu temple of the time of Maharaja Vikramaditya at Sri Rama Janma Bhumi, and tried to raise a mosque- like structure in its place with its materials. Babar was not an Emperor. He was a marauder. What was constructed was not a 'mosque' nor was it constructed for the use of the Muslims in general. It was not known as 'Babri Masjid', but was described as 'Masjid Janmasthan' in British times. Objective evidence of the demolition of the ancient temple and attempted construction of the 'Mosque' at Sri Rama Janma Bhumi existed in the form of the 14 Kasauti Pillars, the Sandal wood beam, and other structural features of the building, which are more fully



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detailed in the additional pleas. Mir Baqi did so on account of the superstitious influence of the so called Faqir named Fazal Abbas Qalandar who had demanded the destruction of the ancient temple at Sri Rama Janma Bhumi and the construction of a mosque at that place for him to offer prayers, although the doing so is opposed to tenets of Islam as disclosed by the Qoran and the Fatwas issued by Muslim theologians.

Amended as per order of court
dated 21.08.95
Sd./- 04.09.95

2. That the contents of paragraph 2 of the plaint are denied. The sketch map annexed to the plaint is wholly wrong, vague and out of all proportion and does not make any sense. There is no grave-yard anywhere at Sri Rama Janma Bhumi, nor was there any such grave-yard as alleged at any time within 12 years of the institution of the suit. There was nothing, neither a mosque nor a graveyard, which vested or might have vested in the 'Almighty' of the Muslims, namely 'ALLAH' . According to the Islamic faith, as explained in the Fatawa-e-Alamgiri : Volume VI, page 214: "It is not permissible to build mosque on unlawfully acquired land. There may be many forms of unlawful acquisition. For instance if some people forcibly take somebody's house (or land) and build a mosque, or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat" . The allegation about the loss of many lives in the battle that is said to have ensued between Babar's hordes led by Mir Baqi and the Ruler of Ayodhya must be related to the demolition of the ancient Hindu temple at Sri Rama Janma Bhumi, Ayodhya, by Mir Baqi; and in that context it is not denied: but it is denied that any of the graves of the Muslims who lost their lives in that battle more than 450 years ago were situated on, or anywhere near Sri Rama Janma Bhumi. It is



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submitted that a Mosque and a graveyard go ill together according to the tenets of Islam, for the offering of prayers except the funeral prayers on the death of a person buried therein is prohibited in a graveyard. The khasra numbers of the alleged 'Mosque' and the alleged 'grave-yard' are all imaginary and fictitious, and are not identifiable at site. Their correctness is denied.

3. That the contents of paragraph 3 of the plaint are denied. There was no 'Mosque' and there could be no question of any grant for its upkeep or maintenance, or any such purpose. There is no evidence of any expenditure from the alleged grant on the upkeep or maintenance of the building alleged to be the 'Babri Masjid'.

4. That the contents of paragraph 4 of the plaint are denied. The alleged grant, if any, in cash or by way of revenue free land described as 'Nankar', must have been for personal services rendered or promised to be rendered by the grantee to the British in enslaving India by suppressing the First War of Independence of 1857, miscalled the Sepoy Mutiny by them.

5. That in paragraph 5 of the plaint the existence of the Chabutra 17'x21' within the premises of the building miscalled a 'mosque', is admitted; but the construction thereon was not "a small wooden structure in the form of a tent." It was the Temple of Bhagwan Sri Rama Lala. Originally there was a Temple erected at that place after the demolition of the ancient temple of Maharaja Vikrameditya's time. It is submitted that no Muslim Ruler could have permitted the raising of a temple at the place where the Chabutra was situated if the premises had been a 'mosque'. On the demolition of even that temple by Aurangzeb, the worship of Bhagwan Sri Rama Lala was carried on at that Chabutra, and there was a small Temple existing thereon, and not merely" a small wooden structure in the form of a tent."



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The deity installed therein had been continuously worshipped without any break or interruption. That place called the Rama Chabutra.

Amended as per order
of Court dated 21.08.95
Sd./- 04.09.95

6. That in paragraph 6 of the plaint, the fact of the filing of the suit by Mahant Raghubar Das against the Secretary of State for India is not denied, but the rest of the contents of that paragraph are denied. That suit was for permission to erect a permanent temple in place of the then existing structure at the Rama Chabutra. Mohammad Asghar was added later as a defendant on his own request. It is denied that the alleged 'mosque' at Janmasthan was a 'mosque' or that Moahammad Asghar was its Mutwalli. The result of that suit is wholly irrelevant in the present suit and does not bidn the answering Defendant or the Hindus in general or the worshippers of Bhagwan Sri Rama Lalla Virajman at Sri Rama Janma Bhumi in particular.

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6-A. That the contents of paragraph 6-A of the plaint are denied.

6-B. That the contents of paragraph 6-B of the plaint are denied.

6-C. That the contents of paragraph 6-C of the plaint are denied.

6-D. That the contents of paragraph 6-D of the palint are denied.

6-E. That the contents of paragraph 6-E of the plaint are denied.

6-F. That the contents of paragraph 6-F of the plaint are denied. It is rather established by the judgments in that suit that Asthan Sri Rama Janma Bhumi, called the Janmasthan, was a sacred place of Hindu worship of Bhagwan Sri Ram, as the incarnation of Lord Vishnu, symbolized by the existence of the objects of worship like the Sita-Rasoi , the Charans, and the idol of Bhagwan Sri Rama Lala Virajman on the Chabutra, within the precincts of the building at Janmasthan, which was alleged to be a Masjid; and that there was no access to it except through that place of Hindu worship by which it was land-locked. Such a building could not be a Masjid according to the tents of Islam.



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7. That the contents of paragraph 7 of the plaint are denied.
8. That the contents of paragraph 8 of the plaint are not admitted in the form in which they are stated. Correct facts are stated in the Additional Pleas.
9. That in paragraph 9 of the plaint the fact of the enforcement of the U.P. Muslim Waqfs Act in the year 1936 is not disputed. The rest of the contents thereof are denied. The alleged inquiry and report said to have been made by the Commissioner of Waqfs was an ex-parte affair. It is a waste paper, and is not binding on anyone, particularly the Hindus. Correct facts are stated in the Additional Pleas.
10. That the contents of paragraph 10 of the plaint are denied. correct fact are stated in the Additional Pleas.
11. That the contents of paragraph 11 of the plaint are denied. The Muslims were never in possession of the alleged 'mosque'. They never could recite prayers therein, and never recited any prayers therein till 23.12.1949, or any date even remotely within 12 years of the institution of the suit. Correct facts are stated in the Additional Pleas.

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11-A. That the contents of paragraph 11(a) of the plaint are denied. It is incorrect that the structure raised at Sri Rama janma Bhumi, during the time of Babar after demolition of the Ancient Hindu Temple which existed there, was built by Babar, or that he was an Emperor, or that it was or could be a 'mosque'. There was and there could be no question of any exclusive or continuous possession by the Muslims over the site of the ancient Hindu Temple or any part or portion of Sri Rama Janma Bhumi, which was by itself an object of worship by the Hindus and as such a deity having the status of a juridical person in the eye of law. The act of demolition of the ancient Hindu Temple and entering upon Sri Rama Janma Bhumi was a wrongful act of trespass, which did not, according to the tents of Islam, commend itself to Allah, for He does not accept the waqf of any property or thing taken by force or by an illegal act. A Waqf cannot according to Muslim Law be made of a thing or property not belonging to the Waqf as owner.

The attempt to raise a mosque-like structure did not succeed; and no



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'mosque', deemed to be waqf according to Muslim Law, ever came into existence. The act of Mir Baqi was a fleeting act to trespass and not an act of entering into adverse possession by a person claiming ownership against the true owner, and no Muslim could by any such act of trespass or its repetition, confer any right, title or interest in the nature of a waqf in favour of ALLAH for the purposes of a 'mosque.' According to Muslim law, ALLAH alone is the owner in possession of all waqf property. A mutwalli is a mere manager, and neither the Mutwalli nor the beneficiaries of a Muslim waqf, can claim or have any rights of ownership or possession as an owner for, or on behalf of ALLAH. Title by way of a Muslim waqf, cannot, therefore, be acquired by adverse possession, for Allah does not accept the waqf of property by a wrongful act of adverse possession. The Deity of BHAGWAN SRI RAMA VIRAJMAN in the ancient Temple at Sri Rama Janma Bhumi, and the ASTHAN SRI RAMA JANMA BHUMI, which was by itself a Deity and worshipped as such since ever and had a juristic personality of its own, continued to own and possess the property rights of ownership and possession of the space of Sri Rama Janma Bhumi at Ayodhya, without any dent on them by any such acts of trespass as the demolition of the Temple or the attempt to raise a mosque—like structure thereat. The act of installation of the Deity of BHAGWAN SRI RAMA under the central dome of the building at Sri Rama Janma Bhumi, in the form of the idol of Bhagwan SRI RAMA LALA on Paush Shukla 3 of the Vikram Samvat 2006, by His worshippers, led by, among others, the answering defendants Guru, Baba Abhiram Das, was not a mischievous act, but a perfectly lawful exercise of their right by the Hindus to worship the Deity. The Muslims did not get any title by adverse possession, and the pre-existing right, title and interest of the Deities continued to exist uninterrupted, by any such act of Mir Baqi as is said to have been committed during Babar's time over 400 years ago. The act of the Hindus on Pausha Shukla 3, of Vikram Samvat 2006, was in furtherance and re-assertion of the pre-existing property rights of the Deity and their own right of worship. And BHAGWAN SRI RAMA did MANIFEST HIMSELF that day at Sri Rama Janma Bhumi. Even the Muslim Havaldar, who kept guard at the police Outpost, Abdul barkat by name, experienced the Manifestation, by His Grace. The day is since them



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celebrated as the Prakatya Dieas, every year, at Ayodhya. At any rate, it is submitted, in the altenative, that the Muslims having lost whatever fleeting possession they might have had by tespass over a part of the area of Sri Rama Janma Bhumi, that was finally and effectively brought to an end, and they have no right, title or interest whatsoever in the land or the mosque-like structure at Sri Rama Janma Bhumi, Ayodhya.

12. That paragraph 12 is not disputed in so far as the recording of a report of the 'incident' of 23.12.1949 by the police is concerned, but the contents of the report are not admitted to be correct. They are denied as motivated and incorrect.

13. That in paragraph 13 of the plaint, the fact of the passing of the preliminary order dated 29.12.1949, under Section 145 of the code of Criminal Procedure, 1898, is admitted, but for a correct appraisal of the terms of the order, the answering defendant relies on the order itself. Sri Priya Dutt Ram was appointed Receiver to manage the worship of the Deity of Bhagwan Sri Rama Lala Virajman under the central dome of the building at Sri Rama Janma Bhumi, with the duties of a Shebait imposed on him. Admittedly, the Muslims were prohibited from entering upon the building premises and the surrounding area at Sri Ram Janma Bhumi. They had no legal or Constitutional right of offering Namaz in the building or doing anything else at the place. It was not a mosque at all. Babu Priya Dutt Ram died some twenty years ago and the Receiver appointed by the Civil Court in this very suit, with the duties of a Shebait imposed on him for arranging and managing the worship of the Deity, in the terms prescribed by the orders culminating in the order dated 23.7.1987, of the Hon'ble High Court in F.A.F.O. No.17 of 1977,Ram Lakhan Saran V. The Sunni central Board of Waqfs and others: had taken over and was in charge of the worship of the Deity.

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Until his discharge by the acquiretion of certain area of Ayodhya ordinance No.8 of 1993, promulgated by the president on January 7, 1993, which was later on replaced and he enacted as Act No.33 of 1993, learning the same



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name by the Parliament.

14. That paragraph 14 of the plaint is denied. The action of the City magistrate was not illegal. But if the plaintiffs regarded it to be illegal or 'fraught with injustice', for having re-inforced their ouster from the premises, which, according to them, had already been completed on 23.12.1949, they ought to have challenged it and sought appropriate relief within the limitation of one year prescribed by Article 14 of the Schedule to the Indian Limitation act, 1908, which was in force at that time. it has to be added that the Constitution of India came into force on January 26, 1950, and therefore the action taken by the City Magistrate by passing the preliminary order which he did on 29.12.1949, or the giving of the charge of the management of the worship of the Deity of BHAGWAN SRI RAMA LALA VIRAJMAN under the central dome of the building at Sri Rama Janma Bhumi, to the Receiver, Babu Priya Dutt Ram, could not be said to have deprived the Muslim citizens of India of any Constitutional rights, for, before 26.1.1950 no one had any such rights in India.

15. That in paragraph 15 of the plaint the filing of the suit No.2 of1950 by Sri Gopal Singh Vishard in his personal capacity is admitted, but the averment that the statement therein that the building in suit was a temple and that there were Deities installed therein, was a' false allegation', is itself false and incorrect, Indeed, the learned Civil Judge, In whose court the suit had been filed on 16.1.1950, issued an interim injunction in the terms prayed for, that very day; and, on the application of the District Government counsel, the interim injunction was clarified by the Court on 19.1.1950, by saying that: "The parties are hereby restrained by means of temporary injunction to refrain from removing the Idol in question from the site in dispute and from interfering with Puja etc., as at present carried on." This temporary injunction was confirmed after hearing the parties, by order dated 3.3.1951, by the learned civil Judge. On appeal by the Muslims to the high court, the temporary injunction was upheld by a Division Bench of the High Court by Judgment dated 26.4.1955. The injunction has remained in operation down to the present day.

16. That the filing of the second suit No.25 of 1950 by Paramhans Ram Chandra Das, now Mahant of Digambar Akhara, Ayodhya, for



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identical reliefs as in suit No.2 of 1950, after serving notice under section 80 of the Code of Civil procedure is admitted, in reply to paragraph 16 of the plaint; but it is not correct to say that all the defendants were the same as in suit No.2 of 1950. Although the first five Muslim Defendants were the same in both the suits, and the Defendants Nos.6 and 7 were also identical, namely, Uttar Pradesh State and Deputy commissioner, Faizabad, respectively; Defendants Nos.8 and 9 of suit No.2 of 1950, namely, the Additional City Magistrate, Faizabad, and Superintendent of Police, Faizabad, were not made parties to suit No.25 of 1950. The two suits were consolidated, and for all practical purposes they became one suit. All the five Muslim Defendants of the two suits are dead.

17. That in paragraph 17 of the plaint the fact of the filing of suit No.26 of 1959 (not 26 of 1960) is admitted but it has to be added that the Muslim Defendants to that suit, namely, Haji Phekku, Mohd. Faiq, and Mohd. Achhan Mian, who were defendants Nos.2,3 and 5 in suits Nos.2 and 25 of 1950, are dead, so that no one represents the Muslim community in that suit; and the Receiver Babu Priya Dutt Ram is also dead.

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18. That in paragraph 18 of the plaint, the fact of the issue of the temporary injunction in suit No.2 of 1950 is admitted. It is also admitted that the Muslims were prohibited from entering any place within 200 yards of the area of Sri Rama Janma Bhumi. The rest of the allegations are denied. It is denied that the building was a ‘mosque’, or that it was declared to be a public waqf, or that it was used by generations of Muslims as a ‘mosque’ for reciting prayers therein since its construction about 460 years ago. It may be pointed out that the suit was filed in 1961 and the building is said to have been erected by Mir Baqi in 1528. It could not, therefore, be said to have been constructed 460 years ago when the suit was filed, the period elapsed having been only 438 years between 1528 and 1961. It is further submitted that the issue of the temporary injunction was upheld even on appeal to the High Court by the Muslim Defendants to the suit. It cannot be said to be ‘fraught with injustice’, and a separate suit did not and does not lie to have that injunction set aside, whether by



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the Muslim public or otherwise, against the Hindu public or otherwise, whether under Order I, Rule 8, of the Code of Civil Procedure or under any other provision of law.

5. That paragraph 19 of the plaint is denied. The plaintiffs cannot and do not represent the entire Muslim community, nor do the defendants originally impleaded or added later, in fact represent, or can represent the entire Hindu community. The permission to sue in a representative capacity was obtained by the plaintiffs on the basis of misrepresentations and suppressions. Such permission is always open to be examined at the final hearing.

6. That paragraph 20 of the plaint is denied. The Receiver was by the express terms of the Order, required not to remove the Deity of BHAGWAN SRI RAMA LALA VIRAJMAN under the central dome of the building, but was, on the other hand required to continue the sewa and puja of the deity, and to receive on his behalf the offerings made by the devotees and the pilgrims. The Receiver's position was that of a curator or manager appointed to look after the affairs of a person who cannot personally do so. The position of the Idols was not and could not be disturbed. But consistently with that position the managerial duty and obligation was entrusted to the Receiver.

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The possession of the Receiver was the possession of the Deity as through a Shebait appointed for him by the court. A suit for possession over a 'mosque' can only be filed by the Mutwalli thereof. Others who are not Mutwallis of a 'mosque' can only sue for a declaration that the place is a 'mosque'. The plaint does not idicate that there is, or ever was a Mutwalli of the alleged 'mosque', which can only mean that the building was not a ''mosque'' and there was no waqf in respect of it. Indeed, the plaintiffs suit was still-bora. It is barred by limitation and all the laws applicable to a suit of its nature; and it can never succeed. The plaint deserves to be rejected under



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order VII, Rule 11, of the Code of Civil Procedure, 1908.

7. That paragraph 21 of the plaint is denied.

8. That paragraph 22 of the plaint is denied.

9. That paragraph 23 of the plaint is denied. The cause of action pleaded therein is fictitious. It could in no case be said to be renewed de-die-in-diem, inasmuch as the imaginary injury complained of does not constitute a continuing injury or a continuing wrong in the eye of law. The suit is hopelessly time-barred by the limitation of 6 years prescribed by article 120 of the Schedule to the Indian Limitation Act, 1908, which squarely applies to the allegations and the cause of action pleaded in the plaint, throuh the answering defendant submits that there was in fact no cause of action for the suit, and the suit is only a malicious exercise in futility which is fit to be dismissed as such.

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10. That the plaintiffs are not entitled to the relief claimed, or any of them. The suit is liable to be dismissed with costs. In fact, it is false, malicious and vexatious and the defendants are entitled to be awarded the maximum amount of special costs by way of compensation against the plaintiffs.

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**ADDITIONAL PLEAS**

11. That the building in suit was no 'mosque' and its surrounding was not a grave-yard. It is a fact of history that there was an Ancient Temple of Maharaja Vikramditya's time at Sri Rama Janma Bhumi, and that was demolished by Mir Baqi. The dominant motive of Iconoclasts was the prejudice born of ignorance that Hindu temples were places of Idolatry, which was condemned by the Qoran. But as stated more fully, herein below, those who are acquisinted with the true knowledge of Qoran also know that a 'mosque' cannot be built in the place of a Hindu temple after forcibly demolishing it, for ALLAH DOES NOT accept Namaz offered at a place taken by force, or in a 'mosque' built on land obtained by Gasba or forcibly woithout title. it seems,



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therefore, that the three domed structure raised at Sri Rama Janma Bhumi after demolishing the Ancient Hindu Temple, was not intended to be used as a 'mosque', and it was never used as 'mosque'. It was an act of putting down Idolatry. The alleged killing of Muslims in the battle that ensued with the Hindus, and who are alleged to have been buried at the place, only shows unmistakably that the demolition of the Temple led to a fierce struggle by the Hindus. The alleged existence of a graveyard all round it, also shows that the Muslims could not have gone to offer Namaz in the building, which was abandoned and never used as a 'mosque' by the Muslims.

12. That it is manifestly established by public records and relevant books of authority that the premises in dispute is the place where, BHAGWAN SRI RAMA manifested Himself in human form as an incarnation of BHAGWAN VISHNU, according to the tradition and faith of the Hindus. Again according to the Hindu faith, GANGA originates from the nail of the tee of BHAGWANVISHNU, and cleanses and purifies whatever is washed by or dipped into its waters. And BHAGWAN VISHNU having Manifested himself in the human form of Maryada Puroshottam Sri Ramchandra Ji Maharaj at Sri Rama Janma Bhumi, those who tough the Earth or the footprints or BHAWAN SRIRAMA symbolised by the CHARANS at that place, are cleansed of their sins and purified. The Earth at Sri Rama Janma Bhumi could not have acted differently towards the Muslims who went there. They were also cleansed and purified of the evil in them by the touch of BHAGWAN SRI RAMA'S footprints, which like the waters of the GANGA purify all without any discrimination. The place, like the waters of the GANGA, remains unsullied, and has been an object of worship, with a juridical personality of its own as a Deity, distinct from the juridical personality of the presiding Deity of BHAGWAN SRI RAMA installed in the Temple thereat, and has existed since ever even before the construction of the first temple thereat and installation of the Idol therein. Indeed, it is the VIDINE SPIRIT which is worshipped. An Idol is not in dispensable. There are Hindu Temples without any Idol. The Asthan Sri RAMA JANMA BHUMI has existed



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immovable through the ages, and has ever been a juridical person. The actual and continuous performance of Puja at Sri Rama Janma Bhumi was not essential for the continued existence or presence of the Deities at that place. They have continued to remain present , and shall continue to remain present so long as the place lasts, which, being land, is indestructible, for any one to come and invoke them by prayer. the Deities are Immortal, being the Divine Sprit or the ATMAN, AND MAY TAKE DIFFERENT SHAPES AND FORMS AS Idols or other symbols of worship according to the faith and aspiration of their devotees.

13. That it is indisputable that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya, and that it was partly demolished and an attempt was made, by Mir Baqi, Commander of Babar's hordes, to construct a 'mosque' in its place. He was a Shia, and although demolition of a temple for constructing a ''Mosque''is prohibited by Islam, he attempted to do so under the superstitious influence of the so called Faqir, named, Fazal Abbas Qalander. He did not , however, succeed, for, as the story goes, whatever was constructed during the day feel down during the night, and it was only after making certain material concessions in favour of the Hindus for the continued preservation of the place as a place of Hindu worship, that the construction of the three- domed structure was somehow completed, and the construction of the minarets and certain other essential features of a public 'mosque' was not undertaken. Amended as per courts order

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14. That the following facts would show that the three domed structure so raised by Mir Baqi was not a 'mosque' at all, namely-

(A) ALLAH does not accept a dedication of property for purposes recognized as pious and charitable, that is, as waqf under the Muslim Law, from a person who is not its rightful owner; for instance, ALLAH would not accept the dedication of stolen property from a thief. By his act of trespass supported by violence, for erecting a 'mosque' on the



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site of the ancient Hindu Temple at ASTHAN SRI RAMA JANMA BHUMI, after demolishing it by the force of arms, Mir Baqi violated all the true tenets of Islam. it was a highly un-Islamic action. ALLAH never forgave him for that, so much so that every time an attempt was made to convert the place into a 'mosque', by misguided inconoclasts like him, they were killed without mercy in the battles that ensued, for violating HIS injunctions, for ALLAH had spoken thus to the Prophet IN the Qoran---

'And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the transgressers. And kill them wherever ye find them; and turn them out of that whereof they have dispossessed you; for temptation to idolaotry is more grievous than slaughter; yet fight not against them in the holy temple, unless they attack you therein…."

Indeed, the whole history of the rise and fall of the Mughal Empire in India will stand testimony to it. Babar, who did not believe in iconoclasm founded the rule of Mughals in India.. Akbar his grandson, by his tolerance and secularism expanded it on all sides and converted the Mughal Rule into an Empire. Aurangzeb, the iconoclast fanatic, destroyed the Empire which was at the pinnacle of its glory when he deposed and imprisoned his own father Shahjahan and grabbed the crown.

(B) Inspite of all that Mir Baqi tried to do with the Temple, the space always continued to vest in possession with the Deities of BHAGWAN SRI RAMA VIRAJMAN and the ASTHAN SRI RAMA JANMA BHUMI. THEIR worshippers continued to worship THEM through such symbols as the CHARAN and the SITA RASOI, and the Idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra. No one could enter the three domed structure except after passing through these places of Hindu worship. According to the tenets of Islam there can be no Idol worship within the precincts of a 'mosque', and the passage to a 'mosque' must be free and unobstructed and open to the 'Faithful' at all times. It can never be land-locked by a Hindu place of worship; and there can be no co-sharing in title or possession with ALLAH, particularly in the case



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of a 'mosque'. His possession must be exclusive.

(C) A 'mosque', which is a public place of worship for all the Muslims, must have a minaret for calling the AZAN according to Baillie-----.

> "When an assembly of worshippers pray in a masjid with permission, that is delivery. But it is a condition that the prayers be with izan, or the regular call, and be public not private, for though there should be an assembly yet if it is without izan, and the prayers are private instead of public, the place is no masjid, according to the two disciples." (Pt. 1, Bk. IX, ch. VII, Sec. I, p. 605)

Indeed, according to P.R. Ganapathi Iyer's Law relating to Hindu and Mahomedan Endowments, (2nd Edition, 1918, Chap. XVII, at p.388.) there has been no 'mosque' without a minaret after the first half century from the Flight.

(D) There was no arrangement for storage of water for vazoo, and there were the Kasauti pillars with the figures of Hindu Gods inscribed on them and the Sandalwood beam. Such a place could never be a 'mosque'.

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(E) There is a mention in the Fyzabad Gazetteor of the burial of 75 Muslims at the gate of the Janmasthan and the place being known as Ganj Shahidan, after the battle of 1855 between the Hindus and the Muslims in which the Hindus succeded in resuming control over the premises, including the three domed structure. There have been no graves anywhere near the building or its precincts or the area appurtenant thereto, or surrounding it, for the last more than 50 years at least, but if the building was surrounded by a grave-yard soon after the annexation of Avadh by the British, the building could not be a 'Mosque' and could not be used as a 'mosque', for the offering of payers or Namaz, except the funeral prayers on the death of a person buried therein that is, the Namaz-e-Janaza, is prohibited in a grave-yard according to the Muslim authorities.

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15. That thus, the worship of the Deities of BHAGWAN SRI RAMA VIRAJMAN and the ASTHAN SRI RAMA JANMA BHUMI has continued through the ages at Sri Rama Janma Bhumi, Ayodhya. The space belongs to the Deities. No validwaqf was, or could ever be created of Sri Rama Janma Bhumi or any part of it, in view of the title and possession of the said Deities thereon, which has been all pervasive and continuous. ALLAH never claimed, or took, or got any title or possession over the said premises or any part of them. Nor has there ever been any person living or juridical, who might have put forward any claim to ownership or possession as owner of the said premises or any part of them. Occasional acts of trespass by iconoclasts were successfully resisted and repulsed by the Hindus from time to time; and there was no blemish or dent in the continuity of the title and possession of the said Deities over Sri Rama Janma Bhumi. No title could or did vest in ALLAH over any part of Sri Rama Janma Bhumi, by any possession adverse to the Deities or in any other manner. Neither ALLAH nor any person on his behalf had any possession over any part of the premises at any time whatsoever, not to speak of any possession adverse to the ownership of the Deities.

16. That at any rate the Muslims could never acquire any right to worship at the place as in a 'mosque', by adverse possession. First, because the consequence of the violation of any injunction of the Qoran could not, according to Muslim Law, be worked out by lapse of time howsoever long. Secondly, in respect of a claim to pray, every single Muslim has the right to pray in a 'mosque' in his own independent and individual character. He does not derive that right from another such right of all the Muslims is similar but independent of each other. Even a newly converted Muslim gets that right on conversion, although none of his ancestors or members of his family had any such right. Therefore, it is impossible to say in law that those who have a right to pray in a 'mosque' are in possession of that right in the 'mosque' as a community. The fluctuating body of individual Muslims have this right as individuals to go into the 'mosque' and pray therein, but only so long as the 'mosque' continues to exists as a 'mosque'. This right



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to pray cannot be tacked on by a Muslim to the similar right of another Muslim, and cannot form the basis of any adverse possession in law, or acquisition of title to land by prescription as a waqf for a 'mosque'. The body of worshippers is only an undulating, ever changing body of individuals and not a corporation. Thirdly, the claim of a right to worship by going to a place as a 'mosque' is not a claim of a right to possession of the place as its owner and the factum of occupation of a place without any claim to title as owner, cannot clothe the occupier with ownership of the place, and the true owner's title remains unaffected by any such occupation, howsoever long it may be. A place can become a waqf for a 'mosque' only when Namaz is offered there with the permission of the owner and publicly in a group after the calling of azan.

17. That after the annexation of Avadh and the first war of independence, miscalled the Sepoy Munity by the British, an inner enclosure for the three-domed structure was created by raising a boundary wall with iron gratings in the courtyard of the building, which separated the Rama Chabutra and the Charans and the Sita Rasoi, from the building and divided the courtyard into two parts. The inner part in which the three domed structure was situated, was land-locked from all sides by the outer part in which the Rama Chabutra, the Charan and the Sita Rasoi were situate. The British thus tried to confine the Hindus to worship their Deities in the outer part of the courtyard, but no Muslim could enter the inner part of the courtyard or the three domed structure within it, except by passing through the outer courtyard, which had Hindu places of worship in it and was in their exclusive and constant occupation. This laid the seeds of trouble off and on whenever any Muslims wanted to go inside. The result was that no Namaz was offered inside the three domed structue, inspite of the attempt of the British Government to induce the Muslims to do so by raising the inner boundary wall. This was calculated attempt by the Britishers to encourage the Muslims to use the abandoned place as a 'mosque' and create differences between their Hindu and Muslim subjects, with the object of maintaining their power, particularly in the context of the



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First War of Independence in which the Hindus and the Muslims had fought the British power shoulder to shoulder like brothers. However, the attempt to induce the Muslims, to use the building inside the inner enclosure as a 'mosque' did not succeed. There was an over-helming number of Hindus living all round the place, and the local Muslim population knew that the place was not a proper place for offering Namaz, as it was not a 'mosque' according to the true tenets of Islam. The Hindus never left the place and continued to worship the ASTHAN through such symbols of the DIVINE SPIRIT as the CHARANS, the SITA-RASOI and the Idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Rama Chabutra within its precincts.

18. That with reference to the fact of demolition of substantial parts of the three domed structure at Sri Rama Janma Bhumi in the communal riots of 1934 at Ayodhya, which were sparked off by the slaughter of a cow by some fanatic, or a hired hoodluy and the fact of its reconstruction and renovation by the British Government, at its own cost through a Muslim Thekadar, stated in paragraph 8 of the plaint, it is submitted that the said act of the British Government must have been very much a part of their policy to divide the Hindus and the Muslims in order to rule India. If there really was a 'mosque' in existence with the grant of revenue free land of two villages attached, for its maintenance and upkeep, as alleged in the plaint, there ought to have been a Mutwalli to manage the waqf and to look after the 'mosque', and there could, and would have been no question of rebuilding and reconditioning the 'mosque' by the benign British Government at its cost, through a Muslim Thekadar, for the benefit of the loyal Muslim subjects of His Majesty the King Emperor of India, in order to teach Hindus a lesson, as they were raising their head against the British rule. The British were thus sowing the seeds of the two nation theory which ultimately led to the Partition of India. Nevertheless inspite of the British efforts, no prayers were ever offered in the three domed structure at Sri Rama Janma Bhumi even after the reconstruction and renovation, for the Muslims knew that the place was no 'mosque' inasmuch as ALLAH



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does not accept Namaz offered at a place occupied without the permission of its owner, or on land occupied by Gasba, that is, without title.

19. That in 1936 the U.P. Muslim Waqfs Act, was passed. It established two Central Boards of Waqfs in U.P., namely the Sunnil Central Board of Waqfs and the Shia Central Board of Waqfs, to supervise and control the Muslim Waqfs of the two sects respectively. All the existing Waqfs were required to be surveyed and classified into Sunni and Shia waqfs by a Commissioner of waqfs, who was required to submit his report to the local Government, and the Government in its turn was required to send that report to the Central Board concerned, according to the sect to which the waqf belonged, whereafter the Central Board concerned was required to notify in the Gazette the waqfs of its respective sect. There was no such notification in respect of the 'waqf' of the 'mosque' in dispute. Allegation to the contrary is wrong. The Plaintiff waqf Board, has had no jurisdiction in respect of the premises even if it were a 'mosque'. Further, it took no action or postive steps for the custody or the care of the building or its establishment as a 'mosque'. No one acted as its Mutwalli, or Mauzin, or Imam, or Khatib, or Khadim. The descendant of Mir Baqi who was sought to be planted as the Mutwalli by the British was an opium addict. He denied that the grant of revenue free land was waqf for the purposes of the 'mosque', and instated claimed that it was his Nankar for services rendered to the British, and did not look after or manage the 'mosque' at all.

20. That on the independence of India from the British yoke, coupled with the Partition and the carving out of the new State of Pakistan, on the footing that the Hindus and the Muslims constitute two separate nations, and the mass killing and expulsion of Hindus from Pakistan, Baba Abhiram Das, the answering Defendant's Guru, who was the Propoganda Secretary of the Hindu Mahasabha at that time, resolved, along with Peramhans Ramchandra Das, Defendant No.2, who was the Secretary of the local unit of the Hindu Mahasabha at that time, and Gopal Singh Visharad, Defendant No.1, and several other, to restore



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the sacred ASTHAN of Sri Rama Janma Bhumi to its pristine glory, in particular by removing the three domed structure raised thereat by Mir Baqi, which was an object of National shame for the Hindus. Pursuant to this resolution, action was initiated by taking a collective vow publicly for the restoration of Sri Rama Janma Bhumi, at a public meeting held on 2.10.1949, the Gandhi Jayanti day, which was also the Bijaya Dashmi day that year, as the first step towards the fulfillment of the dream of the Mahatma of establishing Rama-Rajya in Bharatvarasha after independence from the British bohdage. After the taking of the collective vow their first step was to clear up the scattered mounds of earth which the Muslims claimed were their graves, in the areas around Sri Rama Janma Bhumi. This was followed up by Navahna Pathas, Japa and Sankirtan at Sri Ram Janma Bhumi. The first batch of 108 Navahna Pathas commenced on 16.10.1949. This was followed by 1108 batches of Nayahna Pathas. Japa and Sankirtan were also performed continuously. They continued in and outside the three-domed building, and within its precincts and on adjacent land all round, unabated, rather in rising crescendo, until the great event of the Manifesation of BHAGWAN SRI RAMA within the three domed building, under its central dome to be more precise, by the installation of the Idol of BHAGWAN SRI RAMA LALA with all due ceremony at the auspicious hour Brahmamuhurta, during Shrgvan Nakshatra and Tula Lagna in the most auspicious constellation of the planes, named Harshan Yoga, on Thursday, Pausha Shukla 3, of Vikrama Samvat 2006. It may be added that although the Planet Sun was Dakshinayana Sanyasis and Variragis are permitted by the Sastras to instal a Deity even during Dakshinayana. The Idol of BHAGWAN SRI RAMA LALA IS Chala and seated on a Silver Singhasan. Akhan-da Sankirtans and Japa have continued ever since without any break for the last about 40 years at Sri Rama Janma Bhumi.

21. That the suit is bad and not maintainable in law inasmuch as the Deity of BHAGWAN SRI RAMA LALA VIRAJMAN under the central dome of the building, and on the Rama Chabutra, and the Deity of



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ASTHAN SRI RAMA JANMA BHUMI with such symbols of worship as the Charan and the Sita Rasoi, have not been made parties to the suit. It is also bad for want of Mutwalli of the alleged waqf.

22. That the Sunni Central Board of Waqfs, U.P. has no jurisdiction or competence to meddle with the alleged 'waqf'; or the alleged 'mosque', or to sue in respect thereof for want of a proper and valid notification in its favour, in respect thereof, under Section 5 of the U.P. Muslim Waqfs Act, 1936, the notification published in the Official Gazette dated 26.2.1944, having already been held to be invalid by the Court's finding dated 21.4.1966 on issue No.17, in this suit, which has become finial and irreversible between the parties. Further, the suit when filed in 1961, was barred by the provisions of the U.P. Muslim Waqfs Act, 1960; only the Tribunal constituted under that Act had the jurisdiction to entertain a suit of this nature, if filed within the limitation prescribed by it, and the Civil court had no jurisdiction to entertain it.

23. That the suit as framed under Order 1 Rule 8 is incompetent and not maintainable. The permission granted by the court to the Plaintiffs to sue in a representative capacity for all the Muslims, is liable to be revoked, particularly because the Plaintiffs are all Sunnis, while the Shias did claim the alleged 'mosque' and alleged 'waqf' in respect of it to be a Shia waqf. The Defendants named in the suit cannot also represent all the various sects of Hindus in India.

24. That none of the plaintiffs have any right to sue for possession over the alleged 'mosque'.

25. That the relief for possession by the removal of the idols and other articles of Hindu worship, is in fact and in law a relief for mandatory injunction, and is barred bt the 6 years' limitation prescribed by Article 120 of the Schedule to the Indian Limitation Act, 1908. Otherwise too a person other than the Mutwalli of a Mosque cannot sue for its possession, and can only sue for a declaration that it is a mosque and, if out of possession or dispossessed, that its possession be made over to the Mutwalli, and to such a suit also Article 120 applied, and neither of the Articles 142 or 144 of the Schedule to the Indian Limitation Act,



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1908 had any application. Further, on the pleas raised in the plaint, the Plaintiffs having claimed to have been effectively and completely dispossessed by the Preliminary order of attachment and appointment of a Receiver to maintain the worship of the Deity inside the three domed building, passed on 29.12.1949 under Section 145 of the code of Criminal Procedure, 1898, the suit is barred by Article 14 of the Schedule to the Indian Limitation Act, 1908. In as much as the plaintiffs have claimed that they were completely and effectively ousted from the building and the premises in suit by the Defendants act of 'placing' of Idols within the 'mosque', on December 23, 1949, their cause of action was finally complete and closed that day, and did not recur thereafter, according to their own allegations. It could not be said to arise thereafter de-die-in-diem, as it was not the case of a continuing wrong, within the meaning of Section 23 of the Indian Limitation Act, 1908. In any view of the matter the suit is hopelessly barred by limitation, even on the allegations of the Plaint which is liable to be rejected under Order 7, Rule 11 of the code of Civil Procedure, 1908, and Section 3 of the Indian Limitation Act, 1908, casts a duty on the Court to dismiss the suit and not to proceed with its trial any further.

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26. That it is essential in the interest of justice and the maintenance of peace and amity between the Hindus and the Muslims in India, and now, even for maintaining good international relations between India and Pakistan and some of the Muslim countries, that this dispute is speedily resolved by the court. So far as the answering Defendant is concerned he, along with the Vaishnavite Hindus of the Ramanandi Sampradaya whom he claims to represent, and to whom the Temple at Sri Rama Janma Bhumi belong as the persons entitled to look after the management of the worship and also as the true worshippers of the Deities who SIT there, would only be too willing to arrive at a negotiated settlement with the Muslim community, under the supervision or mediation of the court, for the honourable udinguishment of their claim to the demolished three doomed structure at Sri Rama Janma Bhumi, Ayodhya, and its re-erection at village



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Sahanwa near the place where Mir Baqi's mazar stands. It may be stated that while there are many instances of removal of 'mosques' in Muslim countries, the place where Maryada Purshottam Bhagwan Sri Rama Chandra Ji Maharaj manifested himself in human form as an incarnation of Bhagwan Vishnu, according to the faith of the Hindus, cannot be changed. There are no Muslims residing anywhere near the place, who may require a 'mosque' there, for offering prayers, and the number of existing 'mosques' at Ayodhya is so large, as compared to the need for them, that some of them have even fallen into disrepair and ruins for want of maintenance. The answering Defendant has said this in the true tradition of the Ramananda Sampradaya Kabir, a Muslim by birth, was one of the most famous disciples of the Adiguru Ramanandachayra. Given the necessary goodwill and dedication to the national interest on both the sides, such a negotiated settlement is not impossible and the answering Defendant would hope and pray for it. indeed Prince Anjum Quqder, the President of All India Shia Conference, and a descendant of NawabWajid Ali Shah who ruled Avadh when it was annexed by the British, has come forward with the statement in reply to the suit filed on behalf of the Deities (Suit No.236 of 1989 of the Court of Civil Judge Faizabad, now registered as Other original Suit No.5 of 1989, in the High Court) that "he and the Muslims of India have the highest regard for Lord Rama". He has quoted from Iqbal the couplet: Amended as per order of court

dated 21.08.1995 Sd./-

"Hae Ram ke wajood pa Hindostan ko naaz Ahle Nazar Samajhte hain uski Imame Hind."

ultimately he has said:

> "However, after all said and done, it is most respectfully submitted that if only this claim is proved that a Mandir was demolished and Babri Masjid was built on the Mandir land, this defendant and all other Muslims will gladly demolish and shift the mosque, and return the land for building of the Mandir thereon."



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And in support he has quoted, among others, the authority of the "celebrated Muslim historian and scholar Maulana Syed Sabahuddin Abdur Rahman (since expired)" in his well known treatise "BABRI MASJID", at page 5, at the very begining of its preface-

"On behalf of Muslims I also have a right to say that if it is proved that babri Masjid has been built after demolishing Ram Janam Bhoomi Mandir on its place, then such a mosque if built on such an usurped land deserves to be destroyed. No theologian or Alim can give Fatwa to hold Namaz in it." Prince Anjum Quder had also obtained a Fatwa from Ulema Maulana Saiyid Mohammad Naqi, who is now a resident of karachi and a Pakistani National since the partition, but is reputed to be the principal authority governing the Shias in such matters in the Sub-continent of India, Pakistan and Bangla Desh, that if the removal of the 'Babri Masid' is necessary in the present circumstances, for preserving the peace and resolving the dispute, then that may be done.

41. That in the Navajivan dated 27.7.1937, Mahatma Gandhi had expressed his views thus on the controversy relating to Sri Rama Janma Bhumi----

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"It is a great sin to occupy by force any religious place of worship. During the Mughal times, due to religious fanaticism, Mughal rulers had occupied many such Hindu religious places which were sacred places of worship for the Hindus. Many of them were looted and destroyed, and many of them given the shape of a mosque. Although a temple and a mosque are both sacred places for worshipping God, and there is no deference between them, but the traditions and forms of worship of the Hindus and the Muslims are different from each other.

"From the religious point of view a Muslim can never tolerate the placing of an Idol by a Hindu in his mosque where he has been worshipping KHUDA. In the same way a Hindu will never suffer demolition of any of his temples where he has been regularly worshiping Rama, Krishna, Shankars, Vishnu and Devi, and the construction of a mosque in its place. All such disgraceful acts were symptoms of religious bondage. Hindus and Muslims should both try and resolve all such disputes by mutual settlement. The Hindus should generously return such Muslim places of worship as may be



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under their control. Similarly the Muslims should willingly return those places of Hindu worship which are in their possessions. This will resolve the differences between the two, and further Hindu Muslim unity which will prove to be a boon for the pious people of India."

42. That under the circumstances, the re evection of the demolished three domed structure, minus its kasauti columns and the sandalwood beam, somewhere near the Mazar of Mir Baqi at village Sahanwa, or any other place where the Muslims have a sizeable population and agree to its re-evection, on land to be provided by them, is the most sensible solution of the dispute for preserving the integrity of the Nation, and peace and amity on the sub-continent of India, Pakistan and Bangla Desh. The answering Defendant hopes and prays that the Hon'ble Court would bring that about by using its good offices, and remove once for all this festering sore from the body politic of India that is Bharat.

43. That as a result of the ruling of the Supreme Court, dated October 24, 1994, on the issue "whether the suit has abated or survives" given in the centeral of the questioned validity of the Acquisition of certain area at Ayodjya Act, 1993, to the effect that the acquisition of the entire area specified in that act except for the site of the demolished structure, described therein as "RAM JANAM BHUMI BABRI MASJID (including the premises of its inner and outer courtyards), situate in a part of plots nos.159 and 160 of village of Kot Ram Chandra Ayodjya, (of the last revenue settlement of the year (93A AD), was absolute and constitutionally valid, and that the rights title and interest therein stand transferred to, and west in the Central Government under Section 3 with the consequences detailed in Section 4(1) and (2) of that Act, the claim of a Muslim graveyard on that laid does not servive, and is fit to be dismissed without any further enquiry thereinto.

44. That the entire cause of action pleaded, and relief claimed in the suit, other than that in respect of the grave yard, relates to the demolished three domed structure which does not exist any longer, therefore, no part of the suit survives now, after the disappearance of the said structure.

45. That the Sunni Central Board of Waqfs, has not been constituted for many years past in accordance with the requirements of the U.P. Muslims Waqf



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Act 1960, and its present controller who is alleged to have been appointed illegally, by Janab Mohd. Azam Khan, the present Minster of Waqfs in the present government of Uttar Pradesh (who is also the convener of the Babri Masjid Act committee) has been restrained from performing certain functions of the Board until the issue of notification constituting the Board after the necessary election under the Act, by a division bench of the Hon'ble High Court sitting at Allahabad in writ petition no.37378 of 1994 filed by Janab. S.Farman Ahmad. The suit therefore, proceed due to the non-existence of the principal plaintiff, namely, the Sunni Central Board of Waqf, U.P.

46. That a statuary body like the Sunni Central Board of Waqf U.P., cannot represent all the Muslims generally, nor the Shia Central Board of Waqf U.P. and the Shia in particular, the other Muslims individuals who were joined as plaintiffs are also all of them Sunni Muslims and cannot therefore, represent the Shia Muslims withwhom there was a clear conflict of interest in the suit in view of the suit filed by the Shia Central Board of Waqfs U.P., against the Sunni Central Board of Waqfs U.P. claiming the alleged mosque to be a Shia Waqf, and the admitted fact that the alleged Mutwalli of the alleged waqf was a Shia and did not submit to the jurisdiction of the Sunni Waqf Board and even claimed that there was no waqf at all in his application to that Board. In view of the fact that the Mutwalli of the alleged Waqf had to be Shia Muslim the suit could not proceed without him and was had for his non-joinder, in as such as the alleged Waqf of property held by him for the maintenance of alleged mosque was a Shia Waqf and the Sunni Central Board of Waq could not appoint any Mutwalli in his place, or committee of Management for the alleged waqf of the alleged mosque, nor exercise any central in respect thereof. None of plaintiffs could, therefore, maintain the suit and in any case the ttreatment of the suit as a representative suit on behalf of Muslims was wholly illegal. This is in addition to the plea already taken that the Hindu defendants did not and cannot represent the Hindus generally the permission to sue in a representative capacity was illegal and non-est in law.



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Amended as per court's order dated
21.08.1995
Sd./- Dharam Das defendant No.13.
Sd.-
Counsel for the defendant No.13

Dated Lucknow
4th December 1989

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ADDITIONAL WRITTEN STATEMENT ON BEHALF OF DEFENDANT NO: 13

IN

ORIGINAL SUIT NO: 4 OF 1989

Sunni Central Board of Waqf U.P. & Ors. …Plaintiffs

Versus

Gopal Singh Visarad & Ors. ….Defendants

**ADDITIONAL WRITTEN STATEMENT ON BEHALF OF MAHANT DHARAMDASS (DEFENDANT NO.13) MOST RESPECTFULLY SHOWETH:-**

21-A. That the contents of the paragraph nos:21-A added in the plaint are incorrect and denied. The building structure of Shri Ram Janam Bhumi which was demolished on 6.12.1992 was not a mosque and could not be called "BABRI MASJID". The demolition of the structure (wrongly called Babri Masjid) was not in violation of the order of the Hon'ble Supreme Court dated 15.11.1991, nor in violation of any orders of this Hon'ble Court dated 3.2.1986 or 7.11.1989, nor in violation of any other order of any court. The Deities were never removed from the place where they sat. The structure evected on 7.12.1992 was not an illegal structure, nor were any of these acts in violation of any order of any court or the above orders, or any undertaking. The people who demolished the structure (wrongly called 'the Mosque') were not miscreants or criminals. The demolition and destruction was not with the connivance of the then "State Government of B.J.P." There could be no question of any restoration of any structure as it then existed on 5.12.92. As already stated, the demolition of the building structure at Sri Ram Janam Bhumi was not in defiance, nor in violation of any orders of this Court or the Supreme Court.

21-B. That the contents of paragraph no.21-B added in the plaint are incorrect and denied. The land in suit had a structure wrongfully erected



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thereon by "GASB" after wrongfully demolishing the Hindu Temple standing at Sri Ram Janam Bhumi by force of arms. it could not, be and never became a mosque under the law of the land, nor even according to the Shariat. There could thus be no question of the site of the demolished structure, being a mosque of the Muslims or there being any right to offer prayers therein or thereat.

21-C. That the contents of paragraph no.21-C as stated are denied. The structure at Sri Ram Janam Bhumi was not a mosque and could not be described as "Babri Masjid". The interpretation of the judgment of the Hon'ble Supreme Court dated 24.10.94 is incorrect. Correct facts are stated in the additional pleas.

Relief Clause (bb): The clause (bb) has been wrongly inserted in the relief clause of para 24 of the plaint. The Central Government is a Statutory Receiver of the disputed area under Act 33 of 1993 as interpreted by the Supreme Court in its judgment dated 24.10.1994 reported in 1994 (VI) SCC 360. According to the findings recorded by this Hon'ble Court in order dated 25.5.1995 on C.M.Application No.9 (0) of 1995, there does not exist any lis now between the plaintiff and the Central Government and no such decree can be claimed in the suit.

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**ADDITIONAL PLEAS:**

46. That the amendments made in the plaint from time to time and with the permission of the court after its order dated 25.5.1995 on C.M. Application No: 9(0) of 1995 are not verified at all. They can not be read and relied upon as part of the plaint. The application for amendment was signed by Mohd. Hashim alone. he does not hold any power of Attorney or authority on behalf of other plaintiffs, and in particular the Principal plaintiff Sunni Central Board of Wakfs, U.P. The amendments made in the plainst cannot, therefore, be read and relied upon as part of the plaint.

47. That the contents of paragraph no:21-A are liable to be struck off for being unnecessary and vexatious and would prejudice and delay the fair trial of the suit. None of the allegations made therein are against any of the defendants in the suit, nor were any of them responsible for any of imaginary wrongs complained off therein. There is no claim for the



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restoration of building as it stood on 5.12.1992, obviously because Mohd. Hashim, who alone amongst the several plaintiffs had applied for amendment, must have known that the talk of restoration of the building as it existed on 5.12.1992 was moonshine and could not be decreed in the suit. No claim for any relief of retoration of building as it existed on 5.12.1992 has been made even after the amendment of plaint prayed for by him. The whole of the contents of para 21-A are meaningless and unnecessary. They would seem to have been made merely to tease, scandalize and provoke the devotees of Bhagwan Sri Ram Lala Virajman at Shri Ram Janma Bhumi. The allegations made are all incorrect and their retention as a part of the plaint will only delay the fair trial of the real issues between the parties in the suit.

48. That on the facts and grounds already stated in paragraphs 25,26,27,28,29,30,31 of the answering defendant's written statement, the structure at Shri Ram Janam Bhumi which was demolished on 6.12.1992 was not a mosque at all and its site always was and continues to be a place of worship for the Hindus and owned and possessed by Shri Ram Lala Virajman at Sri Ram Janma Bhumi. There could be thus no question of the place being a mosque or Muslims being entitled to offer prayers thereon after the demolition of the structure in view of the continuance of worship of Bhagwan Sri Rama Lala seated thereat under a canopy.

49. That the acquisition of the areas under the Acquisition of Certain Area of Ayodhya Act (Act No.33 of 1993) was not made for any of the purposes of the Central Government. The Central Government holds the land beneath the structure (Including the outer and inner courtyard) as a statutory Receiver until the adjudication of the dispute relating to the disputed area in the suits pending before this Court, when the Act was enforced (7.1.1993), viz, O.S.13,4 and 5 of 1989, with the obligation to hand over the disputed area aforementioned to the party found entitled thereto in suits, and to return the remaining area to the original owners thereof.

50. That clause (bb) has wrongly been inserted in the prayer clause. No relief can be granted against any person who is not a party in the suit. The Central Government is statutory Receiver of the area acquaired under



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Act no.33 of 1993. It has not been appointed as such by this court. The structure in the form of canopy under, which Sri Ram Lala sits, is not an unauthorised structure, nor can the idols be removed therefrom by any decree of the court, more so in a suit in which neither the Deity nor Bhagwan Sri Ram Lala nor the persons who erected the canopy are parties.

51. That as already stated in para 2 of the written statement of answering defendant, the Khasra numbers of the alleged 'Graveyard' and 'Mosque' are all imaginary and fictitious and are not identifiable at site. In Schedule 'A' of the plaint, the said numbers are described as the 'Nazul Khasra' numbers. There is nothing like 'Nazul Khasra numbers in law. The law requires identification of immovable property in suit by numbers in a record of settlement or Survery vide order 7 Rule 3 C.P.C. No relief can therefore, be granted in the suit with refrence to Schedule A of the plaint. The Act 33 of 1993 also refers to the record of settlement of village Kot Ram Chandra, Pargana Haveli Avadh', Tehsil Sadar, District: Faizabad.

52. That in the light of supervening facts and circumstances, the disapperance and non-existence of the property in respect of which the relief is claimed in the plaint, the suit has become wholly infructuous and cannot be proceed with any further.

53. That the suit even after amendment of the plaint is not maintainable in law.

54. That the suit is liable to be dismissed with costs.

Dated:August 29,1995

Sd./- Dharam Das
Defendant No.13



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ORIGINAL SUIT NO: 4 OF 1989

(R.S.No.12 of 1961)

Sunni Central Board of Waqf & Ors. …Plaintiffs

Versus

Gopal Singh Visarad & Ors. ….Defendants

**(ADDITIONAL) WRITTEN STATEMENT UNDER ORDER VIII RULE 9 C.P.C. TO THE AMENDED PLAINT BY DEFENDANT NO.17 RAMESH CHANDRA TRIPATHI.**

The defendant No.17, named above, most respectfully begs to submit as under:-

1. That the contents of para 21A of the amended plaint are not admitted. No Masjid or Babri Masjid ever existed at the land in question, and as such no Masjid was demolished on 6.12.1992. It is further false to allege that idols were placed only in the night of 22nd/23rd December, 1949, but the fact is that idols were in existence at the place in question from the time immemorial. It may be mentioned here that Babar was an invader and he had no legal authority to construct any Masjid at the sacred place of Hindus i.e. the birth place of Lord Shri Ram. Mughal invador Babar through his Commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question, but he could not succeed in his mission. After the riot in 1934, the three domes of the temple were damged. It is submitted that before the said date, the outlook of the building was of pure Hindu temple, but while carrying out repair works, the Britieshers tried to give it the shape of mosque and three domes were constructed over Kasauti pillars which were of temple. The Hindus have all along been in possession over he entire area of Shri Ram Janmaabhoomi. The land in question has all along been in possession of Hindus and devotees of Lord Shri Ram. The worship of Lord Shri Ram Lala Virajman is going on since the time immemorial. It is further submitted that with a view to renovate the old temple and to construct



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a new one, Kar Sewa was performed and the said action cannot be said to be in violation of any order passed by any court. There was no order in force against Hindus in respect of the temple property/structure. it is submitted that the people of the State had voted for Bhartiya Janta Party in the election as it was committed to fulfil the aspirations of the people to construct a glorious Shri ram Temple at the place in question. It is true that the Bhartiya Janata Party Government did not resort to firing and barbarian action which was adopted earlier by the Government headed by Sri Mulayam Singh Yadav on 30.10.1990 and 2.11.1990. It is further submitted that the Government cannot suppress the will of the people and it has to honour and fulfil aspirations of the people in the democratic set up. The Bhartiya Janata Party has neither abetted for demolition of the structure, nor did anything in violation of law. The devotees of Lord Shri Ram who were present in lacs decided to demolish the old structure. In fact no offence was committed and no law was violated in demolishing the structure of Hindu temple with an intent to construct a big temple. At this place, it may be mentioned here that the Hindus have never been fanatic; they allowed every religion to flourish in Bharatvarsh. There is no evidence in history to show that the Hindus ever demolished any mosque or place of worship of any other religion. The history speaks otherwise. Every Mughal invader and ruler from Mohammad-bin-Qasim to Aurangzeb and even thereafter demolished, destroyed and looted the temples of Hindus. The plaintiffs never had/have any concern with the land in question and also they are not entitled for restoration of the building or its possession.

2. That the contents of para 21-B of the amended plaint are not admitted. The Muslim law cannot be made applicable in Bharatvarsh. Muslim law is also subject to the provisions of Constitution; it is the Constitution which is supreme and not any personal law, muchless Muslim law. Muslims cannot use any open piece of land in question for offering prayers and they also cannot encroach upon the land of religious places of Hindus. Under Shastrik law applicable to Hindus,



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the property once vested in the deity continues to remain of the deity. It is specifically submitted that the entire property in question belongs to Shri Ram Lala Virajman who is in existence from the time immemorial and is being worshipped by his devotees at the place in question without any interruption till date. According to the own averments of the plaintiffs, the place in dispute has got no significance for them as they can offer prayers at any place, even in open.

It would be appropriate and in consonance with the principles of 'secularism' that the Muslims do not offer prayers within the vicinity of the birth-place of Lord Shri Ram Lala Virajman, which is sacred for Hindus and offer their prayers beyond the area of Panchkashi Parikrama. That will create brotherhood and peace everywhere. The para under reply itself shows that the alleged mosque was unnecessary and meaningless for Muslims too. It is further submitted that over the land in question, no mosque ever existed and the Muslim are not entitled to encroach upon the land in question or offer prayers at that place.

3. That the contents of para 21-C of the amended plaint are not admitted. It is further submitted that no mosque ever existed over the land in question and no property or land belonging to mosque has been acquired. The entire area covered under the Ordinance No.8 of 1993 and Act No.33 of 1993 belongs to Hindus and the devotees of Shri Ram Lala Virajman. The judgment of the Hon'ble Supreme Court is being misinterpreted and nowhere Hon'ble Supreme Court has held that the area covered by the Act belongs to any mosque or adjacent area will be provided for enjoyment of the crucial area of mosque portion as per requirement.

4. That the relief claus 24-BB of the amended plaint cannot be granted to the plaintiffs. It is further submitted that the said relief has not been allowed to be added by this Hon'ble Court vide its order dated 25.5.1995. It is further submitted that the property in dispute has not been described in Schedule-A to the plaint. The description in Schedule A of the plaint cannot be termed as suit property as no dimensions, width, statement of survey numbers etc. have been given



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for identifying the property as required by Order VII Rule 3 C.P.C. and hence the property described in Schedule –A of the plaint cannot be termed as suit property being vague and unidentifiable on the spot. The plaintiffs are not entitled for the possession of the structure standing at the site at the land in question and the adjacent are belongs to Hindu and devotees of Lord Shri ram. Please also see additional pleas.

ADDITIONAL PLEAS

5. That it is worth to mention here that Bharatvarsh was divided on the basis of the religion and Pakistan was created for Muslim and the rest part of Bharatvarsh remained for Hindus. Secularism was adopted in the Constitution as it is one of the pillars of Vedic religion. No religion of the world preaches religious tolerance and secularism except the Vedic scriptures. No other community or religious group can claim any privilege or additional rights in derogation of the rights of Hindus. The rights of other religious group or community are subject to the rights of Hindus.

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6. That it is an undisputed fact that Lord Ram, Lord Krishna and Lord Shiv are cultural heritage of Bharatvarsh, which has been recognized by Constituent Assembly. In the original constitution, on which the members signed, the pictures of our recognized cultural heritage can be seen which include the scene from Ramayana (conquest over Lanka and recovery of Sita by Lord Ram). Thus the citizens of this country are entitled to pay homage to their Lord at His birth-place and it being sacred place for Hindus cannot belong to Muslims or any other community or religious group. Therefore, the claim of Muslims over the land in question is unconstitutional and is also against Islamic laws and in the circumstances, the plaintiffs cannot claim themselves to be Muslims entitled to file the suit.

7. That it may be mentioned here that even according to the plaintiffs, the devotees of Lord Shri Ram and Hindus in general came into possession of disputed structure on 22nd/23rd December, 1949 i.e. before the commencement of the Constitution on 26th January, 1950.



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If it is so, it cannot be said that the Hindus have committed any wrong. They have rectified the curse of Mughal Slavery before the commencement of the Constitution. The said action of invaders had no sanction of law and after independence, it is the right of citizens to nullify every misdeed and wrong action of the invaders.

8. That the entire area including the place in question belongs to deity Lord Shri Ram Lala Virajman and His devotees and worshippers are entitled to offer prayers, Pooja, Arti, Bhog etc. and to pay homage to their Great Lord. They have also right to construct a glorious temple at the place in question.

9. That it is remarkable to mention here that under the debris of demolished temple structure, a lot of signs and material concerning temple have been found. The answering defendant believes that under the orders of this Hon'ble Court, they would be in safe custody. It may be mentioned here that a very big Chabutara beneath the present structure exists which also reveals that there existed a glorious and big temple of Lord Shri Ram. There is no evidence, signs or material at all to show that there was any mosque.

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10. That the statutory receiver has not been arrayed as party to the suit and as such the plaintiffs cannot claim any relief against the receiver.

11. That Sunni Central Board of Waqfs has no legal authority to file the suit and as such the suit is liable to be dismissed.

12. That the (amended) relief as prayed for by way of amendment has also become time-barred.

13. That the amended relief cannot be granted to the plaintiffs as the same is not permissible under the law.

14. That the case is to be decided on the principles of justice, equity and good conscience. Prayer for injunction has to be refused if the case of the plaintiff does not come within the four corners of the said principles. Since the plaintiffs have failed to prove that their case comes within the ambit of justice, equity and good conscience, the suit is liable to be dismissed, as no relief can be granted.

15. That the suit cannot be termed as representative suit; the compliance of Order 1 Rule 8 of the C.P.C. has not been made. Hindu community as



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a whole has not been represented and legal procedure for the same has not been followed. The suit in the representative character is not maintainable.

16. That the waqf properties are not immune from the operation of law and no privilege or advantage can be given to waqf properties. The concept of mosque and graveyard, whatever may be under Islamic law, is subject to the provisions of the Constitution. The claim of the plaintiffs based on Islamic law, which is not applicable in Bharatvarsh, is to be rejected.

17. That the suit property has not been described till date. The schedule annexed to the plaint with the description of Nazul numbers has no sanction of law. Moreover, the same was no brought on record in accordance with law. Amendment of the plaint in this regard is time-barred and the same is also illegal, inoperative and void.

18. That the suit as framed is a suit for declaration and the relief for delivery of possession has not been made in specific terms as the said relief was time-barred on the date of institution of the suit. Now by way of amendment, relief of possession from statutory receiver is being sought and as such the plaintiffs are stopped from claiming possession of the property at this stage and the said claim has also become time-barred.

19. That the property in suit is the birth-place of Lord Shri Ram and this fact is established from the customs and usages having the force of law. At the time of the commencement of the Constitution on 26.1.1995, in view of Article 372 of the Constitution, all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered, repealed or amended by a competent Legislature.

20. That it is submitted that the entire structure including inner and outer courtyard, sanctum sanctorium and Ram Chabutara is and was part of the same building. Those are all deities property and He can sit anywhere No likes within that campus.

21. That Schedule ‘A’ to the amendment application dated 2.1.1962 has not been signed by any party or counsel and in fact nobody can dare to



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sign the said paper and as such the said Schedule which is not signed and verified, cannot be added to the plaint. The genuineness of the said schedule is also disputed.

22. That according to the plaintiffs, the idols were placed in the structure on 22/23.12.1949. It cannot be disputed even by the plaintiffs that worship of the deity is going on since then and Arti Bhog and Pooja etc. are being offered, for more than 45 years.

23. That it is pertinent to mention that no suit has been brought by any person or body of persons from the Muslim side claiming dispossession of the deity. Thus, the possession of the deity is hostile to the interest of the plaintiffs which is in their knowledge, but no suit has been filed against the deity i.e. Shri Ram Lala Virajman. Thus the deity has perfected his title by remaining in adverse possession and the plaintiffs are stopped from challenging the existence of deity now and claiming possession which has become time-barred.

Lucknow:Dated
Sept. 14,1995

Sd./- Rameshchandra Tripathi
Defendant No.17

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ORIGINAL SUIT NO: 4 OF 1989

(R.S.No.12 of 1961)

The Sunni Central Board of Waqf U.P. Lucknow & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

WRITTEN STATEMENT ON BEHALF OF MAHANTH GANGADASS.

Para 1. Denied. Totally false and concocted.

Para 2. Denied.

Para 3. Denied.

Para 4. Denied.

Para 5. Denied.

Para 6. Denied. Any statement filed by the said Raghuarbardass alongwith the alleged plaint would be false and fictitious and is not binding on the answering defendant.

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Para 7. Denied.

Para 8. That the allegations contained in para 8 of the plaint are denied. The answering defendants deny the allegations of the alleged Babri Mosque and the allegations of its being damaged and of its being rebuilt and reconstructed at any body's cost or throughthekadar is altogether fictitious. Even if any communal riot be proved to have occurred in Ajodhya in 1934. No mosque whatsoever was damaged in Ajodhya in 1935.

Para 9. That the contents of para 9 of the plaint are totally denied except that UP Muslim Wakf Act, 1936 was passed by the UP Legislature the answering defendants deny the inquiry of the report alleged in the said plaint para and its publication in the Gazettee. Even if any such enquiry were proved to have been held and its report published, it was totally an ex-parte enquiry secretly and surrptitiously made without any intimation and information to the answering defendant and the same is not binding upon them.



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Para 10. No knowledge denied.

Para 11. Not admitted.

Para 12. Denied.

Para 13. That the contents of para 13 of the plaint are disputed and are denied. The fact is that the said City Magistrate started proceedings u/s 145 Cr.P.C. by attaching the temple of Janam Bhumi and placing it under the custody of Priyadutt Ram defendant No.2 as receiver who still continues as such but the Pooja Path of the diety in the said temple are regularly performed on behalf of the Hindu community. The Muslims have no right to offer prayer in the said temple.

Para 14. Denied.

Para 15. No knowledge. Hence denied. But this much is correct that the building in the present suit is a temple.

Para 16. No knowledge. Denied.

Para 17. No knowledge. Hence denied.

Para 18. No knowledge. Hence denied.

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Para 19. That the contents of para 19 of the plaint is denied. The Sunni Board cannot represent the Shia community. The suit as contemplated u/order 1 rule 8 C.P.C. is misconceived. The answering defendant is informed and believe that all the individual plaintiffs are Sunnis and represents the Sunnis community. It is said that Babar was a Shia and not a Sunni.

Para 20. That regarding plaint para 20 only this much is admitted that the building in question i.e. the temple of Janam Bhum is at present in the custody and management of the receiver. The rest of the contents of the para are denied. The plaintiffs are not entitled to any relief.

Para 21. No knowledge. Hence denied.

Para 22. Denied.

Para 23. Denied.

Para 24. That the plaintiffs are not entitled to any such reliefs.



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ADDITIONAL PLEA

Para 25. That the sketch map attached to the plaint is totally incorrect and is misleading. The details given in the plaint are wrong and imiginary. A correct sketchmap of the property indispute is annexed with the written statement as annexure "A" and which correctly shows the various cnstructions and placed in their relative positions.

Para 28. That the suit is time barred and the plaintiffs for the Muslim or any of its members have not been in possession within the limitation over the property in suit.

Para 29. That the contesting defendant does not take even a drop of water without the darshan of the said Lord Rama installed in the disputed place known as Janam Bhumi Lord Rama is a stadio of the answering defendants. The answering defendant is doing such darshan of the said Lord Rama continuously for 30-32 years. And thus accrued a right of Darshan of the said Lord Rama by prescription and long usur which the answering defendant have enjoyed peacefully and without any inturruption for more 30-32 years.

Para 30. That the plaintiffs suit deserves to be dismissed with costs.

Through: Sd./- Mahant Ganga Das

Dated 18.7.69/19.7.69



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ORIGINAL SUIT NO: 4 OF 1989

(Transferred Suit No.12 of 1961 from the Court of Civil Judge, Faizabad)

The Sunni Central Board of Waqf & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

Written Statement on behalf of Madan Mohan Gupta, the Convenor of Akhil Bharatiya Shri Ram Janam Bhumi Punrudhar Samiti, E-7/45, Bangla T.T. Nagar, Bhopal, newly added Defendant No. ____(added by the order dated 23.10.89 of the Hon'ble High Court) is as follows:-

1. That the contents of paragraph 1 of the plaint as they stand are wrong and are denied.
2. That the contents of paragraph 2 of the plaint are absolutely wrong and denied. There has never been any battle between Emperor Babar and the previous Ruler of Ayodhya nor any grave yard or mosque as alleged has been built or dedicated by Emperor Babar.
3. That the contents of paragraph 3 of the plaint as they stand are wrong and are denied. The grants, if any, as mentioned in the plaint were only political act and do not confer any rights on the disputed property.
4. That the contents of paragraph 4 of the plaint are not admitted.
5. That the contents of paragraph 5 of the plaint are denied.
6. That the contents of paragraph 6 of the plaint are denied. The answering defendants are not aware of any such alleged suit. Any sketch map filed by said Raghubir Das along with the alleged plaint would be fictitious and would not be binding on the answering defendants.
7. That the contents of paragraph 6-A, 6-B, 6-C, 6-E, 6-F of the plaint are denied. The building in dispute is a temple and not a mosque. Any alleged decision cannot and does not operate as res-judicata in the present suit. Neither the answering defendant nor the Hindu Public in general derive any title from the said Mahant Raghubar Das or his



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representatives and are not bound by their any action or conduct, nor any decision in the said suit No.61/280 of 1985.

8. That the contents of paragraph 7 of the plaint are denied.

9. That paragraph 8 of the plaint as it stands is denied.

10. That the contents of paragraph 9 of the plaint except for the act, as they stand, are denied. The alleged enquiry, if any, is wholly ex parte and behind the back of the Hindu Public in general and is not at all binding on Hindus as such.

11. That the contents of paragraph 10 of the plaint are not admitted as they stand, as neither the answering defendants nor the Hindu Public in general have been given any notice nor they had any knowledge of the same. Even otherwise, non-filing of any such suit could not convert a Hindu temple into a Muslim mosque.

12. That the allegations made in paragraph 11 of the plaint are totally false and are denied. The building which the plaintiffs allege as Babari masjid is and has been always the Ram Janam Bhumi Temple with the idols of Hindu God.

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13. That the contents of paragraph 11-A of the plaint are denied.

14. That the facts stated in paragraph 12 are not within the knowledge of the answering defendants, hence denied. The plaintiffs are put to strict proof thereof.

15. That the contents of paragraph 13 of the plaint are not in the knowledge of the answering defendant. It is, however, emphatically denied that the Muslims have any legal or constitutional rights of offering prayers alleged at the sight of Ram Janam Bhumi.

16. That the contents of paragraph 14 of the plaint are denied.

17. That the filing of the suit as mentioned in paragraph 15 of the plaint is admitted but it is denied that the allegations that the building in suit was a temple and deities are installed are false, or wrong and are denied.

18. That the contents of paragraph 16 of the plaint are admitted.

19. That paragraph 17 of the plaint needs no reply.

20. That paragraph 18 of the plaint relates to the proceedings of suit no.2 of 1950 and needs no reply axcept that any thing contrary to the Court



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records is denied.

21. That in reply to paragraph 19 of the plaint it is stated that the plaintiffs have no right to make the original defendants contest the suit in a representative capacity of the Hindu community who resides from Kashmir to Kanyakumari and from Dwarika to Assam and Nagaland. None of the defendants represent all the Hindus in India.

22. That paragraph 20 of the plaint as it stands is denied. The plaintiffs have no cause of action to file the present suit.

23. That the contents of paragraph 21 of the plaint as they stand are not admitted. The plaintiffs are put to strict proof thereof.

24. That paragraph 22 of the plaint is not admitted. The suit is undervalued.

25. That paragraph 23 of the plaint is denied. The suit is barred, the plaintiffs have no cause of action.

26. That paragraph 24 of the plaint is denied. The plaintiffs are not entitled to any relief and the suit is liable to be rejected with costs.

ADDITIONAL PLEAS

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27. That Lord Rama, an incarnation of God, was born many many thousand years ago in Ayodhya and his birth place is known as Ram Janam Bhumi or Ram Janma Sthan. This birth place is worshipped for the last many thousand years by the Hindu public who believe in divine presence at Ram Janma Bhumi in Ayodhya and have a devout faith that by offering worship at that place they are the recipients of the bounties and blessings of God, and this by itself constitutes the feature of a temple in Hindu religion. However, a holy temple stood at this place in ancient times. At a later stage Maharaja Vikramaditya reconstructed and resusisticated Ram Janma Bhumi temple and for Hindus it is a Spiritual base of Hindu religion.

28. That according to Hindu scriptures and traditions, Ram was born between the close of Treta Yuga and beginning of Dwapar Yuga, and that the span of Dwapar Yuga was about eight lacs of years. He was God incarnate and took birth in human form to protect the saints, to destroy the evils and to establish Dharma and save the world. Since then for times immemorial he is being worshipped by Hindus with the



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highest devotion and reverence.

29. That the literature is full with the narration of ideal life lived by Ram on this earth beginning with Ramayana of sage Balmiki who according to the evidence in the treatise was a contemporary of Ram. Then comes sage Vyasa who has mentioned Ram at many places in Mahabharat and has written a summary in his holy Biography in Ramopakhyan parva which is part of Bara Parva, Purans, Arthashastras of Kautilya, Raghubansh of Kalidas, Satrabandha of great Bhakta King Prabarsein and multitudes of other books in many languages of India describe the life of Ram and in all these literatures Ayodhya and its sanctity are repeatedly described.

30. That the last but not the least is Ramcharitra Manas written by Goswami Tulsidas (1497-1623 AD), who was contemporary of four Moghal Emperors viz. Babur, Humaun, Akbar and Jahangir. In Uttarakhand of Ramayan he has described the devotion with which the functions of Ram Janma were celebrated in Ayodhya. Not a single word is to be found in this great treatise about the existence of Baburi Masjid or performance of Namaz at Ram Janma Bhumi.

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31. That Ram is the most renowned and respected incarnations born in India. He was born on Navmi in the month of Chaitra according to Hindu calendar, which is popularly known as Ram Navmi. He killed demon Emperor Ravan and the entire episode is celebrated every year in the shape of Dussehra in every part of India. After the conquest of Lanka when Ram returned to Ayodhya, the said occasion was celebrated with great enthusiasm and the Diwali is the successor of that celebration which is still being celebrated all over India with participation of all members of religions, communities and sects. The Father of Nation, Mahatma Gandhi, was also a devotee of Ram. In fact when the assesian shot him the only word which came out from his mouth was ‘Hay Ram’. The ideal government commended by him was ‘Ram Rajya’. Ram thus enjoys respects of all mankind.

32. That in a very ancient book known as Ayodhya Mahatmya (A Guide for Travellers), the original of which is in Sanskrit but its translation by Ram Narain has been published in the journal of the Asiatic society



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of Bengal, Vol. 54 Part I, Chapter-I-C-4-1875 Calcutta 1875 states that all the four sons of emperor Dashrath were born in the palaces of their respective mothers. At one place it is described that Sita Rasoi is in Kaushalya Bhavan, the Janmasthal. The researchers have concluded that this ancient book appears to have come into existence during the tenure of Emperor Akbar. There appears to be no description of any so called Baburi Masjid alleged to have been constructed by Emperor Babur.

33. That the Faizabad Gazetteer, Volume 43 (XLIII) of the District Gazetteers of the United Provinces of Agra and Avadh compiled by Sri H.R.Nevill, I.C.S., published by Government Press in 1905 under the topic 'Directory' while dealing with Ayodhya (at page 12-F) affirmed that "The Janmasthan was in Ramkot and marked the birth place of Ram". Later on, it is said, "The Mosque has two inscriptions, one on the outside and the other on the pulpit; both are in Persian and bear the date 935 Hizri. Of the authensity of the inscriptions there can be no doubt, but no record of the visit to Ayodhya is to be found in the Musalman historians. It must have occurred about the time of his expedition to Bihar." It is to be noted that nothing has been found so far to establish the visit of Babur to Ayodhya. Only on the basis of these two inscriptions, the conclusion is being drawn all round that the mosque was built by Babur. It is very doubtful that it was so built. It appears to be a creation of Britishers sometimes in the Nineteenth century in order to create hatred between the two communities of India viz. Hindus and Muslims and thereby implement an effective policy of communal disharmony, and thereby create problems of law and order so that their annexation of Avadh may be justified on moral grounds. The script on the outer inscription of the mosque is pretty bold and more artistic, a style which was developed sometimes in the middle half of the Nineteenth century while the inner inscription is very fine and thin, a style developed in the latter half of the Nineteenth century. It is therefore absolutely certain that on the basis of these two inscriptions it cannot be concluded that either the mosque was built in 1528 AD or in 935 Hizri, or it was built by Emperor Babur or his



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Governor Mir Baqui, as stated therein.

34. That in U.P. District Gazetters Faizabad published by U.P. Government in 1960 and edited by Smt. Esha Basanti Joshi at page 47 quotes the inscription inside the mosque and relies on it for the date of construction of the mosque. The translation of the inscription in Persian given by her is as follows:-

" By the command of Emperor Babur whose justice is an edifice reaching upto the very height of the heavens. The good hearted Mir Baqui built this alighting- place of angels; Buvad Khair Baqi! (May this goodness last for ever). The year of building it was made clear likewise when I said Buvad Khair Baqi (=935)."

This also shows that for both the things i.e. for year of construction and for naming Emperor Babur as the builder of the mosque, authorities have relied upon only on two inscriptions found in the mosque.

35. That in the Babur Nama translated by Annette Susannah Beveridge, Vol. II published by Sayeed International, New Delhi, in appendix 'U' the heading is "The Inscriptions of Babur's mosque in Ayodhya (Avadh)". While reproducing the inscription inside the mosque, and translating it at page IXXVIII after quoting the cuplets and giving its translation and working out the number 935 to identify the year, the author at the bottom appended the following note, which is very important:-

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"Presumably the order for building the mosque was given during Babur's stay in Aud (Ayodhya) in 934 A.H. at which time he would be impressed by the dignity and sanctity of the ancient Hindu shrine- it (at least in part) displaced and like the obedient follower of Muhammad he was in intolerance of another Faith, would regard the substitution of a temple by a mosque as dutiful and worthy. The mosque was finished in 935 A.H. but no mention of its completion is in the Babur Nama. The diary for 935 A.H. has many minor lacunae; that the year 935 A.H. has lost much matter, breaking off before where the account of Aud might be looked for. On the next page the author says, "The inscription is incomplete and the above is the plain interpretation which can be given to the cuplets (aforesaid) that are to hand."

36. That the Britishers in achieving their object got a book published in 1813 by Laiden and known as Memoirs of Badruddin Mohd. Babur,



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Emperor of Hindustan and for the first time in this book it was stated that Babur in March 1528 passed through Ayodhya and even though Laiden has not mentioned that Babur in Ayodhya demolished the Hindu temples and built the mosque in their place, yet the British rulers gave currency to this false news that Babur demolished the Ram Janma Bhumi Mandir and constructed the Baburi Masjid thereon. The translated Babur Nama, Memoirs of Babur, published in 1921 and translated by M.A.S. Beveridge has mentioned that Babur never interfered with the religion of others and even though he visited various Hindu temples he appreciated their archaeological beauties. It appears there are no evidences that Babur ever visited Ayodhya or demolished any Hindu temple in Ayodhya. To claim the disputed mosque as one built by Babur 400 years ago by the plaintiffs is therefore wholly wrong. In fact, in Faizabad Gazetters 1960 at page 352, it is said "It is said that at the time of Muslim conquest there were three important Hindu shrines (Ayodhya) and little else, the Janmasthan temple, the Swargadwar and the Treta-Ke-Thakur. The Janmasthan was in Ramkot and marked the birth place of Ram….."

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37. That there was no mosque even till 1855 is established from the following narration in Faizabad Gazetteer 1960 at p. 63,where it is stated as under:-

"In 1855 a serious conflict between Vairagis and the Muslims at the site of Hanumangarhi in Ayodhya, both claiming it to be a place of worship connected with their respect respective religions. King Wajid Ali Shah is said to have appointed a Committee to investigate this matter which held a public meeting in Gulab Bari. It appears that among those assembled no one testified the existence of the mosque. Therefore, the Committee unanimously decided the issue in favour of the Vairagis. When the report of the Committee reached Lucknow, it caused a sensation among the Muslims. A council of action was formed of which Maulvi Amir Ali of Amethi (District Lucknow) was elected leader. He was staying at Suhali and succeeded in attracting a large number of followers. On learning this the Vairagis started arrangements for the defence of the place. Wajid Ali Shah then ordered a regiment to guard it. At last on November 7, 1855 Maulvi Amir Ali started for Rudauli with his followers. On refusing to retrace his steps when ordered to do so by Captain Barlow, a fight ensued in which he and most of his followers were killed.

The Gazetteer for the above has in the Footnote appended referred



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toKawal-ul-din Haider: Qaisar-ut-Tawarikh or Tarikh-I-Avadh Part II pp. 110-128 Mirza Zan : Radiqa-I-Shuhda (Lucknow 1772 A.H./1855-56 AD).

38. That in Faizabad Gazetter of 1905 at page 174 it is said "The desecration of the most sacred spot in the city caused great bitterness between the Hindus and Musalmans. On many occasions the feelings led to bloodshed and in 1855 an open fight occurred, the Musalmans occupying the Janmasthan in force and thence making a desperate assault on the Hanumangarhi. They charged up the steps of the temple but were driven back with considerable loss. The Hindus then made a counter attack and stormed the Janmasthan, at the gate of which seventy five Mussalmans were buried, the spot being known as the Ganj Shahidan or the martyr's resting place. Several of the King's Regiment were present but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organized a regular expedition with the object of destroying the Hanumangarhi; but he and his forces were stopped in Barabanki district. It is said that upto this time both Hindus and Musalmans used to worship in the same building but since the mutiny the outer closure has been put up in front of the mosque and the Hindus who are forbidden their access to the inner yard make their offerings on a platform which they have raised in the outer one."

39. That in Aine Akbari also no mention of the existence of Baburi Masjid is to be found.

40. That in Faizabad Gazetter of 1960 at pages 351 and 352 it is said that "With the departure of the Court, the Hindus were left to themselves and numerous temples and monasteries sprang into existence. Naval Rai, the Deputy of Nawab Safdar Jung built a fine house in Ayodhya which still stands on the river front. Probably this rise in importance was due to the creating popularity of the Ramcharitra Manas of Tulsidas and the progress of this place became even more rapid after the annexation of the Avadh by the British. before the middle of the nineteenth century Ayodhya was regarded as a stronghold of Hinduism…."



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41. That the following facts also establish that the mosque in dispute has not been built by Babur at all in 1528 nor is a mosque at all:-

(1) The tomb of this disputed Masjid if it is to be looked from behind would show that it is not in the style developed by Turkis during fifteenth century, nor the Mehrab of the Masjid in that style is to be found. Thus there is no tomb in the disputed Masjid as is to be found in other mosques generally.

(2) On the north door in the front facing each other there are two tigers. They are in the style of taking leaps and their tails are just in the same style when a tiger takes the leap. Between these two tigers there is a peacock. This is not a characteristic of a mosque.

(3) The various Hindu idols are painted or their scriptions are to be found in the disputed mosque.

(4) In the disputed mosque there is no provision for reciting Namaz. To this day it has no minorities, no place for storage of water for Vazoo.

(5) The Muslim Faith as adumbrated in Holy Koran does not permit the construction of a mosque on the site of temple after demolishing the temple.

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(6) Babur never dedicated the property of disputed mosque to Allah. Even supposing without admitting that Babur constructed the disputed mosque, yet as it has been done by committing trespass, demolishing the Temple, the abode of God, either by Babur or at his instance by Mir Baqi, the governor of Oudh, the dedication is wholly invalid and void. The material of the old temple was largely employed in building the mosque and a few of the original columns are still in good preservation. They are of closed grained black stone (Kasauti) bearing various Hindi Bas-reliefs. The outer beam of the main structure being of sandal wood, the height of the columns is 7 to 8 ft., the shape of the base, the middle section and the capital is square, the rest being round octagonal. There are two inscriptions in Persian. One on the outside and the other on pulpit bearing the date 935 Hizri. Subsequently, Aurangjeb also desecrated the shrines of Ayodhya which led to prolonged bitterness between Hindus and Musalmans. Latter also occupied Janmasthan by force and also made an assault on



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Hanumagarhi. Attacks and counter attacks continued under the leadership of Maulvi Amir Ali (See page 352 of Faizabad Gazetteer 1960).

(7) A mosque must be built in a place of peace and quiet and near a place where there is a sizeable and large number of Muslim population. According to the Tenets of Islam, a mosque cannot be built at a place which is surrounded on all sides by temples where the sound of music, of Conch shells or Ghanta Ghariyalis must always disturb the peace and quiet of the place.

(8) A mosque must have a minaret for calling the Ajan. According to Baille "When an assembly of worshippers pray in a Masjid with permission, i.e. delivery. But it is a condition that prayers be with Ajan or the regular call and be public and not private, for though there should be an assembly yet if it is without Izah and the prayers are private instead of public, the place is no Masjid according to the true disciples." Indeed there has been no mosque without a minaret after the first half century fight. (See P.R. Ganapati Iyer's law relating to Hindu and Muhammadan Endowments 2nd Edition 1918 chapter XVII, page 388).

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(9) According to the claim laid by the Muslims in the present suit, the building is surrounded on sides by a grave yard known as Ganj Shahidan. There is a mention in the Faizabad Gazetteer also of the burial of seventy five Muslims at the gate of Janmasthan and the place being known as Ganj Shahidan after the battle of 1855. Although there are no graves any where near the building at Sri Ram Janma Bhumi o in its precincts or the area appurtenant thereto for the last more than 50 years and if the building was surrounded by a graveyard during the British times soon after the annexation of Audh by them the building could not be mosque and could not be used as a mosque for offering of prayers except the funeral prayers.

42. That the mere displacement in part of the ancient Hindu temple of Ram Janma BhumiStahan will not take away the religious sanctity of the temple and the site inasmuch as the Hindu religion believes the presence of the divine spirit at the Ram Janma Bhumi Sthan, worship



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whereat is conducive to the spiritual well being of the person as the place relates to the birth place of Lord Ram and to constitute temple it is not merely the presence of idols as such which is required. The acts of vandalism perpetrated either by Babur or by any other person after him would not take away the religious sanctity of the place or destroy the religious belief of the Hindus attached to that place, nor the place as such could be deemed to be out of possession of the Hindus as such. As Carneigy puts it "Ayodhya which is to the Hindus as Macca is to the Muhammadans, Jerusalam to the Jews. has in the traditions of the Orthodox, a highly mythical origin, being founded for additional security not on earth for that is transitory but on the chariot wheel of the Great Creator Himself which will endure for ever." It is intimately connected with the mass of legend relating to Ram and Suryabanshi (solar) race and was certainly the capital of several reigning dynasties." It is a place of great antiquity. According to Hindu mythology, it represents the forehead of Vishnu and is the chief of the seven cities (Saptapuri) of pilgrimage in India (See 1960 Faizabad Gazetteer at page 351). The worship at the place has continued since ever throughout the ages. The Hindus were never out of actual and legal possession. Their rights always remained and still exists on the land in dispute.

43. That according to the case set up by certain defendants and the documents filed by them or on their behalf, the Babari Masjid was a Sunni Waqf but its Mutwallis being the descendants of Mir Baqi were Shia Muslims. It is wholly incomprehensible in law that a Waqf created by a Shia Waqif would be a Sunni Waqf at all. The mosque according to the plaintiffs was built by Mir Baqi, who was a Shia and that he being the Waqif so were the Mutwallis one after the other. But fully aware of the realities the Shia Central Board of Waqfs U.P. did not agitate the matter, while the plaintiffs purported to take proceedings on the basis of some report of the Waqf Inspector. The said proceedings are not at all binding on the answering defendants or Hindus in general. The answering defendants were never parties to those proceedings, nor the entire Hindu community was represented in



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those proceedings taken by the Sunni Waqf Board. Those proceedings are clearly violative of principles of natural justice and are null and void.

44. That before the middle of the 19th Century, as mentioned above, Ayodhya was regarded as a stronghold of Hindus and the Ram Janma Bhumi was at all material time accessible to Hindus. Since then Hindus are in peaceful possession of the place and the temple in dispute and are performing the worship therein peacefully and uninterruptedly.

45. That in 1949 some members of the Muslim community tried to raise disputes whereupon the proceedings under Section 145 Cr.P.C. were initiated and even thereafter the Hindus continued to worship at the place. According to U.P. District Gazetteers Faizabad 1960 Annexures in Table 11 at page 450 shows that various fairs are being held on different days showing there large gatherings of Hindus varying from 2 lacs to 4 lacs, which confirms the description of Carneigy about Ayodhya being Macca to Hindus.

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46. That the same Gazetteer Faizabad 1960 records a very important fact by Sri William Finch when it mentions as follows at page 50:-

> "William Finch, the English merchant who traveled through the Moghal Empire (1608-1611) says that Avadh is "a city of ancient note and seate of a Potan King, now much ruined; the castle built four hundred years ago. here are also the ruins of Rani Chand (s) 3 Castle and houses which the Indians acknowledge for the great God saying that he took a flesh upon him to see Tamasha of the world. In these ruins remayne certain Brahmens who record the names of all such Indians as work themselves in the river running thereby; which custume, they say, hath continued four lackes of years (which is three hundred ninety four hundred thousand and five hundred years before the world's creation). At the bottom against the word '3' which is indicated in the citation against the word 'Rani Chand' it is explained as follows:-
>
> > "Rani Chandra, the Hero of Ramayan. The reference is to the mound known as Ramkot or fort of Ram."

Thus it shows that after Babur during the time of Akbar, Ram Janma Bhumi Sthan was being worshipped by the Hindus which was noticed by the English traveller as well. It may be mentioned here that Audh



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was equivalent to Ayodhya.

47. That the temple and the Sthan has always been the public religious worship place for the last several thousand years and the interference, if any, by Babur in 1528 by displacement of a part of the Temple for a few years could not take away the legal rights of Hindus, speciallywhen after Babur's death the record of history establishers re-emergency of Hindus' possession over the same. The presence or absence of the idols would not in any way affect the right, title and interest of Hindus over the Sthan and the temple in dispute, nor it will affect in any way the religious character of Ram Janma Bhumi as a place being a part of the Hindu religion. It is not necessary that there must be idols installed at the place before it could be described as a temple and a part of the Hindu religion. As for example, Lord Krishna left this world at the place near Somnath in the State of Gujarat. The place is known as Prabhas Patan (Somnath) but at this place there is no idol of Lord Krishna. Yet the place is a very holy place for Hindus and is worshipped as the Hindus firmly believe that worship at this place would be conducive to their spiritual well being and peace. In the present case what is of the maximum religious importance for Hindus is the birth place of Lord Ram i.e. the Janma Sthan, the presence of idols on the place are of later origin when Vikramaditya repaired and resusticated the temple for the benefit of the worshippers who subsequently started imagining a particular image in which the God Ram is manifesting Himself as a divine person to them.

48. That, in the above circumstances, the ouster of Hindu community from Ram Janma Bhumi did not ever take place. The Hindus have always been and are still today in lawful possession and shall always be deemed to be in lawful possession of the site in dispute. In the alternative, even supposing without admitting that the Hindus were ousted, yet they have thereafter regained possession and have been exercising their rights of worship peacefully and to the knowledge of the plaintiffs for more than twelve years and thus perfected their title in the eyes of law. The suit is barred by limitation.

49. That Babur is alleged not to have made any endowment or waqf, nor



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he could. The emperor does not if so facto became the owner of the whole earth of which he may be a ruler. There is no such concept that the ruler becomes the true owner of all the land in his kingdom if so facto. The site in dispute admittedly belongs to Hindus for the last thousand years. The ruler might have a superior right to levy taxes etc., but could not be deemed to be the actual owner. In these circumstances, the claim of the plaintiffs that Babur by annexation, which is emphatically denied, as there was no annexation as such, became the owner and made a Waqf when there was no battle between Babur and Raja of Ayodhya and no question of annexation of the territories arose. The general religious notions of the Hindu community prior as well as subsequent to Babur has always been that the temple and the Janma Bhumi Sthan, i.e. Ram Janma Bhumi, the birth place of the Creator and Lord Ram, are and have always been for the religious benefit of the Hindus, for the benefit of the truth and good as against evils and vices, the worship for which the place was used and stood dedicated was at no relevant time displaced, nor taken away and hence neither the plaintiffs nor the Muslims acquired any rights, title or interest in the disputed property. In fact Babur had no rights to give religious place of Ram Janma Bhumi of Hindus in perpetuity to Muslims or create any rights in favour of Muslims in perpetuity over the religious place of Hindus, which is against all cannons of justice, morality and good conscience. Further a place already dedicated cannot be rededicated.

50. That birth place of Ram is only located at one particular spot in Ayodhya. It cannot be shifted to any other place in the world. It is in the same position for Hindus as Macca for Muslims. As Macca cannot be shifted so Ram Janma Bhumi cannot be shifted. On the basis of national policy of assigning the weight of a particular place for a particular religion or a particular community, the belief and religious feelings of Hindus in this regard be given supreme importance as a mosque can be built in any other part.

51. That it has been the national policy of our country since India attained Independence to value and appreciate the depth of feelings of all



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communities concerned and redress the wrongs irrespective of the protests of the opponents on grounds of injuries to their religious feelings. The Govt. of India under Pt. Jawahar Lal Nehru and Sardar Patel placed the reconstruction of the Somnath Mandir in Gujarat in spite of opposition of some Muslims fundamentalists. Similarly, the claim of Christian fundamentalists on Vivekanand rock was brushed aside and the Govt. of India okayed the construction of Vivekanand Mandir near Kanya Kumari.

52. That the plaintiffs have no right to maintain the suit and the suit is liable to fail on this ground alone.

53. That the plaintiffs are not entitled to any of the reliefs claimed by them and the suit is liable to be dismissed with costs.

Lucknow dated November 5, 1989

Sd./-
Madan Mohan Gupta
Defendant
(Newly added defendant)

Sd./-
(Sah Om Prakash Agarwal)
counsel for the defendant

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ADDITIONAL WRITTEN STATEMENT

On behalf of defendant no.2O

IN

ORIGINAL SUIT NO.4 OF 1989

(Regular Suit No.12 of 1961)

The Sunni Central Board of Waqf, U.P. and others ……Applicants.

Versus

Gopal Singh Visharad & Others ……Respondents

On behalf of defendant No.20 it is stated as under:-

1. That the allegations in para 21A of the plaint (amended) is not admitted as stated and is denied.
2. That the allegations of para 21B of the plaint (amended) is not admitted and is denied.

Corrected today to the permission of
Hon'ble Court. Sd./- 07.01.96

3. That the allegations of para 21C is admitted to this extent that ordinance No.8A of 1993 was promulgated on 7.1.93 and latter on it was substituted by Act No.3 of 1993, these ordinance and the Act were challenged before the Hon'ble Supreme Court. It is also admitted that Union of India was held as Statutory receiver. Rest of the allegation of the aforesaid para is not admitted.

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ADDITIONAL PLEAS

4. That the disputed land is known as Ram Janam Bhomi, which is very sacred for the Hindus from time immemorial. There was a temple of Hindu deity 'Ram' on the aforesaid land. When Babar invaded India he partly destroyed the said temple. It is alleged that he had constructed a mosque. In fact the upper structure was constructed and remaining temple was left as it is. In this construction the malba of the temple was used. The pillars of the temple were also used in the construction. On the pillars, the figures of Hindu deity & holy signs were evidence that Hindu Temple was not completely destroyed. Thus



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the temple structure existed and it is wrong to claim that a new mosque was constructed by Babar and handed over to Muslim community. The muslims were not offering prayer in the disputed structure as there were in graved figures of Hindu deity on the 14 pillars of the disputed structure. It is also wrong to say that the Muslims offer Namaz for last more than 46 years the muslims never offered Namaz. The land or place does not become mosque. Thus the claim of the plaintiff through amendment that the disputed land 'Ram Janam Bhomi' will become Babari Masjid as the Muslims had offered Namaz in the structure is wrong and incorrect. It is further stated that the nature of Ram Janam Bhomi will never be changed and it shall always remain as Ram Janam Bhomi even if Muslims have ever offered namaz in it and it will not become mosque under the eye of law. It is further stated that open land is the land of the temple and it cannot be a mosque.

5. That by destruction of the structure, the pillars were also destroyed which were evidence of Hindu Temple. It is not the destruction of Babri Mosque but a Hindu temple. The answering defendant No.20 is entitled to claim the land in dispute for constructing a temple of Bhagwan Ram on the disputed land.

6. That in case the court decree the suit for re-construction of the demolished structure, it is necessary that it should be built in the original shape and model having 14 pillars with the figures of Hindu diety, lotous, swastic and Ram Chabutara, Sita Rasoi and temple of Ram Lala.

7. That the building which was alleged as mosque is demolished and now the land is of the temple of Ram Janam Bhomi, which was demolished is claimed by the plaintiff through the amendment. The plaintiff has no right to claim the land of the temple which is the property of Hindus.

8. That the Babar never became an Emperer of India he was only an invadar, however no king or Government had a right to hand over or give the religious land to any person as such Babar had no right to construct a mosque over Ram Janam Bhomi and give it to Muslims, nor Muslims have any right to claim Ram Janam Bhomi.



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9. That similarly the plaintiff cannot claim places of Hindus worship Sita Rasoi, Ram Chabutara. The claim of the plaintiff is without any basis nor they are in possession.

Dated:17.10.1995 Sd./- Madan Mohan Gupta

Defendant No.20

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O.O.S.No.4 of 1989

The Sunni Central Board of Wakf U.P. & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visarad & Ors. ….Defendants

**Reg. Suit No.12 of 1961**

**Replication to the written statement of defendant 3 and 4**

Para 1 to 24. The allegations in para 1 to 24 of the plaint are true. Contrary allegations are denied.

Para 25. The sketch map attached to the plaint is correct. Allegations against it are denied. The sketch map attached to the written statement is wrong and denied.

Para 26. Wrong and Denied.

Para 27. Denied. The property in suit is not a temple as alleged and has never been in possession of the defendants as alleged.

Para 28. Denied.

Para 29. Denied.

Para 30. Denied. The Muslim Public has always been saying prayers and visiting the Mosque and Ganje-Shahidan which is the property in suit for last 450 years when the mosque was built.

Para 31. Only this much is admitted that in 1950 the mosque in suit was attached under Section 145 Cr.P.C. and Sri Priadutta Ram was appointed Receiver and was placed in possession of the attached property as such. He is still continuing as Receiver. The rest of the allegations of this para are absolutely wrong and denied.

Para 32. Denied. The defendants have never been in possession or in-charge of the property in suit as alleged. The filing of the suit mentioned in this para is admitted. Rest is denied.

Para 33. Filing of the suit in the court of the Addl. Civil Judge Faizabad is admitted. The said suit has since been transferred to this Hon'ble Court and is pending.

Para 34. Denied. The plaintiffs and Muslim Public have been in possession for last 450 years.



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Para 35. Denied. The plaintiffs have been in possession of the property in suit as Mosque and Ganje-shahidan for last 450 years and it is absolutely wrong that the Hindu public ever had possession of any sort over the property in suit as temple, as alleged by the defendants in this para.

Para 36. Denied. The Sketch map and the list given as part of the written statement is wrong and denied.

**Additional Pleas**

Para 37. That the Muslim public had been in continuous and open possession of the mosque and Ganje-Shahidan for last 450 years, i.e. the time when the mosque was built. In 1934 of course the Hindu Public out of mischief attempted to destroy the mosque and in their attempt they damaged the mosque at places which damage was repaired by the Government at the expense of the Government and Hindus Public was penalized by punitive tax for their unlawful actions.

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Para 38. That the possession of the Muslim public was not disturbed and they remained in possession of the property as mosque and saying their usual prayers continuously upto December 1949 when Hindu Public by force entered the mosque, by breaking open the lock of the mosque and desecrated the mosque by placing idols inside the mosque which being made by the police proceedings under Section 145 Cr.P.C. were started and to avoid apprehension of breach of peace the mosque was placed in custody of a Receiver. The Receiver is still holding the property for the benefit of Muslim Public.

Para 39. That the Muslim Public as representative of Wakf has been in continuous possession of the property in suit for las 450 years i.e. since the mosque was built and even if the Hindu Public had any interest whatsoever in the property in suit before that period of 450 years the Muslim Public as representative of wakf has perfected title to the property in suit by their long undisturbed open possession against the interest of Hindu Public to their



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knowledge which amounts to adverse possession of the wakf and thus the title or interest, if any, of the Hindu Public has been extinguished.

Lucknow Dated:
September 11/12.1963

Sd./-
Ehtram Ali
Plaintiff

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O.O.S.No.4 of 1989
Reg. Suit No.12 of 1961

The Sunni Central Board of Wakf U.P. & Ors. …Plaintiffs

Versus

Sri Gopal Singh Visharad (Now deceased) & Ors. ….Defendants

**Replication to the amended written statement of defendant No.10 (President All India Hindu Maha Sabha).**

The plaintiffs, above named, beg to submit as under:-

1. That the contents of paras 33 and 34 of the amended written statement as inserted under the order dated 28.10.1991 (hereinafter referred to as amended written statement) are the matters of record and they need no reply.
2. That the contents of para 35 of the amended written statement are denied as stated and in reply thereto it is submitted that the plaintiffs are not aware of any 3-point formula referred to in the para under reply. In any case no such formula finds embodied in the said Ordinance No.9 of 1990. It is further submitted that the land in dispute including the mosque in question was not even actually acquired and the same could not be even legally acquired and any such acquisition was absolutely illegal, unconstitutional and void.
3. That the contents of para 36 of the amended written statement are also incorrect and hence denied as stated. As already mentioned above, no such formula was ever agreed upon by the plaintiffs or by the leaders of both the communities much less by the Muslim leaders. The Muslim leaders had categorically rejected the said Ordinance and most of them had strongly urged for withdrawal of the same. The script of the T.V. and Air broadcast of the relevant dates, specially of 19th October 1990 to 23rd October, 1990 will be required by this Hon'ble Court to be perused for ascertainment of the fact that the said Ordinance was strongly opposed by the leaders of the Muslim



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community and also by leaders of Hindu community and even the Vishwa Hindu Parishad leaders had rejected the same.

4. That the contents of para 37 of the amended written statement are also incorrect and hence denied as stated. No physical charge of the entire property in dispute was ever taken over by the said Commissioner, Faizabad Division. The mosque in question had virtually remained in the custody of the Receiver all throughout. If any charge is alleged to have been taken over the same was only a paper transaction and it had no legal effect upon the custody or management of the mosque in question. It is also incorrect to say that the Ordinance in question was in respect of the property in suit. The boundaries of the property sought to be acquired by the first Ordinance were vague and in no case the same covered the property in suit which comprised of the 23 plots of land mentioned in the plaint. The northern boundary of the area sought to be acquired was upto the road linking Hanuman Garhi with Doraha Kuan while the property in suit includes plot No.238 also which falls in the further north of the said road and as such the land of plot No.238 (of Nazul Khasra) could not at all be said to have been acquired by the aforesaid First ordinance. Similarly in the Southern side the boundary of the acquired area extended upto Khasra plot No.172 of the 2nd Second Settlement while the property in suit includes land falling even beyond the said Khasra plot No.172 of the settlement and Nazul Khasra plot Nos.603, 606, 607, 610, 619, 620,621 and 628 etc. are all situated in the further south of the said plot No.172 of the 2nd settlement. Similarly the western boundary of the so-called acquired area mentioned in the first Ordinance extended upto the so-called road in Nazul plot No.577, while the fact is that the said Nazul plot No.577 was situated in the eastern side of the mosque in suit and not in the western side and as such the western boundary of the acquired area was absolutely wrong and vague and on that account also the said First Ordinance was absolutely illegal, defective, incomplete and void ab initio.

In the eastern boundary of the acquired property plot numbers, mentioned in the First Ordinance, are 1105, 1106 and 1118 which do



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not appear to be the plots of the Khasra of 2nd Settlement of Mauza Ram Kot. In any case these plots numbers are not situated in the eastern side of the property in suit as the plots numbers of the second settlement existing in the eastern side of the property in suit are 164,165,166 and 167 etc. As such the eastern boundary of the so-called acquired area was absolutely vague and unidentifiable. As such the said First Ordinance was illegal, non est and void even on account of the aforesaid ambiguity and vagueness.

5. That the contents of para 38 of the amended written statement are also incorrect and hence denied as stated. It is incorrect to say that the said First ordinance No.9 of 1990 was implemented in fact and spirit. In any case the property in suit was not covered by the aforesaid Ordinance No.9 of 1990 and as such there was no question of implementation of the said Ordinance in respect of the property in suit. It is also incorrect to say that the property in suit had ever vested in the Central Government. As already stated above the Receiver of the property had continued all through that period and he was never relieved of his responsibility. Moreover the land of Nazul Khasra plots nos.238, 603, 606, 607,610, 619, 620, 621 and 628 etc. was clearly situated beyond the northern and southern boundaries mentioned in the so-called acquired area under the aforesaid Ordinance and the boundary of the eastern and western sides being non-existent, incorrect, misleading and vague, the land of other plots in dispute could also not be said to have been acquired by the aforesaid Ordinance and as such the entire Ordinance was nothing but vague and indefinite in respect of the property sought to be acquired and in that view of the matter no portion of the property in suit could be said to have been acquired by the aforesaid Ordinance and as such there was no question of implementation of the said Ordinance in respect of physical possession on the spot or even otherwise.

6. That the contents of para 39 of the amended written statement are also incorrect and hence denied as stated. As already submitted above the said first Ordinance could not be implemented at all on account of its vagueness and uncertainty and other deficiencies regarding incomplete



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details of the property sought to be acquired and as such there was no question of its being implemented.

7. That the contents of para 40 of the amended written statement are also incorrect and hence denied as stated. As the First Ordinance itself was vague, incomplete and void ab initio no consequences could be said to have been followed from the same. The averments made in the para under reply are merely imaginary and baseless. Neither the property in suit had ever vested in the Government and nor it was freed or discharged as alleged in the para under reply and the orders of injunction and appointment of Receiver etc. had continued to remain in force as the Ordinance in question could not at all be said to have applied to any portion of the property in suit much less the entire property in suit. The suit in question as well as the orders passed therein had all through remained operative. So also neither the Commissioner could be legally said to be an authorised person in respect of any portion of the property in suit much less the entire property in suit and as such there was no question of his taking actual possession of any portion of the property much less the entire property in suit.

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8. That the contents of para 41 of the amended written statement are also incorrect and hence denied as stated. It is incorrect to say that the said first Ordinance was withdrawn under pressure of anyone but the same appears to have been withdrawn on account of the aforesaid deficiencies and illegalities which were undoubtedly pointed out to the then Prime Minister and his Cabinet colleagues and others. The motive imputed to the Prime Minister is also incorrect and false.

9. That the contents of para 42 of the amended written statement are also incorrect and hence denied as stated. Whatever was mentioned in the Second Ordinance would be evident from the contents of the same and legal effect of the same is a matter of argument regarding which submissions will be made during the course of arguments.

10. That the contents of para 43 of the amended written statement are also incorrect and hence denied as stated. The President of India had absolute and full power to withdraw, repeal and revoke the said first



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ordinance and to provide for the legal consequences of the same as are mentioned in the 2nd Ordinance. As already mentioned above the property in suit had never vested in the government and the same or at least major portion of the same was not at all covered by the First Ordinance and as such there was no question of vesting or divesting of the said property which was not at all covered by the First Ordinance and the property, if any, found to be covered by the First Ordinance could very well be divested by the said 2nd Ordinance and its sta us could be restored to its original position as if the first Ordinance had not at all been issued.

11. That the contents of para 44 of the amended written statement are also incorrect and hence denied as stated and the same being of argumentative nature, they would be replied during the course of argument. It is further submitted that the suit in question had not at all abated by the First Ordinance and as such the interim orders passed therein had also remained very much operative and in force in spite of the First Ordinance.

12. That the contents of paras 45, 46, 47, 48, 49 and 50 of the amended written statement are also incorrect and hence denied as stated. The same contain legal pleas which have no basis but still the same will be replied during the course of arguments.

13. That the contents of para 51 of the amended written statement are also incorrect and hence denied as stated. As the suits and proceedings in question had never abated even by the First Ordinance, the same had always remained in existence and very much operative and in force. It is further submitted that even if the First Ordinance had caused any effect upon the said suit or orders, the said effect could very well be undone by the 2nd Ordinance and the same was undone by the said 2nd Ordinance.

14. That the contents of para 52 of the amended written statement are also incorrect and hence denied as stated. The averments of the para under reply are argumentative in nature and the same will be replied during the course of arguments.

15. That the contents of para 53 of the amended written statement are



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absolutely incorrect and hence denied as stated. It is further submitted that since allegations of malafide have been made against Sri V.P.Singh and his Cabinet colleagues they were required to be impleaded as parties to the instant suit if at all the said allegations are considered worth trial although the plaintiffs maintain that the said allegations are liable to be deleted or at least ignored as they are not at all relevant for the purposes of the instant suit.

16. That the contents of paras 54, 55 and 56 of the amended written statement are also incorrect and hence denied as stated and in reply thereto it is submitted that whatever advice is given by the Council of Ministers to the President of India, the same is not justiciable by the Courts of law and in any case the Courts cannot go into the circumstances which led to the enactment of any legislation and as such the circumstances which had necessitated the issuance of the second Ordinance cannot be investigated by this Hon'ble Court and the reasoning given in the 2nd Ordinance is to be read as is mentioned therein. It is also incorrect to say that the 2nd Ordinance hits the basic structure of the Constitution of India.

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17. That the contents of para 57, 58, 59 and 60 of the amended written statement relate to the Union Government and as such the Union of India is liable to be impleaded in order to reply the same.

The plaintiffs maintain that the said second Ordinance having been legally promulgated on 23rd October, 1990 the same could remain in force for six weeks without being laid before any House of the Parliament and as such at least it had the effect of withdrawing the First Ordinance and by virtue of the said Second Ordinance it will be presumed that the First Ordinance had never been issued and had never seen the light of the day.

18. That the contents of paras 61, 62, 63 and 64 of the amended written statement are also incorrect and hence denied as stated and in reply thereto it is submitted that the same are all argumentative in nature and will be replied during the course of arguments.

19. That the contents of para 65 of the amended written statement are also incorrect and hence denied as stated. There is no definite and



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prescribed procedure for promulgating an Ordinance and the procedure which can be said to have been prescribed under the Constitution of India for issuance of an Ordinance has been followed and both the Ordinances were issued by following the same procedure and as such the Second Ordinance had the effect of nullifying and doing away with the first Ordinance.

20. That the contents of para 66 of the amended written statement are also incorrect and hence denied as stated and in reply thereto it is submitted that the legal fiction of withdrawal makes the first Ordinance non-existent and as such the first Ordinance will not be deemed to have been issued and it never came into effect. The legal pleas will be replied during the course of arguments.

21. That the contents of paras 67, 68, 69 and 70 of the amended written statement are also incorrect and hence denied as stated and the same being of argumentative nature will be replied during the course of arguments.

It is, however, maintained that the instant suit had very much remained pending all throughout and the same had never abated either in part or in full and as such the same is liable to be tried.

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Dated: Lucknow
18th November, 1991

Sd./- Secretary,
U.P.Sunni Central Board
of Waqfs, Lucknow

1. Sd./- illegible
2. Sd./-illegible
3. Sd./- illegible

Plaintiffs

Sd./- Z.Jilani
Advocate,
Counsel for the plaintiffs.



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In the court of Civil Judge, Faizabad
12 of 1961
Sunni Central Board vs. Shri Gopal Singh Visharat

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08.08.62

Shri Mohd. Ayub, advocate for the plaintiffs states that the property in suit is the property is dedicated to Almighty God and is a Mosque for the use of the entire Muslim community at large. He adds that Shias and Sunnis have the interest in the same.

Sd- illegible
Mohd. Ayub,
Advocate

Sd/- illegible
Civil Judge,
08.08.62

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28.8.63

Sri Mohd. Ayub states that the mosque be in A, B, C, D as shown in the plaint map (sketch map) and the land around A, B, C, D is grave yards of the Muslims as shown in it.

Sd/- illegible
28.8.63

28.8.63

Sri Mohd. Ayub states that the plaintiff pleads in the alternative that even if the defendants had any right in the property in suit, the same have been extinguished by lapse of time.

He clarifies that the same invests to adverse possession and the rights of the defendants have extinguished by it and the plaintiff has argued title by adverse possession.

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Sd/- illegible
28.8.63



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Statement under Order 10 Rule 2 C.P.C. of Sri Zafaryab Jilani, Advocate, for the plaintiff.

---

That the mosque was situate on a Nazul Plot No. 583 of the Khasra of 1931 of Mohalla Kot Ramchandra known as Ramkot at Ayodhya.

Sd/-illegible
Sri Zafaryab Jilani
11.1.1996

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**STATEMENT OF SRI ZAFARYAB ZILANI, COUNSEL FOR PLAINTIFF IN O.O.S. 4 OF 1989 MADE UNDER ORDER X RULE 2 C.P.C. ON 22.04.2009.**

For the purpose of this case there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth of Lord Rama at Ayodhya a described in Balmiki Ramayana or as existing today. It is, however, disputed and denied that the site of Babri Masjid was the place of birth of Lord Rama. It is also denied that there was any Ram Janam Bhoomi Temple at the site of Babri Masjid at any time whatsoever.

The existence of Nirmohi Akhara from the second half of Nineteenth Century onwards is also not disputed. It is, however, denied and disputed that Nirmohi Akhara was in existence and specially in Ayodhya in 16th Century A.D. or in 1528 A.D. and it is also denied that any idols were there in the building of the Babri Masjid up to 22nd December, 1949.

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Sd/-
Z. Jilani, Adv.
22.04.2009

The above statement
was recorded before us.

Sd/-
S. Rafat Alam
Sudhir Agarwal
D.V.Sharma
22.04.2009



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**STATEMENT OF SRI MUSTAQ AHMAD SIDDIQUI, COUNSEL FOR PLAINTIFF IN O.O.S. 4 OF 1989 MADE UNDER ORDER X RULE 2 C.P.C. ON 22.04.2009.**

For the purpose of this case there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth of Lord Rama at Ayodhya a described in Balmiki Ramayana or as existing today. It is, however, disputed and denied that the site of Babri Masjid was the place of birth of Lord Rama. It is also denied that there was any Ram Janam Bhoomi Temple at the site of Babri Masjid at any time whatsoever.

The existence of Nirmohi Akhara from the second half of Nineteenth Century onwards is also not disputed. It is, however, denied and disputed that Nirmohi Akhara was in existence and specially in Ayodhya in 16th Century A.D. or in 1528 A.D. and it is also denied that any idols were there in the building of the Babri Masjid up to 22nd December, 1949.

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Sd/-
M.A. Siddiqui, Adv.
22.04.2009

The above statement
was recorded before us.

Sd/-
S. Rafat Alam
Sudhir Agarwal
D.V.Sharma
22.04.2009



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**STATEMENT OF SRI SYED IRFAN AHMAD, COUNSEL FOR DEFENDANTS NO.6/1 AND 6/2 IN O.O.S. NO.3 OF 1989 MADE UNDER ORDER X RULE 2 C.P.C. ON 22.4.2009.**

For the purpose of this case there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth of Lord Rama at Ayodhya a described in Balmiki Ramayana or as existing today. It is, however, disputed and denied that the site of Babri Masjid was the place of birth of Lord Rama. It is also denied that there was any Ram Janam Bhoomi Temple at the site of Babri Masjid at any time whatsoever.

The existence of Nirmohi Akhara from the second half of Nineteenth Century onwards is also not disputed. It is, however, denied and disputed that Nirmohi Akhara was in existence and specially in Ayodhya in 16th Century A.D. or in 1528 A.D. and it is also denied that any idols were there in the building of the Babri Masjid up to 22nd December, 1949.

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Sd/-
S. Irfan Ahmad, Adv.
22.04.2009

The above statement
was recorded before us.

Sd/-
S. Rafat Alam
Sudhir Agarwal
D.V.Sharma
22.04.2009



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In The Court of Civil Judge Faizabad

Reg. Suit No. 12 of 61

Sunni Central Board and others

Vs

Gopal Singh and other

Statement U/ order X rule 2

C.P.C. of Plaintiff's Counsel

मो0 अयूब अडवोकेट वादीगण ने बयान दिया कि जायदाद निजाई में बाबरी मस्जिद व उसकी चहारदीवारी से मिला हुवा कबरिस्तान जानबे पूरब ,उत्तर– दक्खिन है। पच्छिम तरफ कबरिस्तान नहीं है । बाबरी मस्जदि को शहनशाह बाबर ने 1528 ए0डी0में एकदम नये सिरे से बनाया था । जिस जगह पर बाबरी मस्जिद बनी है उस जगह पर उसके बनाने के पहले कभी भी हिन्दुओं का किसी तरह का कोई मंदिर या देव स्थान या कोई तामीर नहीं थी। बाबरी मस्जिद के रेलिंग के बाहर और सदर फाटक के बाउण्ड्री वाल के अन्दर पूरब दक्खिन की तरफ एक 17 फिट बाई 21 फिट का चबूतरा है जिस पर लकड़ी के स्ट्रक्चर का एक वूडेन टेम्पिल बना है उसमें कोई भी हिन्दुओं की मूर्तियां न कभी थीं , न अब तक हैं। वह जगह भी मुसलमानों की मॉस्क का हिस्सा है। मुझे नहीं मालूम कि वह जगह आज तक कभी भी हिन्दुओं के इस्तेमाल में आई है या नहीं । ये भी नहीं मालूम कि वह जगह कभी भी मुसलमानों के इस्तेमाल में रहीं है या नहीं । जब से यानी दिसम्बर 1949 ई0 से मुसलमान लोग 145 जाब्ता फौजदारी के मुकदमे में बाबरी मस्जिद के करीब जाने से रोक दिये गये हैं तब से उस जगह पर अगर कोई चेन्जेज किसी ने किया हो तो उसके बारे में मुझे कोई इल्म नहीं है । बाबरी मस्जिद के सदरी फाटक से अन्दर दाखिल होने पर उसके दाहिनी तरफ जो भी तामीरात है वह दिसम्बर 1949 के पहले वहां पर कभी नहीं थे, उन्हें दिसम्बर 1949 ई0 के बाद किसी ने तामीर कर लिया होगा । बाबरी मस्जिद की मेन बिल्डिंग के उत्तर तरफ चहारदीवार के अन्दर भी दिसम्बर 1949ई0 तक कभी कोई तामीरात बराबर इमारत या चबूतरा वगैरह के कभी नहीं रहे । इस जगह पर जो चबूतरा सीता रसोई के नाम से मुदालेहुम कहते हैं उसे दिसम्बर 1949 ई0 के बाद ही मुदालेहुम ने या किसी ने बनाया है। बाबरी मस्जिद के सामने की कम्पाउण्ड वाल में जो मेन गेट है उसमें दो खम्भे खसौटी पत्थर के लगे हैं जो बाबरी



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मस्जिद के शुरु में बनने के वक़्त से लगे हैं और बाबरी  मस्जिद में मेन बिल्डिंग के अन्दर भी बारह खम्भे कसौटी पत्थर के लगे हैं, यह भी शुरु से लगे हैं । इन चौदहों कसी के खम्भों में कोई भी मूरत या इन्सक्रिप्शन इंडीकेशन आफ हिन्दुइज्म नहीं खुदी है ।

ह0/अपठनीय

ह0/ पी0एस0 शुक्ला

सिविलजजफैजाबाद

20-1-64

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In The Court of Civil Judge Faizabad

Reg. Suit No. 12 of 61

Sunni Central Board and others

Vs

Gopal Singh and other

लाल सुरेन्द्र नाथ सिंह वकील प्रतिवादी नं0–1 व 2 ने बयान किया कि तनकीह में 5 (डी) आफ द लीडिंग केस के सिलसिले में बयान तहरीरी मुदालेहुम नं0–1 व 2 के पैरा 32 के सब–पैरा ए बी और डी को ही प्रेस करता हूँ । बयान तहरीरी मज़कूर के दफा 5 के बाद के सबपैराज को दीगर प्रेस तनकीहात के सिलसिले में प्रेस करुंगा ।

ह0–अपठनीय

24–4–64

ह0 / पी0एस0 शुक्ला

सिविल जज फैजाबाद

24–4–64

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In The Court of Civil Judge Faizabad

Reg. Suit No. 12 of 61

Sunni Central Board and others

Vs

Gopal Singh and other

श्री मो0 अयूब वकील वादी ने अण्डर आर्डर 10 रुल 2 सी पी सी बयान किया कि जायदाद निजाई को जो नोटीफिकेशन अण्डर सेक्शन–5(1) आफ यू0पी0 मुस्लिम वक्फ एक्ट 13 आफ 1936 हुआ था , पर उसकी सही नकल कागज नं0 243/ग व 243/1ग है जिसमें कागज नं0 243/1ग में पेज नं0–11 के सीरियल नं0 26 बाबत जिला फैजाबाद पर जायदाद निजाई का नोटीफिकेशन मज़कूर छपा है। इसके अलावा जायदाद निजाई का अण्डर सेक्शन–5(1) आफ यू0पी0 मुस्लिम वक्फ एक्ट 13 आफ 1936 का और कोई नोटीफिकेशन नहीं है ।

सुनकर तसदीक किया ।

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ह0/अपठनीय
17–7–65
ह0/ पी0एस0 शुक्ला
सिविल जज फैजाबाद
17–7–65



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In The Court of Civil Judge Faizabad

Reg. Suit No. 12 of 61

Sunni Central Board and others

Vs

Gopal Singh and other

श्री मो0 अयूब  वकील वादी ने बयान किया कि बसिलसिले तनकीह नं0–1 कागजात मुन्दर्जा जैल पर रिलाई करता है उनके अलावा तनकीह मज़कूर के सिलसिले में और कोई ओरल या डाकूमेंटरी इवीडेंस नहीं देना है । सुनकर तसदीक किया ।

1. कागज नं0 13/क मोरखा 16–9–38

2. कागज नं0 14/क मोरखा  8–2–41

मशमूला मिसिल मुकदमा नं0 2 सन 50

गोपाल सिंह बनाम जहूर अहमद

ह0/ पी0एस0 शुक्ला

सिविल जज फैजाबाद

17–7–65

ह0–अपठनीय

17–7–65

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In The Court of Civil Judge Faizabad

Reg. Suit No. 12 of 61

Sunni Central Board and others

Vs

Gopal Singh and other

श्री सर्बजीत लाल वर्मा व श्री लाल सुरेन्द्र नाथ सिंह वकील प्रतिवादी ने बयान किया कि बसिलसिले तनकीह नं0 17 मुझे कोई शहादत नही देनी है।

ह0–अपठनीय

17–7–65

ह0–अपठनीय

एडवोकेट

17–7–65

ह0 / पी0एस0 शुक्ला

सिविल जज फैजाबाद

17–7–65

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH: LUCKNOW
OTHER ORIGINAL SUIT NO.4 OF 1989
(Regular Suit No.12 of 1961)

Sunni Central Board of Waqfs and others …….Plaintiffs

Versus

Gopal Singh Visharad and others ……..Defendants

Issues at it stands now:

Issue No.1:-

Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiffs ? If the answer is in the affirmative-

(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant No.13 ?

(b) Whether the building had been constructed on the site o an alleged Hindu temple after demolishing the same as alleged by defendant no.13 ? If so, its effect ?

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Issue No.1-A:-

Whether the land adjoining the building on the east, north and south sides, denoted by letters EFGH on the sketch map, was an ancient graveyard and mosque as alleged in para 2 of the plaint ? If so, its effect ?

deleted vide courts order

dated 23.2.96

Issue no.1-B (a)

Whether the building existed at Nazul plot no.583 of the Khasra of the year 1931 of Mohalla kot Ram Chandra known as Ram kot, city Ayodhya (Nazul estate ) Ayodhya ? If so its effect thereon)"

Issue no.1-B (b):-

Whether the building stood dedicated to almighty God as alleged by the plaintiffs ?



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Issue no.1-B (c):-

Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial ? If so, its effect ?

Issue no.1-B (d):-

Whether the alleged graveyard has been used by the members of Muslim community for burying the dead bodies of the members of the Muslim community ? If so, its effect ?

Issue 1 B(d) deleted vide court order dated 23.2.96

Issue No.2:-

Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint ?

Issue No.3:-

Is the suit within time ?

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Issue No.4:-

Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants ?

Issue No.5 (a):-

Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff No.1 in view of the provision of 5 (3) of U.P. Act 13 of 1936 ? (This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge)

5 (b) Has the said Act no application to the right of Hindus in general and defendants in particular to the right of their worship ?

5(c) Were the proceedings under the said Act conclusive ? (This issue has



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already been decided in the negative vide order dt. 21.4.1966 by the learned civil Judge.)

(d) Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement ?

(This issue was not pressed by counsel for the defendants, hence not answered by the learned Civil Judge, vide his order dated 21.4.1966).

5(e) Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no.17 to the effect that, "No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute", the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit ?

5(f) Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960 ?

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Issue No.6:-

Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

Issue No.7:-

7(a) Whether Mahant Reghubar Dass, plaintiff of Suit No.61/280 of 1885 had sued on behalf of Janma-Sthan and whole body of persons interested in Janma-Sthan ?

7(b) Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque ?

7(c) Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estpopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute ? if so, its effect ?



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7(d) Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit ? If so, its effect ?

Issue No.8:-

Does the judgment of Case No.6/281 of 1881, Mahant Raghubar Dass Vs. Secretary of State and others, operate as res judicate against the defendants in suit ?

Issue No.9:-

Whether the plaintiffs served valid notices under Sec. 80 C.P.C.
(Deleted vide order dated May 22/25. 1990).

Issue No.10:-

Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint ?

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Issue No.11:-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji ?

Issue No.12:-

Whether idols and objects of worship were placed inside the building in the night intervening 22nd and 23rd December, 1949 as alleged in paragraph 11 of the plaint or hey have been in existence there since before ? In either case, effect ?

Issue No.13:-

Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?



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Issue No.14:-

Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial ? If so, its effect ?

Issue No.15:-

Have the Muslims been in possession of the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hinus in general ? If so, its effect ?

Issue No.16:-

To what relief, if any, are the plaintiffs or any of them entitled ?

Issue No.17:-

Whether a valid notification under section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done ? I so, its effect ?

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(This issue has already been decided by the learned Civil Judge by order dated 21.4.1966).

Issue No.18:-

What is the effect of the judgment of their lordships of the Supreme Court in Gulam Abbas and others Vs. State of U.P. and others, A.I.R. 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21st April, 1966 on issue no.17 ?

Issue No.19(a):-

Whether ever after construction of the building in suit deities of Bhagwan Sri ram Virajman and the Asthan Sri Ram Janam Bhumi continued



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to exist on the property in suit as alleged on behalf of defendant No.13 and the said places continued to be visisted by devotees for purposes of worship ? If so, whether the property in dispute continued to vest in the said deities ?

Issue No.19(b):-

Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship ? If so, its effect ?

Issue No.19 (c):-

Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question ? If the finding is in the affirmative whether no mosque could come into existence in view of the Islamic tenets, at' the place in dispute ?

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Issue No.19 (D):-

Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did not have minarets ?

Issue No.19(e):-

Whether the building in question could not legaly be a mosque as on plaintiffs own showing it was surrounded by a grave-yard on three sides.

Issue No.19(F):-

Whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses ? If the finding is in the affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam.

Issue No.20 (a):-



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Whether the Waqf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutwalis were allegedly Shia Mohammedans ? If so, its effect ?

Issue No.20 (b):-

Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession.

Issue No.21:-

Whether the suit is bad for non-joinder of alleged deities?

Issue No.22:-

Whether the suit is liable to be dismissed with special costs ?

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Issue No.23:-

If the Wakf Board is an instrumentality of state ? If so, whether the said Board can file a suit against the state itself ?

Issue No.24:-

If the wakf Board is state under Article 12 of the constitution ? If so, the said Board being the state can file any suit in representative capacity sponsering the case of particular community and against the interest of another community)'.

Issue No.25:-

"Whether demolition of the disputed structure as claimed by the plaintiff it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable ?"



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Issue No.26:-

"Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished ?"

Issue No.27:-

"Whether the outer court yard contained Ram Chabutra Bhandar and Sita-Rasoi ? If so whether they were also demolished on 6.12.1992 along with the main temple ?"

Issue No.28:-

"Whether the defendant No.3 has ever been in possession of the disputed site and the plaintiffs were never in its possession ?"

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**IN THE COURT OF THE CIVIL JUDGE FAIZABAD.**
**PLAINT OF ORIGINAL SUIT.**
(Under order VII, Rule 1, of the Code of Civil Procedure, 1908)
***O.O.S. No. 5 of 1989 (R.S. No. 236 -89***

1. Bhagwan Sri Rama Virajman at Sri Rama Janma Bhumi, Ayodhya, also called Bhagwan Sri Rmaa Lala Virajman, represented by next friend, Sri Deoki Nandan Agrawala, Senior Advocate and retired Judge High Court, 56 Dilkusha New Katra, Allahabad.

2. Asthan Sri Rama Janma Bhumi, Ayodhya, represented by next friend, Sri Deoki Nandan Agarwala, Senior Advocate and retired Judge High Court, 56, Dilkusha, New Katra, Allahabad.

3. Sri Deoki Nandan Agarwala, aged about 68 years, son of late Sri M.L. Agarwala, Senior Advocate and retired Judge, High Court, resident of 56, Dilkusha, New Katra, Allahabad. ...**Plaintiffs.**

**Versus**

1. Sri rajendra Singh, adult, son of Late Sri Gopal Singh Visharad, at Present residing at Gonda, care of the State Bank of India, Gonda Branch Gonda.

2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya.

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3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya, through its present Mahant Sri Ram Kewal Das, Chela Gopal Das, resident of Nirmohi Akhara Mohalla Ram Ghat, Ayodhya.

   Substituted with permission of Court vide order dated
   SD./- 1.9.95
   Mahant Jagannath Das aged about 54 years, Chela of Vaishnav Das Nirmohi resident of Mohalla Ram Ghat Nirmohi Bazar Pargana Haveli Awadh, Ayodhya, District Faizabad.

4. Sunni Central Board of Waqfs, U.P. having its officer at Moti Lal Bose Road, Lucknow.

5. Sri Mohammad Hashim, Adult, son of the Sri Karim Bux, resident of Mohalla sutahti, Ayodhya.

6. Sri Mohammad Ahmad, Adult son of Sri Ghulam Hasan, resident of Mohalla Rakabganj, Faizabad.

7. State of Uttar Pradesh, through the Secretary, Home Department, Civil Secretariat, Lucknow.

8. The Collector & District Magistrate, Faizabad.



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9. The City Magistrate, Faizabad.

10. The Senior Superintendent of Police, Faizabad.

11. The President, All India Hindu Mahasabha, New Delhi.

12. The President, All India Arya Samaj, Dewan Hall, Delhi.

13. The President, All India Sanatam Dharma Sabha Delhi.

14. Sri Dharam Das Adult, Chela Baba Abhiram Das, resident of Hanuman Garhi, Ayodhya.

15. Sri Pundarik Misra, Adult son of Sri Raj Narain Misra, resident of Baham pur Sarai, Rakabganj, Faizabad.

16. Sri Ram Dayal Saran Adult, Chela Ram Lakhan Saran, resident of Ramcharit Manas Bhavan, Mohalla Ramkot, Ayodhya.

17. Sri Ramesh Chandra Tripathi Adult, sonof Sri Parash Ram Tripathi, resident of Village Bhagwan Patti, Pargana Minjhaura, Tehsil Akbarpur, District Faizabad.

    Deleted vide order dated Sd./-20.9.1989

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18. Mahant ganga Das Adult Chela Sarju Das, resident of Mandir Lalta Prasad, Ayodhya.

19. Swami Govindacharya Manas Artand, Adult, son of Sri Balbhadar, alias Jhallu, resident of Ayodhya.

20. Sri Umesh Chandra Pandey, Adult, son of Sri Uma Shankar Pandey, Advocate, resident of Ranopali, Ayodhya.

21. Sri Rama Janma Bhumi Nyas, a Trust, having its officer at Sankat Mochan Ashram, Sri Hanuman Mandir, Rama Krishan Puram, Sector VI, New Delhi, through Sri Ashok Singhal, Managing Trustee.

22. Shia Central Board of Waqfs, U.P., Lucknow.

23. Sri Javvad Husain, Adult, resident of Village Sahanwa, P.O. Darshan Nagar, District Faizabad.

24. Prince Anjum Quder, Preestrict, All India Shia conference, Qaomi Ghar, Nadan Mahal Road, Lucknow.

25. All India Shia Conference, through Sri S. Mohammad Hasnain Abidi, Honorary General Secretary, Qaomi Ghar, Nadan Mahal Road,



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Lucknow.

*26. Hafiz Mohd. Siddiqui, aged about 46 years son of late Haji Mohd. Ibrahim, resident of Lalbagh Moradabad. General Secretary, Jamaitul Ulema Hind U.P. Jamait Building B.N. Verma Road, Kutchery Road, Lucknow.

*27. Vakeeluddin aged about 55 years, son of Ismail, resident of Madarpur Pergana and Tehsil Tanda District Faizabad.

…..**Defendants**

* Amended vide order dated 15.4.92
read with order dated 21.4.92. Sd./-

***SUIT FOR DECLARATION AND INJUNCTION***

1. That the plaintiffs Nos. 1 and 2, namely, Bhaagwan Sri Rama Virajman at Sri Rama Janma Bhumi, Ayodhya, also called Sri Rama Lala Virajman, and the Asthan Sri Rama Janma bhumi, Ayodhya, with the other Idols and places of worship situate thereat, are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place. The Plaintiffs No. 3 is a Vaishnva Hindu, and seeks to represent the Deity and the Asthan as a next friend.

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2. That the place Sri Rama Janma Bhumi is too well known at Ayodhya to need any description for purposes of identification of the subject matter of dispute in this plaint. However, for greater precision, two site plans of the building premises and of the adjacent area known as Sri Rama Janma Bhumi, prepared by Sri Shiv Shankar Lal pleader, in the discharge of his duty as a commissioner appointed by the court of Civil Judge, Faizabad, in Suit No.2 of 1950: Sri Gopal Singh Visharad Versus Sri Zahur Ahmad and others: along with his Report dated 25.5.1950, are being annexed to this plaint and made part of it as Annexures I, II and III, respectively.

3. That the said suit No. 2 of 1950 was filed on 16.1.1950, by Sri Gopal Singh Visharad against (1) Zahoor Ahmad, (2) Haji Pheku, (3) Mohammad Faiq, (4) Mohammad Shami, (5) Mohammad Achhan Mian, (6) Uttar Pradesh State, (7) Deputy Commissioner, Faizabad, (8) City Magistrate, Faizabad, and (9) Superintendent of Police, Faizabad. The plaintiff of that suit died recently and his name has been substituted by that of his son, who



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has been impleaded as Defendant No. 1, in this suit. Of the defendants, the first five Muslim individuals are dead and their names have been struck off under the orders of the Court. They have, therefore, not been impleaded as defendants in this suit. The defendants Nos. 6 to 9 of that suit have been impleaded as defendants Nos. 7 to 10, respectively, in this suit also.

4. That the relief claimed in that suit (No. 2 of 1950) was a declaration that the Plaintiff was entitled to perform the Puja and to have Darshan of Sri Baagwan Ram Chandra and others Virajman at Asthan Janma Bhumi without any hindrance, dispute or interruption, and that the Defendants had no right to interfere in the plaintiffs exercise of his said rights. A permanent injunction restraining the Defendants and their successors from ever removing the Idols of Sri Bhagwan Ram Chandra and others Virajman at Asthan Janma Bhumi, from the place where they were, or closing the entrance gate or other passages of ingress and egress, and from interfering or disturbing the Puja or Darshan in any manner whatsoever, was also claimed.

5. That an identical suit, being Suit No.25 of 1950, was filed a few months later, after serving a notice under section 80 of the Code of Civil Procedure, 1908, by Paramhans Ramchandra Das, who is now the Mahant of Digambar Akhara, Ayodhya. He has been impleaded as defendant No.2 in this Suit. The same five Muslim individuals were Defendants Nos. 1 to 5 in that suit, and on their death their names were also struck off under the orders of the Court. Of the remaining Defendants of suit No.2 of 1950, defendants Nos. 8 and 9, namely, the City Magistrate and the Superintendent of Police, Faizabad, were not impleaded in Suit No. 25 of 1950 and the only surviving defendants therein are the Uttar Pradesh State and the Deputy Commissioner, Faizabad, who have been impleaded as defendants Nos. 7 and 8, respectively, in this Suit.

6. That a third suit being suit No. 26 of 1959 was thereafter filed in the Court of the Civil Judge, Faizabad, by the Nirmohi Akhara, Ayodhya, who has been impleaded as defendant No.3 in this suit, claiming the relief of removal of Babu Priya Dutt Ram, Defendant No.1 thereto, from the management and charge of the temple of Janma Bhumi with the idol of Lord Ram Chandra and others installed therein, at Asthan Janma Bhumi, whereto he had been appointed as Receiver in the year 1950 by the City Magistrate,



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Faizabad, in a proceeding under Section 145 of the Code of Criminal Procedure, 1898. The other Defendants were (2) State of Uttar Pradesh, (3) Deputy Commissioner, Faizabad, (4) City Magistrate, Faizabad, (5) Superintendent of Police, Faizabad, (6) Haji Phekku, (7) Mohammad Faiq, and (8) Mohammad Achhan Mian. The said Defendants Nos. 2,3,4 and 5, are respectively Defendants Nos. 7,8,9 and 10 in this suit. The other Defendants have died and their legal representatives have not been brought on the record obviously because the cause of action did not survive against them.

7. That a fourth suit, being suit no. 12 of 1961, was thereafter filed by the Sunni Central Board of Waqfs, U.P., and 8 other Sunni Muslims on 18.12.1961 in the Court of the Civil Judge, Faizabad. The reliefs claimed were (a) A declaration that the property indicated by the letters A B C D in the sketch map annexed to the plaint is a "public mosque commonly known as 'Babri Masjid', and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim grave-yard", and (b) "for delivery of possession of the mosque and grave yard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship." The Sunni Central Board of Waqfs, U.P. is being impleaded as Defendant No. 4 in this suit, and of the remaining plaintiffs of that suit, the only surviving plaintiffs No.7 and 9 are being impleaded as Defendants No. 5 and 6 hereto. Of the Defendants to that suit, the legal representatives of Defendants No. 1, 13, and 15, who have been impleaded therein, are being impleaded as Defendants No. 1.14 and 16 respectively in this suit. The surviving Defendants No. 2,3, 5.6,7,8,10,11,12, 14,17,18 and 19 of that suit, are being impleaded as Defendants No. 2,3,7,8,9,10,11,12,13,15,17,18 and 19 respectively, herein. Remaining Defendants No. 4 and 16 have died and have been left out.

8. That it needs to be stated that by an order dated 8.8.1962 of the Court of the Civil Judge, Faizabad, in Suit No. 12 of 1961, the plaintiffs thereof were permitted to sue, on behalf of the entire Muslim community, the Defendants No. 1 to 4 therein as representatives of, and for the benefit of the entire Hindu community. Of them, Defendant No.4 has since died. Defendants 10 to 19 were impleaded therein later, on their own request of



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themselves defendant No. 16 has since died, their legal representatives have not been impleaded in that suit. They have, therefore, been left out in this suit.

9. That it also needs to be stated that by an order dated 4.8.1951, suits No. 2 and 25 of 1950 were consolidated together, and by an order dated 6.1.1964 all the four suits were consolidated and Suit No. 12 of 1961 was made the leading case.

(Amended vide order dated 05.02.92)

10. That it must also be stated that in suit No. 2 of 1950, an ad-interim injunction was issued on 16.1.1950, in the terms prayed for but on an application made by the Defendant District Magistrate, the ad-interim injunction was modified on 19.1.1950 to read as under-"the parties are hereby restrained by means of temporary injunction to refrain from removing the Idols in question from the site in dispute and from interfering with Puja etc., as at present carried on."

The aforesaid ad-interim injunction was confirmed by order dated 3.3.1951, after hearing the parties, in the following terms- "The interim injunction order dated 16.1.50 as modified on 19.1.50 shall remain in force until the suit is disposed of. "

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A first appeal from that order, being F.A.F.O. No. 154 of 1951, in the High Court at Allahabad, was dismissed by judgement dated 26.4. 1955. The interim injunction continues to remain in force, ever since down to the present day.

11. That the issues were framed in all the four suits more than 25 years ago, but their hearing has not yet commenced. The Sewa and Puja of the plaintiff Deities has in the meanwhile been looked after by a Receiver, to begin with by Babu Priya Dutt Ram, appointed by the City Magistrate in the proceedings under Section 145 of the Code of Criminal Procedure, 1898, and later by Sri K.K. Ram Verma, who continued to function as such from 1970 onwards pending the passing of final orders by the Civil Court, in suit No. 12 of 1961. He was discharged by the Court of the IIIrd Additional District Judge, Faizabad, by order dated 25.8.1988. Sri L.P.N. Singh was appointed Receiver. He functioned upto 22.11.1988, when by an order of that date Sri Jamuna Prasad Singh was appointed as Receiver.



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12. The when issues were framed, and when the suits were consolidated, more than twenty five years ago, the expectation was that the suits would be disposed of soon thereafter. But for one reason or another, they continued to remain pending, and still continue to remain pending, with a dim prospect of their immediate hearing. Although the sewa and puja of the plaintiff Deities was being conducted regularly and properly yet Darshan was allowed only from behind a barrier. It is true that in the Temples in the Southern parts of India, the devotees are not permitted to go near the Deities for their Darshan and Puja and must do so from behing a barrier, but that is not the custom in the Northern parts of India, and it was hoped that after the decision of the suits, the devotees would be able to have a closer Darshan of the Plaintiff Deity No.1.

13. That because of the indefinite delay in the disposal of the said suits, on an application made by Defendant No. 20, herein, in the interest of the worshippers, with the prayer for allowing a closer Darshan the Court of the Munsif Sadar, Faizabad, refused to pass orders but on appeal there from, the court of the District Judge, Faizabad by an order dated 1.2.1986, directed the authorities to remove the barrier by opening the locks on the gates O and P on the map, which is annexed hereto as Annexure No.1.

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14. That the plaintiff Deities and their devotees are extremely unhappy with the prolonged delay in the hearing and disposal of the said suits, and the deteriorating management of the affairs of the Temple, particularly the way in which the Receiver has been acting. It is believed that a large portion of the money offered by the worshippers, who come in great numbers, is being misappropriated by the Pujaries and other Temple staff, and the receiver has not controlled this evil. Further, the devotees of the plaintiff Deities are desirous of having a new Temple constructed, befitting their pristine glory, after removing the old structure at Sri Rama Janma Bhumi, Ayodhya.

15. That in order to improve the Temple administration and to reconstruct a new Temple at Sri Rama Janma bhumi, the sacred duty of managing and performing the sewa, archana and puja of the plaintiff Deities, and the task of protecting, renovating, reconstructing and developing the Temple premises, in short, of managing all their estate and all their affairs, was entrusted, by unanimous public opinion, to jagadaguru Ramanandacharya Swami



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Shivaaramacharaya of Kashi, who was the head of the Ramananda Sampradaya to which most of the Sadhus and Vairagis of Ayodhya belong. The Trust so reposed in him by the Hindu public was formally declared by him by Deed of Trust dated December 18, 1985, and registered the same day with the Sub Registrar, S.D. No.1, at Delhi, Vide No. 16510 in Additional Book No.4, Volume 1156, at pages 64 to 69. A copy of the said Deed of Trust is annexed to and made part of this plaint as Annexure IV.

16. That by the said Trust Deed, apart from declaring himself to be the First Trustee for life and the Pramuk and Dharmakarta of the Trust, which was named Sri Rama Janma Bhumi Nyas by Jagadguru Ramanandacharya Swami Shivaramacharya, the following others were appointed as Trustees for life, namely :-

(2) Jagadguru Varishtha Shankaracharya Swami Shantananda Saraswati Ji Maharaj of Jyotishpeetha, Prayag.

(3) Gorakshapeethadhishwar Mahant Avedyanath Ji Maharaj of Gorakhpur.

(4) Mahant Nrityagopal Das Ji Maharaj of Maniram Chhaoni, Ayodhya.

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(5) Paramhans Mahant Ramchandra Das Ji Maharaj of Digambar Akhara, Ayodhya, now the acting Pramukh and Dharmakarta, Defendant No. 2.

(6) Santpravar Prabhu Dutt Ji Brahmachari of Sankirtan Bhawan, Jhusi, Prayag.

(7) Mahant Ram Kewal Das Ji Maharaj of Nirmohi Akhara, Ayodhya which is Defendant No. 3.

(8) Sri Vishnu Hari Dalmia, Tees Janwary Marg, New Delhi.

(9) Sri Ashok Singhal, 16/10 Hashimpur Road, Allahabad.

(10) Sri Dau Dayal Khanna, Nanda Vihar, Civil Lines, Moradabad. Of these Trustees, Sri Vishnu Hari Dalmia was named the Treasurer and Sri Ashok Singhal the Managing Trustee. In addition to the said 10 Trustees, power was given to the Marga Darshak Mandal of the Vishva Hindu Parishad to nominate 4 Trustees who are Mahatmas from different parts of India, and to its Governing Council to nominate 10 Trustees from among eminent Hindu citizens of India, and in exercise of the said power the



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following further Trustees have been appointed by the Vishva Hinduu Parishad namely:-

A. From among the Mahatmas:

(1) Jagadguru Madhwacharya Sri Vishwshtirtha Ji Maharaj of Udipi, Karnataka.

(2) Bhante Gyan Jagat, Budhist Bhikshu of Bodh Gaya, Bihar.

(3) Dr. Ramvilas Das Ji Vedanti of Ayodhya.

(4) Jadadguru Ramanujacharya Swami Purushottamacharya Ji Maharaj, Ayodhya.

B. From among Hindu citizens of India:-

(1) Sri Justice Shiv Nath Katju, Retired Judge, High Court, Allahabad.

(2) Sri Justice Deoki Nandan Agarwala, Retired Judge Rign Court, Allahabad, by whom this plaint is being filed as the next friend. Of the plaintiff Deities No. 1 and 2, and as plaintiff No.3.

(3) Rajmata Srimant Vijae Raje Scindhia of Gwalior.

(4) Sri Shrish Chandra Dikshit, Retired Director General of Police, Uttar Pradesh, Lucknow.

(5) Sri Badri Prasad Toshniwal, Industrialist, New Delhi. The Trustees so appointed hold office for 4 years, and half their number retire by rotation once every two years, but are eligible for reappointment.

16-A. (1)That Jagadguru Ramanandacharya Swami Shivaramacharya of Kashi, who was the Pramukh and Dharmakarta of the Nayas had died and after him Paramhans Mahant Ramachandra Dasji Maharaj of Digambar Akhara, Ayodhya has been acting as the Pramukh and Dharmakarta of the Nyas.

(Added with permission of Court vide order dated 07.05.92 on C.M. No. 68 (o) of 1992).

(2) That Sant Pravan Prabhu Duttji Brahamachari, of Sankirtan Bhawan Jhusi, died after the institution of the suit.

(3) That the two vacancies among the trustees from among the Mahatmas have been filled up, according to the deed of Trust, by the appointment of the following as trustees of the Nyas, namely-



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(i) Veetraag Sant Paramhans Pujya Swami Vamdeoji Maharaj, of Anand Vrindavan, Vrindavan Mathura.

(ii) Mahant Dharam Dasji Maharaj of Sankat Mochan Mandir, Faizabad Road Ayodhya.

(4) That there were 5 vacancies among the Trustees to be appointed from among the eminent Hindu citizens of India, when the suit was filed. They have since been filled up, according to the deed of Trust, by the appointment of the following as Trustees of the Nyas, namely:-

(i) Sri Moropant Pingle, Dr. Hedgewar Bhawan Mahal Nagpur.

(ii) Sri Brahma Deoji, Sankat Mochan, Hanuman Mandir, Sector VI, Ramkrishna Puram New Delhi.

(iii) Sri Surya Krishnaji, Sankar Mochan, Hanuman Mandir Sector VI. Ramkrishnapuram, New Delhi and

(iv) Sri Yashuvant Bhai Bhatt, Sri Rama Janma Bhumi Nyas Karyalaya, Ramkot, Ayodhya".

(Amendment made with the oral permission of the Court on 25.08.1991).

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17. That Sri Rama Janma Bhumi Nyas is directly interested in the seva, puja and other affairs of the Plaintiff Deities. It is being impleaded as Defendant No. 21 in this Suit.

18. That although the aforesaid suits have been pending trial for such an extraordinarily long number of years, they are inadequate and cannot result in a settlement of the dispute which led to their institution or the problems arising there from, inasmuch as neither the presiding Deity of Bhagwan Sri Rama Virajman nor the Asthan Sri Rama Janma Bhumi, the Plaintiffs Nos. 1 and 2 herein, who are both Juridical persons, were impleaded therein, although they have a distinct personality of their own, separate from their worshippers and *sewaks,* and some of the actual parties thereto, who are worshippers, are to some extent involved in seeking to gratify their personal interests to be served by obtaining a control of the worship of the Plaintiff Deities. Moreover, the events which have occurred during these four decades, and many material facts and points of law require to be pleaded from the view point of the Plaintiff Deities, for a just determination of the dispute relating to Sri Rama Janma Bhumi, Ayodhya, and the land and



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buildings and other things appurtenant thereto. The Plaintiffs have been accordingly advised to file a fresh suit of their own.

19. That it is manifestly established by public records of unimpeachable authority that the premises in dispute is the place where Maryada Purushottam Sri Ramchandra Ji Maharaj was born as the son of Maharaja Dashrath of the solar Dynasty, which according to the tradition and the faith of the devotees of Bhagwan Sri Rama is the place where HE manifested HIMSELF in human form as an incarnation of BHAGWAN VISHNU. The place has since ever been called Sri Rama Janma Bhumi by all and sundry through the ages.

20. That the place itself, or the ASTHAN SRI RAMA JANMA BHUMI, as it has come to be known, has been an object of worship as a Deity by the devotees of BHAGWAN SRI RAMA, as it personifies the spirit of the Divine worshipped in the form of SRI RAMA LALA or Lord RAMA the child. The Asthan was thus Deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the idol of Bhagwan Sri Rama thereat.

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21. That it may be here stated that the Hindus do not worship the stone or the metal shaped into the form of their ISHTA DEVATA, or the stone of SALIGRAM which has no particular shape at all. They worship the Divine, which has no quality or shape or form, but can be known only when it manifests ITSELF in the form of an incarnation, and therefore, adopt the form of his incarnation as their ISHTA DEVA. For some even that is unnecessary. They can meditate upon the formless and the shapeless DIVINE and aspire for a knowledge of him through his grace. It is the SPIRIT of the DIVINE which is worshipped by most Hindus, and not its material form or shape in an idol. This SPIRIT of the DIVINE in an idol is invoked by the ritual of pranapratishtha. The SPIRIT of the DIVINE is indestructible and ever remains present everywhere at all times for any one to invoke it in any shape or form in accord with his own aspiration. Different persons are at different levels of realisation of the REALITY. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow BHAKTI MARGA, and BHAGWAN SRI RAMA or BHAGWAN SRI KRISHNA is their ISHTA



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DEVA.

22. That according to the faith of the devotees of BHAGVAN SRI RAMA LALA, or Lord Rama the Child, it is the Spirit of BHAGWAN SRI RAMA as the Divine Child which resides at Asthan Sri Rama Janma Bhumi and can be experienced by those who pray there and invoke that Spirit for their spiritual uplift. That Spirit is the Deity. An idol is not necessary for invoking the Divine Spirit. Another example of such a Deity is that of KEDARNATH. The Temple of KEDARNATH has no Idol in it. It is the undulating surface of stone which is worshipped there as the Deity. Still another example of such a Deity is the Vishnupad Temple at Gaya, That too has no Idol in it. The place which is believed to have born the footprints of Bhagwan Vishnu is worshipped as Deity. Similarly, at Ayodhya, the very Asthan Sri Ram Janma Bhumi is worshipped as a Deity through such symbols of the Divine Spirit as the Charan and the Sita Rasoi. The place is a Deity. It has existed in this immovable form through the ages, and has ever been a juridical person. The actual and continuous performance of Puja of such an immovable Deity by its devotees is not essential for its existence as a Deity. The Deity continues to exist so long as the place exists, and being land, it is indestructible. Thus, Asthan Sri Rama Janma Bhumi is an indestructible and immovable Deity who has continued to exist throughout the ages.

23. That the books of history and public records of unimpeachable authenticity, establish indisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir Baqi, a commander of Baber's hordes. The material used was almost all of it taken from the Temple including its pillars which were wrought out of Kasauti or touch-stone, with figures of Hindu gods and goddesses carved on them. There was great resistance by the Hindus and many battles were fought from time to time by them prevent the completion of the mosque. To this day it has no minarets, and no place for storage of water for Vazoo Many lives were lost in these battles. The last such battle occurred in 1855. Sri Rama Janma Bhumi, including the building raised during Baber's time by Mir Baqi, was in the possession and control of



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Hindus at that time. According to the 1928 Edition of the Fyzabad Gazetteer published by the Government Press, U.P. (at page 179)--"Ayodhya is pre-eminently a city of temples..... It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ayodhya and little else. These were the Janmasthan temple, the Swargaddwar and the Treta-ka-Thakur, and each was successively made the object of attention of different Musalman rulers. The Janmasthan was in Ramkot and marked the birthplace of Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation, they are of close-grained black stone, called by the natives kasauti and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit, both are in persian and bear the date 935 Hijri.... and again according to the same Gazetteer (at page 180):- "This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On many occasions the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janmasthan in force and then making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made counter-attack and stormed the Janmasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyr's resting place. Several of the king's regiments were present, but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organised a regular expedition with the object of destroying the Hanuman Garhi, but he and his forces were stopped in the Barabanki district. (Gazetteer of Barabanki, P. 168). It is said that upto this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put up in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one."



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24. That such a structure raised by the force of arms on land belonging to the Plaintiff Deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindu gods carved thereon, could not be mosque and did not become one in spite of the attempts to treat it as a mosque during the British rule after the annexation of Avadh. Some salient points with regard thereto are noted below.

(A) According to the Koran, ALLAH spoke to the Prophet thus-

"And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loved not transgressors. And kill them wherever ye find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatory is more grievous than slaughter. Yet fight not against them in the holy temple, until they attack you therein;....."

(B) According to all the Muslim authorities and precedents and the decided cases also, ALLAH never accepts a dedication of property which does not belong to the Waqif that is, the person who purports to dedicate property to ALLAH for purposes recognized as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the temple after destroying it by force, Mir Baqui committed a highly un-Islamic act. His attempt to convert the Temple into a mosque did not, therefore, create a valid dedication of property to Allah, whether in fact or in law, and it never became a mosque.

(C) That in spite of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and they never surrendered their possession over it. Their possession continued in fact and in law. The ASTHAN never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and SITA RASOI, and the idol of BHAGWAN SRI RAM LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the building except after passing through these places of Hindu worship. According to the Muslim religion and law there can be no Idol worship within the courtyard of a mosque, and the passage to a mosque must be free and unobstructed and open at all times



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to the 'Faithful'. It can never be through Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of a mosque. His possession must be exclusive.

(D) A mosque must be built in a place of peace and quiet, but near to a place where there is a sizeable Muslim population according to the tenets of Islam, and as insisted upon by it, a mosque cannot be built in a place which is surrounded on all sides by Temples, where the sound of music or conch shells or Ghanta Ghariyals must always disturb the peace and quiet of the place.

(E) A mosque must have a minaret for calling the Azan. According to Baillie "When an assembly of worshippers pray in a masjid with permission, that is delivery. But it is a condition that the prayers be with izan. or the regular call, and be public not private, for though there should be an assembly yet if it is without izan. and the prayers are private instead of public, the place is no masjid, according to the two disciples." (Pt. 1. BK. IX, Ch. VII Sec. i,p. 605) Indeed, there has been no mosque without a minaret after the first half century from the Flight. (See-P.R. Ganapathi Iyer's Law relating to Hindu and Mahomedan Endowments, 2nd Edition, 1918, Chap. XVII, P. 388.)

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(F) According to the claim laid by the Muslims in their suit No. 12 of 1961, the building is surrounded on all sides by grave-yard known as 'Ganj Shahidan'. There is a mention in the Fyzabad Gazetteer also, quoted herein above, of the burial of 75 Muslims at the gate of the Janmasthan, and the place being known as Ganj Shahidan. After the battle of 1855. Although there are no graves anywhere near the building at Sri Rama Janma Bhumi, or in its precincts, or the area appurtenant thereto, for the last more than 50 years, if the building was surrounded by a grave-yard during the British times soon after the annexation of Avadh by them, the building could not be a mosque, and could not be used as a mosque, for the offering of prayers, except the funeral prayers on the death of a person buried therein, is prohibited in a grave-yard according to the Muslim authorities.

(G) As already stated, there is no arrangement for storage of water for Vazoo and there are the Kasauti pillars with the figures of Hindu Gods and Godesses inscribed thereon in the building.



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(25) That the worship of the Plaintiff Deities has continued since ever throughout the ages at Sri Rama Janma Bhumi. The place belongs to the Deities. No valid waqf was ever created or could have been created of the place or any part of it, in view of the title and possession of the Plaintiff Deities thereon. ALLAH, as conceived by the Muslims, never got any title or possession over the premises or any part of them. Nor has there ever been any person, living or juridical, who might have put forward any claim to ownership of the property or any part of it. Occasional acts of trespass or attempts to get into possession by the muslims were successfully resisted and repulsed by the Hindus from time to time, and there was no blemish or dent in the continuity of title and possession of the Plaintiff Deities. No title could or did vest in ALLAH over any part of Sri Rama Janma Bhumi by adverse possession or in any other manner. Neither ALLAH nor any person on his behalf had any possession over any part of the premises at any time whatsoever, not to speak of any adverse possession.

(26) That at any rate no prayers have ever been offered in the building at Sri, Rama Janma Bhumi, which was recorded as Janmasthan Masjid, during the British times, and confined, after the annexation of Avadh, to the area within the boundary wall raised by them adjacent to the arch openings, in the courtyard which is n ow enclosed by what may now be described as the outer boundary wall. The domes of the building and substantial parts of it were destroyed by the Hindus in the year 1934 during the communal riots which occurred by way of retaliation to cow slaughter by some Muslims at Ayodhya. Although the building was got re-built by the Government, no one dared to offer namaz therein. No action was taken by anyone for its use or management as a mosque. Neither of the two Boards of waqfs in U.P., namely the Sunni Central Board of Waqfs and the Shia Central Board of Waqfs, created on the passing of the U.P. Muslim Waqfs Act in 1936, took any action or postive steps for the establishment of the building as a mosque. No one acted as a Mutwalli or Muazzin or Imam or Khatib or Khadim of the building as a mosque.

(27) That after independence from the British Rule, the Vairagis and the Sadhus and the Hindu public, dug up and levelled whatever graves had been left in the area surrounding Sri Rama Janma Bhumi Asthan and purified the



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place by Akhand Patha and japa by thousands of persons all over the area. Ultimately, on the night between the 22nd 23rd December, 1949 the idol of Bhagwan Sri Rama was installed with due ceremony under the central dome of the building also.

(28) That although there have been no Muslims residing anywhere near the place, and no resistance was offered by any Muslim to any of these acts, the local authorities found it difficult to get out of their old habits acquired under the British Rule, and a First Information Report was recorded by the Police on their own and proceedings were initiated by the Additional City Magistrate under Section 145 of the Code of Criminal Procedure, 1898, by recording a Preliminary Order dated 29.12.1949. The Magistrate did not identify any Hindu or Muslim individuals as parties to the dispute, and merely said that he was satisfied on information received from Police sources and other credible sources "that a dispute between Hindus and Muslims in Ayodhya over the question of rights of proprietorship and worship in the building claimed variously as Babri Masjid and Janma Bhumi Mandir..... is likely to lead to a breach of the peace." That was merely a device to take over the administration of the Janma Bhumi Mandir by the Government by appointing a Receiver, namely, B. Priya Dutt Ram, who was appointed as such by the same order, and after his death in 1970 Sri K.K. Ram Verma was appointed in his place by the City Magistrate, although he had dropped the proceedings under section 145 of the Code of Criminal Procedure, 1898, by order dated 30.7.1953, with the finding that there was no apprehension of the breach of peace any longer. Orders for appointment of Receiver have now been passed by the Civil Court, and Sri K.K. Ram Verma, who was functioning for more than 15 years under stay orders, has been replaced by a Civil Court Receiver.

(29) That the plaintiff Deities were not made parties to any of the aforesaid proceedings in which the orders of appointment of Receiver have been passed, whether by the City Magistrate or the Civil Court. The powers of a Receiver are derived solely from the orders of the Court. The Receiver was not authorised to remove any person from the possession or the custody of the premises, and in fact the Receiver never interfered with the possession of the Plaintiff Deities. No party to a proceeding could dispossess a third party,



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nor could the Receiver interfere with the possession of a person who is not a party to the proceedings. At the highest, the Receiver acted like a Shebait. He did not disturb the possession of the plaintiff Deities. Their possession over, the building premises in disput ever since the installation of the first Plaintiff's Idol on the night between the 22nd and 23rd December, 1949, is admitted by all the concerned parties. Thus, independently of the original title of the Plaintiff Deities which continued all along, the admitted position of their possession places the matter of their title beyond any doubt or dispute. Even if there had been any person claiming title to the property adversely to the Plaintiff Deities, that would have been extinguished by their open and long adverse possession, which created positively and affirmatively a proprietary title to the premises in the Plaintiff Deities.

(30) That the Hindu Public and the devotees of the Plaintiff Deities, who had dreamed of establishing Ram-Rajya in Free India, that is, the rule of Dharma and righteousness, of which Maryada Purushottam Sri Ramchandra Ji Maharaj was the epitome, have been keenly desirous of restoring his Janmasthan to its pristine glory, as a first step towards that national aspiration given to us by Mahatma Gandhi. For achieving this, they are publicly agitating for the construction of a grand Temple in the Nagar style. Plans and a model of the proposed Temple have already been prepared by the same family of srchitects who built the Somnath Temple. The active movement is planned to commence from September 30, 1989, and foundation stone of the new Temple building, it has been declared, shall be laid on November, 9, 1989.

(31) That the plaintiff Deities not being a party to any of the litigations pending in the Courts, and being thus not bound or affected by anything which may be decided or not decided in any of the four suits pending as aforesaid for the last so many years, the Plaintiff No. 3 felt that the pendency of the said suits may present a hindrance, inasmuch as a declaration has been sought, privelously though, in suit No. 12 of 1961, by the Sunni Central Board of Waqfs, U.P., that the building at Sri Rama Janma Bhumi Ayodhya is a mosque known as 'Babri Mosque' and that the adjacent land is a Muslim Public graveyard, known as Ganj-Shadidan, and the Court had permitted the plaintiffs of that suit to sue the Defendants Nos. 1 to 4 thereof as



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representatives of the entire Hindu community. The Plaintiffs of that suit cannot represent the entire Muslim community because they are all Sunnis, and thus only asegment of the Muslim population, who have wide ranging differences with other sects of Muslims, particularly the Shias. Nor were the Defendants Nos. 1 to 4 competent or capable of representing the entire world of Hindus. The Defendants Nos. 1 and 2 have categorically stated that they do not represent any one else except themselves, and the Defendant No.3 has put forward a personal interest in the management of the worship of the Plaintiff Deities. Defendant No.4 is already dead. Under the circumstances the Plaintiff No. 3 has been advised to file this suit as the next friend for and on behalf of the Deities, to remove whatever obstacle there may be in the path of the fulfilment of the aforesaid programme, against all the contending parties.

(32) That according to the case taken up by the Defendants Nos. 4, 5 and 6 and the documents filed by them or on their behalf, the 'Babri Masjid' was a Sunni Waqf but its Mutwallis, being the descendants of Mir Baqi, were Shia Muslims. A judgement dated 30.3.1946 of Sri S.A. Hasan, Civil Judge, Faizabad, in suit No. 29 of 1945, of his Court, between the Shia Central Board of Waqfs U.P., as Plaintiff and the Sunni Central Board of Waqfs U.P., as the Defendant, has been produced in this context, although the judgement has not been relied upon or referred to in the Plaint of Suit No. 12 of 1961 to show that the Waqf of the Babri Masjid was a Sunni Waqf and that its Mutwallis were Shias. This position seems to be incomprehensible in law, inasmuch as a waqf created by a Shia Waqif would be a Shia waqf and could not be a Sunni Waqf. Admittedly, according to their case, the 'mosque' was built by Mir Baqi and that he was a Shia, and that he being the Waqif his heirs were the Mutwallis one after the other. But the Shia Central Board of Waqfs, U.P. did not agitate the case any further, either because of negligence or collusion in those difficult days of communal conflict immediately before the Partition. At any rate this judgement is not binding. Further according to a report dated 10.12.1949 of Mr. Mohammad Ibrahim, Waqf Inspector, and an office note signed by the Secretary of the Sunni Central Board of Waqfs, U.P. and dated 25.11.1948, Sri Javed Husain, the nambardar of village Sahanwa, and in the line of descent from Mir Baqi, was the Mutawalli of the



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waqf, although it appears, he was not acting as such and did not submit to the jurisdiction of the said Board of Waqfs. The Shia Central Board of Waqfs, U.P., and Sri Javved Husain are also being impleaded as Defendants Nos. 22 and 23 in this suit. Prince Anjum Quder, who is the president of the All India Shia conference and that body as representatives of the Shia Muslims, have also been impeaded as Defendants Nos. 24 and 25 in the suit.

(33) That the entire premises at Sri Rama Janma Bhumi, Ayodhya, which contain, besides the presiding Deity of Plaintiff No. 1 other Idols and Deities and the Rama Chabutra, the Charan and the Sita Rasoi etc., along with the yards, enclosures and buildings, including the Sita Koop, and all that, constitute one integral complex. They have a single identity. The claim by the Muslims represented by the Defendants Nos. 4,5 and 6 is confined to the building and the area enclosed within the inner boundary wall, erected after the annexation of Avadh by the British. The rest of the area has not been claimed as 'Babri Masjid'. The claim that the surrounding area is a Qabristan known as Ganj Shahidan is vague and undefined. There are no graves anywhere for the last fifty years at least. The totality of the Facts and circumstances set out above demonstrate the utter hollowness of the claim put forward by the Muslims represented by Defendants Nos. 4,5 and 6 who do not represent the entire Muslim community. Besides, although admitting that Defendant No. 23 is the present Mutwalli of the 'Babri Masjid' since before 1948, he was not joined as a Plaintiff or Defendant in the suit No. 12 of 1961, in spite of the well established position in law that only a Mutwalli of mosque can sue for its possession, and even where a worshipper sues in respect of an existing mosque he must sue for possession being delivered to the Mutwalli and that he cannot ask for possession being delivered to him.

(34) That a sensible section of the Muslim community led by Prince Anjum Quder, Defendants No. 24, does not approve of the course adopted by the Defendant Nos. 4 to 6 and their like. Suggestions have been made from many quarters for ending the dispute by removal of the 'mosque' to suitable place where it could serve the interest of its beneficiaries. Although the Plaintiffs do not admit for a moment that the building at Sri Rama Janma Bhumi, Ayodhya, or any part of its precincts has ever been a mosque, they would not be averse to the proposal of removal of the materials of the



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building, except the Kasauti pillars and the like, for, the building will in any case have to be demolished for the construction of the new Temple which they propose to construct at the place.

(35) That the Muslims are as much the children of God as Hindus, and the Plaintiff No.3, believes in the policy of living in amity and goodwill with all the several communities and religious denominations in Free India. But having regard to the nature and significance of the ASTHAN SRI RAMA JANMA BHUMI for the Hindus, its sites cannot be changed. On the other hand, under the tenets of Islam a Mosque can be shifted under certain circumstances, and these circumstances are fully and entirely made out in the case of the 'Babri Masjid', if a mosque it ever was. The shifting of the so called 'Babri Masjid' from its present site at Sri Rama Janma Bhumi, would, therefore, appear to be the most sensible solution of the acrimonious dispute which has been raging for some time past and threatening the peace of this land of SRI RAMA.

(35 H) That exasperated by the laws deleys, the saints assembled in a meeting held at Ujjain during May, 1992, resolved to start the KAR SEWA for the construction of New Temple at Sri Rama Janma Bhumi from the SHILANYAS site, on July, 9, 1992, and in their assembly at Ayodhya on July 6,7 and 8, 1992, that resolve was re-affirmed.

(35 I) The 30th November was fixed by the Assembly of saints or October 30, 1992 for the commencement of the KAR SEWA for constructing the new temple at Sri Rama Janma Bhumi after the break down of the talks for an amicable resolution of the Rama Janma Bhumi-Babri Masjid dispute that had been initiated at the instance of the Prime Minister.

(35 J) That inspite of all efforts to the contrary, the KAR SEWAKS climbed up the three domed structure and brought it down with their bare hands, in about 5 hours after 11.A.M., on 6.12.1992. The debris was thereafter cleared and carried away by the KAR SEWAKS as holy mementos, leaving the place where the Deity of BHAGWAN SRI RAMA LALA was installed under the central dome of the demolished structure flat in the form of a CHABUTRA on which the Deity was immediately re-installed, the place was enclosed by a brick boundary wall and a canopy was also erected for the protection of the Deity, and PUJA was continued as of



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yore.

(35 K) That owning full responsibility for the orders that firing shall not be resorted to by the security forces against the KAR SEWAKS and the inability to prevent the demolition of the three domed structure, Sri Kalyan Singh, the then Chief Minister of U.P. resigned from that office by the evening of 6.12.1992 but instead of acceptance of the resignation by the Governor, the Prime Minister advised the President to impose his own rule and notify the dissolution of the Legislative Assembly before midnight that day, which the President dutifully did under Article 356 of the Constitution.

(35 M) That shortly thereafter on January 7, 1993, the President Promulgated the ACQUSITION OF CERTAIN AREA AT AYODHYA ORDINANCE, No. 8 of 1993 and simultaneously referred to the Supreme Court, under Article 143(1) of the Constitution for its consideration and opinion, the following question:-

"Whether a Hindu temple or any Hindu religious structure existed prior, to the construction of the Ram Janma Bhumi-Babri Majid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

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(35 N) That the object and purpose of both the said measures adopted by the President on 7.1.1993, was stated therein to be the settlement of the "long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure) commonly known as the Ram Janma Bhumi Babri Masjid, situated in village Kot Ramchandra in Aydhya." The preamble to the reference shows that the area in which the structure stood" is "located in Revenue Plot Nos. 159 and 160 in the said village Kot Ramchandra."

(35 O) That the device adopted by the Ordinance was the acquisition of the area in which the disputed structure stood, and vesting it for the time being in the Central Government until its transfer to any authority or other body, or trustees of any trust" willing to comply with the terms and conditions that may be imposed by the Central Government, which event, it must have been contemplated, would come after the settlement of the dispute in the terms of the opinion of the Supreme Court on the question referred. Under Sub-Section (3) of Section 4 of the ordinance all the suit and



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proceedings relating to the said dispute that were pending in courts were abated, and until the resolution of the dispute and transfer thereafter of the area to some authority or other body or trustees of a trust by the Central Government, it was required by Section 7 of the Ordinance to manage and administer it, either by itself, or "a person or body of persons or trustees of any trust authorised" by it in this behalf who was called the " authorised person" according to the meaning assigned to that term under the definitions clause (b) of Section 2 of the Ordinance, Sub Section (2) of Section 7 of the Ordinance required that: "In managing the property vested in the Central Government under section 3, the Central Government or the authorised person shall ensure that the position existing before the commencement of this Ordinance in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid stood is maintained."

(35 P) That the said Ordinance was replaced and re-enacted as Parliaments Act No. 33 of 1993, which received the presidents assent on April 3, 1993, and was published the same day in the Gazette of India Extraordinary but was deemed to have come into force on the 7th January 1993, the day on which the Ordinance was promulgated.

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(35 Q) That the Plaintiff Deities who are juristic persons in law could not have been, nor do they appear to have been acquired under the said enactment. Nor could the right of the Hindus in general and the devotees of SRI RAMA in particular to worship them be acquired or taken away. But the right to manage their property including the arrangements to be made for maintaining their worship on the SHEBAITI rights which in themselves constitute heritable property under the Hindu law, would seem to have been taken away and entrusted for the time being to the Commissioner, Faizabad Division, Faizabad, *ex-officio* under Section 7 of the enactment by the Central Government under cover of its responsibility to manage the area in which the disputed structure stood.

(35 R) That the Authorised person is required by sub-section (2) of Section 7 of the enactment to maintain status quo as it existed on the 7th January 1993, in the area in which the disputed structure stood. That is best illustrated by the affidavit of Sri Radhe Sham Kaushik, the Commissioner,



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Faizabad, dated the 6th August 1993, in the Contempt Petition No. 97 of 1992. In the matter of Mohd. Aslam alias Bhure Verses State of U.P.: I.A. No. 10 of 1992: before the Supreme Court of India.

(35 S) That the validity of the said enactment (Ordinance No. 8 and Act No. 33 of 1993) was challenged in several writ petition in the Hon'ble Court which were with drawn by the Supreme Court for hearing and decision along with the hearing of the preliminary objection to the maintainability of the Presidential Reference under Article 143(1) of the Constitution. It was sought to be challenged in the connected O.O.S. No. 3 and 4 of 1989 in this Court as well, and an issue "whether the suit has abated or services" was raised thereupon. Notice was also issued thereafter to Attorney General of India, by the Hon'ble Court, but before the hearing of the issue could be taken up by it, it was stayed by the Supreme Court, while ordering the withdrawal of the writ petition against the acquisition from this Court to itself for hearing and decision.

(35 T) That by judgement dated October 24, 1994, of the Hon'ble the Chief Justice Mr. M.N. Venkatachalliah Hon'ble Mr. Justice J.S. Verma and Hon'ble Mr. Justice G.N. Ray, in the Transferred Cases Nos. 41, 43 & 45 of 1993: Dr. M. Ismail Faruqui etcetera Vs. Union of India and others connected with other Transferred cases and Writ Petitions and the Special Reference No. 1 of 1993 under Article 143(1) of the Constitution: the Supreme Court has declared the Sub Section (3) of Section 4 of Act No. 33 of 1993, to be unconstitutional and invalid, but upheld the validity of the other provisions thereof subject to the interpretation put thereon by it.

(After Para 35 and before Para 36 all paragraphs are added vide order dated 09.5.1995. Para 35 U struck of under the order of the court dated 03.08.1995. Paras 35 H, 35 I, 35 J, 35 K, 35 M, 35 N, 35 O, 35 P, 35 Q, 35 R, 35 S, 35 T, 35 U amended under vide order dated 09.05.1995 on C.M. A. No. 8 (O) of 1994. Sd/- 22.05.1995).

(36) That the cause of action for this suit has been accruing from day to day, particularly since recently when the plans of Temple reconstruction are being sought to be obstructed by vioient action from the side of certain Muslim Communalists.

(37) That the subject matter of dispute is situate within the limits of the



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territorial jurisdiction of the Court.

(38) That the valuation of the suit for purposes of jurisdiction is placed at Rs. 11,11,101/- as the subject matter of the suit being inalienable, is incapable of valuation in terms of money and consequently that for payment of Court Fee it is Rs. 2,22, 220/-. The prescribed court fee of Rs. 500/- being the maximum, is being paid on the consequential relief of injunction.

(39) That the Plaintiffs claim the following RELIEFS:

(A) A declaration that the entire premises of Sri Rama Janma Bhumi at Ayodhya, as described and and delineated in Annexures I, II and III, belong to the Plaintiff Deities.

(B) A perpetual injunction against the Defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of the new Temple building at Sri Rama Janma Bhumi, Ayodhya, after demolishing and removing the existing buildings and structures etc., situate thereat, in so far as it may be necessary or expedient to do so for the said purpose.

(C ) Costs of the suit against such of the Defendants as object to the grant of relief to the plaintiffs.

(D) Any other relief or reliefs to which the Plaintiffs may be found entitled.

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Counsel for the Plaintiffs
Dated: July 1, 1989.

Sd/-
(DEOKI NANDAN)
Plaintiff No. 3
for himself and for and on
behalf of Plaintiff Nos. 1 & 2
as their next friend.



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**31A1/1**

**<u>In the Hon'ble High Court of Judicature at Allahabad Lucknow Bench Lucknow.</u>**

**Written statement under order 8 Rule 1 C.P.C. On behalf of Nirmohi Akhara Defendant No. 3.**

**In**

**O.O.S NO. 5 OF 1989**

************

1. Before giving para-wise reply to the plaint it is necessary to state that Shri Deoki Nandan Agrawal posing himself as the Next Friend has filed this long cumbersome suit embracing a wide range of matters and topics, mostly irrelevant collected from alleged many and various records and books and annals of history running into 39 long paragraphs. The suit was filed on 1.7.1989 before the Civil Judge Faizabad without serving any notice or duplicate of the plaint. The suit has since been transferred to this Hon'ble Court. On 11.8.1989 when the answering defendants learned counsel informed this Hon'ble Court that he will require sufficient time to collect necessary information and materials to enable him to file a full and complete written statement. This Hon'ble Court was pleased to observe that written statement may be filed on 14.8.1989 and then a supplementary written statement may be filed later. The answering defendant despite his best efforts could not collect necessary requisite information and materials to file a full and complete written statement and is filing this written statement reserving his right to file a supplementary written statement with fuller and more complete facts after making further inquiries and collecting more facts, for which a separate application for time is also being made.

2. That the present suit filed by B. Deoki Nandan Agrawal is purely a malicious suit and is designed to damage the title and interest of the answering defendant. He has no right to act as Next Friend of plaintiffs 1 and 2 and plaintiff no. 2 is not even a juridical persons. Nor has he any personal right to file the suit. The suit is liable to be summarily dismissed.

3. That it is wrong to say that Bhagwan Shri Ram is also called Ram Lala Virajman. The address of the plaintiff No. 1 is also incorrect. Bhagwan Shri Ram is installed not at Janma Bhoomi but in the Temple known as Janma Bhoomi Temple for whose delivery of charge and management the answering defendant has filed his suit No. 26 of 1959 (Now O.S. No.2 of 1989). The suit is liable to be dismissed for this incorrect description and



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address as well.

4. That the contents of para-1 of the plaint as drafted are totally wrong and are denied. The idol of Bhagwan Shri Ram is installed or is Virajman not at Ram Janma Bhoomi Ayodhya but in the temple known as Ram Janma Bhoomi Temple Ayodhya for whose delivery of charge and management the answering defendant has filed his suit referred to above. It is also totally wrong to say that Bhagwan Shri Ram is also known as "Ram Lala Virajman". He is not known as such more over the ward "VIRAJMAN" tacked with the words "Shri Ram Lala" is simply meaningless. Virajman is not the name or title of any deity but it simply means "resident or residing". "Asthan Shri Ram Janma Bhoomi Ayodhya" as stated in para-1 of the plaint is again a meaning less phrase. Asthan, simply, means a place and is not a juridical person. It is denied that the plaintiff No. 3(Shri Deoki Nandan Agarwal) is a Vaishnavite. He is not even a worshipper of the Deity installed in Shri Ram Janma Bhoomi Temple and has no right to sue. Nor can he represent the Deity or the so called Asthan. He is not at all interested in the welfare of the Deity in question. He lives at Allahabad and is not at all interested in Shri Ram Janma Bhoomi Temple and got maliciously interested to obtain cheap popularity by raising a slogan of constructing a new temple by arranging to spend Rs. 25 Crores when the temple belong to the defendant No.3, the answering defendant.

5. That the contents of para-2 of the plaint are denied. The birth place of Ram is not in dispute. The whole world knows that His birth place is in Ayodhya where the Temple Ram Janma Bhoomi stands. It is the temple known as Ram Janma Bhoomi Temple situate in mohalla Ram Kot Ayodhya which is in dispute in the various suit transferred to this Court, which by Muslims is said to be a mosque and which is claimed by the answering defendant as being the Temple of Bhagwan Shri Ram under his charge and management, and where of the Nirmohi Akhara is the Shebait of Bagwan Sri Ram. Annexure I, II and III are denied as incorrect. The plaintiffs should submit a fresh correct and complete plan. Many important places of the temple have not been shown in the said Annexures. They pertain to another suit and have no evidentiary value in the present suit.

6. That the contents of para-3 of the plaint are not denied.



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7. That the correctness of the contents of para-4 of the plaint can best be verified from the plaint of suit No. 2 of 1950. The plaintiffs have wrongly used the words Asthan Janma Bhoomi which is denied. It is the temple known as Shri Ram janma Bhoomi Temple at mohalla Ram Kot Ayodhya. Asthen Janma Bhoomi means the birth place of Shri Ram which is the entire city of Ayodhya. It is the temple referred to above which is question and not the birth place of Bhagwan Shri Ram.

8. That the contents of para-5 of the plaint are not denied.

9. That in regard to the contents of para-6 of the plaint it is submitted that the said contents are not denied except that the plaintiffs of the present suit filed by Sri Deoki Nandan Agrawal have maliciously used the words "Asthan Janma Bhoomi in place of the words Temple of Janma Bhoomi. The correct version of the plaint in suit No. 26 of 1959 shall appear from the said plaint itself which suit has been connected with the present suit.

10. That the contents of paras 7 to 10 of the plaint are all matters of record which may best be ascertained from the record of the suits which are all consolidated and connected.

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11. That the contents of para-11 of the plaint are not denied.

12. That the contents of para-12 of the plaint are not denied except the last sentence which is irrelevant.

13. That the contents of para-13 of the plaint are matters of record which may be ascertained from the same.

14. That the answering defendant will reply to the first part of Para -14 of the plaint after making full inquiries. But the contents of the last sentence are emphatically denied. The answering defendant is the Shebait of Bhagwan Shri Ram installed in the temple in dispute, and he (the Nirmohi Akhara) alone has the right to control and supervise and repair or even to re-construct the temple if necessary. It is absolutely false to say that the devotees of the "plaintiff Deities are diserous to have a new temple constructed after removing the old structure.

15. That the contents of para-15 of the plaint are emphatically denied. The Nirmohi Akhara has no knowledge of the alleged Trust and he (the defendant No.3) reserves the right to give fuller reply to this para after making complete inquiry of the allegations contained in this para.



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16. That the contents of para-16 of the plaint are emphatically denied. The answering defendant reserves his right to give fuller replies after making thorough inquiries. The alleged Trust has no relevance at all to the present dispute. In this para the name of Mahant Ram Kewal Das is mentioned at item No. 7 as also being a Trustee for life to the alleged Trust. Mahant Ram Kewal Das is a simple Sadhu and he was duped to become a Trustee without understanding fully the malicious plan of the alleged Trust to encroach upon the rights and interests of the Nirmohi Akhara which is Panchayate Akhara and is governed by the Panches of the Akhara. The Mahant is only a figure head without any power or authority to bind the Akhara through any act done by him or any transaction or entered by him. Even if Mahant Ram Kewal Das be proved to have accepted himself as Trustee, intelligently and consciously which is denied, the Nirmohi Akhara is not all bound by his alleged act and the alleged Trust even if proved has no bearing or relevance to the present dispute. The Nirmohi Akhara filed its suit in 1959 and the said Trust is said to have come into existence only in 1985 with an obvious design to damage the title and interest of the Akhara.

17. That the contents of para-17 of the plaint are totally wrong and are emphatically denied. The said NYAS is neither directly nor indirectly interested in the Sewa, Puja of Bhagwan Shri Ram which interest solely lies with the answering defendant. The said Nyas is only maliciously interested to encroach upon the rights of the Nirmohi Akhara who is the sole Shabait of the said Deity. The Nyas is irrelevant to the present dispute and is not at all a proper party to the suit.

18. The contents of para-18 of the plaint are emphatically denied. The plaintiffs have been wrongly advised to file this malicious suit. Asthan Shri Ram Janma Bhumi is not at all a juridical person. The answering defendant has already filed suit No. 26 of 1959 thirty years ago for the benifit of Bhagwan Shri Ram for a decree of delivery of charge and management of the temple to the Nirmohi Akhara.

19. That the contents of para-19 need no reply except that though the birth place of Bhagwan Ram is place where the temple known as Ram Janma Bhumi Temple is constructed but the dispute is not regarding the place of birth of Lord Rama but regarding the Temple known as Temple Shri Ram



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Janma Bhumi. The belief that Lord Ram is the son of Raja Dashrath of solar Dynasty is not disputed.

20. That the contents of para-20 of the plaint are denied. They are products of imagination of the so called Next Friend of the plaintiffs 1 and 2. The plaintiffs studiously avoid to mention the subject of dispute as the Ram Janma Bhumi Temple for whose delivery of charge and management the Nirmohi Akhara has filed the suit No. 26 of 1959 and maliciously uses the phrase Asthan Sri Ram Janma Bhumi which is meaningless. The said Asthan is not a juridical person.

21. That the contents of para-21 of the plaint are the indivisual view of Shri Deoki Nandan Agrawal, the plaintiff No. 3 of the suit are totally irrelevant to the subject matter of dispute and have been vainly introduced in the plaint.

22. That the contents of para-22 of the plaint are the personal views of Shri Deoki Nandan and are totally irrelevant to the present dispute which relates to the Ram Janma Bhumi Temple.

23. That the contents of para-23 of the plaint refer to various alleged historical facts. They cannot be replied without making thorough investigation for which the answering defendant seeks time and will reply through a supplementary written statement later.

24. That the contents of para-24 of the plaint shall be answered after making further inquiry into the matter later through a supplementary written statement.

25. That the contents of para-25 of the plaint are denied. The temple in question along with the land and properly appertaining there to is already Waqf property where of the Nirmohi Akhara is the Shebait and Manager. The rest of the contents are only argumentative.

26. That in reply to the contents of para-26 of the plaint it is true that no prayers have ever been offered by any muslim in the Ram Janma Bhumi Temple which is claimed by some muslims on Mosque which it never was. The rest of the contents are matters of evidence which shall be inquired into by the answering defendant and then replied later through a supplementary written statement.

27. That the contents of para-27 of the plaint cannot be replied without



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making thorough inquiry for which the answering defendant needs time. But it is asserted that the idol of Bhagwan Ram was always there installed in the Temple. The answering defendant reserves the right to give fuller and more complete inquiry through a supplementary written statement.

28. That in reply to the contents of para-28 of the plaint only this much is admitted that the temple in question along with the appertaining properties was attached illegally under section 145 Cr.P.C. It was on account of this attachment that the Nirmohi Akhara filed Suit No. 26 of 1959. The rest is a matter of record.

29. That in reply to the contents of para-29of the plaint it is stated that the answering defendant has already filed suit No. 26 of 1959 for of delivery of charge and management of the said temple. The contents of para-29 are irrelevant. The plaintiffs have no right and interest a part from the rights of Nirmohi Akhara.

30. That the contents of para-30 of the plaint are denied. There is no movement of any construction of a new temple in place of the present temple. The Temple belongs to Nirmohi Akhara. No body else has a right to construct a new temple in its place except the Nirmohi Akhara.

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31. That the contents of para-30 of the plaint are partly irrelevant and partly a matter of record and can be ascertained from the same. The plaintiffs of the suit have no real title to sue and they have been wrongly advised to file the suit only to harass the Nirmohi Akhara and to try to encroach upon its rights of management of the temple. There is a subdues observation regarding the fulfilment of the "Aforesaid programme" which obviously referes to the imaginary plan if reconstruction. This renders the entire suit as malicious and inconsistent with the relief sought and the suit is liable to be dismissed.

32. That the contents of para-32 of the plaint refer to various orders and report about which the answering defendant has no knowledge. He will give a reply after full inquiry regarding the said orders and reports through a supplementary written statement later.

33. That the contents of para-33 of the plaint are denied. The entire premises belong to the Nirmohi Akhara the answering defendant. There is no question of any mosque as Babri Masjid or any Qabristan.



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34. That the contents of para-34 of the plaint are not known to the answering defendant. He will give complete reply after full inquiry through a supplementary written statement. But this is admitted that the Temple of Shri Ram Janma Bhumi was never a mosque. There is no question of demolishing the building at all nor of a new construction.

35. That the contents of para-35 of the plaint are irrelevant and need no reply.

36. That the contents of para-36 of the plaint are denied. The plaintiffs have no cause of action at all and the suit is liable to be dismissed.

37. That para-37 of the plaint is admitted.

38. That the valuation fixed in para-37 of the plaint is totally fictitious and is denied.

39. That the plaintiffs are not entitled to any relief at all. The premises mentioned by the plaintiffs belong to the Nirmohi Akhara and the Plaintiffs of this suit have no right of declaration against the right and titles of the Nirmohi Akhara. Nor are the plaintiffs entitled to any injunction as sought.

**Additional Pleas**

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40. That the reliefs sought by the plaintiffs are both imaginary and inconsistent and contained a threat to demolish the temple of the Nirmohi Akhara for which the suit of the Akhara is pending. The suit is liable to be dismissed.

41. That the answering defendants will file a supplementary written statement later after making necessary inquiries into the various allegations made in the plaint. In any view of the matter this suit is liable to be stayed under Section 10 C.P.C. till the final disposal of the suit of Nirmohi Akhara.

R.S. No. 26/59.

Lucknow
Dated: August 14, 1989.

Defendant No. 3
Nirmohi Akhara through
Mahant Ram Kewal Das.
Present Mahant
Through
Sd/-
(S.L. Verma)
Advocate
Counsel for the Nirmohi
Akhara Defendant No. 3.



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**In the High Court of Judicature at Allahabad Lucknow Bench Lucknow**
**Additional W.S./Supplementary W.S. On behalf of Nirmohi Akhara**
**Defendant No. 3**
**in**
**O.O.S. No. 5 of 1989**
**Full Party Name to be typed.**

1. That contents of para 1 to 41 of W.S. Of defendant No. 3 are reaffirmed.

**Addl. W.S./Supplementary W.S.**

Para 42. That site plan annexure 11 attached to the above noted plaint does not bear any plot nos. (settlement or Nazul) nor it is bounded as to give any definite identity of property. Temple Shri Vijay Ragho Ji Sakshi Gopal has never been subject matter of the any of the suit O.O.S. 4/1989 or O.O.S 3/1989 pending before this Hon'ble Court. Sumitra Bhawan is another temple shown in the site plan which is temple of Sheshaawatar Laxmanji Maharaj and that is why it is famous name of his mother Sumitra as Sumitra Bhawan. It has been in possession and management of Mahant Raj Mangal Das one of the panch of Nirmohi Akhara. The Nazul plot no. 588 measaming 1-6-13-15 Kachwanceis of Mohalla Ram Kot is recorded with Diety Laxamanji Maharaj through Ram Das Nirmohi who is Guru of Raj Mangal Das. Mah Ram Das of Sumitra Bhawan is recorded in settlement plot No. 168 to 174 as qubiz. Similarily Lomash Chaura Mandir, Sita Koop Mandir, Kuti shown is said map has distinct Diety of Bahgwan Ram Lalaji by the other panches of Nirmohi Akhara namely and respectively Mahant Dwarika Das, Mahant Naval Kishore Das and Ram Gopal Das who are all panches of Nirmohi Akhara. Sankat Mochan temple have been omitted in the said map whereas it did exist on the date of this suit. It has its diety Sankat Mochan Hanomanji and Thakur Ram Janki represented by Sarbarakar Ram Dayal Saran Chela of Ram Lakhan Saran. Late Ram Lakhan Saran and also belong to the spiritual family of Nirmohi Akhara as he was Naga Chela of Goliki Ram Lakhan Das, one of the old panch of Nirmohi Akhara. Other Samadhis in the name of famous sages have been owned and claimed by answering defendant No. 3 as Samadhies of old Sadhus of Nirmohi Akhara. Panches and Sadhus of Akhara are living in the surrounding since before the human memory. The outer Sahan carried a little temple of Bhagwan Ram



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Lalaji along with other place which are regularly worshipped according to the customs prevailing amongst Rama Nandi Vairagies. The outer part with this temple of Ram Lallaji and other dieties have ever been in management and charge of Nirmohi Akhara as sheibiat till this outer portion with Bhandar was attached U/s 145 Cr.P.C. on 16.2.1982 and a receiver is appointed there vide order of Civil Judge Faizabad in Reg. Suit 239/82 Sri Ram Rama Nandi Nirmohi Akhara Versus K.K. Ram Varma etc. due to lootpat committed by Dharam Das. Mr. Deoki Nandan Agarwal has named himself to be witness of Dharam Das. Therefore, suit for all these properties by plaintiff 3 is not maintainable for want of possession and is barred by provision of Section 34 of Specific Relief Act.

Para 43: That outer portion consisting of Bhagwan Ram Lala on Sri Ram Chabutra along with other deities, chathi pujan sthan and Bhandar with eastern outer wall carrying engraved image of varah Bhagwan with southern and northern wall and also western portion of wall carries the present municipal No. 10/12/29 old 506, 507 and older 647 of Ram Kot ward of Ayodhya City had been a continious referred in man litigation since 1885 till Reg. Suit No. 239/82 of the Court of Civil Judge Faizabad and in every case Nirmohi Akhara was held always in possession and management of this temple so the Bhagwan Ram Lalaji installed by Nirmohi Akhara on this Ram Chabutra is a distinct legal entity owned by def. no. 3. That suit is bad for want of impleadment of necessary party as mentioned above.

Para 44: That attachment made in the 1949 is only in respect of main building of Garbh Grahya Carrying three “Shikher” where in the deity of Bhagwan Sri Ram Chandraji is installed by Nirmohi Akhara from time beyond the human memory and are since then is management and possession of it till the said property attached. Therefore, plaintiff 3 can not claim any right to represent him.

Para 45: That origin of installation pltf. 1 and 2 and dedication to it both have not been pleaded by plaintiff no. 3. Thus pleading is vague and misconceived.

Para 46: That suit is heavily time barred.

Para 47: That plaintiff No. 3 Mr. Deoki Nandan is office bearer of V.H.P. and is also member of defendant No. 2 the alleged Nayas which is not a legal



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constituent. There could be no delegation of an endowment to any other trust. Once a dedication to endowment is always a dedication for ever. Thus def. No. 21 altogether an illegal entity playing in the hands of V.H.P. Thus interest of Pltff. No. 3 as member of Nayas Def. No. 21 is adverse to Bhagwan Sri Ram Ji Pltff. No. 1.

Para 48: That outer portion with surrounding temples were illegally acquired by V.H.P. Backed BJP Govt. which notification 7.10.1991 is under the challenge in Writ Petition but same is void, illegal U/s 52 of T.P. Act.

Para 49: That plaintiff no. 1 can only be represented by Def. No. 3 along and therefore plaintiff 1 to transposed as defendant to be represented by defendant No.3.

Para 50: That suit is liable to be dismissed.

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Def. no. 3 Nirmohi Akhara

Sd/-
R.L. Verma.
Advocate.

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**In the High Court of Judicature at Allahabad Lucknow Bench**

**Lucknow.**

**IInd Addl. W.S. On behalf of Defendant No.3 Nirmohi Akhara**

**In Re:**

**O.O.S. No. 5/1992**

**Full party name to be typed.**

1. That the contents of Original Written Statement from para 1 to 41 and contents of para 42 to 50 of Addl. Written Statement are re-affirmed.

**Second Additional Written Statement**

Para 51: That contents of para 16-A of the plaint are denied. That existence of alleged Nayas is ipso facto illegal and void. Jagada Guru Rama Nand had himself condemned the existence of alleged Nayas vide his interview of "Dainik Jan Morcha" before his death. Sri Ram Chandra Das has himself admitted the title, possession of Nirmohi Akhara since long.

Para 52: That disputed temple belongs to Nirmohi Akhara from before the time of Hanuman memory and mostly all the property in suit vests to be religious denomination of Panch Rama Nandi Nirmohi Akhara and thus there could be no divesting of the religious institution to any other endowment or Nayas. Def. No. 3 has not joined information of any such Nayas nor could it do legally.

Para 53: That said Nayas is also becomes illegal as non-constituent body being devoid of any title to disputed property.

**********

Sd/- Mahant Bhaskar Das
Defendant No. 3 Nirmohi
Akhara.
Sd/-
R.L. Verma
Advocate.



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**In the High Court of Judicature at Allahabad Lucknow Bench**
**Lucknow.**
**O.O.S. No. 5 of 1989**
**(Regular Suit No. 236 of 1989)**
**(of the court of Civil Judge, Faizabad)**
**Full party name to be typed.**

**Fixed for 18.09.1989.**

**Written statement of the U.P. Sunni Central Board of Waqfs, Lucknow (Defendant No. 4)**
**in O.O.S. No. 5 of 1989**

**The defendant No. 4 begs to submit as under:-**

1. That the contents of para 1 of the plaint are incorrect and hence denied as stated. Neither the plaintiffs Nos. 1 and 2 are the juridical persons and nor there is any Presiding Deity of Sri Ram Chandraji at the place in dispute and nor the plaintiff no. 3 has any locus standi or right to represent the so-called and alleged deity and Asthan as next friend. It is further submitted that the plaintiffs nos. 1 and 2 are not at all legal personalities (and as such they have no right to file the instant suit). As a matter of fact there has never been any installation of deity within the premises of the disputed place of worship known as Babri Masjid and the idol in question was stealthily and surreptitiously kept inside the mosque in the night of 22nd/23rd December, 1949 by some mischief-mongers against whom an F.I.R. had also been lodged at the Police Station Ayodhya on 23rd December, 1949.

2. That the contents of para 2 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the said plan as well as the report submitted by Sri Sheo Shanker Lal, and made part of this Plaint do not depict the correct position of the spot and the same cannot be relied upon for identification and description of the property in suit. The plaintiffs were, therefore, obliged to give the boundaries as well as the site plan of the property in suit and the plaint is defective in this respect.

3. That the contents of para 3 of the plaint are also denied as stated and in reply thereto only this much is admitted that suit No. 2 of 1950 had been filed by Sri Gopal Singh Visharad against Sri Zahoor Ahmad and others. It is incorrect to say that the original plaintiff of the said suit has died only recently. The fact is that Sri Gopal Singh Visharad had expired several years ago and no application for substitution has been moved in the said suit within the prescribed period (and as such the said suit had abated much



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before 1986 and the order of substitution passed in favour ofdefendant No. 1 is absolutely illegal and improper).

It is further submitted that the names of the Muslim defendants of the said suit had been wrongly struck off. The answering defendant is advised to state that the heirs of the Muslim defendants were liable to be substituted in place of the original Muslim defendants. Rest of the contents of the para under reply may be verified from the record of the original Suit No. 2 of 1950.

4. That the contents of para 4 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that whatever relief was claimed in the said suit No. 2 of 1950 would appear from the copy of the plaint of that suit.

5. That the contents of para 5 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the contents of the said suit No. 25 of 1950 may also be verified from the copy of the plaint of that suit, and in the absence of the relevant record it is not admitted that a valid notice under Section 80 of the Code of Civil Procedure had been given prior to the filing of the aforesaid suit No. 25 of 1950.

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(It is further submitted that the names of the Muslims defendants have been wrongly struck off).

6. That the contents of para 6 of the plaint are also incorrect and hence denied as stated and in reply thereto is submitted that since suit No. 25 of 1950 was also considered to be defective like Suit No. 2 of 1950, a third Suit had also been got filed which had been numbered as Suit No. 26 of 1959. Whatever was pleaded in Suit No. 26 of 1959 would appear from the copy of the plaint of that suit and it is absolutely incorrect to say that the idols of Sri Ram Chandraji and others have ever been installed in the said premises of Babri Masjid which has been wrongly described as Janam Bhoomi. (It is further submitted that the said Suit No. 26 of 1959 was also defective and not maintainable. It is also incorrect to say that the heirs of the Muslims defendants of the said suit were not liable to be substituted. The answering defendant is advised to state that the cause of action, if any, did survive even against the heirs and legal representatives of the said Muslim defendants). As all of them claimed the property in suit to be a mosque and none of them had



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ever admitted the said building to be a temple.

7. That the contents of para 7 of the plaint are also incorrect and hence denied as stated and in reply thereto only this much is admitted that suit No. 12 of 1961 was filed by the answering defendant and 8 other Muslims in the Court of the Civil Judge, Faizabad. The reliefs claimed in the said suit may be verified from the plaint of the said suit and it is incorrect to say that only plaintiffs Nos. 7 and 9 of the said suit are surviving. As a matter of fact the plaintiffs nos. 5 and 8 of the said suit No. 12 of 1961, namely Maulvi Mohd. Naseer and Vakiluddin are also very much alive and the plaintiffs nos. 2, 4,6 and 10 are survived by their legal representatives (and all of them are liable to be impleaded in the instant suit).

8. That the contents of para-8 of the plaint are denied as stated for want of definite knowledge and the same may be verified from the record.

It is further submitted that the aforesaid suit No. 12 of 1961 was filed in the representative capacity and the application for permission to sue in a representative capacity was allowed by the Court.

9. That in reply to para 9 of the plaint it is admitted that all the aforesaid four suits have been consolidated and suit no. 12 of 1961 had been made as the leading suit.

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10. That the contents of para 10 of the plaint may also be verified from the record of the suit No. 2 of 1950.

11. That the contents of para 11 of the plaint are denied as stated and in reply thereto it is submitted that the plaintiffs nos. 1 and 2 cannot be treated as deities and also there arises no question of their Sewa and Pooja. Rest of the contents of the para under reply may be verified from the record.

12. That the contents of para 12 of the plaint are also denied as stated and in reply thereto it is submitted that there arises no question of Sewa and Pooja of the said alleged deities as no such deities exist in the building in question and the idols kept therein could not be treated as deities. It is further submitted that the restricted Pooja as carried on 16th January, 1950 could not be treated as Sewa and Pooja of the alleged deity. It is also incorrect to say that there has ever been any likelihood of the suits being decided in such a manner that any closer Darshan of the idols could be possible.



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13. That the contents of para 13 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the defendant No. 20 had no right or title or locus standi to move the said application for the opening of the gate of the mosque for closer Darshan (and the defendant No. 20 being not at all a party to any of the aforesaid suits, he had no locus standi to file the Appeal before the District Judge, Faizabad, and the order dated 1.2.1986 passed by the District Judge, Faizabad, was patently and manifestly illegal and without jurisdiction) and two writ petitions are pending in the Hon'ble High Court against the aforesaid order dated 1.2.1986.

It is further submitted that the building in dispute is not the Janam Bhoomi of Sri Ram Chandraji and no idols of Sri Ram Chandraji were ever installed in the said building and as such there arises no question of any right or claim of the defendant no. 20 or of anyone else to perform Pooja and Darshan over there. The fact is that the property in suit is an old mosque known as Babri Masjid and the same was constructed during the regime of Emperor Babar.

14. That the contents of para 14 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the building in dispute is not a temple and as such there arises no question of any Pooja and Darshan being allowed to be performed over there. (It is reiterated that the plaintiffs nos. 1 and 2 are not the deities recognised by Hindu law and as such they have no legal entity).

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It is further submitted that since the building in question is a mosque there arises no question of any new temple being constructed over the site of the said Babri Masjid (and the plaintiffs or anyone else have no right or locus standi to claim the removal of the old structure of the said mosque).

It is also relevant to mention here that neither any idols were kept in the said mosque prior to the incident of the night of 22nd/23rd December, 1949 when the idols were surreptitiously or stealthily kept in the mosque by some mischievous elements and nor the said mosque was ever used for performing Pooja and Darshan etc. prior to 23.12.1949. As the plaintiffs Nos. 1 and 2 cannot at all be treated as deities, there is no question of unhappiness of the so called deities and their alleged devotees. It is, however, admitted that there has been unnecessary and unusual delay in the



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disposal of the suits referred to above and on account of the attachment of the mosque for the last about 39 years the condition of the building has also deteriorated. The Receiver appointed by the Court is not taking proper interest in the maintenance of the building and in spite of the orders of the Court, no repairs of the building have been undertaken for the last several years. The answering defendant is, however, not aware of the alleged misappropriation of the money by the staff appointed by the Receiver. The answering defendant is further advised to state that the alleged desire of removing the structure of the mosque and of constructing a temple on the site of the said mosque is wholly uncalled for and unwarranted and mischievous and any such attempt will be fraught with very dangerous consequences (and instigation of such unholy design and illegal activity also amounts to offence apart from being contemptuous) and in gross violation of the restraint order passed by the Hon'ble High Court in Writ Petition No. 746 of 1986: Mohd. Hashim Versus State of U.P. and others.

15. That the contents of para 15 of the plaint are absolutely incorrect and hence denied as stated and in reply thereto it is submitted that as there is no temple there arises no question of improving the administration and re-construction of the same or of managing the performance of alleged Sewa, Archana and Pooja etc. So also there being no deities, there is no question of protecting, renovating and re-construction and developing the alleged temple premises, and the building in question being a mosque there was no question or justification for creation of any Trust or for execution of any Deed of Trust and the so-called Trust and Deed of Trust are wholly uncalled for, unwarranted and illegal and the same have got no legal sanctity. The entire exercise done in this respect is based on imaginary concept of Ram Janam Bhoomi temple while no such temple ever existed over the premises in question.

16. That the contents of para 16 of the plaint are absolutely incorrect and hence denied as stated. As already stated above, the so-called Sri Ram Janam Bhoomi Nyas has got nothing to do with the building in dispute and as such it is absolutely irrelevant for the purposes of the instant case as to who are the Trustees and members of the same.

17. That the contents of para 17 of the Plaint are absolutely incorrect and



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hence denied as stated. The so-called Nyas has got no concern with the property in suit and it is also not a legal person and no Sewa and Pooja being done in the building in question under the auspices of the said Nyas, there is no question of the impleadment of the Nyas as defendant No. 21.

18. That the contents of para 18 of the plaint are also denied as stated. Neither there is any Presiding deity and nor there is any Asthan as alleged in the para under reply and as such the plaintiffs nos. 1 and 2 are not at all the juridical persons and the suit filed on their behalf is wholly misconceived and non-maintainable. As already stated above, the idol was surreptitiously and stealthily kept inside the mosque in the night of 22nd/23rd December, 1949 and as such the said idol has neither been installed in accordance with the tradition and rituals of Hindu Law and nor there have been any ceremonies prescribed by Hindu Law for the installation of the idols and as such the idols kept in the mosque have got no legal entity and that being so there arises no question of impleadment of the same, and moreover, the plaintiff no. 3 has also got no direct right or title or concern with the property in suit and as such he is also not entitled to institute the present suit. In any case the instant suit having been filed after expiry of more than 39 years since after the attachment of the property in suit the instant suit is heavily barred by time and it is not at all maintainable even on this account.

19. That the contents of para 19 of the plaint are absolutely false and incorrect and hence denied as stated. Neither there is any public record, much less any record of unimpeachable authority showing that the premises in dispute is the place of birth of Sri Ram Chandraji and nor there is any historical or judicial record to testify the averments of the para under reply. As a matter of fact the religious books as well as the writing of Hindu scholars themselves make it very doubtful as to whether the personality of Sri Ram Chandraji is a historical personality. Similarly there are several versions about the place of birth of Sri Ram Chandraji and it is not at all settled, even amongst the Hindu scholars, as to where and in what period such a religious leader known as Sri Ram Chandraji was born. The booklets being circulated at Ayodhya by the Vishwa Hindu Parishad and other Hindu Organizations and other books of Hindu mythology describe the period of Sri Ram Chandraji as that of Treata Yug meaning thereby that he was born



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more than 9 lakh years ago. According to Hindu mythology, there have been three Maha Prayleys during this period due to which the entire earth had submerged into water and as such according to Hindu mythology itself no specific place can be said to be the birth place of Sri Ram Chandraji. It is also pertinent to mention here that greatest authority of Hindu mythology on Sri Ramchandraji known in the recent history is that of Goswami Tulsidasji. He had written the book on Sri Ramchandraji known as Sri Ram Charitra Manas during the regime of Mughal Emperor Akbar who was the grandson of Mughal Emperor Babar and it is said that Sri Goswami Tulsidasji had composed the said Ram Charitra Manas at a place known as Datun Kund situated at a distance of about one kilometre from Ayodhya in district Faizabad and as such had there been any birth place of Sri Ramchandraji in Ayodhya, Goswami Tulsidasji must have specifically mentioned about the same in his Ram Charitra Manas and as a great devotee of Sri Ramchandraji Goswami Tulsidasji cannot be expected to have skipped over or concealed or kept quiet over such an important fact regarding the life history of Sri Ramchandraji and had there been any iota of truth in the story of Sri Ram Janam Bhoomi temple being there at Ayodhya at the site of the Babri Masjid during the regime of Emperor Babar or prior thereto and had there been any incident of demolition of any such temple and construction of Babri Masjid over the same, Goswami Tulsidasji must have taken up this matter in the Court (Darbar) of Emperor Akbar and Emperor Akbar must have undone the alleged wrong and specially so when the Court of Akbar was full of Advisors, councillors and ministers from Hindu community and his own Queen was also Jodha Bai. It is also relevant to mention here that even the location of present Ayodhya does not tally with the location of Ayodhya as given in the Balimik Ramayan and this also creates doubt about there being any place of birth of Sri Ramchandraji in the present Ayodhya situated in district Faizabad. Ayodhya mentioned in the Balmiki Ramayan is said to be situated at a distance of about 1-1/2 Yojana (equivalent to about 14-1/2 miles) from river Saryu flowing East to West which is presently running quite adjacent to the present Aydhya from West to East.

It is also absolutely incorrect to say that there is any historical or other evidence to the effect that Sri Ramchandrji had manifested himself in human



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form at the place where the idols are presently kept in the mosque in question.

It is also absolutely incorrect to say that the place known as Babri Masjid has ever been called as Sri Ram Janam Bhoomi prior to December, 1949.

20. That the contents of para 20 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there is no deity by the name of Asthan Ram Janam Bhoomi and as a matter of fact there is no said Asthan also within the premises of Babri Masjid.

It is also relevant to mention here that in 1885 Mahant Raghubar Das, Mahant of Janam Asthan of Ayodhya, had filed a suit against the Secretary of State for India in Council and Mohd. Asghar, Mutawalli of the said mosque in the Court of Sub-Judge, Faizabad, in which a site plan had also been annexed along with the plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the said suit was filed for permission to erect temple over the said Chabutra. In respect of the said Chabutra the said Mahant Raghubar Das had stated that the temple of Janam Bhoomi was desired to be constructed over there, but the said Mahant could not succeed even in that suit which was ultimately dismissed on 24th December, 1885 by the Sub-Judge, Faizabad, and the appeal filed against the said judgement and decree dated 24th December 1885 was also dismissed by the District Judge, Faizabad, and the Second Appeal filed against the same had also been dismissed by the Judicial Commissioner of Avadh. The aforesaid suit was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad etc. As such the plaintiffs cannot claim any portion of the Babri Masjid to have been defied or having become a juridical personality by the name of Asthan Ram Janam Bhoomi and specially so when neither there has been any installation of deity and nor any personification of the same in accordance with the tenets of Hindu religion or law. It is further submitted that the plaintiffs are even estopped from claiming the mosque in question as the Janam Bhoomi of Sri Ram Chandraji as the plaintiffs' predecessors and specially Mahant Raghubar Das had confined his claim to the Chabutra (platform) of 17' x 21 ft. outside the said



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mosque as being Janam Asthan of Ram Chandraji and also because there already exists another temple known as Janam Asthan temple situate at a distance of less than 100 yards only from Babri Masjid and on its northern side.

21. That the contents of para 21 of the plaint are also denied as stated and in reply thereto it is submitted that the mythological concept of incarnation etc. is not at all relevant for the purposes of the instant case. However, the averments of the para under reply are not correct and consistent with Hindu Law and the same being a matter of legal nature it will be dealt at the appropriate stage. It is, however, relevant to mention here that neither there has been any installation of any deity within the premises in dispute and nor the ritual of Pranpratishtha in respect of any idol surreptitiously and stealthily kept inside the mosque in question was ever performed or observed; as such there arises no question of divine spirit having been created or manifested in the idol forcibly kept in the mosque in question in the night of 22nd-23rd December, 1949 about which an F.I.R. was lodged at the Police Station Ayodhya in the morning of 23.12.1949 by a Hindu Officer of the Police Station himself who had mentioned in the said F.I.R. that some mischievous element had kept the said idol in the preceding night in a stealthy and surreptitiously manner by sheer use of force and non the basis of the said F.I.R. a Criminal case had also been registered against those persons who had kept the said idol and subsequently proceedings under Section 145 Cr.P.C. had been drawn by the Magistrate and as a result of the communal tension arising and developing on account of the aforesaid incident or keeping the idol in the mosque, the said building had been attached on 29.12.1949 and Suprudgar/Receiver for the care and custody of the said building had also been appointed who had drawn up a scheme of Management and the same was submitted on 5.1.1950.

22. That the contents of para 22 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the spirit of Sri Ram Chandraji as the divine child cannot be said to reside at any place or in any idol kept inside the said mosque and as such no idol or place of the said mosque can be said to be deity. It is further submitted that there is no comparison of Kedarnath or Vishnupad temple of Gaya with the Babri



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Masjid. It is also relevant to mention here that there is no Charan or Sita Rasoi within the premises of Babri Masjid and the place known as Sita Rasoi is situated outside the premises of the said mosque. It is also incorrect to say that Pooja in any form was ever performed inside the mosque in question at any time prior to 23.12.1949.

23. That the contents of para 23 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there has never been any temple of Maharaja Vikramadittya's time at the site of the Babri Masjid and no authentic books of history and no public record of any unimpeachable authenticity can be cited in this respect. It is also incorrect to say that the mosque in question was raised at the site of any temple or after destroying any temple by force and arms. It is also not correct to say that the material used in the construction of the said mosque was almost all of it taken from any temple, and it is also incorrect to say that the pillars of the said mosque were wrought out of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. The fact is that such pillars are available at some other places also. It is also absolutely false and baseless to suggest that any resistance was put by the Hindus or any battle was fought from time to time to prevent the construction of the mosque. Regarding the shape of the structure of the mosque it is submitted that there is no requirement of any specific type of construction or structure for any mosque and existence of minaretes or or domes is not at all required for any mosque and so also there is no necessity of any place for storage of water for VAZOO for any mosque although in the close vicinity of Babri Masjid a well is very much there for taking out water for the purposes of Vazoo. There are several other mosques in India and even in Faizabad and Lucknow, which do not have minarets and even domes and one such mosque is situated within the premises of Dargah Hazrat Jahangir Samdani in Kachaucha Shareef district-Faizabad in which there are no domes or minaretes and one such mosque exists in the district of Lucknow in which there are five domes but no minaretes. It is also incorrect to say that any life was lost in any battle fought in respect of Babri Masjid and no battle in respect thereto had taken place till 1885.

It is also incorrect to say that the building of Babri Masjid raised during Babar's time had ever remained in the possession and control of



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Hindus. The citation of Faizabad gazetteer given in the para under reply is based on hearsay information and the same cannot be said to be true and correct or in any way a reliable piece of evidence.

It is also relevant to mention here that bitterness had been created between Hindus and Muslims in respect of the mosque situated inside Hanuman Garhi and it was on the report of the demolition of that mosque that some Muslims had tried to take up arms under the command of Maulvi Ameer Ali, but they could not succeed on account of the army of the Nawab as well as British army posted for facing their challenge. The expedition of Maulvi Ameer Ali had, therefore, no concern or connection with the Babri Masjid and the observations of the contrary in the Gazetteer of Faizabad and Barabanki are, therefore, totally incorrect and no reliance can be placed upon the same. It is also incorrect to say that at any point of time Hindus and Muslims both used to worship in the same building known as Babri Masjid.

Had there been any such practice of worshipping by both the communities inside the Babri Masjid, mention of the same should have been made in the plaint of the Original Suit No. 61/280 of 1885: Mahant Raghubar Das Versus Secretary of State & another, decided on 14.12.85 by the Sub-Judge, Faizabad.

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24. That the contents of para 24 of the plaint are also incorrect and hence denied as stated. At no point of time there ever existed any temple at the site of the Babri Masjid and it is absolutely incorrect to say that the said mosque was constructed, after destroying any ancient temple, with the material of the alleged temple. The mosque in question has always been used as a mosque since its construction during the regime of Emperor Babar.

The contents of the sub-paras (A) to (G) of the para under reply are also incorrect and the same are also denied as stated:

(A) That the contents of para 24(A) of the plaint are also denied as stated. The quotation of Quran is totally out of context and the same is not even correct and complete.

(B) That the contents of para 24(B) of the plaint are also incorrect and hence denied as stated. The land in question undoubtedly belonged to the state when the Mosque in question was constructed on behalf of the State and as such it cannot be said that it could not be dedicated for the purposes



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of the mosque. Emperor Babar was a Sunni Muslim and the vacant land on which the Babri Masjid was built lay in his State territory and did not belong to anyone and it could very well be used by his officers for the purposes of the mosque and specially so when the Emperor Babar himself consented and gave approval for the construction of the said mosque. It is absolutely incorrect to say that the site in question was the site of any temple and any temple was destroyed by Meer Baqi. Had anysuch incident of demolition of any temple taken place, the same must have been reported in any authentic book of Mughal history but no such incident finds mention in any authentic book of history and as such it is absolutely false and concocted to suggest that the mosque in question was constructed at the site of any temple.

(C ) That the contents of para 24(C) of the Plaint are also absolutely false and incorrect and hence denied as stated. No temple had ever existed at the site of the said mosque and there is no question of vesting of the site in any alleged deity. Similarly no Asthan and deity could be said to have ever existed over there and as such there arises no question of the possession of any deity or Asthan on the site in question. The alleged Ram Chabutra has also not remained in existence since the time of Babar out rather the same is the creation of around 1857 period.

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It is also incorrect to say that the entry of the mosque could not be possible except after passing through any place of Hindu worship. The concept of the mosque has also been wrongly and incorrectly described in the para under reply.

(D) That the contents of para 24(D) of the plaint are also incorrect and hence denied as stated. There is no such requirement for the construction of any mosque- that the same should be built in a place of peace and quiet and near to a place where there is a sizeable muslim population. It is also incorrect to say that the mosque cannot be built in a place which is surrounded by temples, where the sound of music and Konch shell, Ghanta Gharyal disturbs the peace and quiet of the place.

(E) That the contents of para 24(E) of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there is no specific shape of building of a mosque and there is no requirement of existence of any minaretes in a mosque. It is also not required that there



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should be any specific place or minaretes for calling the Azan. The quotations given in the para under reply are also irrelevant and out of context and the same do not even present a correct law.

(F) That the contents of para 24(F) of the plaint are also incorrect and hence denied as stated. Whatever was mentioned in the plaint of Suit No. 12 of 1961 would appear from the copy of the same and the averments of the Faizabad Gazetteer referred to in the para under reply are neither authentic and nor correct. It is also incorrect to say that there were no graves near the building of the said mosque. The fact is that many graves existing in the Ganj-Shaheedan have now been mostly demolished by the Bairagis and that is why they are not now visible. It is reiterated that the mosque in question has been used for offering regular 5 time prayers up to 22nd December, 1949 and even Friday prayers have been offered in the same till 16th December, 1949 and the Imam of the said mosque who used to lead the prayers even in 1949 namely Maulvi Abdul Ghaffar son of late Mohd. Abdul Qadir. He had even filed his affidavit in writ petition No. 746 of 1986 : Mohd. Hashim Vs. District Judge, Faizabad and others, which is still pending in this Hon'ble Court.

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(G) That the contents of para 24(G) of the plaint are also incorrect and hence denied as stated and in reply thereto it is, submitted that there is a pucca well also outside the mosque in question for taking out water for the purposes of Vazoo.

(25) That the contents of para 25 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there never remained any deity in the mosque in question. It is also incorrect to say that no valid waqf of the mosque was ever created and the reference of command of law made in the para under reply is also incorrect and misleading.

It further submitted that the muslims possession has remained uninterrupted and continuous of the mosque in question since its construction and up to 22.12.1949 (and as such the alleged right or title, if any, of anyone else over the same has ceased to exist and the alleged right and title shall be deemed to have extinguished) on account of the uninterrupted and adverse possession of the muslims over the mosque in question for more than 420 years.



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(26) That the contents of para 26 of the plaint are also incorrect and hence denied as stated and in reply there to it is submitted that regular 5-time prayers used to be offered in the said mosque up to 22.12.1949 and Friday prayers were also offered up to 16.12.1949 and on 23.12.1949 when the muslims led by the Imam of the said mosque had approached the authorities of the district to offer Friday prayers in the said mosque they were persuaded to offer Friday prayer on that date in some other mosque with the specific assurance that they will be allowed to offer Friday prayers in the mosque in question on the next Friday falling on 30.12.1949. But before that the mosque in question had been attached by the Magistrate under Section 145 Cr.P.C. and since then the attachment of the said mosque is continuing and till now the said mosque is continuing in the custody of the Court.

It is further submitted that although communal riot of 1934 had nothing to do with the mosque in question but still some Bairagees had damaged a portion of the mosque and as such the District Magistrate of Faizabad had got the said damaged portion of the mosque repaired through a muslim contractor soon thereafter.

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It is also incorrect to say that after the said repairs no one had dared to offer Namaz in the said mosque. As the mosque in question was very much in use there was no occasion for the Waqf Board to take any action or steps for the establishment of the building as a mosque.

It is also absolutely incorrect to say that there was no Mutawalli or Moazzin or Imam or Khatib or Khadim of the said mosque. The name of the mutawalli of the said mosque finds mention even in the Government Gazette of 1944 declaring the said mosque as a waqf and even at present there is a Committee of Management of the said mosque appointed by the U.P. Sunni Central Board of Waqf (answering defendant).

(27) That the contents of para 27 of the plaint are also incorrect and hence denied as stated. The graves existing near the Babri Masjid were dug up and levelled mainly after 1949 and not just after Independence and in the night of 22nd-23rd December, 1949 some Bairagees had forcibly and illegally entered into the mosque and had kept the idol below the middle dome of the mosque about which an F.I.R. was lodged at Police Station, Ayodhya in the morning of 23rd December, 1949 and some of the culprits were even named in the



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FIR. It is absolutely incorrect to say that the idol of Bhagwan Sri Ram Chandraji was installed with due ceremony in the Central dome of the building in the 'aforesaid' night. It is also incorrect to say that any purification of the alleged Asthan was done by Akhand Ramayan and Jap by thousands of persons all over the area.

(28) That the contents of para 28 of the plaint are also incorrect and hence denied as stated. It is absolutely incorrect to say that no muslims have been residing near the Babri Masjid and as such no resistance was offered. The fact is that muslims reside not only behind the mosque but also in the localities situated in the southern and eastern side of the mosque. But no one being aware of the aforesaid keeping of idols in the late hours of the night could offer resistance at that time and when the muslims had come to know about the same on 23rd December, 1949, they had collected over the spit and had insisted for offering Friday prayers in the said mosque, but the district authorities present over there had persuaded the muslims not to offer prayer on that date and they had assured the muslims that the idols stealthily kept in the mosque would be removed by the next Friday and as such the muslims could offer prayer from the next Friday. In this view of the matter the muslims acted with restraint and as law abiding citizens and when the mosque was attached on 29th December, 1949, the muslims had started pursuing legal remedies. The said proceedings had started under section 145 Cr.P.C. and have not been dropped so far, but rather the same were stopped and consigned to record on account of the filing of the Civil suit and the same will be revived after the decision of the civil suit.

It is also relevant to mention here that the aforesaid act of keeping the idols in a stealthy manner was done with the connivance of some district officials and that is why the said idols had not been removed by those officials specially by the then District Magistrate Sri K.K. Nayyar in spite of the fact that the then Prime Minister, Sri Jawahar Lal Nehru as well as the then Chief Minister Pandit Govind Ballabh Pant had severally asked the District Magistrate Faizabad to get the idols removed from the mosque. In this respect one Sri Akshay Brahmchari, the then President of the District Congress Committee, Faizabad, had even undertaken fast in order to press the demand for the removal of the idols from the said mosque but on the



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assurance given by the then Chief Minister Pt. Govind Ballabh Pant, he had broken his fast.

It is also incorrect to say that the Magistrate who had initiated proceedings under Section 145 Cr.P.C. had not considered the dispute in question to be a dispute between Hindus and Muslims.

It is also incorrect to say that the said proceedings under Section 145 Cr.P.C. had been dropped on 30th July, 1953 with the finding that there was no apprehension of breach of peace and order any longer.

(29) That the contents of para 29 of the plaint are also incorrect and hence denied as stated. There was no deity in the eyes of law in the said mosque and hence there was no occasion for the impleadment of the same either in the suit filed by the Hindus or in the suit filed by the muslims; the idols kept in the mosque could not be treated as deities and as such there arose no question to interfere with the so-called possession of any alleged deity. Moreover there being a restraint order of Injunction against the removal of the idols, the said idols could not be removed during the pendency of the suits. The possession of the building in question has remained with the Supurdgar/Receiver right from 5.1.1950 and as such no one else could be said to have been in actual and physical possession over the mosque in question since after 5.1.1950 up till now. It is also incorrect to say that the Receiver could be said to have acted like a onebiat. As there are no deities in possession of the site in question there arose no question of extinguishment of the rights of the muslims over the mosque in question on account of the alleged long and adverse possession.

(30) That the contents of para 30 of the plaint are also incorrect and hence denied as stated. Neither the Hindu public could be said to have dreamt of establishing Ram Raj after freedom and nor it could be said that the restoring of the alleged Janam Asthan to its imaginary glory has ever been the National aspiration of Mahatma Gandhiji. Mahatma Gandhi had never considered or treated Babri Masjid to be Janam Asthan of Sri Ram Chandraji and that is why his followers and disciples had never supported the act of keeping idols in the said mosque but rather they had treated the forcible act of keeping the idols in the mosque with the contempt it deserved. Sri Askshay Brahmchari was a disciple of Mahatma Gandhi and that is why he



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had undertaken fast in order to press his demand for the removal of the idols from the mosque. It is, therefore, absolutely incorrect to say that the devotees of Sri Ram Chandraji are agitating for the construction of a grand temple at the site of the said mosque. As a matter of fact this demand is being made by some disgruntled elements having their vested interest in making such demand and a large number of persons have been mislead to believe that as if the said Babri Masjid is the birthplace of Sri Ramchandraji.

It is further submitted that there is absolutely no justification for the present campaign being carried on for starting construction of Ram Janam Bhoomi temple at the site of the Babri Majid with effect from 9.11.1989. There is no question of construction of any such temple at the site of the mosque and muslims will never permit any such attempt being successful. The averments of the para under reply are most unwarranted and amount to incitement of an offence and also amount to contempt as the same has the effect of undermining the authority of the Court.

(31) That the contents of para 31 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there being no deity in the said mosque, there was no question of impleading the same as party. It is also incorrect to say that the four suits pending for the last several years were in any way insufficient for adjudication of the controversy in question. It is also incorrect to say that the pendency of the aforesaid suits could present any hindrance in the making of declaration about the nature and character of the building in question. It is also incorrect to say that the declaration sought in the Regular suit No. 12 of 1961 was in any way frivolous and it is also incorrect to say that the plaintiffs of Regular Suit No. 12 of 1961 could not represent the entire muslim community. It is also incorrect to say that there are wide ranging differences amongst Shias and Sunni sects of the muslims in respect of the mosque in question. It is also incorrect to say that the defendants no. 1 to 4 and other defendants who have been impleaded later on in Regular Suit No. 12 of 1961, were not competent or capable of representing the entire Hindu community. In any case several other Hindus apart from defendants no. 1 to 4 had got themselves impleaded after publication of notice of the representative suit and the plaintiff no. 3 having not impleaded himself in the aforesaid Regular Suit No. 12 of 1961 at



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the proper time, he could not now say that he was the next friend of the deity and that he could file a fresh suit in respect of the subject matter in issue. It is also incorrect to say that the plaintiff no. 3 was the next friend of Sri Ram Chandraji. Legally speaking the plaintiff No. 3 has never remained in any way concerned with the management and pooja etc. of the idols in question and as such he could in no way claim himself to be the next friend of Sri Ram Chandraji.

It is also relevant to mention here that the Shia sect has nothing to do with the waqf of the mosque in question and this matter has already been adjudicated upon by the Civil Judge, Faizabad in 1946 and it has been finally settled that the Babri Masjid is a Sunni Waqf.

(32) That the contents of para 32 of the plaint are also incorrect and hence denied as stated. It is incorrect to say that the mutwallis of the mosque in question were Shia muslims or the descendants of Mir Baqi. The answering defendant is advised to state that the judgement and decree dated 30th March, 1946 of the Court of the Civil Judge, Faizabad passed in Suit No. 27 of 1945 is binding upon the parties and controversy about the Shia or Sunni nature of the waqf in question has been set at rest by the aforesaid judgement and the said judgement has all along been relied upon by the Muslim parties in the matter in issue. It is, however, relevant to mention here that there is no legal bar for appointment of Shia Mutawalli of a Sunni Waqf; so also a Sunni Muslim can very well be appointed as mutawalli of a Shia Waqf.

It is pertinent to mention here that the person, who constructs the mosque or under whose supervision a mosque is constructed does not become a Wakif of the said mosque ipso facto and specially so when an officer or General of the Army of a king constructs a mosque on behalf of the King or Emperor the waqf is said to have been created by the Emperor and not by the officer. It is also incorrect to say that any Mutwalli of the waqf in question had not submitted to the jurisdiction of the Sunni Waqf Board after the creation of the said Board under the Waqf Act of 1936. From the record of the Board it is not borne out that Sri Jawwad husain was ever recorded as mutawalli of the said waqf and as such Jawwad Husain has been wrongly impleaded as a defendant in the instant case. So also the defendants No. 22, 24 and 25 have also been wrongly impleaded in the instant suit and their



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impleadment appears to be mala fide and just to create a controversy about the nature of the Waqf. The suit is, therefore bad for misjoinder of parties.

(33) That the contents of para 33 of the plaint are also incorrect and hence denied as stated. Neither there is any Presiding Deity of plaintiff No. 1 and nor there are other deities over the premises in question and it is also incorrect to say that the so-called Charan (footsteps) and Sita Rasoee etc. constitute one integral complex and have a single identity. It is also incorrect to say that the claim of the muslims is confined to the building and the area enclosed within inner boundary wall. The area being claimed by the muslims is mentioned very specifically in the plaint of Regular Suit No. 12 of 1961 and the description of the same can in no way be said to be vague and undefined. It is also incorrect to say that there are no graves in the vicinity of the said mosque for the last fifty years. It is not at all admitted that the defendant No. 3 is the present mutawalli of the Babri Masjid since before 1948. At present the said mosque has got a Managing Committee appointed by the answering defendant. It is also incorrect to say that only a mutwalli of the mosque can sue for its possession. The Board is a statutory Board having been created by the U.P. Muslim Waqf Act, 1936 and now continuing under the U.P. Muslim Waqf Act, 1960. The Waqf Act of 1960 was also passed to provide for better governance and administration and supervision of the Waqfs in Uttar Pradesh, and under Section 19 of the said Waqf Act, 1960 the Board has got the power of general supervision of all the Waqfs and it is the duty of the Board to do all things reasonable or necessary to ensure that the Waqfs under its superintendence are properly maintained, controlled and administered and under Section 19(2)(q), the Board has also been conferred with the power to institute and defend suit and proceedings in any Court of law relating to all waqfs. It is, therefore, absolutely incorrect to say that the Board or other muslims associated with the management and administration of the mosque in question or offering Namaz therein could not file the suit for possession registered as Regular Suit No. 12 of 1961.

(34) That the contents of para 34 of the plaint are also incorrect and hence denied as stated. It is also incorrect to say that Prince Anjum Qudar, defendant No. 24 or any other sensible and sizeable Section of the muslim community does not approve of the course adopted by the defendants no. 4



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to 6. It is also incorrect to say that any responsible muslim has ever made any suggestion for the removal of the mosque to any other place. The concept of the removal of the structure of the mosque to any other place is quite foreign to the Muslim law and there is no possibility of any such course being adopted by the muslims in respect of the mosque in question. The concept of the mosque is that the entire area below as well as above the portion of the mosque remains dedicated to God Almighty and as such it is not the construction or structure of a mosque alone which is important but more important is the land on which the mosque stands constructed because the land also stands dedicated to God Almighty and the same cannot be removed. As such even if any person bearing the muslim name makes any suggestion of removal of the mosque to any other place, the same is of no value and significance as the principles of Islamic law do not permit any such removal. It is also preposturous to suggest that the building in question will have to be demolished for the construction of a temple in place thereof. While making such a statement the plaintiffs do not appear to be conscious about the grave and disastrous consequences that may follow, if any such proposal is given effect to. The muslims will never tolerate demolition of the mosque for the construction of a temple at the site thereof.

(35) That the contents of para 35 of the plaint are quite vague and ambiguous and also incorrect and hence denied as stated. There can be no dispute to the averments that all human beings including the muslims and Hindus are the creation of one and the same God and the plaintiffs of Regular Suit No. 12 of 1961 as well as other muslims also believe in the policy of living in amity and goodwill with the members of all communities and religious denomination. That does not mean that the gesture of goodwill and amity should be shown to such persons who are bent upon demolishing the mosque. It is also incorrect to say that the site in question has got anything to do with the place of birth of Sri Ramchandraji and as such the same has got no significance of the alleged Asthan Sri Ramchandra Janam Bhoomi. The entire propaganda and publicity being carried out by the Vishwa Hindu Parishad and Ram Janam Bhoomi Yagya Samiti and their associates and allied bodies in this respect is nothing but sheer concoction and this is being done with the vested interests and political ambitions and as



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such it is not at all difficult for the plaintiffs of this suit as well as for the defendants of Regular Suit No. 12 of 1961 to abondon their claim over the mosque in question and to construct a magnificent and grand temple of Sri Ramchandraji at any other free site which may not be the property of any other person or community. It is also incorrect to say that under the tenets of Muslim law the mosque can be shifted under certain circumstances.

(36) That the contents of para 36 of the plaint are also incorrect and hence denied as stated. No cause of action ever accrued to the plaintiffs to file the instant suit as they have never remained associated with the management or administration of the property in question. In any case if any cause of action in respect of the property in suit can be said to have accrued to the plaintiff No. 3, the same must be deemed to have accrued in December, 1949 when the property in question was attached and when the muslims had categorically denied the alleged claim of the Hindus to perform pooja in the mosque in question and that being so the instant suit is highly time barred. It is also relevant to mention here that the plaintiff no. 3 was required to give the specific date, month and year since when the alleged cause of action is said to have accrued and no such description having been given, the averments of the cause of action are incomplete and defective and the plaint is liable to be rejected on account of there being no cause of action as per averments of the plaint.

(37) That the contents of para 37 of the plaint are not disputed.

(38) That the contents of para 38 of the plaint are also incorrect and hence denied as stated for want of requisite details. Neither the suit has been properly valued and nor the court fees paid is sufficient.

(39) That the contents of para 39 of the Plaint are also incorrect and hence denied as stated. The plaintiffs are not entitled for any relief claimed in the para under reply and the suit is liable to be dismissed with special costs.

(40) That apart from the averments made above, attention of this Hon'ble Court is invited to the Additional Pleas in support of the averments made above.

**Additional Pleas**

41. That the instant suit is not at all maintainable and the plaintiffs no. 1 and 2 are neither deities and nor they can be treated as juristic person and the



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plaintiff no. 3 cannot claim himself to be the next friend of Bhagwan Sri Ram. As such none of the plaintiffs have any right to file the instant suit.

42. That the instant suit is highly belated and the same is barred by the law of limitation and as such the same is liable to be dismissed on this account alone.

43. That the property in suit has also not been properly described and as such the instant suit suffers for want of material facts and particulars and on this account also the plaint is liable to be rejected.

44. That as the relief in the instant suit has been claimed against all the defendants including the Government and its officers arrayed as defendants no. 7 to 10, the suit could not be filed without giving notice under Section 80 of the Code of Civil Procedure to the said defendants no. 7 to 10 and no such notice having been given and there being no averments in the plaint in this respect, the suit is liable to be dismissed on this account also and in any case the plaint is liable to be rejected for want of statutory notice.

45. That as the subject matter of the instant suit is a waqf property and stands registered as a waqf in the Register of Waqf maintained by the Sunni Waqf Board under Section 30 of the Waqf Act and a Gazette notification in respect thereto has also been issued by the State government in 1944 and the same stands recorded as a mosque even in the revenue record and other government records and the same is even accepted as a mosque by the State Government and its officers in the written statements filed in Regular Suit No. 2 of 1950 as well as in Regular Suit No. 25 of 1950, the instant suit could not be instituted against the answering defendants until the expiration of two months next after notice, in writing, had been delivered or left at the office of the Board as per requirement of Section 65 of the U.P. Muslim Waqf Act, 1960 and no such notice having been given to the answering defendants by the plaintiffs, the suit is not maintainable and is liable to be dismissed.

(46) That even the reports of the Archeological experts have been to the effect that there appear to be no symptoms of human habitation in the present Ayodhya of more than 700 B.C. and also there appear to be no symptoms of any Fort or Palace or Old temple being there at the site of the Babri Masjid.

47. That the suit is barred by the provisions of Section 34 of the Specific



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Relief Act also.

48. That the suit is bad for misjoinder of parties and also because of non-joinder of necessary parties.

49. That the instant suit is absolutely frivolous, and vexatious and the same deserves to be dismissed with Special Costs.

**********

Dated: Lucknow
26/29.8.1989

Sd/-
Defendant No. 4
Z. Zilani
Advocate
Counsel for the Defendant No. 4.

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**In the Hon'ble High Court of Judicature at Allahabad Lucknow Bench Lucknow**
**High Court Suit No. 05 of 1989**
**Regular Suit No. 236 of 1989**

**Full party name to be typed.**
**Written Statement under Order 8 Rule 1 C.P.C. on behalf of Defendant No. 5**
**In O.O.S. No. 05 of 1989**

**F.F. 07.08.89**

1. That the contents of para 1 of plaint are denied. Neither the plaintiff no. 1 nor plaintiff no. 2 are the deities within the meaning of Hindu Law nor they are juristic person to file the suit. Remaining contents of para are also denied. Kindly see additional pleas.

2. That the contents of para 2 of the plaint are denied. The area and the places indicated in Annexures No. 1,2, and 3 of the plaint are neither Ram Janam Bhoomi nor Ram Janam Asthan. However, it is evident that there exists a mosque known as Babri Masjid, the existence of this mosque is established by record, Historic, Judicial and Revenue. The filing of the suit no. 2 of 1950 are not denied. However, the suit is wholly misconceived. The plaintiff of suit no. 2 of 1950 had no legal right and the suit is misconceived. (See the additional pleas).

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3. That in reply to the contents of para 3 of the plaint, only the filing of the suit no.2 of 1950 is admittedly but not the contents of the plaint of the said suit. The remaining contents of para under reply are denied.

(Kindly see additional pleas).

4. That in reply to the contents of para 4 of the plaint it may be pointed out that relief claimed in suit no. 2 of 1950 is wholly misconceived and legally not sustainable, remaining contents of this para are denied.

(Kindly see additional pleas).

5. That in reply to the contents of para 5 of the plaint the filing of suit No. 25 of 1950 is admitted but the contents of the plaint of the said suit are denied. Remaining contents of the para under reply are also denied.

(Kindly see additional pleas).

6. That in reply to the contents of para 6 of the plaint the filing of suit No. 26 of 1959 is admitted while the allegations of the plaint of the said suit are denied, the initiation of the proceeding under Section 145 Cr.P.C. and the



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appointment of the receiver, which still continuous is also not denied. However, remaining contents of para under reply are denied.

(Kindly see additional pleas).

7. That in reply to the contents of para 7 of the plaint, the suit No. 12 of 1961 including its contents are admitted. The Sunni Central Board of Waqf U.P. is the rightful Public Authority having right to have possession of the entire complex of Babri Masjid and also has a right to maintain it incouding the graveyard known as 'Ganj Sahheedan'. The claim of U.P. Sunni Central Board of Waqf has already been adjudicated in its favour.

(Kindly see additional pleas).

8. That in reply to the contents of para 8 of the plaint, it may be pointed out that the order dated 8th August 1962 was rightly passed. Ramaining contents of para under reply are not admitted as framed.

9. That in reply to the contents of para 9 of the plaint, it may be pointed out that the averments relate to the judicial record, and hence are not denied.

10. That in reply to the contents of para 10 of the plaint it may be pointed out that at the time of granting of the said injunction the answering defendant was not a party to suit No.2 of 1950. The said suit was also not in the representative capacity. Hence the answering defendant is not bound from the said interim injunction. The answering defendant is advised to state that the interim injunction order dated 16.1.1950 as modified on 19.1.1950 was also beyond the scope of suit No.2 of 1950. Remaining contents of the para under reply are also denied. (See additional pleas).

11. That in reply to the contents of para 11 of the plaint it may be pointed out that pooja etc., even in the restricted way, was wrongly permitted. However, the appointment of receiver is not disputed. (Kindly see additional pleas)

12. That the contents of para 12 of the plaint are denied. The averments of para under reply, as regards performing religious ceremonies during the pendency of the suit is also incorrect and denied.

(Kindly see additional pleas etc.)

13. That the contents of para 13 of the plaint are not admitted as framed, answering defendant is advised to state that the order of District Judge dated 1.2.1986 is wholly illegal and is also void, being in utter violation of the



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principle of natural justice. However, the said order has been challenged in two writ petitions, vide W.P. No.746/86 and W.P.No.3106 of 1986. (Kindly see additional pleas etc.)

14. That the contents of para 14 of the plaint are denied. There is no deity in the premises in dispute within the meaning and concept of Hindu Law and as such there is no question of devotees etc. The averments pertaining to the money received by the receiver are denied for want of definite knowledge.

15. That the contents of para 15 of the plaint are denied. There is no question of construction of any temple over the site in question. Answering defendant and his co-religionist have a right to resist any such attempt. There is no question of any management of the so called temple. The premises is a mosque and muslims have a right to offer namaz in it and U.P. Sunni Central Board of Waqf has a right to supervise and manage it. Neither Jagadaguru has any right or locus in the matter and nor he can execute any deed legally in respect of the premises in question. The answering defendant is not aware of the religious sect of the so called vairagies of Ayodhya. (Kindly see additional pleas also.)

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16. That in view of the submissions made above the contents of para 16 of the plaint are vehemently denied. The so called trust deed is a nullity. It has no legal basis and the same has no relevance in the present controversy. (see additional pleas ).

17. That the contents of para 17 of the plaint are vehemently denied. The so called 'Nyas' has no locus in the matter, nor it can be a party to any suit. (Kindly see additional pleas also.)

18. That the contents of para 18 of the plaint are vehemently denied. No other suit is needed. The present suit is also barred by limitation. The averments of the para under reply have been made with a malafide intention, by which the plaintiff No.3 only wants to boost his own status, while he has no locus; neither there is any deity having a juristic personality (or juristic person) and nor the plaintiff No.3 is a next friend of any deity and the only persons who have a right to worship in the premises in dispute, i.e the mosque, are the muslims. (Kindly see additional pleas).

19. That the contents of para 19 of the plaint are vehemently denied. There is no evidence, historic or otherwise, to indicate that Sri Ram Chandra



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Ji was born there. This all is a later concoction and there is no question of devotees. (see additional pleas also.)

20. That the contents of para 20 of the plaint are vehemently denied. As there is no deity , there is no question of any devotee and there is no question of any asthan also. It is an innovation even in Hindu Law; the answering defendant is advised to state that the so called asthan can not be treated as a juristic person and as such the suit is not maintainable on this court also.

(Kindly see additional pleas).

21. That the contents of para 21 of the plaint are vehemently denied, the concepts of the various schools of though of Hindu religion are not relevant to the controversy before this Hon'ble Court. (see additional pleas.)

22. That the contents of para 22 of the plaint are denied, various philosophers, fiction and concept of Hindu religion are not relevant for the controversy to be adjudicated in the 4 suits referred to above. Hence the averments of the para under reply are only an effort to introduce new questions not legal but philosophical and spiritual, which are not relevant. (see additional pleas).

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23. That the contents of para 23 of the plaint are denied, the narration of history in the plaint is false and baseless; no authentic book of history has been referred in the plaint. The premises has always been a mosque since its construction in sixteenth century, it has always been used by the muslims for offering namaz and for no other purposes. Remark in the gazette is no authentic record of history. It is only a generalised observation, the Gazette also does not make any reference of any authentic history or record. The pillars are not of Kasauti. However, it is not relevant as the fact remains that it is a mosque, and has always been used as a mosque and it is wholly incorrect that anybody else other than muslims worshipped in the building which is called Babri Masjid. The narration of history by the plaintiff is baseless and false. There is no evidence of the demolition of any temple for the construction of this mosque. (see additional pleas).

24. That the contents of para 24 of the plaint are vehemently denied, the quotation from Holy Quran has been incorrectly quoted and the same is out of context. There is no evidence of demolition of any temple. The contents of sub-paras are also denied, on the basis of judicial records and other



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evidence, it is clear that the premises in question has always been a mosque in which muslim had been offering regular namaz upto 22nd December, 1949. No specific shape or specific design has been prescribed for the mosque, in Islam. The shapes and architectural design of the mosque vary in different parts of the world and even in India. The Ganj-e-Shahidan also belongs to muslims and vests in God Almighty. The plaintiff has misrepresented about the contents of suit No.12 of 1961. The claim and the contents are clear in the plaint of suit No.12 of 1961, there is also a pucca well outside the mosque for 'vazoo'.

(Kindly see additional pleas also.)

25. That the contents of para 25 of the plaint are denied, the building has always been a mosque. In the night of 22/23 December 1949 some mischievous elements forcibly entered into the mosque and surreptitiously and stealthily kept the idol, the details of which have been narrated in the F.I.R. lodged at the Police Station, Ayodhya in the morning of 23rd December, 1949. A criminal case was also registered against several persons on the basis of said F.I.R. and a report was submitted to the Magistrate and the proceeding under Section 145 Cr.P.C. were initiated and the premises was attached and the attachment continues.

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( see additional pleas ).

26. That the contents of para 26 of the plaint are vehemently denied. The building known as Babri Masjid has always been in use as a mosque and the muslims have offered namaz in it since its construction till 22nd December, 1949. Some of those who offered namaz in it are still available. Some part of the mosque was damaged in the communal riot of 1934 and the same was repaired soon thereafter. The threat contained in the para under reply is most unwarranted. There was a litigation between Shia and Sunni Waqf Boards and in 1946 it was decided in favour of Sunni Waqf Board. The mosque is a Sunni Waqf and there was an Imam as well as a mutawalli of the said mosque. The averments in the para under reply are wholly incorrect and false.

(See additional pleas).

27. That the contents of para 27 of the plaint are vehemently denied. As narrated in the foregoing paragraphs, some persons between the night of



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22/23rd December, 1949, illegally entered into the mosque about which F.I.R. was lodged at the police Station, Ayodhya in the morning of 23rd December 1949, some of the culprits were named in the F.I.R. and on that basis the proceedings under Section 145 Cr.P.C. were initiated and the mosque was attached, the attachment continues; there was no so called ceremony nor any supernatural happening.

(Kindly see additional pleas).

28. That the contents of para 28 of the plaint are vehemently denied. It is incorrect that muslims do not live nearby. They do live there but the muslims were not in a position to prevent the aforesaid illegal act done with the connivance of the local administration. The Muslims acted as the law abiding citizens and pursued the legal remedy available to them but no party can be permitted to take benefit of the delay caused in court of law, Here it may also be pointed out that the rights of the muslims to offer Namaz should have been protected but the machinery of law failed in it, only the Muslims still have the right to offer Namaz in the building and no other community has any right in the said building. The proceedings under Section 145 Cr.P.C. have not been dropped but after the filing of the suits the proceedings under Section 145 Cr.P.C. were stopped and consigned to record, the property in suit is custodial egisbeing still under attachment. However, Namaz has been offered in the mosque in question after 23.12.1949 also and Azan has also been called.

29. That in view of the submissions made in the foregoing paragraphs the contents of para 29 of the plaint are denied. Neither there is any deity and nor there could be any impleadment of it. Plaintiff No. 3 also has no locus standi and so also plaintiffs No. 1 and 2.

30. That the contents of para 30 of the plaint are denied. There is no question of any devotee, and the present campaign and proclamation made in the plaint has nothing to do with the struggle for freedom of the country, there is no question of construction of any temple there, such an attempt will be resisted, there is no legal right for the construction of temple on the site in question. The assertion in the para under reply are most unwarranted and amount to incitement of an offence, and also amount to contempt, by way of undermining the authority of this Hon'ble Court as, this Hon'ble Court on



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3.2.1986 in W.P.746 of 1986 for maintaining status quo, is still in operation.

31. That the contents of para 31 of the plaint are denied. As there is no deity a there is no question of its next friend and a judicial decision will be binding upon all, disregard of the Rule of law pleaded in the plaint is regretted. Shia community has nothing to do with the waqf of the said mosque and this matter has already been adjudicated by the Civil Judge, Faizabad in 1946, and it has been settled that Babri Masjid is a Sunni Waqf.

32. That the contents of para 32 of the plaint are denied. Shia Waqf Board has no locus in this matter. The matter has already been adjudicated and as such now Sri Jawwad Husain has no legal ststus concerning the mosque in question. The reference of Shia political conference is also wholly irrelevant .

33. That the contents of para 33 of the plaint are denied. It may be pointed out that the entire complex belongs to waqf Babri Masjid, the existence of which can't be denied, the entire muslim community is represented by the Sunni Muslims parties and U.P. Sunni Central Board of Waqf, who are plaintiff in R.S. No.12 of 1961.

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34. That the contents of para 34 of the plaint are vehemently denied. The premises has always been a mosque and it has been used as such and no one can remove the structure.

35. That no doubt that the Muslims fear the God, other contents of para 35 of the plaint are denied. None of the plaintiff has any status to maintain the suit.

36. That the contents of para 36 of the plaint are denied, plaintiff has no cause of action including the plaintiff No.3. The cause of action, if any, had accrued in 1528 A.D. When the Mosque was built.

37. That the contents of para 37 of the plaint need not reply.

38. That the contents of para 38 of the plaint are denied, the contents of para 38 of plaint are vague and it has not been properly valued.

39. That the contents of para 39 of the plaint are denied, the plaintiffs are not entitled to get any relief and the suit is liable to be dismissed with special costs.

**ADDITIONAL PLEAS**

40. That according to the inscription in the mosque, the said Babri Masjid



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was constructed by Mir Baqui, one of the commanders of the Babar in 1528 and since then it has been in use as mosque and the muslims always regularly offered namaz in it till the attachment.

41. That between the night of 22nd and 23rd December 1949 certain undesirable persons forcibly entered into the mosque and surreptitiously kept the idols in the said mosque.

42. That in respect of above occurrence an F.I.R. was lodged in Police station, Ayodhya by Police Officer with the Ayodhya Police Station on the morning of 23rd December 1949. A case of criminal trespass and religious hatred was registered on that basis and a report was submitted under Section 145 of the Cr.P.C. and Additional City Magistrate of Faizabad passed an order of attachment on 29th December 1949 and the mosque was attached.

43. That firstly under the order of the Magistrate the property was given under the charge of the receiver Sri Priya Dutt Ram and later on the suits were filed and arrangement regarding the property made under Section 145 of the Cr.P.C. was also accepted by the Civil Court, the receivers in course of time changed and uptill now the receiver is there.

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44. That present suit is not maintainable. The plaintiff No.1 and 2 are not the Hindu deities to be termed as juristic person, the plaintiff No.3 can not be next friend of the deities. The plaintiff No.3 has no connection with the matter, and his sudden emergence only indicates his political motive in the matter.

45. That the suit is also barred by limitation and on this ground, also the suit is not maintainable.

46. That the some averments of the plaint contain a threat and constitute contempt of the courts of law including an excitement to violence and disregard for the rule of law. Hence plaint as such is liable to be rejected. The plaintiff No.3 undermines the authority of the court specially the interim order dated 3rd Feb. 1986 passed in writ petition No.746 of 1986 by this Hon'ble Court being there, for such contemptuous averments the plaintiff No.3 is liable to be punished.

47. That Babri Masjid (building in question) has always been a mosque and used as such, and only muslims have right to offer Namaz in it and U.P. Sunni Central Board of Waqf has a right of supervision and control.



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48. That the property in suit is not described in accordance with the provision of Order 7 Rule 3 of C.P.C. and the plaint is liable to be rejected on this ground alone.

49. That the suit in question involves State and Govt. Officers and no notice as per plaint averments, as required under the law has been served and as such the plaint is liable to be rejected.

50. That Lord Rama in whose name the controversy in question has been created, according to authoritative texts of the historians and other scholar of Hindu Religion is mere an epic and imaginary figure and was never in existence. In India there have been authoritative pronouncements by the various historians and also by the seminars and symposium that Lord Rama never existed. It is mere an epic, besides above no period and place could be fixed till this date. After long research Holy Barahmins have come to conclusion that it is all mere an epic and legend.

51. That as per Balmiki's Ramayan which is supposed to be the only authoritative source of Lord Rama. The city Ayodhya where the property in question situates is not the place described in that book, the averment that at the site of Babri Masjid there was some temple which was demolished at the behest of Babar is absolutely incorrect and false. Shri Tulsidas who by his book Ram Charitra Manas has elevated the status of Lords Rama from Mariyada Prushottam to Bhagwan has not written about the demolition of any such temple in his book which was written after construction of Babri Masjid, at the Datoon Kund in Ayodhya itself which situates at a short distance from the Babri Masjid. Before Tulsi's Ram Charitra Manas, there were no temples of Lord Rama in any part of India instead there were temples of other gods and goddess and as such the contention regarding demolition of Rama Mandir is absolutely baseless and has been designed-ly thatched up to create communal disharmony and hatred between the two communities.

52. That the recent scientific investigation a, c-14 test which is radio carbon dating method has revealed the stones used in the building in question are less than 500 years in age and this falsifies the claim that the temple was demolished and by the same material the mosque was built, however, it is clarified that all such averments made in the plant are



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absolutely of no consequence in courts of law.

53. That property in question is continuously recorded as graveyard and mosque in the revenue records from prior to first settlement and the said entry coming unchallenged and there being three settlement also now the entries in revenue records are final and can not be questioned.

54. That after the enforcement of 1936 U.P. Muslim Waqf Act the property in question, after due inquiry in Survey, was notified in official gazette as waqf property to be registered with Sunni Central Board of Waqfs and the said notification having not been challenged and the property in question being recorded in the registers of Waqfs as Waqf property, now same can not be challenged.

55. That initially there was provided a cash grant from the period of King Emperor Babar and after British Rule in lieu of the said cash grant Zamindari of village Shahnavan, Bhoranpur and Sholipur was given for the Babri Masjid and the masjid in question was inter alia maintained by the income of said Zamindari property and the salary of Imam and Moazin etc. was paid and other expenses were also made.

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56. That there have been a regular Imam in the said Mosque who led the Congregational five time prayers including Friday Prayer.

57. That the averments regarding accrual of cause of action are absolutely vague and lacking necessary material; who has decided to demolish the mosque and build the proposed temple at its site and how the plaintiff No. 3 became spokesman of such person has not been stated and for want of the same the plaint is liable to be rejected.

58. That the alleged pooja being carried on by the receiver as per orders in regular suit No. 2 of 1950 could not legally make any change in the situation because the receiver being the man appointed by the court and the property being custoddia legis and both parties being responsible for the expenses incurred by the receiver. Besides above, regular suit No. 2 of 1950 was an incompetent suit from the very beginning for non-compliance of Section 80 C.P.C. and after death of Gopal Singh Vishrad which occurred long ago the said suit has abated and no more survives in law, he himself having claimed no here table right in the said suit and non having come forward initially for being substituted or impleaded.



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59. That Ram Janam Sthan Mandir exists in Ayodhya which is quit distinct and separate from the premises in question. Mahant Raghubar Das of Ram Janam Sthan Mandir filed regular suit No. 61/280 of 1885 for a portion of premises in dispute measuring 17 x 21 feet which was dismissed from the Court of Subordinate Judge, Faizabad and appeal against the said decree filed by Mahant Raghubar Das was also dismissed from the court of District Judge as well as the Judicial Commissioner, Avadh paralled to Hon'ble High Court. In the said suit the existence of Mosque in question has been very much unequivocally admitted and that admission is binding on the present plaintiffs as well as by estoppel and acquiscence and the said suit was decided with the clear findings that even if any wrong was done in 1528 A.D, that can not be undone now. The answering defendant factually disputing the statement that any wrong was done by or at the behest of King Emperor Babar is advised to state that said findings operate as res judicata and the instant suit is barred Under Section 11 C.P.C. Besides above regular suit No. 57 of 1978 filed on behalf of and in the name of alleged deity itself for the very property has been dismissed from the Court of Munsif, Faizabad and till this date no step has been taken to set aside that order as such the present suit is liable to be dismissed.

60. That the present suit is inter alia liable to be stayed as provided under Section 10 C.P.C. On account of pendency of the four suits referred to in the plaint itself.

61. That the plaintiff no. 3 has got no authority to represent the alleged deities and file suit on their behalf as next friend. The answering defendant is advised to state that plaintiff no. 3 being not entitled to file the suit has sought to regularise his illegal act by obtaining order of the court for being appointed as next friend. It is stated that next friend is appointed for minors, lunatics and persons of unsound mind and in some cases for executors and administrators etc. in case of deity as the dieties are ever represented by someone known as Manager, Shebait, Mahant or Sarvarakar etc. and the suits are also filed through such persons and not through next friend. In revenue records also names of such deities are entered through such persons and as such the order dated 1.7.1939 appointing the plaintiff no. 3 as next friend deserves to be recalled and the plaint rejected accordingly for which



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separate application has been moved.

62. That the plaint is liable to be rejected for want of a real and subsisting cause of action and not seeking relief of possession under Section 34 Specific Relief Act and as per plaint averment there is no surviving cause of action in favour of the plaintiffs.

63. That as per plaint averment the matter concerning a large number of members of Hindu's community as well as Muslim community the suit as framed is not maintainable.

64. That annexures 1, 2 and 3 relied upon by the plaintiffs do not at all depict the correct spot situation and are subjudice, objection against the same by the state as well as other defendants has been filed and that has not been directed to be brought on record and as such there being no specification of the property in the plaint the suit is liable to be dismissed.

65. That the temporary injunction as initially ordered on 16.1.1950 and modified on 19.1.50 and continued since then as stated in the plaint has got no legal effect in as much as suit no. 2 of 1950 itself being not maintainable for want of compliance of Section 80 C.P.C. and the plaintiffs of that suit himself having repeatedly stated that the suit is for his individual rights and as such no body else can claim any assistance there from.

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66. That in the plaint Lord Rama has been stated as son of Dashrath and thereafter the birth of child as Ram Lala has been stated, no period of the birth of the either has been given as such the plaint is liable to be rejected.

67. That there has been no concern of Lord Rama, Janki or of any person having faith in them with the land in question over which exists the Babri Masjid and adjoining area of graveyard. Admittedly, the mosque being in existence since 1528 and the deads having been buried the same could not be subject matter of any other type of Puja in practice and ASTHA if any if the same could survive from 1528 onwards till this date without any access to the place in no circumstances that Astha could not give a right for demolition of the mosque and the place where the deads or burried could not be purified to be used for any other purpose.

68. That the term he manifested himself in human form is beyond comprehenssion and vague.

69. That just the mosque was built and the deads were buried the site



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became waqf property vested in almighty God and it will remain so vested eternally and the property once vested in the God can not be divested. The place where the mosque is built remains a mosque to the depth of the earth and even above the same and can not be removed or shiftted to any other place at all. No person on the earth can accord a permission for its removal or shifting.

70. That for the protection of the mosque any muslim interested in the up keep of the mosque can bring the suit and the averment that the suit having not been brought by Mutawalli has got no relevance in the matter. However the averment itself is contradictory.

71. That the averments that Muslims are children of the God is incorrect and against the Islamic faith. God has no child at all. Them muslims and all the living on the earth are creatures of God.

72. That in the instant suit a simple question of ownership and possession of land is involved which has to be decided in accordance with the law of the land and the claim of the plaintiffs on behalf of the alleged deities that by meare used some right accrued for them although factually in court has been repelled by the District Judge in appeal filed by Mahant Raghubar Das.

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73. That the suit is bad form is joinder of defendants No. 22 to 25. They have got no concern with the property in question, they have been impleaded mala fide with ulterior motive collusively and with a view to create confusion and rift among the muslims interest.

74. That the defendant No. 3, 11, 12, 13, 21 and 25 are nor the natural, neigther legal persons and as such the suit is bad and liable to be dismissed for the misjoinder of such parties.

75. That site plan and the report prepared by Shri Shive Shanker Lal, pleader filed in regular suit No. 2 of 1950 is itself subjudice and can not be relied in present suit.

76. That the instant suit is absolutely vexatious and frivolous one and is liable to be dismissed with special cost having being filed with mala fide intention and ulterior motive.

Lucknow
Dated: 14.08.89/21.08.89

Sd/-
Defendant No. 5.



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**In the Hon'ble High Court of Judicature at Allahabad Lucknow**

**Bench Lucknow**

**O.O.S. No. 5 of 1989**

**Full party name to be typed.**

**Additional Written Statement of Defendants Nos. 4 and 5 in O.O.S. No. 5 of 1989**

Defendants Nos. 4 and 5 beg to submit as under:-

1. That the contents of para 35-H of the amended plaint are denied as stated for want of definite knowledge. In any case the same are irrelevant and hence are denied as stated.

2. That the contents of para 35-I of the amended plaint are also denied as stated for want of definite knowledge. The averments of the para under reply are also irrelevant and are denied.

3. That the contents of para 35J of the amended plaint are denied as stated and in reply thereto it is submitted that the demolition of the Babri Masjid appeared to be a pre-planned, deliberate and intentional act on the part of the miscreants and criminals who had assembled at the site on the call of the Vishwa Hindu Parishad, Bajrang Dal and Shiv Sena etc. All the acts of the said so-called Kar Sewaks were totally illegal, unjustified and in violation of the orders of this Hon'ble Court as well as of the Hon'ble Supreme Court and amounted to blatant exercise of Rule of Jungle and the so called construction of make-shift temple and placing of idols in the same on 7.12.1992 was all totally illegal and contemptuous and the said idols could not be described as deity under Hindu law also.

4. That the contents of para 35-K of the amended plaint are also denied as stated and in reply thereto it is submitted that Sri Kalyan Singh and his government had deliberately violated and flouted the orders of the this Hon'ble Court as well as of the Hon'ble Supreme Court and had even committed breach of their own undertaking given in the Hon'ble Supreme Court and as such the dismissal of the State Government headed by Sri Kalyan Singh was perfectly justified.

5. That the contents of para 35-L of the Amended Plaint are admitted only to this extent that the said writ petitions were allowed on Ist January,



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1993 against which Special Leave Petitions were filed in the Hon'ble Supreme Court which are still pending. Rest of the contents of the para under reply are denied as stated.

It is further submitted that the averments of the para under reply are totally irrelevant and frivolous.

6. That the contents of paras 35M, 35 N, 35-O and 35-P of the Amended Plaint are matters of record and the same may be verified from the said Ordinance and the Act. The averments contrary to the intent and meaning of the provisions of the said ordinance and the Act as explained by the Hon'ble Supreme Court are denied as stated.

7. That the contents of para 35-Q of the Amended Plaint are absolutely incorrect and are denied as stated. Neither there is any deity at the site in question and nor the idols in question can be said to have any juristic personality. The plea contained in the para under reply was raised even before the Hon'ble Supreme court but the same was not accepted. As there exist no deity there arises no question of any Shebaiti rights.

8. That in reply to the contents of para 35 R of the Amended Plaint it is submitted that the Hon'ble Supreme Court has discussed in detail the meaning and purport of Section 7(2) of the Act and the plea under reply is unwarranted and irrelevant.

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It is further submitted that the averments contained in the affidavit of Sri Radhey Shyam Kaushik have neither been given in the para under reply and nor the answering defendants had definite information about the same and as such the averments regarding the same are liable to be deleted on account of being vague and ambiguous.

9. That the contents of paras 35-S and 35-T of the Amended Plaint may be verified from the record.

10. That the contents of para 35-U of the Amended Plaint are not disputed.

11. That the amendments sought in the Plaint and specially those contained in the paragraphs 35-H to 35-L of the Amended Plaint are totally irrelevant, vexatious and frivolous and the same are liable to be deleted.

12. That the plaintiffs have no right, title or claim over the property in suit and after the judgement of the Hon'ble Supreme Court, there remains no justification for the trial of the instant suit.



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13. That the plaintiffs have no cause of action and specially so when the idols placed in the mosque surreptitiously in the night of 22nd-23rd December, 1949 have been removed on 6.12.1992. The claim, if any, regarding the said idols stood extinguished on the removal of the said idols.

Lucknow
Dated: 22nd August, 1995
Z. Zilani
Counsel for Defendants No. 4 & 5.

Sd/-
Defendants 4 and 5.

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**In the Hon'ble High Court of Judicature at Allahabad Lucknow Bench Lucknow.**

**Suit No. 236/89 of Faizabad 07.07.1989 of Lucknow**

**Full party name to be typed**

**Date of hearing 14.08.89**

**Written Statement on behalf of Defendant No. 11, President All India Hindu Mahasabha, New Delhi.**

**In O.O.S. No. 5 of 1989.**

**RESPECTFULLY SHOWETH:-**

The defendant No. 11 begs to submit as under:-

1. Para no. 1 of the plaint, as stated, is admitted.

2. Para No. 2 of the plaint, as stated, in its earlier part is admitted. It is also admitted that Shri Shiv Shankar Lal, pleader, was appointed as a Commissioner in Civil Suit No. 2 of 1950, by the court of the Civil Judge, Faizabad. The Annexures mentioned in this para are admitted to be correct.

3. Para No. 3 of the plaint, as stated, is a matter of record.

4. Para No. 4 of the plaint, as stated is also admitted. The said suit is still pending disposal.

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5. Para No. 5 of the plaint, as stated, is also admitted. The said suit is also pending disposal.

6. Para 6 of the plaint, as stated, is admitted being matter of record. The said suit is also pending disposal before this Hon'ble court.

7. Para 7 of the suit as stated is a matter of record. The suits detailed in this is also pending for disposal before this Hon'ble Court.

8. Para 8 of the plaint, as stated is not denied.

9. Para 9 of the plaint, as stated, is a matter of record.

10. Para 10 of the plaint is a matter of record.

11. Para 11 of the plaint is admitted. All the suits are still pending disposal before this Hon'ble Court.

12. Para 12 of the plaint is admitted.

13. Para 13 is a matter of record.

14. Para 14 of the plaint, as stated, is admitted.

15. Para 15 of the plaint, as stated, is admitted. However, it is submitted that the All India Mahasabha be also included in the Trust created for protecting, renovating, reconstructing and developing the temple premises,



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in short, of managing all their estates and all their affairs.

16. Para 16 of the plaint, as stated, is admitted. That the trust as framed for managing all the affairs of Ram Janam Bhumi be directed to include All India Mahasabha as a member of the said Trust for managing all the affairs pertaining to the Ram Janam Bhumi.

17. Para 17 of the plaint, as stated, is admitted. However, it is submitted that All India Hindu Mahasabha as a party to the said Shri Ram Janam Bhumi Nias is directly in the Sewa Pooja and all other affairs of the Ram Janam Bhumi Temple. The All India Hindu Mahasabha is ready to cooperate with all Hindu Organisations.

18. Para 18 of the plaint, as stated is admitted.

19. Para 19 of the plaint, as stated, is correct.

20. Para 20 of the plaint, as stated, is correct to the core.

21. Para 21 of the plaint, as stated, is correct.

22. Para 22 of the plaint, as stated is correct.

23. Para 23 of the plaint, as stated, is historically correct. It is, however, submitted that the quotation of the 1928, Edition, Faizabad, Gazetter, published by the Government Trust U.P. State, at page 179 is correct.

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24. Para 24 of the plaint is historically correct and site inspection of the suit property stands testimony.

Sub-para (a) is also correct

Sub-para (b) is a matter of record.

Sub-para © is also correct.

Sub-para (d) is also correct.

Sub-para (e) is also correct.

Sub-para (f) is also correct.

Sub-para (g) is also correct.

Sub-para (h) is also correct.

25. Contents of para 25 of the plaint as stated are correct and fully endorsed.

26. Para 26 of the plaint is historically correct.

27. Contents of para 27 as stated are correct.

28. Para 28 is a matter of record.

29. Para 29 of the plaint as stated is correct.



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30. Para 30 of the plaint as stated is correct.

31. Para 31 of the plaint is admitted to be correct.

32. Para 32 of the plaint as stated is a matter of record.

33. Para 33 of the plaint as stated is a matter of record and the existence of deities and the Ram Chabootra etc. are admitted to be correct.

34. Para 34 of the plaint, as stated is correct.

35. Para 35 of the plaint is correct.

36. Para 36 is legal and admitted to be correct.

37. Para 37 as stated is correct.

38. That the valuation of the suit property is correct.

**Prayer Clause**

Prayer clause (a) is correct.

Prayer clause in sub-para (b) is correct and releifs sought by the plaintiff be granted to the plaintiff.

© regarding costs, the plaintiff be awarded costs against the contesting defendants.

Any other relief which this Hon'ble Court may deem just fit and proper in the circumstances of the case be granted to the plaintiff.

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New Delhi
Dated 14 August, 1989.

Sd/- Inder Sane Sharma
Defendant No. 11
Through
Sd/-
Advocate
14.08.89

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**In the High Court of Judicature, Allahabad Sitting at Lucknow**
**In Re:**
**O.O.S. No. 5 of 1989**
**Arising out of Regular Suit No. 236 of 1989**

**Full party name to be typed.**

**Written Statement on behalf of Defendant No. 17 Sri Ramesh Chandra Tripathi In O.O.S. No. 5 of 1989**

1. That the answering defendant No. 17 has perused the above mentioned suit and has understood the contents.
2. That para 1 to 38 of the plaint is admitted.
3. That the plaintiff is entitled to the relief as prayed in para 39.

**Additional Pleas**

4. That answering defendant is a Vaishnav, Ramanandi devotee of Bhagwan Sri Ram Virajman in the Ram Janma Bhumi Temple at Ayodhya.
5. That the Muslims individually and collectively have no right or title in the said Sri Ram Janma Bhumi Temple and for unnecessary and political reasons they want to occupy the said temple with the aid of present party in power.
6. That the said temple and its deity is an object of worship and reverence and a creed of Hindu faith and the answering defendant is strictly follower of that faith.

Lucknow
Dated: 14.08.89

Sd/- Ramesh Chandra Tripathi
Sd/- Through Shri K.P. Singh
Advocate, High Court, Lucknow



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**In the Hon'ble High Court of Judicature at Allahabad Lucknow Bench Lucknow.**
**Regular Suit No. 05 of 1989**
**Original Suit No. 236 of 1989**

**Full party name to be typed.**

**Written Statement of Defendant No. 24**
**In O.O.S. No. 05 of 1989**

The defendant No. 24 begs to submit as under:-

1. That statement made in para 1 of the suit plaint, i.e. the claims of the plaintiff no. 3 seeking to represent the deity and the Asthan as a next friend are not admitted, and are contested. The holy deity and Asthan can not be made parties to this suit. Plaintiff no. 3 has not secured any authority to file the suit on behalf of plaintiffs No. 1 and 2. This defendant considers Lord Rama to be above the Jurisdiction of this Hon'ble Court. This defendant considers it a sacrilege to drag the name of Lord Rama into these mundane proceedings. Because this suit, like all suits before the Court, is also liable to be dismissed. But the plaintiff No. 3 is trying to make Lord Rama as the Plaintiff No. 1 in order to make sure plaintiff No.3 is not defeated because Lord Rama can not be defeated. This attempt should not be allowed to succeed.

2. That as regards the contents of para 2 thereof the answering defendant has no knowledge of Sri Rama Janam Bhoomi, by which is meant the exact spot of birth of Lord Rama. The site plans referred are alleged to be the part of court record, which can be verified by the court, and are not admitted to be correct. Today, there are at least three spots in Ayodhya claimed as the exact spots where Lord Rama was born, viz:

a. The spot being presently claimed by the plaintiff is being made known as Ram Janam Bhoomi Only since 22.12.1949.

b. The Ram Chabutra, in the courtyard outside the Babri Masjid Structure, is being known as Ram Janam Bhoomi only since 1855.

c. The Janamsthan site Rasoi Mandir, facing the Babri Masjid across the street, is traditionally known as Ram Janam Bhoomi since time immemorial.

The last 2 mentioned spots have not been abandoned by the believing devotees in Ayodhya.



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3. With regard to the contents of paragraphs 3, 4,5,6,7, 8, 9 and 10 of the suit plaint, this defendant states that since he was not a party to any of the suits and actions mentioned, he has little knowledge about them. Since the statements concerned the relevant records of the mentioned cases, this defendant has nothing to say to that, and does not admit anything.

4. Statements made in paragraph 11 of the suit plaint are also matters of record. The answering defendant submits that the issues framed in all the four pending suits as stated may first and promptly be decidedly by this Hon'ble Court.

5. With reference to paragraph 12 of the suit plaint, it is most respectfully submitted that when the four pending suits were consolidated and the issues have been framed, the same should be decided without any further delay.

6. With regard to paragraph 13 of the plaint, this defendant is also dissatisfied with the order of the District Judge, Faizabad dated 1.2.1986. Since a writ petition against that order is pending in this Hon'ble Court, this answering defendant does not wish to discuss the same. But he simply requests this Hon'ble Court to dispose that pending writ petition simultaneously with the instant suit and other pending suits.

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7. With reference to the statements made in the last sentence of paragraph 14 of the suit plaint, this answering defendant wishes to place on record that this defendant considers the mentioned structure as a mosque, popularly known as Babri Masjid, which can not be lawfully removed to make way for a Mandir.

8. With reference to the contents of paras 15 and 16 of the suit plaint, the answering defendant submits that unless the issues in the four pending suits are decided, and unless new issues in the instant Original Suit No. 236 of 1989 are framed and decided, and unless and until ownership is settled and decided by this Hon'ble Court of the land and structures called by the Muslims as Babri Masjid and Ganj-e-Shaheedan Qabristan and by the plaintiffs as Ram Janmsthan, formation of Trust comprising the disputed property is illegal and invalid.

9. With reference to the statements made in paragraph 17 of the Suit plaint, this defendant submits that when the Trust itself is illegal and invalid, making it as defendant No. 21 in this suit is meaningless. Further more such



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a step is also collusive, inasmuch as plaintiff No. 3 Sri Deoki Nandan Agarwala is one of the Trustees of the Trust, which has been made as defendant no. 21 in it. So, Mr. Agarwala represents both the plaintiffs as well as the defendants. If Lord Ram were really the plaintiff No. 1 such a faux pas would never have committed.

10. With reference to the statements made in paragraph 18, this defendant at the outset wishes to record the fact that he and the Muslims of India have the highest regard for Lord Rama. These sentiments of the Muslims are best reflected in the poem entitled "Ram" composed by the greatest Muslim thinker of India of the present century Allama Dr. Sir Muhammad Iqbal, who has summed up in just one verse of the long poem what Muslims of India think of Shri Ram Chanderji:

"Hae Ram ke wajood pa Hindostan ko naaz
Ahl-e Nazar Samajht-e hain usko Imam-e-Hind."

Meaning- India is proud of the existence of Ram. The intelligent-sia consider him as the leader of India.

This defendant submits that if Lord Ram himself could help it, he would not have liked his good name to be dragged into this unseemly and undignified controversy. Impleading of the great names of plaintiffs No. 1 and 2 is therefore, unauthorised and unwarranted. Plaintiff No. 3 has no right or authority to make the Deity and Asthan as the Platitiffs No. 1 and 2, as their consent has not been obtained by plaintiff No. 3, and the latter has not been authorised or appointed by plaintiffs No. 1 and 2 to act on their behalf. Politicians and communal minded fundamentalists have set up plaintiff no. 3 to file this frivolous suit in the name of the Asthan and Bhagwan Sri Rama to serve their own narrow political and selfish ends. The suit plaint filed asserts that "The plaintiffs above-named beg to state as under", and a number of incorrect statements based on ignorance of facts and law have been made thereafter. Had Lord Ram been really the plaintiff, such incorrect and ignorant statements would not have been made. In fact Lord Ram would not have subordinated himself, the way his devotee has done him.

11. The claim in paragraph 19 of the suit plaint that "the premises in dispute is the place where Maryada Purshottam Sri Ram Chanderji Maharaj



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was born" is denied and contested. This defendant submits that only since 22 December, 1949, about 40 years ago, such a belief has come into existence. If any documentary or recorded evidence is produced by the plaintiff No. 3 establishing beyond doubt that the present belief existed before 22.12.1949 also, this defendant will surrender all his opposition.

12. In this connection, this defendant further submits that when the Babri Masjid was being constructed in 1528 A.D. No such belief existed in Ayodhya, or elsewhere that the place where the mosque was being built was Ram Janam Bhoomi. Goswami Sant Tulsidas, the great biographer of Lord Ram was alive then, and wrote his epic biography "Ram Charitra Manas" about the year 1558 A.D., but did not complain that Babri Masjid was built on Ram Janam Asthan. The book Ram Charitra Manas is a public document.

In an earlier period, Valmiki wrote perhaps the first Ramayana. He also did not identify the presently contentious spot as Ram Janam Asthan.

In none of the several Ramayanas in several languages, the said contentious spot has been mentioned as the place of birth of Lord Ram.

13. Statements made in paragraphs 20 and 21 of the suit plaint are irrelevant to the issues in the suit, and are based on intricacies of philosophy and theology.

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14. Religious sentiments of plaintiff No. 3 contained in para 22 of the suit plaint are respected but the following passage in it is strongly contested:

> "The place is a deity. It has existed in this immovable form through the ages, and has ever been a juridical person. ..... Thus Asthan Sri Rama Janama Bhumi is an indestructible and immovable Deity who has continued to exist throughout the ages."

Fact of the whole matter is that idea of Ram Janmsthan was first floated by British East India Company's agents in 1855 in order to destabilize the regime of this Defendant's forebear, the King of the realm Wajid Ali Shah. At that time a spot outside the structures of the Babri Masjid, in a corner of the courtyard was claimed as Ram Janam Asthan. But the King settled the dispute by partitioning out the plot 17 ft. x 12 ft. naming it as Ram Chabutra and by giving it to the Hindus to do "paats" of Ramayana, peace was then restored.

Again, for the first time on 22.12.1949 the Ram Janm Asthan claim



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was shifted from Ram Chabutra to right inside the mosque just beneath the main large dome of the Babri Masjid.

Earlier than 1855, the undisputed Ram Janm Asthan was the old Janam Asthan Sita Rasoi Mandir across the street on a mound facing the Babri Masjid.

All the above mentioned three Ram Janam Asthans are now believed to be Lord Rama's probable places of birth, viz. (i) inside the Babri Masjid beneath the main dome since 1949, (ii) at Ram Chabutra in the courtyard of the Babri Masjid since 1855, (iii) at the old Ram Janam Asthan Mandir where Sita Rasoi is also situated, and whose present Mahant is Harihar Das, aged over 100 years.

15. That the statements made in the first two sentences of paragraph No. 23 of the plaint are the most important, and all Muslims of India are willing to make that as the issue and settle the dispute one way or other at this. Paragraph No. 23 opens thus:

"That the books of history and public records of unimpeachable anthenticity establish indisputably that there was an ancient temple of Maharaja Vikramaditya's time of Sri Rama Janam Bhumi Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat by the force of arms, by Mir Baqia commander of Babar's hordes."

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The plaintiff No. 3 Sri Deoki Nandan Agarwal, in a booklet named "Sri Rama Janam Bhumi" published by "Sri Rama Janam Bhumi Mukti Yagna Samiti", 58, Rajendra Nagar, Lucknow, has written at page 2 as follows:-

> "That there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janam Bhumi is a fact of history, which is indisputable, although there is some controversy as to which of the Vikramaditya resurrected the place and built the magnificent Temple."

In paragraph No. 23 of the suit plaint there is a reference to 1928 Edition of the Fyzabad Gazetteer published by the then British Government in Uttar Pradesh, wherein at page 179 there are stories of Moghul Emperor Babar coming to Ayodhya, halting there for a week, destroying the ancient temple at Janamsthan, and building the Babri Mosque on its site the



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materials of the old destroyed Mandir. But it is a well-known fact of history that Emperor Babar never came to Ayodhya. And that the Babri Mosque was built by Mir Baqi and not by Babar has been admitted in the suit plaint itself. Further more, Babar in his Babar-Nama, while recording his daily diary, has made no mention of visiting Ayodhya, destroying Mandir or building Mosque there, although in other pages of Babarnama many things adverse are also mentioned.

But the Fyzabad Gazetteer of 1877, this Defendant submits, does not contain any mention of destruction of any Mandir and building of Babri or any Masjid on the Mandir land. Of the two Gazetteers , the one contemporary and more near to the date concerned will have to be relied on.

District Gazetteers of the British Government, as is well known, were no works of history. They only reflected the policy of the alien Government to divide the vast population of India by creating conflicts such as the present one, and to perpetuate the minority rule of the foreign imperialist power. This defendant submits that all the aforesaid and other conflicting facts need to be investigated by this Hon'ble Court or by a Commission of Experts of history and archaeology to arrive at the truth.

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However, after all said and done, it is most respectfully submitted that if only this claim is proved that a Mandir was demolished and Babri Masjid was built on the Mandir land, this defendant and all other Muslims will gladly demolish and shift the mosque, and return the land for building of the Mandir thereon.

But if this is not a fact, the Babri Masjid must in all fairness be returned to Muslims.

In this connection, the following quotation of Swami Swaroopananda Saraswati, the Shankeracharya of Dwarka Peeth, and published in the national newspaper on 14th May, 1987, is being reproduced below from Qaomi Awaz-Urdu Daily of Lucknow:

"CONDITION FOR RETURN OF BABRI MASJID TO MUSLIMS:

Pune (Maharashtra) 13 May-

Jagadguru Shankaracharyya Swaroppananda Saraswati has proposed that to resolve the Ram Janam Bhumi Babri Masjid tangle an Authority should be constituted.



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Addressing a gathering of the All India Virodhman Asthan Kwasi Jain Shraman Sangh here yesterday he said that if it is proved that Moghul Emperor Babar got the mosque constructed after demolishing Mandir, then surely the Hindus should get the Mandir. But if it is found that Hindu Administrators made the Mandir after destroying the mosque, then the place will have to be made over to Muslims."

In this connection, the celebrated Muslim historian and scholar Maulana Syed Sabahuddin Abdur Rahman (since expired) in his well-known treatise "BABRI MASJID" wrote at page 5 at the very beginning of his preface thus: (translation from Urdu).

"On behalf of Muslims I also have a right to say that if it is proved that Babri Masjid has been built after demolishing Ram Janam Bhoomi Mandir on its place, then such a mosque if built on such an usurped land deserves to be destroyed. No theologean or Aalim can give Fatwa to hold Namaz in it."

In the monumental theological work Fatawa-e-Alamgiri, volume 6 page 214, the following is the ruling: (translation).

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"It is not permissible to build mosque on unlawfully acquired land. There may be many forms of unlawful acquisition. For instance, if some people forcibly take somebody's house (or land) and build a mosque or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat."

Other assertions made in paragraph 23 of the Plaint, not specifically dealt with above, are contested and denied.

16. Parts of the contents of paragraph 24 of the suit plaint have been answered in para 15 above. This defendant submits that plaintiff No. 3 is not competent to interpret Koran, Islamic Shariat, and Islamic custom and practices which he has tried to do in sub-paragraphs A, B, C, D, E, F and G of the paragraph 24. The interpretations given are strongly contested. The contentions in the suit plaint in this regard are wholly irrelevant with the points at issue. This defendant states:

(A) That Emperor Babar or Mir Baqi did not destroy or demolish any Mandir.

(B) Emperor Babar or his commander Mir Baqi did not construct the mosque on the land of or on the ruins of any Mandir. Mir Baqi



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built the Babri Masjid on vacant land.

(C ) Sanctity of Babri Mosque was not affected by the creation of Ram Chabutra on the courtyard, or by the mosque being surrounded by Mandirs.

(D) There is no tenet of Islam against existence of a mosque in a noisy place, or in a non-Muslim locality.

(E) Minaret is no essential part of a mosque.

(F) Non-existence of a water reservoir in it does not make a Mosque as no mosque.

Finally speaking, if it is not a mosque how it is claimed that mosque was built after destroying the Mandir.

17. The statements made in paragraph 25 of the suit plaint are based on imagination, and are contested.

18. Statements made in paragraph 26 of the Suit Plaint are mostly irrelevant and are matters of record, the same are not admitted. Namaz particularly Friday Namaz used to be regularly held in the Babri Masjid, and the last Namaz was held on 22.12.1949. The Imam, who led the prayers regularly till 22.12.1949, was Maulana Haji Abdul Gaffar and he is alive and lives at Mohalla Qaziana, Ayodhya, District Faizabad. While the Plaintiffs have denied here that there was a Mutawalli, they have admitted in paragraph 32 of the plaint that defendant no. 23 was the Mutawalli of the Babri Masjid and that is why he has been made defendant. This itself shows that Lord Rama could not have been the Plaintiff of this Suit.

19. That the statements made in paragraph 27 of the suit plaint are incorrect. What actually happened on the night between 22.23 December, 1949 is best narrated by the then Deputy Commissioner of Faizabad himself in an affidavit filed by him on behalf of the State, being Defendant No. 6 in Regular Suit No. 25 of 1950. Xerox copy of relevant portion of the said Affidavit is being made Annexure 'A' hereto. Destruction of the graveyard, done by the plaintiff No. 3's party was an act of sacrilege and was illegal. The same was done after 23.12.1949. In this connection attention is invited of your Lordships to the Thana Diary entry made by the constable who was on beat duty on the said night between 22.-23 December, 1949, which is also in the records of Regular Suit No. 25 of 1950, which is before your



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Lordships in this amalgamated hearing.

20. That as regards the contents of para 28 of the Suit Plaint, it is submitted that under the Constitution of Secular India religious places of all the communities ought to be protected by the Government, and the action of its officers for the protection of Babri Masjid and for preventing any breach of peace was fully justified. The Objection of the Plaintiff to this rule of law is unfortunate.

21. With reference to the statements contained in paragraph 29 of the Suit Plaint, it is submitted that the contents therein are imaginary and speculative and are not based on law. The claim of adverse possession in respect of religious places like Babri Masjid is unjustified and illegal. Moreover, the adverse possession if any was always with guilty knowledge, and was malafide.

22. That as regards the contents of paragraph 30 the answering defendant believes that the Hindu population of India has always been by and large secular, otherwise India would have been a Hindu Dharmic State. The infinitely small minority amongst Hindus, to which group the plaintiff no. 3 and the party of which he is the Vice-President namely the Vishwa Hindu Parishad belong, have little or no voice in the country. In last 42 years after India gained freedom from foreign rule, the plaintiff no. 3 and his like-minded political parties have never been able to win more than 1 or 2 percent of the total number of seats in the Indian Parliament thereby exposing their following in the country. The answering defendant believes that the Hindu public and devotees who have happily co-existed in Ayodhya with the Babri Masjid for over 400 years since its construction in 1528 will never commit an act of Adharma by demolishing the Babri Masjid and constructing a Mandir over it by illegal means as threatened by the Plaintiff No. 3 on 30.9.1989, especially when this Hon'ble Court is seized of the matter and an order for status-quo is in force. The threats contained in paragraph No. 30 amount, it is most respectfully submitted, to contempt of Court.

23. That the views contained in para 31 of the Suit Plaint are misconceived. The present suit is nothing but a guise to cover the short comings of the other original suits, and is bound to create more disputes than solve them. Contrary to what have been asserted in the plaint, the fact is that



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there are no differences between Shia and Sunni sects of Muslims in India and elsewhere so far as the protection of mosques, including the Babri mosque, is concerned.

24. That as regards paragraph 32 of the Suit Plaint, this Defendant states that the Babri Masjid was built by Mir Baqi, a Shia Muslim and the Mutawalliship devolved upon his descendants since inception in 1528 without break. But both Shia and Sunni Muslims used to offer Namaz in the Babri Masjid, as indeed in all Shia managed mosques all over the world, in their own different ways. Sunni Muslims however were permitted by the Shia Mutawalli to form their own daily Jamaat in the Babri Masjid since about 1925, because by then the Shia population in Ayodhya had dwindled. The Sunni Imam Maulana Haji Abdul Gaffar was the last Imam of Babri Masjid, who led the last Namaz on 22.12.1949.

25. That as regards paragraph 33 of Suit Plaint, since every mosque is a public property and all Muslims regardless of their sect are its beneficiaries, every member of the Muslim community has right to represent the case of a mosque. Attempt of the Plaintiff No. 3 to drive a wedge between Shias and Sunnis in this Hon'ble Court in the instant proceedings is deplored. The Sunni Central Waqf Board, Defendant No. 4, and its co-defendants No. 5 and 6, being the present three plaintiffs in Suit No. 12 of 1961 have the full support of this answering defendant as President All India Shia Conference in their just struggle for the recovery of Babri Masjid. In fact this is the reason no Shia Muslim, including the Shia Mutawalli of Babri Masjid, or the Shia Central Waqf Board or All India Shia Conference has ever opposed or contested the claim of Plaintiffs in Suit No. 12 of 1961. The possession of the Babri Masjid and the Qabristan or Ganj-e-Shahidan adjoining that mosque on the mosque land, which is with the Court Receiver and under an order of Status-quo of this Hon'ble Court, should not be interfered with by the Plaintiffs' party.

26. That as regards the contents of paragraphs 34 and 35 of the Suit Plaint, the answering defendant being a representative of the Shia Muslims of India is deadly against any form of sacriligious actions. He is of the firm view that no place of worship of any religion should be destroyed and no place of worship should be constructed on the ruins of the destroyed one. The



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answering defendant firmly believes that the Babri Masjid was certainly not built after destroying the Vikramaditya Mandir or any temple. Yet, at the same time if it is unequivocally proved in this Hon'ble Court in the light of historical archaeological and expert scientific evidence that the Babri Masjid was really built after demolishing any Mandir on the Mandir land, only then this defendant will withdraw his opposition.

As a further concession to the Plaintiff No. 3 and to the Hindu community of India whose religious sentiments the said Plaintiff and his party are trying to wrongly arouse since last 3 years, this Defendant is prepared to withdraw his opposition also if it is unequivocally proved, in this Hon'ble Court that the belief, of Ram Janam Asthan being at the presently claimed spot inside the Babri Masjid, existed from before the Babri Masjid was built, existed from before the Babri Masjid was built. And that the Babri Masjid was knowingly built on the Ram Janam Asthan spot.

27. Regarding paragraph 36 of the Suit Plaint, it is submitted that no cause of action accrues to the plaintiffs.

28. With regard to paragraph 38 of the Suit Plaint, this Defendant submits that the suit has been under-valued.

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29. That as regards the contents of paragraph 39 of the Suit Plaint, this Defendant submits that the Plaintiffs have made out no case, and are not entitled to any relief, and the suit is liable to be dismissed.

30. It is irrelevant if the disputed Waqf is Sunnni or Shia. In either case ownership of the Waqf vests in almighty Allah.

31. Once it is admitted that a mosque was built hundreds of years ago and was used as such it became Waqf by user, irrespective of the fact whether or not legal formalities for creating a Waqf were observed.

32. The Suit is definitely barred by limitation.

33. The claim is also barred by the principle of estoppel.

Lucknow, dated
4.9.1989

Sd/-
Defendant No. 24.



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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD SITTING AT LUCKNOW**

**---------**

**O.O.SUIT NO. 5 OF 1989**

Bhagwan Sri Ram Virajman & others ..... Plaintiffs

Vs.

Rajendra Singh & others ..... Defendants

**WRITTEN STATEMENT UNDER ORDER VIII RULE 1 OF C.P.C. ON BEHALF OF DEFENDANT NO. 25.**

1. That the contents of para 1 of the plaint are denied. Neither the plaintiff No. 1 nor plaintiff no. 2 are the deities within the meaning of Hindu Law nor they are juristic person to file the suit. Remaining contents of para are also denied. Kindly see Addl. Pleas.

2. That the contents of para 2 of the plaint are denied. The area and the places indicated in Annexures No. 1, 2 and 3 of the plaint are neither Ram Janam Bhoomi nor Ram Janam Asthan. However, it is evident that there exists a Mosque known as Babri Masjid, the existence of this mosque is established by record, Historic, Judicial and Revenue. The filing of the suit no. 2 of 1950 are not denied. See the Addl. Pleas.

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3. That in reply to the contents of para 3 of the plaint, only the filing of the suit No. 2 of 1950 is admitted but not the contents of the plaint of the said suit. The remaining contents of para under reply are denied. Kindly see Addl. Pleas.

4. That in reply to the contents of para 4 of the plaint it may be pointed out that the relief claimed in suit no. 2 of 1950 is wholly misconceived and legally not

5. That in reply to the contents of para 5 of the plaint the filing of suit no. 25 of 1950 is admitted but the contents of the plaint of the said suit are denied. Remaining contents of the para under reply are also denied.

6. That in reply to the contents of para 6 of the plaint the filing of suit No. 26 of 1959 is admitted while the allegations of the plaint of the said suit are denied. The initiation of the proceeding under Sec. 145 Cr.P.C. and the appointment of the receiver, which still continue is also not denied. However, remaining contents of para under reply are denied. See Addl.



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Pleas.

7. That in reply to the contents of para 7 of the plaint, the suit No. 12 of 1961 including its contents are admitted, the same may be decreed.

8. That in reply to the contents of para 8 of the plaint, it may be pointed out that the order dated 8th august, 1962 was rightly passed. Remaining contents of para under reply are not admitted as framed.

9. That in reply to the contents of para 9 of the plaint, it may be pointed out that the averments related to the judicial record, and hence are not denied.

10. That in reply to the contents of para 10 of the plaint it may be pointed out that at the time of granting of the said injunction the answering defendant was not a party in suit no. 2 of 1950. The said suit was also not in the representative capacity. Hence the answering defendant is not bound by the said interim injunction. The answering defendant is advised to state that the interim injunction order dated 16.1.1950 as modified on 19.1.1950 was also beyond the scope of suit No. 2 of 1950. Remaining contents of the para under reply are also denied.

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11. That in reply to the contents of para 11 of the plaint it may be pointed out that Pooja etc. even in the restricted way, was wrongly permitted. However, the appointment of receiver is not disputed.

12. That the contents of para 12 of the plaint are denied. The averments of para under reply, as regards performing religious ceremonies during the pendency of the suit is also incorrect and denied. See Addl. Pleas.

13. That the contents of para 13 of the plaint are not admitted as framed, answering defendant is advised to state that the order of District Judge dated 1.2..1986 is wholly illegal and is also void being in utter violation of the principles of natural justice. However, the said order has been challenged in two writ petitions, vide W.P. No. 746/86 and writ petition No. 3106 of 1986.

14. That the contents of para 14 of the plaint are denied. There is no deity in the premises in dispute within the meaning and concept of Hindu Law and as such there is no question of devotees etc. The averments pertaining to the money received by the receiver are denied for want of definite knowledge.

15. That the contents of para 15 of the plaint are denied. There is no question of construction of any temple over the site in question. Answering



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defendant and his co-religionist have a right to resist any such attempt. The premises is a mosque and muslims have a right to offer namaz in it. Neither Jagadaguru has any right or locus in the matter and nor he can execute any deed legally in respect of the premises in question. The answering defendant is not aware of the religious sect of the so called vairagies of Ayodhya.

16. That in view of the submissions made above the contents of para 16 of the plaint are vehemently denied. The so called trust deed is a nullity. It has no legal basis and the same has no relevance in the present controversy.

17. That the contents of para 17 of the plaint are vehemently denied. The so called 'Nyas' has no locus in the matter, nor it can be a party to any suit.

18. That the contents of para 18 of the plaint are vehemently denied. No other suit is needed. The present suit is also barred by limitation. The averments of the para under reply have been made with a malafide intention by which the plaintiff no. 3 only wants to boost his own status, while he has no locus; neither there is any deity having a juristic personality (or juristic person) and nor the plaintiff No. 3 is a next friend of any deity and the only persons who have a right to worship in the premises in dispute, i.e. the mosque, are the muslims.

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19. That the contents of para 19 of the plaint are vehemently denied. There is no evidence, historic or otherwise, to indicate that Sri Ram Chandra ji was born there.

20. That the contents of para 20 of the plaint are vehemently denied. As there is no deity, there is no question of any devotee and there is no question of any asthan also. It is an innovation even in Hindu law; the answering defendant is advised to state that the so called asthan can not be treated as a juristic person and as such the suit is not maintainable on this count also. Kindly see addl. pleas.

21. That the contents of para 21 of the plaint are vehemently denied, the concepts of the varous schools of thought of Hindu religion are not relevant to the controversy before this Hon'ble Court.

22. That the contents of para 22 of the plaint are denied, various philosophies, fictions and concepts of Hindu religion are not relevant for the controversy to be adjudicated in the 4 suits referred to above.

23. That the contents of para 23 of the plaint are denied. The narration of



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history in the plaint is false and baseless. No authentic book of history has been referred in the plaint. The premises has always been a mosque since its construction in sixteenth century, it has always been used by the muslims for offering namaz and for no other purpose. Remark in the gazette is not an authentic record of history. It is only a generalised observation, the Gazette also does not make any reference of any authentic history or record. The pillars are not of Kasauti. However, it is not relevant as the fact remains that it is a mosque, and has always been used as mosque and it is wholly incorrect that anybody else other than muslims worshipped in the building which is called Babri Masjid. The narration of history by the plaintiff is baseless and false. There is no evidence of the demolition of any temple for the construction of this mosque.

24. That the contents of para 24 of the plaint are vehemently denied, the quotation from Holy Quran has been incorrectly quoted and the same is out of context. There is no evidence of demolition of any temple. The contents of sub-paras are also denied. On the basis of judicial records and other evidence, it is clear that the premises in question has always been a mosque in which muslims had been offering regular namaz up to 22nd December, 1949. No specific shape or specific design has been prescribed for the mosque in Islam. The shapes and architectural designs of the mosque vary in different parts of the world and even in India. The Ganj-e-Shahidan also belongs to muslims and vests in God Almighty.

25. That the contents of para 25 of the plaint are denied. The building has always been a mosque.

26. That the contents of para 26 of the plaint are vehemently denied. The building known as Babri Masjid has always been in use as a mosque and the muslims have offered namaz in it since its construction till 22nd December, 1949. some of those who offered Namaz in it are still available. Some part of the mosque was damaged in the communal riot of 1934 and the same was repaired soon thereafter. The threat contained in the para under reply is most unwarranted. There is no dispute between Shias and Sunnis over the mosque in question. Mosque is vested in almighty and every Muslim (Shias or Sunnis) have the right to offer Namaz in any Masjid. The averments in the para under reply are wholly incorrect and false.



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27. That the contents of para 27 of the plaint are vehemently denied. As narrated in the foregoing paragraphs, some persons between the night of 22/23 December, 1949, illegally entered into the mosque about which FIR was lodged at the police station, Ayodhya in the morning of 23rd December, 1949. Some of the culprits were named in the F.I.R. and on that basis the proceedings u/s 145 Cr.P.C. were initiated and the mosque was attached, the attachment continues; there was no so called ceremony nor any supernatural happening. Kindly see Addl. Pleas.

28. That the contents of para 28 of the plaint are vehemently denied. It is incorrect that muslims do not live nearby. They do live there but the muslims were not in a position to prevent the aforesaid illegal act done with the connivance of the local administration. The muslims acted as the law abiding citizens and pursued the legal remedy available to them but no party can be permitted to take benefit of the delay caused in a Court of law. Here it may also be pointed out that the rights of the muslims to offer namaz should have been protected but the machinery of law failed in it. Only the muslims still have the right to offer namaz in the building and no other community has any right in the said building. The proceedings u/s 145 Cr.P.C have not been dropped but after the filing of the suits the proceedings u/s 145 Cr.P.C. were stopped and consigned to record.

29. That in view of the submissions made in the foregoing paragraphs the contents of para 29 of the plaint are denied. Neither there is any deity and nor there could be any impleadment of it. Plaintiff no. 3 also has no locus standi and so also plaintiffs no. 1 and 2.

30. That the contents of para 30 of the plaint are denied. There is no question of any devotee, and the present campaign and proclamation made in the plaint has nothing to do with the struggle for freedom of the country. There is no question of construction of any temple there such an attempt will be resisted, there is no legal right for the construction of temple on the site in question. The assertion in the para under reply are most unwarranted, amount to incitement of an offence, and also amount to contempt, by way of undermining the authority of this Hon'ble Court as, it may be pointed out that the interim order passed by this Hon'ble Court on 3.2.1986 in W.P. 746 of 1986 for maintaining status quo, is still in operation.



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31. That the contents of para 31 of the plaint are denied. As there is no deity there is no question of its next friend and a judicial decision will be binding upon all. Disregard of the Rule of law pleaded in the plaint is regretted.

32. That the contents of para 32 of the plaint are denied. The matter has already been adjudicated.

33. That the contents of para 33 of the plaint are denied. It may be pointed out that the entire complex belongs to Waqf Babri Masjid, the existence of which cannot be denied.

34. That the contents of para 34 of the plaint are vehemently denied. The premises has always been a mosque and it has been used as such and no one can remove the structure.

35. That no doubt that the muslims fear the God, other contents of para 35 of the plaint are denied. None of the plaintiff has any status to maintain the suit.

36. That the contents of para 36 of the plaint are denied. Plaintiff has no cause of action including the plaintiff no. 3. The cause of action, if any, had accrued in 1950.

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37. That the contents of para 37 of the plaint need no reply.

38. That the contents of para 38 of the plaint are denied, the contents of para 38 of plaint are vague and property in suit has not been properly valued.

39. That the contents of para 39 of the plaint are denied, the plaintiffs are not entitled to get any relief and the suit is liable to be dismissed with special costs.

## ADDITIONAL PLEAS

40. That on behalf of the All India Shia Conference it may be pointed out that the premises in question always has been mosque and it is a mosque.

41. That in the night of 22/23rd December, 1949 certain persons forcibly entered into the mosque and put an idol in the same; against them an F.I.R. was lodged in the Police Station, Ayodhya in the morning of 23rd of December, 1949. A case under Section 448, 147, 148 I.P.C. etc. was



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registered, on the basis of that F.I.R. the proceedings under Section 145 were taken and the premises was attached. A receiver was appointed in the proceedings under section 145 of the Cr.P.C. later that arrangement was also maintained by the Civil Court in the Civil suits. The said premises is still under the control of the receiver and in other words the same is under the control of the Court. The premises when ever released must go to the Muslims to be used as a mosque. And no one has any right in respect of this premises except Muslims.

42. That it may also be pointed out that the suit is not maintainable. There is no Hindu deity as juristic person in relation to the premises in question nor there is any Hindu deity with the name and style of Asthan Sri Ram Janam Bhumi Ayodhya. It may also be pointed out that Sri Deoki Nandan Agarwal has no nexus with the premises in question nor he has any managerial and beneficial interest. He cannot be next friend to the deity. Hence the suit is not maintainable.

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Sd/-
Syed Mohd. Hasnain Abidi
Hony. General Secretary
All India Shia Conference.
Defendant No. 25.

Place:Lucknow
Dated:16.9.89/18.9.89



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**Other Original Suit No. 5 of 1989**

At the instance of Sri R.L. Varma, Sri Deoki Nandan Agarwal makes the following clarification under Order 10 Rule 2 C.P.C.

---

In the early hours of December, 23, 1949 the idol of Bhagwan Sri Ram Lala, which was already on Ram Chabutra was transferred to the place where he presently sits, that is, under the central dome of the disputed building. I was not personally present at that time at the p[lace. This information was conveyed to me by Paramhans Ram Chandra Das of Digamber Akhara. This transfer of the idol was done by Paramhans Ram Chandra Das and Baba Abhi Ram Das and certain other persons whose name I do not remember at the moment. I will have to look into the record to give their names.

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The idol is Chal Vigraha (moveable idol).

Paramhans Ram Chandra Das had informed me that all the due ceremonies were performed when the idol was transferred.

Presently, the property in suit is bounded on three sides by a wall constructed by the State Government recently and on the north by public road.

The entire area enclosed by the aforesaid wall belongs to the deity.

30.04.1992 Sd/-illegible
MHS/- 30.4.92



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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH: LUCKNOW
OTHER ORIGINAL SUIT NO.5 OF 1989
(Regular Suit No.236/89)

Bhagwan Sri Ram Birajman and others ……..Plaintiff.

Versus

Sri Rajendra Singh and others ……Defendants

Following Issues have been framed by this Court.

**Issues:-**

1. whether the plaintiffs 1 and 2 are juridical persons ?
2. whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend ?

3 (a) Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.4.92 in their statement under order 10 Rule 2 C.P.C. ?

3 (b) Whether the same idol was reinstalled at the same place on a chabutra under the canopy?

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Issue No.3 (c):-

"Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated 14.8.1989, 7.11.1989 and 15.11.91 ?

Issue No.3 (d):-

If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity ?"

Issue as it stands now'

(4) Whether the idols in question has been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no.3 ?

(5) Is the property in question properly identified and described in the plaint?



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(6) Is the plaintiff No.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?

(7) Whether the defendant no.3, alone is entitled to represent plaintiffs 1 and 2 and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no.3 ?

(8) Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Rama installed in the disputed structure ?

(9) Was the disputed structure a mosque known as Babri Masjid ?

(10) Whether the disputed structure could be treated to be a mosque on the allegations contained in paragraph 24 of the plaint ?

(11) Whether on the averments made in paragraph-25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute is as a mosque ?

(12) Of the structure in question is held to be mosque, can the same can be shifted as pleaded in paragraphs 34 and 35 of the plaint ?

deleted vide court order

dated 23.2.96

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(13) Whether the suit is barred by limitation ?

(14) Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site.

Issue No.15:-

Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only reggularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22nd December 1949 as alleged by the defendants 4 and 5 ?

Issue No.16:-

Whether the title of plaintiffs 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no.4 ? If yes, have plaintiffs 1 & 2 re-acquired title by adverse possession as alleged in paragraph 29 of the plaint ?



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Issue No.17:

Whether on any part of the land surrounding the structure in dispute there are graves and is any part of that land a Muslim Waqf for a grave-yard ?

deleted vide this Hon'ble Court
order dated 23.2.96

Issue no.18:-

Whether the suit is barred by section 34 of the the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no.3 and also as alleged in paragraph 47 of the written statement of defendant no.4 and paragraph 62 of the written statement of defendant No.5 ?

Issue no.19:-

Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant No.3 ?

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Issue no.20:-

Whether the alleged Trust, creating the Nyas defendant no.21, is void on the facts and grounds stated in paragraph 47 of the written statement of defendant no.3 ?

Issue no.21:-

Whether the idols in question cannot be treated as deities as alleged in paragraphs 1, 11, 12, 21, 22, 27 and 41 of the written statement of defendant no.4 and in paragraph 1 of the written statement of defendant no.5 ?

Issue no.22:-

Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint " If so, its effect ?

Issue no.23:-

Whether the judgment in suit No.61/280 of 1885 filed by Mahant



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Raghuber Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicate as alleged by the defendants 4 and 5 ?

Issue no.24:-

Whether worship has been done of the alleged plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?

Issue no.25:-

Whether the judgment and decree dated 30th March 1946 passed in suit no.29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs ?

Issue no.26:-

Whether the suit is bad for want of notice under Section 80 C.P.C. as alleged by the defendants 4 and 5 ?

Issue no.27:-

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Whether the plea of suit being bad for want of notice under Section 80 C.P.C. can be raised by defendants 4 and 5 ?

Issue no.28:-

Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5 ? If so, its effect.

Issue no.29:-

Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no.57 of 1978 (Bhagwan Sri Ram Lala Vs. State) of the Court of Munsif Sadar, Faizabad.

Issue no.30:-

To what relief, if any, are plaintiffs or any of them entitled ?



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# I N D E X

# ANNEXURE-II

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**In the High Court of Judicature at Allahabad,**
**Lucknow Bench, Lucknow**
**O.O.S.No.3 of 1989 (R.S. No.26-59)**

**Plaint under Order 7 rule 1 C.P.C.**

1. Nirmohi Akhara situate in mohalla Ramghat City Ayodhya though Mahant Jagar Nath Das aged about 54 years chela of Mahant, Mahant and Jarbarahkar, resident of Nirmohi Akhara, Mohalla Ramghat Ayodhya district Faizabad.
substituted vide order dated 23.7.66
sd/-
Substituted vide court order dt.11.7.78
Sd/-
amended vide order dated 8.7.67 Sd./-

2. Vaishnab Das r/o Nirmohi Bazar Ramghat Oudh City Ayodhya District Faizabad added vide court's order dtd. 1.9.95

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Versus

1. Shri Jamuna Prasad Singh amended vide the order dt.23.10.89 on
44(O) by this Hon'ble Court Sd./- 28.10.98

2. State of Uttar Pradesh

3. Deputy Commissioner, Faizabad

4. City magistrate, Faizabad

5. Superintendent of Police, Faizabad

6/1. Haji Mehboob (adult)

6. died Haji Phekku aged 70 years son of unknown, r/o Mohalla Terhi Bazar.

6/2. Haji Abdul Ahed both R/o Mohalla Terhi Bazar of Mohalla Terhi Bazar. City Ayodhya The. & Distt. Faizabad.

7. Mohd. Faiq aged 50 years son of Haji Ramzan r/o Terhi Bazar
Amended under the court order Sd./-20.9.61



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8. Mohd. Achhan Mian aged about 55 years son of unknown r/o Mohalla Katra.

9. U.P. Sunni Central Board of Waqfs through its Secretary, Lucknow

Amended vide order dt.23.8.89 this Hon'ble Court Sd./-

(6 to 8) City Ayodhya pargana Haveli Oudh Tahsil and district Faizabad on behalf of themselves and all other members of the Muslim Community.

10. Umesh Chandra Pandey aged 34 years S/o Shri Ram Shanker Pandey S/o rampali Ayodhya City Distt. Faizabd (Haveli Oudh)

11. Mohd. Farook S/o Zahoor Ahamad r/o Singarhat Ayodhya Distt. Faizabad.

Amended by the order of this Hon'ble Court dt. 3.12.91 Sd./- 3.12.91

**Suit for removal from management and charge of Temple Janma Bhoomi and delivery of the same.**

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1. That there exists in Ayodhya, since the days of Yore an ancient Math or Akhara of Ramanandi Varagis called Nirmohis with its seat at Ramghat known as Nirmohi Akhara, the plaintiff no.1, which is a religious establishment of a public character, whereof the plaintiff no.2 is the present head as its Mahant and Sarbrahkar.

2. That Janma Asthan now commonly known as Janma Bhumi, the birth place of Lord Ram Chandra, situate in Ayodhya belongs and has always belonged to the plaintiff no.1 who through its reigning Mahant and Sarbrahkar has ever since been managing it and receiving offerings made there at in form of money, sweets, flowers and fruits and other articles and things.

3. That the said Asthan of Janma Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown by letters A.B.C.D. in the sketch map appended hereto within which stands the temple building of Janma Bhumi marked by letters E.F.G.K P N M L E and the



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building denoted by letters E F G H I J K L E is the main temple of Janma Bhumi wherein is installed the idol of Lord Ram Chandra with Lakshmanji, Hanumanji and Saligramji.

4. That the said temple has ever since been in the possession of the plaintiff no.1 and none others but Hindus have ever since been allowed to enter or worship therein and offerings made there which have been in form of money, sweets, flowers and fruits and other articles and things have always been received by the plaintifs through their pujaris.

Para 4A-XI "That before the Judgment of the Writ Petition of 11.12.92 on 6th Dec. 1992 the Temples of Nirmohi Akhara were also demolished by some miscreants who had no religion caste or creed.

Para 4A-XII. "The main temple was demolished on 6th Dec. 1992".

Para 10 (Last) "and further cause of action against defendants 1 to 5 arises during pendency of the suit when the property and temples of plaintiff was demolished on 6th Dec. 1992 by same miscreants within the Jurisdiction of this Court." amended and added to plaint vide Court's order dt. 25.5.95 Sd./- 30.5.95

Para 4A. That Nirmohi Akhara plaintiff is the Panchyati Math of Ram Nandi sect. of Vairagies and as such is a religious denomination following its own religious faith and pursuit according to its own custom prevalent in Vairagies sect of Sadhus. The customs of Akhara Nirmohi have redued in writing on 19.3.1949 by Reg. deed.

Para 4B That plaintiff Nirmohi Akhara owns several temples in it and manages all of such temples through Panches and Mahant's of Akhrara. The whole temples and properties vest in Akhara i.e. plaintiff. The plaintiff being a Panchyati Math acts on democratic pattern. The management and right to management of all temples of Akhrara vest absolutely with Panches of Akhara and Mahant



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being formal head of Institution is to act on majority opinion of Panches.

Amended and added vide
Court's order dt. 25.5.95
Sd./- 30.5.95

5. That no Mohammadan could or ever did enter in the said temple building. But even if it be attempted to be proved that any Mohammadan ever entered it, which would be totally wrong and is denied by the plaintiffs, no Mohammadan has ever been allowed to enter it or has even attempted to enter it at least ever since the year 1934.

6. That in the year 1950, the City magistrate, Faizabad, the defendant No.4 without any lawful cause and with the active connivance of defendant no.2,3 and 5 and under the wrong persuasion of defendants nos.6 to 8 who claim to represent the Muslim community, attached the main temple shown by letters E F G H I J K L E in the said sketch map with all the articles mentioned in list 'A' appended hereto in a proceeding u/s 145 Cr.P.C. and placed the said temple and the articles under the charge of defendant no.1 as receiver on 5.1.1950.

7. That the plaintiffs have been wrongfully deprived of their management and charge of the said temple and have ever since the said wrongful attachment been waiting for the dropping of the proceedings u/s 145 Cr.P.C. but the same are unduly prolonged and lingered with the connivance of all the defendants and since no immediate termination of the same seems to be in sight and since the defendant no.4 refuses in connivance with other defendants to hand over charge and amendment of the temple to the plaintiffs from the hands of the receiver, the institution of the present suit has become inevitable.

8. That the plaintiffs are entitled that the management and charge of the said temple be delivered to the plaintiff no.1 through the plaintiff no.2 the former's mahant and Sarbarhrahkar.



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9. That the defendants 6 to 8 claim to be the representatives of the Muslim Community which has got itself interested in the subject-matter of the suit in not getting the charge and management of the temple delivered to the plaintiffs and are exercising undue influence on the defendants 1 to 5. They are sued in their representative capacity on behalf of the entire Muslim community with the permission of the court.

10. That the cause of action for the suit arose within the jurisdiction of this Hon'ble Court on 5.1.50 on the defendant no.4 illegally taking over the management and charge of the temple with the said articles and entrusting it to the said receiver, the defendant no.1.

11. That the relief claimed by the plaintiffs is incapable of valuation the valuation for the purpose of jurisdiction is fixed at Rs.10,000/- and court fee of Rs.100/- is paid under schedule II Article 17 (6) of the Court fees Act.

12. That the notice of the suit as required by sec.80 C.P.C. has been given to the defendants 1 to 5 which was delivered to them between 6.10.59 and 12.10.59 and which has been replied by them through the defendant no.3 intimating their decision to defend the present suit.

13. That the permission of the court to file the suit against the defendants 6 to 8 on behalf of the themselves and all other members of the Muslim community has been obtained under order 1 rule 8 C.P.C.

1. Wherefore the plaintiffs pray for the following reliefs:-

(a) A decree be passed in favour of the plaintiffs against the defendants for removal of the defendant no.1 from the management and charge of the said temple of Janma Bhoomi and for delivering the same to the plaintiff through its Mahant and Sarbarhrahkar Mahant Jagannath Das. amended vide Hon'ble Court's order dt. 14.5.90 Sd./-



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14.5.90

(b) Any other relief which the court may deem fit and proper.

(c) The cost of the suit be awarded to the plaintiffs.

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**O.O.S. No.3 of 1989**

**(Regular Suit No.26 of 1959)**

**Nirmohi Akhara …….Plaintiff**

**Versus**

**Babu Priya Dutt Ram (Deceased) and others ……Defendants**

Additional Written Statement of Defendant No.9 (U.P. Sunni Central Board of Wakf).

The Defendant No.9 begs to submit as under:-

1. That the contents of para 4-A of the amended plaint are denied as stated and in reply thereto it is submitted that the Plaintiff is put to strict proof of the averments of the para under reply.

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2. That the contents of para 4-B of the amended plaint are also incorrect, hence denied as stated. The averments of the para under reply are even vague and unspecific and the plaintiff is put to strict proof of the same.

3. That the contents of para 4-G XI are also quite vague and ambiguous and hence are denied as stated. In this respect it is submitted that on 6th December, 1992 the so-called Ram chabutra was demolished alongwith the Babri Masjid by the miscreants collected at the instance of Vishwa Hindu Parishad etc.

4. That in reply to para 4-G XII of the amended plaint it is submitted that on 6th December, 1992 the building of the Mosque was demolished and the same could not be called or alleged to be the Main Temple.



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5. That the contents of para 10 of the amended plaint are also denied as stated and in reply thereto it is submitted that the averments of the para under reply are quite vague as the plaintiff's suit does not pertain tot he so-called Ram Chabutra hence no cause of action can be said to have arisen to the plaintiff during the pendency of the suit on account of the demolition of the said Chabutra.

6. That in reply to the said amended portion of the plaint averments of the written statement of the answering defendant are also reiterated and it is further submitted that amendments made in the plaint are quite vague and ambiguous and the same are liable to be deleted.

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**WRITTEN STATEMENT UNDER ORDER VIII RULE I C.P.C. IN OTHER ORIGINAL SUIT NO.3 OF 1989**

Nirmohi Aakhada etc. ……..Plaintiffs

Versus

Baboo Priya Dutt Ram & others ……..Defendants

**Written Statement of the Defendant Umesh chandra Pandey**

1. That the contents of para 1 of the plaint are not admitted. The plaintiff no.2, Mahant Raghu Nath Das, died and there has been no proper substitution in his place.

2. That the contents of para 2 of the plaint are denied. However, it is submitted that the Janma & Asthan is a holy place of worship and belongs to the deity of Bhagwan SHRI RAM LALLA VIRAJMAN there. It never belonged to and could not have belonged to the plaintiff no.1. It is denied that the plaintiff no.1 ever managed it.

3. That the contents of para 3 of the plaint, as written are denied. The holy JANMA ASTHAN OR JANMA BHUMI is actually a very very old temple, whereas the plaintiff AKHADA on the other hand is an institution and owes its existence for no longer than two hundred years. The correctness of the sketch map and the boundaries of the temple with reference to the map are not disputed. The main presiding deity of the temple is BHAGWAN SHRI RAM, although there are several other idols of other deities, termed as RAM DARBAR and are worshiped. Besides, there are other symbols, such as, 'CHARAN', SITA RASOI' etc. through whom the deity of BHAGWAN SHRI RAM therein is worshiped at SHRI RAM JANMA BHUMI, in addition to the ASTHAN OF SHRI RAM JANMA BHUMI, which by itself is a deity and worshiped as such.



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4. That the contents of para 4 of the plaint are not admitted. A Hindu Temple is deemed to be possessed and owned by a deity. The principal deity of SHRI RAM JANMA BHUMI is BHAGWAN SHRI RAM. Any offerings must have been received by the Manager of the same from time.

5. That the contents of para 5 of the plaint are not admitted in the form they have been pleaded. Although it is made to appear that in he first war of independence in the year 1857 A.D., the British, to divide the Hindus and Muslims, mala fide acted by dividing the said ASTHAN by creating an inner enclosure and describing the boundary within the inner enclosure as a mosque but no Muslim who was a true Muslim, would appear to have frequented it for offering his prayer as the same is prohibited by the SHARIYAT. Moreover even ALAMGIR (EMPEROR AURANGZED) issued a mandate, known as FATWA-E-ALAMGIRI which clearly prohibits the offering of prayer by Muslim at such places. More so the KASAUTI pillars and the carvings of Gods and Goddesses thereon will clearly show that this place could not be used by a true Muslim for offering his prayers therein. It will also be seen that the place wrongly alleged as mosque virtually stood land-locked by Hindu Temple, wherein there was the worship of the deity going on. Entry to this inner enclosure was also obstructed.

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The British tried to set up the descendents of MIR BAQI, a Shiya Muslim, as the MUTWALLI, but he denied the TAULLAT and never looked after the disputed place in any capacity, what to say of looking after as a MUTWALLI thereof.



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6. That the contents of para 6 of the plaint are denied. The building was attached and the Receiver appointed by the order dated 29.12.1949 by the court of Additional City Magistrate, Faizabad. In the said proceedings, which was under Section 145 Cr.P.C. (As it then stood), the Muslims also joined. all those Muslim gentlemen, who have been arrayed as defendant Nos.6 to 8 in the suit, have died. The real and legal representatives of the defendant Nos.6 to 8 have not been properly brought on record, in accordance with the provisions of law.

In view of the facts stated hereinabove, the cause of action for the present suit, does not arise. The suit stands abated completely on the death of the last one of the defendants No.6 to 8, which occurred many years ago. The defendant Nos.3,4 and 5 to the suit are the mere posts and offices and are not juristic persons. The suit against them does not lie. So far as the defendant No.2 is concerned, it has not been impleaded in accordance with the provisions of law.

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7. That the contents of para 7 of the plaint are not admitted. The plaintiff is not entitled to file the suit which apparently is beyond the period of limitation prescribed therefor in accordance with the provisions of law. The plaintiffs did not join the proceedings under Section 145 Cr.P.C. nor did they file any revision against the order passed by the Additional City Magistrate, in the competent court of law.

8. That the contents of para 8 of the plaint are denied. The plaintiff No.2 died and there is no proper and legal substitution made in the plaint.

9. That the contents of para 9 of the plaint are incorrect and are denied. No Muslim individual came to contest the said case as the representative of the Muslim community. The defendant Nos.6 to 8 were all Sunnis and they could not



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represent the Shia community of the Mohammedans. As such, it can not be said that the defendants Nos.6 to 8 could or were representing the Muslim community in general.

10. That the contents of para 10 of the plaint are not admitted. On the own showing of the plaintiffs, the cause of action arose in their favour on 5.1.1950, whereas the suit was filed by them in the year 1959. Thus the suit has been filed beyond the prescribed period of limitation. Further the plaintiffs, being not the Manager or the next friend, of the deity, are not entitled to file the suit.

11. That the contents of para 11 of the plaint are not admitted. The suit has not been valued in accordance with the provisions of law and, therefore, the payment of court fees also is not according to the provisions of law.

12. That the contents of para 12 of the plaint are denied for want of proper knowledge.

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13. That the contents of para 13 of the plaint are not admitted. Even if any such permission, as mentioned by the plaintiffs, to sue the defendants No.6 to 8 on behalf of themselves and on behalf of all the members of the Muslim community, has been obtained under Order 1 Rule 8 of C.P.C., then it must be illegal and deserves to be recalled.

14. The plaintiffs are not entitled to the reliefs claimed.

**ADDITIONAL PLEAS**

15. That the suit, as framed, is bad in the eye of law. The defendants No.3 to 5 are mere posts and offices and are not juristic persons. The defendant No.2 has not been properly impleaded as a party to the suit. As such, the plaintiffs' suit is bad for the misjoinder of parties as also for non-joinder of necessary persons as the parties tot he suit.



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16. That the plaintiffs' suit is barred by the provisions of Indian Limitation Act, as the same is much beyond the period of limitation prescribed by law.

17. That the plaintiffs had adequate remedies under the provisions of the Code of Criminal Procedure (as it then stood) against the order, Returning Officer passed by the Additional City Magistrate, Faizabad under Section 145 of the Cr.P.C. The plaintiffs, having not availed of the said remedy within the time prescribed therefor and having not filed the suit within limitation prescribed therefor, their suit is liable to be dismissed on that score.

18. That at any rate, the Receiver appointed by the Additional City Magistrate, Faizabad under the provisions of the Section 145 Cr.P.C. having died and subsequently the Receiver having been appointed by the Civil Court in the Civil Suit under the provisions of the Civil Procedure Code, the present suit of the plaintiffs in its present form, can not proceed and deserves to be dismissed on this count also.

19. That even if the Receiver, appointed by the Civil Court, is or be impleaded in the suit, then the same is illegal and without jurisdiction.

In this very court another suit the other original suit No.4 of 1989 (Regular Suit No.12 of 1961) is pending, wherein the plaintiffs in this suit are a party. If they have any right or claim for restoration of the property, alleged to be their, they could and can get their relief in the said other Original Suit No.4 of 1989.

20. That the Original Suit No.3 of 1989 (Suit No.26 of 1989) and the other Original Suit No.4 of 1989 (Regular Suit No.12 of 1961) are separate suits with different reliefs claimed and different causes of action. These two suits can not be termed



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as the suits having been consolidated together, since the same would amount the misjoinder of causes of action. They can not be tried together.

21. That in view of the facts, stated hereinbefore, the suit (O.O.S.No.3 of 1989) is liable to be tried separately and is liable to be dismissed with costs.

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**O.O.S. No.3 of 1989 (R.S. No.26-59)**

**In the Court of the Civil Judge, Faizabad**

**Reg. Suit No.26 of 1959**

Nirmohi Akhara and another ……..Plaintiffs

Versus

Babu Priya Datta Ram and others ……Defendants

**Replication to the Joint Written Statement filed by defendants 6 to 8 Hazi Faiku (since dead) Hazi Muhammad Faiq and Ahmad Husain alias Achhan.**

The contents of paras 1 to 14 of the plaint are correct and those of W.S. are wrong and denied.

Para 15. The allegations contained in para 15 of the written statement are totally incorrect and are denied. The property in suit is neither a mosque nor is it known as Babri Mosque, nor was it built by Emperor Babar through Mir Abdul Baqi. Nor was it made wakf. The property in suit is the temple of Janma Bhumi.

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Para 16. The contents of para 16 of the written statement are totally incorrect and are denied.

Para 17. The contents of para 6 of the written statement are denied. Janma Asthan is a different temple not connected with the temple of Janma Bhumi and with which the plaintiffs have no concern. The temple of Janma Asthan is situated to the north of the temple of Janma Bhumi across the road passing between Janma Bhumi and Janma Asthan. The plaintiffs are not aware of the said suit, if any, filed by any person known as Mahat Raghubar Das as Mahant of Janma Asthan.



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Para 18. The contents of para 18 of the written statement are totally wrong and are denied. If any, sketch map be found to have been filed by the said Raghubar Das in the said suit it would be totally false, fictitious and collusive and is not binding on the plaintiffs. The building in suit is nothing else but the temple of Janma Bhumi.

para 19. The contents of para 19 of the written statement are denied.

Para 20. That contents of para 20 of the written statement are pure concoctions are denied.

para 21. The contents of para 21 of the written statement are denied. It was beyond the authority and jurisdiction of the said Chief Commissioner of waqf to declare the temple of Janma Bhumi as a mosque. His decision and declaration to the said effect, if any, is totally null and void. The said notification, if any, is also null and void and of no effect in law. The plaintiffs were never intimated of any proceedings held by the said Chief Commissioner regarding the temple of Janma Bhumi, that is, the building in suit and if any proceedings were conducted secretly and surreptitiously they have no effect in law. The said notification, if any, is neither final nor is it binding on the plaintiffs.

Para 22. The contents of para 22 of the written statement are totally false and are denied. The Muslims were never in possession of the building in suit and the allegation regarding the perfecting of the right of the muslims over the building in question by adverse possession is a pure fiction, concocted for the purposes of the suit.

Para 23. The contents of para 23 of the written statement are totally false. The plaintiffs have always been in peaceful possession of the



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building in suit.

Para 24. The contents of para 24 of the written statement are denied. The plaintiffs have ever been in possession of the temple in suit and no question of expiry of the period of limitation arises.

Para 25. The contents of praa 25 of the written statement are denied. Proper notice u/s 80 of the C.P.C. was given to the defendants 1 to 5. The other defendants have no right to take the plea of want of notice to the defendants 1 to 5.

Para 26. The contents of para 26 of the written statement are deliberately false and are denied. The muslim defendants as well as the other defendants and the whole muslim community know that the idol of the deity are installed in the building in suit i.e. in the temple of Janma Bhumi and regular puja of the idol is being performed under the receivership of the defendant no.1. No prayers were ever offered by any muslim in the said building. The suggestion of the defendants that any idol were installed in the suit building stealthily is false and malicious. The said building is not a mosque and the relief asked for is within the competence and jurisdiction of the civil court to grant.

Para 27. The contents of para 27 of the written statement are false, malicious and scandalous. It was the temple of Janma Bhumi which was the subject matter of proceeding under Section 145 Cr.P.C. and not any mosque as also admitted by muslims in the said proceeding. It is admitted that the proceedings under section 145 Cr.P.C. were illegal and were in total denial of justice to and in flagrant invasion on the fundamental rights of the plaintiffs in regard to their management of the said temple. The defendants had



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no interest in the building in suit and no question of invasion over their rights arises. It is the plaintiffs who have suffered the real loss and who have been deprived of their right of management of the said temple and receiving offerings made thereat.

Para 28. The contents of para 28 of the written statement are totally wrong and are scandalous. The only temple built on the sacred place of the birth of Lord ram Chandra is the Janma Bhumi temple in suit. There is no temple known as temple Janma Asthan as suggested by the defendants built on the place of birth of Lord Ram Chandra. The temple of Janma Asthan which is situate to the north of the temple of Janma Bhumi in suit is a separate temple which is not at all connected with place of birth of Lords Ram Chandra. The defendants seem to exploit the name of the said temple to create a confusion regarding the real place of birth of Lords Ram Chandra. They should point out clearly by correct location as to which is the Janma Asthan Temple mentioned in this para of their written statement. The idols of "Ram Chandra Ji and others" are installed in all the Hindu temples all the world over. The emphasis of communal bias alleged in the written statement is misplaced. The plaintiffs having been aggrieved by the invasion through the illegal proceedings under Section 145 Cr.P.C. upon their fundamental rights of managing their own temple have taken recourse to the court of law in defence of their own legal right. it is the said defendants who supported and instigated by their own fanatic friends are advancing a false and a preposterous claim to the temple of Janma Bhumi by blaspheming it with the name of Babari Masjid. The plaintiffs claim has no relation with any election and to characterise the plaintiff's claim as an attempt to jeopardize the success of a secular state in India is simply scandalous. it is in fact this defendants and their supporters who by denying the plaintiffs rights and by putting up a false and a fanatic claim to the sacred



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place of the birth of Lords Ram Chandra are out to blackmail the noble efforts of the Indian people to the attainment of a secular state.

Para 29. The contents of para 29 of the written statement are wrong and are denied. The description of the property has been correctly given in the plaint and the sketch map with all its inferences is correct.

Para 30. In reply to para 30 of the written statement the plaintiffs contend that they have been in possession and management of the temple of Janma Bhumi ever since the living memory of man. The said temple always belongs to the plaintiff and was managed through his Sarbarahkar the plaintiff no.2 being the present Sarbarahkar.

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Para 31. The contents of para 31 of the written statement are denied.

Para 32. The contents of para 32 of the written statement are denied. If the former Government ever acknowledged the temple of Janma Bhumi in suit as Mosque it was simply preposterous and collusive.

Para 33. That contents of para 33 of the written statement are totally wrong and are denied. The plaintiffs suit as framed is maintainable.

Para 34. That contents of para 34 of the written statement are denied. The plaintiffs claim is perfectly justified. The plaintiffs have been in possession of the temple in suit for an immemorial



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time and e en through the evidence of the construction of the temple by the plaintiff no.1 through his mac… Sarbarahkar may not be traced due to the lapse of immemorial age and want of written records the plaintiffs have acquired title to it by open and adverse possession for a period of time which is longer than the living memory of man.

Para 35. The contents of para 35 of the written statement do not call for a reply. The proceedings under order 1 rule 8 C.P.C. were properly taken. The plaintiffs have no objection to any muslim individual or institution joining the other defendants.

Para 36. The contents of para 36 of the written statement are denied. It is the said defendants who are deliberately resisting the plaintiffs claim on grounds known to them as false and it is they who should be ordered to pay special cost to the plaintiffs.

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**O.O.S. 3/89**

Nirmohi Akhara etc. ……Plaintiff

Versus

Babu Priyadatta Ram etc. ……Defendants

**Replication on behalf of plantiff Nirmohi Akhara against the written statement of Defendant No.10.**

(a) That the allegations contained in plain from para 1 to 14 are correct and are confirmed again.

(b) That the contents contained in para 1 of the written statement of defendant No.10 are denied. The defendant Umesh Chandra was not even in existence in the world when cause of action f the suit accrued. Defendant No.10 has been made a tool and lever by certain group of persons who want to demolish the secular sprit of constitution of India and want to create confussion denying even the mandate of order law occurs.

(c) That contents of para 3 as contained in the written statement of defendant No.10 are denied. Umesh Chandra being of 32 years of age cannot say anything about the Mahant of Nirmohi Akhara or about it's existence. Nor he has any clear conception of Nirmochi Akhara which has it's written customs being recognized some more than 500 years ago, in continuity, some of customs are written in a registered deed dated 19.3.49 (prior to date of attachment dated 29.12.49).

(d) That a chronological events of growth and existence of Math witnessed a glorious revival of Hinduism with the advent of great religious preceptor Shankracharya at the end of 7th century A.C. The Hindus Maths were established for the first time by Shankaracharya who himself founded four Maths at the four corner



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of India (1) Goverdhan Math at Puri, (2) Jyoti Math at Badrinath, (3) Saroda Math at Dwarka, (4) Sringari Math on the Tangabhadra.

(e) That practice of setting up Maths which was started by Shankracharya was followed by almost all the religious Teachers since then. The first in order of time was Ramanujacharya next followed by RAMAND.

(f) That Ramanand founded a sect of Vaishnabs known as Ramats which contains a large element of ascetic population who are to be found in Baharas and Ayodhya Ramanand had established several Maths. Ramanandi Maths consist solely of celebates. They obey no caste rules and admit even Sudras in their brother-hood. That RMATS worship one God in the form of Rama and they call themselves Dasses servants of Lords. Thus existence of plaintiff fraternity is coming down from the time of Rama Nand.

(g) That near about more than 500 years ago a great spiritual preceptor known as Shri Swami Brijanand Ji and Shri Balanand Ji belonging to Ramanandi sect of vairagies (belonging to fraternity of plaintiff) had established three Annu known as (1) Nirmohi, (2) Digamber, (3) Nirwani for protection, improvement of "Chatuha Rama Nandi Sampradaya" comprising seven Akhara in it as follows:-

(1) Sri Panch Ramanandi Nirmohi Akhara.

(2) Sri Panch Ramanandi Nirwani Akhara.

(3) Sri Panch Ramanandi Digambari Akhara.

(4) Sri Panch Ramanandi Santoshi Akhara.

(5) Sri Panch Ramanandi Khaki Akhara

(6) Sri Panch Ramanandi Niralambi

(7) Sri panch Ramanandi Maha Nirwani

(h) That aforesaid Akhara are Panchayati Math and act on a domestic pattern. The real power vests in Panchas. The



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appointment of Mahant is through election by Panchayat and has becomes only a formal head of institution.

(i) The Nirmohi Akhara being a Panchayat' Math can own several temple in it as such Nirmohi Akhara owns a temple known as Ram Janam Asthan i.e. Birth place of Lord Rama.

(j) That it would be pertinent to point out here that Kistwar plot No.163 of first regular settlement of 1861 has been a very big plot having 5 Bighas 19 Biswas of land in it but when in the year 1995 amended map was prepared a road bifurcating Janam Asthan now known as Ram Janam Bhumi lies towards sough of the Road whereas Janam Asthan of Gudar Dass lies towards north side of the Road leading from Hanuman Garhi to Janam Bhumi Road as shown in map of last settlement of 1937 A.D. by Kistwar no.159 and 160.

(k) That at the time of attachment of main building outer enclosures comprising of Ram Chabutara where diety of Bhagwan Ram Lala Ji is installed with Laxman Ji. Bharat Ji and Shatruhan Ji in a cage (Guffa), situate both in the eastern side and western side with Hanuman Ji are installed. The outer enclosure have panchmukhi Shanker Ji, Ganesh Ji etc. also with Chhatti Pujan Asthan where Holy Foot Prints of Lord Ram (Charo Bhaiya) are penerial source of worship of followers of brotherhood of Ram Nandi Vairagies. These outer enclosure was in possession of Nirmohi Akhara as the Fard of 145 Cr.P.C. proceedings it self depicts prior to attachment in 1882 Feb.

(l) The Nirmohi Akhara is a religious denominations and had been maintaining managing the disputed temples since long and as already said in the plaint always used to receive it's offering through Pujaris.

(m) That Baba Baldeo Das was pujari as well Panch of Nirmohi Akhara when attachment was made. His desciple Bhaskar Das now UP-SAPPANCH and General Agent of Nirmohi Akhara was there



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with him discharging the duties of Pujari. According to custom of Nirmohi Akhara 5 Sadhus 3 Pujaries 2 cooks and one Panch always used to live at Shri Ram Janam Bhumi. Building certificate for outer enclosure has always been passed in the name of Mahant Raghunath Das of Akhara.

(n) That Lord Ram Chandra installed in main temple belonged to Panchayati Math of Nirmohi Akhara. The big Deity of Lord Ram Chandra installed therein, is Achal Deity while a little Ram Lalla Ji as called Utsava Murti which according to custom prevalent in Bairagi Sect of Sadhus in Ayodhya are used to discharge certain outside ceremoney like Shrud Punoo etc. Beside there are six Salig Ram Bhagwan. There are Singhasan Silver 2, one Murti of Hanuman Ji and other parshades are there as detailed in para 3 of the plaint.

(o) That Panchas of Nirmohi Akhara and Panchas of Nirwani Akhara fought together against many civil forces to save Hanoman Garhi and Ram Janam Bhumi and as such Hanuman Garhi belonged to Panch Rama Nandi Nirwani Akhara similarly Sri Ram Janam Bhumi belonged to Panch Ramanandi Nirmohi Akhara and same custom riwaz Parampara as are applicable to Hanuman Garhi is and used to be discharged for darshan of Hindu Public at large by Nirmohi Akhara prior to attachment.

(p) That outer enclosure was owned and managed by Nirmohi Akhara, Plaintiff. In the year 1967 it was released by court of City Magistrate, Faizabad in favour Ram Lakhan Das, Goliki a Panch of Nirmohi Akhara in inter see dispute. Again in the year 1973 Regular Suit No.9/73 in the court of Civil Judge, Faizabad and several other disputed intersee upto Regular suit No.39/82 followed. The Judicial record and it's decisions are in favour of Nirmohi Akhara proving the title and possession of plaintiff. Since 1982 the outer enclosure is in possession of Receiver appointed by court in regular suit No.39/82 pending in the court of civil Judge III



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(q) That contents of para 6 of written statement of defendant No.10 are denied. The case was vehemently fought by Panch Nirmohi Akhara. Baldeo Das was a prominent figure who started Akhand Kirtan beneath Tin She Chabutara. He also filed written statement in 145 Cr.P.C. proceeding. Several Mohamdans of Vicinity had filed affidavit in favour of Nirmohi Akhara. The parties arrayed have been arrayed legally and constructive presence of all against whom order 1 rule 8 C.P.C. have been enlarged shall be presumed to exist by motion of law. There is no question of abatement in such a suit. The order dated 30.7.53 passed by City Magistrate in case u/s 145 C.P.C. case No.1/2/18 was only to consigned the record which shall be taken after the order of Civil court.

(r) The contents of para 7 of written statement of defendant No.10 are denied.

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(s) That contents of para 8 of written statement of defendant No.10 is denied. Plaintiff being Panchayati Math is a legal entity which will never die. Some hidden greedy person may emerge to say any thing to their lust against Nirmohi Akhara, but Nirmohi Akhara as being eternal legal body had fought for and is fighting for his legal right regarding disputed temple.

(t) That contents of para 8,9,10,11,12,13 and 14 of written statement of defendant No.10 are denied.

(u) That contents of para 15 are denied being repetition only.

(v) That contents of para 17 are vague and are denied.

(w) That contents of para 18 and 10 of written statement of defendant No.10 are denied. The defendant No.10 is too short to give any advice to plaintiff.

(x) That contents of para 20 of written statement of defendant No.10 are denied.



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(y) That contents of para 21 of written statement of defendant No.10 are misconceived and hence denied.

(z) That Umesh Chandra has been utilized just by Hindu Vishwa Parishad only as a lever for some ulterior motive best known to Umesh Chandra.

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17.5.63

Present:- Sri Sarav Jeet Lal, advocate for plaintiff.
And Sri Mohd. Ayub, advocate for defendants 7 & 8.

Shri Sarab Jeet Lal, advocate states as follows:-

The plaintiff claims that this property in suit is believed to be the birth place of Lord Ram Chandra Ji. So there is a temple of Lord Ram Chandra on it. The plaintiff claims that this temple is in the management and of control of the plaintiff. It is further clarified that this property is not dedicated to the Idol although the temple is made in the land which is the birth place of Lord Ram. It is owned by the plaintiff and the temple was made by the plaintiff. It is added that the present suit is confined to property shown by letters E, F, G, I, J, K, L. although in directions were shown by letters E, F, G, H, P, N, M, L, E belongs to the plaint.

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Sd/-illegible
Sarab Jeet Lal & Mohd.Ayub

Sd/-illegible
Civil Judge,
17.5



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**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**
**LUCKNOW BENCH: LUCKNOW**
**OTHER ORIGINAL SUIT NO.3 OF 1989**
**(Reg. Suit No.26/59)**

Nirmohi Akhara Vs. Babu Pirya Dutt Ram and others

**Issues framed in the court of Civil Judges Faizabad on 17.5.1963**

**Issue No.1:-,**

Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint ?

**Issue No.2:-,**

Does the property in suit belong to the plaintiff No.1 ?

**Issue No.3:-**

Have plaintiffs acquired title by adverse possession for over 12 years ?

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**Issue No.4:-**

Are plaintiffs entitled to get management and charge of the said temple ?

**Issue No.5:-**

Is the property in suit a mosque made by Emperor Babar Known as Babari masjid ?

**Issue No.6:-**

Was the alleged mosqe dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property ?

**Issue No.7:-**

a. Has there been a notification under Muslim Waqf Act (Act no.13 of 1936) declaring this property in suit as a Sunni Waqf ?

b. Is the said notification final and binding ? Its effect.

**Issue No.8:-**

Have the rights of the plaintiffs extinguished for want of



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possession for over 12 years prior to the suit ?

**Issue No.9:-**

Is the suit within time ?

**Issue No.10:-**

(a) Is the suit bad for want of notice u/s 80 C.

(b) Is the above plea available to contesting defendants ?

**Issue No.11:-**

Is the suit bad for non-joinder of necessary defendants ?

**Issue No.12:-**

Are defendants entitled to special costs u/s 35 C.P.C. ?

**Issue No.13:-**

To what relief, if any, is the plaintiff entitled ?

**Issue No.14:-**

Is the suit not maintainable as framed ?

**Issue No.15:-**

Is the suit properly valued and Court-Fee paid sufficient ?

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**Issue No.16:-**

Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936 ?

**Issue No.17:-**

(Added by this Hon'ble Court order dated 23.2.96) “Whether Nirmohi Akhara, Plaintiff, is Panchayati Math of Rama Nandi sect of Bairagies and as such is a religious denomination following its religious faith and per suit according to its owner custom.”



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**ओ0ओ0एस0नं01/1989**

**(आर.0एस0नं02-50)**

**गोपाल सिंह विशारद एवं अन्य .....वादीगण**

**बनाम**

**जहूर अहमद व अन्य.....प्रतिवादीगण।**

वअदालत श्री सिविल जज महोदया, फैजाबाद

अरजी दावा हसव आर्डर 7 कायदा1 जावते दीवानी

वसीम नम्बरी

श्री गोपाल सिंह विशारद उःल0भः 42 साल वल्द ठा गिरधारी सिंह

साः मो0सरगद्वार शहर अजोध्या प्र0हवेली अवध तः वॉ जि0 फैजाबाद मृतक-वादी

राजेन्द्र सिंह आयु 46 वा पुत्र श्री गोपाल सिंह विशारद वर्तमान पता स्टेट बैंक आफ इण्डिया शाखा गोण्डा ।

बनाम

1. जहूर अहमद उ0ल0भ0 68 साल वल्द लामालूम सा0 मो0 बड़ा बाजार ,मृतक शहर अयोध्या म0हवेली अवध त0वाँ जिला-फैजाबाद,शहर अयोध्या
2. हाजी फेकू उ0ल0भ0 65 साल वल्द लामालूम मो0 टेढ़ी बाजार,मृतक,शहर अयोध्या प0हवेली अवध त0वॉ जि0फैजाबाद
3. मोहम्मद फायक उ0ल0भ0 45 साल वल्द लामालूम -मो0टेढ़ी बाजार , मृतक,त0 जि0फैजाबाद,शहर अयोध्या प0हवेली अवध
4. मोहम्मद शमी चुड़ीवाला उ0ल0भ0 45 साल वल्द लामालूम सा0 मो0 रामगंज मृतक ,जि0 फैजाबाद,शहर -अयोध्या प्र0हवेली अवध त0वाँ
5. मोहम्मद अच्छन मियां उ0ल0भ0 45 साल वल्द लामालूम सा0 मो0 कटरा-मृतक,शहर अयोध्या प्र0हवेली अवध त0वाँ जिला-फैजाबाद
6. यूनाईटेड प्राविसेंज,उत्तर प्रदेश इस्टेट, लखनऊ
7. के0के0नैयर , डिप्टी कमिश्नर फैजाबाद
8. श्री मारकण्डे सिंह अडिशनल ,सी0टी0 मजिस्ट्रेट फैजाबाद
9. श्री रामकृपाल सिंह ,सुपिरन्टेंडेंट आफ पुलिस फैजाबाद
10. सुन्नी सेन्ट्रल वक्फ बोर्ड उत्तर प्रदेश लखनऊ मोती लाल बोस रोड पुलिस स्टेशन कैसरबाग लखनऊ द्वारा सेक्रेटरी
11. निर्मोही अखाड़ा अयोध्या हवेली अवध, अयोध्या जि0 फैजाबाद द्वारा सरपंच रामस्वरुपदास, उपसरपंच मं0 भास्करदास तथा पंच राजाराम चन्द्राचार्य

दावा इसतिकरारया वॉ हुकुम इमतनाई दवामी

स्वत्व ज्ञापक तथा संतत निोधात्मक आदेश हेतु वाद पत्र

वादी निम्नलिखत वाद पत्र प्रस्तुत करता है

**धारा1** यह कि मूल वादी 1सनातन धार्मवलम्बी अयोध्या निवासी है और अपने धर्मानुकूल देवतावों के मूर्तियों की पूजा व दर्शन करता था वर्तमान वादी भी अपने मृतक पिता (मूल वादी) की तरह ही सनातन धर्मावलम्बी व देवी देवताओं तथा देव स्थलों का दर्शन, पूजा आदि करने वाला है।



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**धारा2** यह कि वादी जन्मभूमि में भी उस स्थान में जिसका विवरण नीचे दिया है उसमें जो भगवान श्री रामचन्द्र जी की मूर्ति तथा चरण पादुका आदि हैं उसका भी पूजा व दर्शन आदि करता आया है और बिना किसी रोकटोक के उस स्थान में भी पूजा व दर्शन करने का अधिकारी है और भविय में भी सदा करने का अधिकारी है।

**धारा 3** यह कि उन दिनों मूल वादी अस्वस्थ था और स्वस्थ्य होने पर मकर संक्रान्ति अर्थात् 14 जनवरी सन् 1950 ई0 को जब पूजा व दर्शन करने के हेतु जन्मभूमि पर गया तो प्रतिवादी नंम्बर 6 युक्त प्रान्त के कर्मचारियों ने मूल वादी को भीतर जहाँ श्रीरामचन्द्र आदि की मूर्ति विराजमान है जाने से रोक दिया और यह ज्ञात हुआ कि प्रतिवादी 1 लगायत 5 तथा उनके अन्य सहधर्मियों के निराधार तथा असत्य दुराग्रह से प्रभावित होकर प्रतिवादी नंम्बर 6 ने अपने कर्मचारियों प्रतिवादी नम्बर 7 लगायत 9 के द्वारा हिन्दू जनता को उनके पूजा व दर्शन सम्बधी न्यायपूर्ण उचित अधिकार से वंचित कर रक्खा है । और प्रतिवादी नम्बर 6 प्रति वादीगण नम्बर 1 लगायत 5 आदि के दुराग्रह के कारण यह घोाणा करते हैं कि भविय में भी हिन्दू

जनता को इसी प्रकार उनके उपर्युक्त अधिकारों से वंचित रक्खेंगे इस अन्यायपूर्ण कार्य से मूल वादी के स्वत्वक अधिकार जिसका उसने सदा उपभोग किया था क्षति हो रही है और ऐसी परिस्थितियो में वर्तमान वादी को भी उसके उपरोक्त धार्मिक अधिकारों के प्रयोग में प्र ातिवादीगण द्वारा अनुचित व अवैध हस्तक्षेप की पूर्ण संभावना व आशंका है।

**धारा 4** यह कि प्रतिवादी नम्बर 6 अपने कर्मचारियों अर्थात् प्रतिवादी नम्बर 7 लगायत 9 के द्वारा हिन्दू जनता पर अनुचित दबाव डाल रहे है कि भगवान श्री रामचन्द्र आदि की मूर्तियों को वर्तमान स्थान से हटा देगें अन्य प्रतिवादीगण उनका पूर्ण सहयोग दे रहे है और हर प्रकार इस अनुचित व अन्याय पूर्ण कार्य करने के लिए कटिबद्ध हैं।

**धारा 5** यह कि उपर्युक्त अन्याय पूर्ण अनुचित व अवैध कार्य में समस्त प्रति वादीगण ाडयन्त्र रचे हुए है, जिससे वादी के स्वत्व व अधिकार पर आघात है और किसी भी दृटिकोण से प्रतिवादी गण नम्बर 1 लगायत 5का दुराग्रह मान्य नहीं हो सकता। और प्र ातिवादी नम्बर 6 लगायत 9 के उपर्युक्त घोाणा महिी विक्टोरियों की घोाणा जो उन्होनें धर्म के सम्बंध में राज स्थापित करने के समय भारतर्वा में किया था,उसके विरुद्ध है और राज्याधिकार के परे हैं तथा( द्वथ्द्धद्धड्ड ध्द्धड्ढद्ध) है,और प्रतिवादी नम्बर 6 लगायत 9 को स्द्वदृष्ड्ढद्धदश्ड्ढदद्द दृढ स्द्वड्डत्ड एहद्द 1935के द्वारा प्राप्त अधिकारों की सीमा के बाहर है, अतः यह नितांत अत्याचार पूर्ण कार्य है। और चूकिं यह सब कार्य न्याय व कानून के विरुद्ध है, अतः यह वाद-पत्र उपस्थित करना अनिवार्य हुआ।



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**धारा 6** यह कि वाद पत्र का विवाद कारण तारीख14जनवरी सन्1950ई0से इस न्यायालय के सीमा के भीतर उत्पन्न हुआ है व ततपश्चात् भी लगातार वर्तमान वादी के उपरोक्त धार्मिक अधिकारो के प्रयोग में प्रतिवादीगण द्वारा अनुचित व अवैध हस्तक्षेप होते रहने से इस न्यायालय के सीमाधिकार में उत्पन्न है।

**धारा 6अ** यह कि मूल वादी की मृत्यु दौरान वाद दिनाँक 28.12.89 को हो गयी । वर्तमान वादी उसका पुत्र व वैधानिक उत्तराधिकारी है और उसको भी अपने पिता की तरह वे समस्त धार्मिक अधिकार प्राप्त है अतः वर्तमान वादी को भी वाद चलाने का अधिकार है , प्रतिवादीगण 1ता 5 की भी मृत्यु हो चुकी है उनके स्थान पर किसी को पक्षकार बनाने की आवश्यकता नहीं है।

**धारा 6ब** यह कि न्यायालय के आदेश दिनाँक 17.10.88के अनुसार प्रतिवादी नं010 को मुकदमे में पक्षकार बनाया जा रहा है और वाद प्रतिवादी नं010के विरुद्ध भी दायर किया जा रहा है । तथा वाद पत्र के उपसम प्रतिवादी नं010के विरुद्ध भी मांगा जा रहा है।

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**धारा 7** यह कि इस वाद तथा उपशम का मूलाकंन वाद वादी 5100/-रुपया नियत करता है परन्तु वाद पत्र स्वत्व ज्ञापक तथा सतत निोधात्मक आदेश हेतु है ,अतः19 और 5100/-के दशांश पर 510/-पर 51 का न्यायशुल्क अर्थात की लगाता है ।

**धारा 8** वादी निम्नलिखित उपशम का प्रार्थी है।

(क) यह घोाणा की जाये कि वादी अपने धर्म नियम तथा रीति के अनुसार श्री भगवान रामचन्द्र आदि विराजमान स्थान जन्मभूमि जिसका वि वरण निम्नांकित है के निकट जाकर विला रोक टोक निर्विवाद , निर्विघ्न पूजा व दर्शन करने का अधिकारी है और प्रतिवादीगण 1 लगायत 6 और 7 लगायत 9 व प्रतिवादी नं0 10 व उनके स्थानापन्नों को वादी के उपर्युक्त अधिकार में बाधा डालने का कोई अधिकार नहीं है।

**(ख)**स्थायी व सतत निोधात्मक आदेश प्रतिवादीगण के विरुद्ध प्रसारित किया जावे कि प्रतिवादीगण 1लगायत 6 और 7 लगायत 9 व प्रतिवादी नं010उनके



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स्थानापन्न स्थान जन्मभूमि जिसका विवरण निम्नाकिंत है ,उसमे श्री भगवान रामचन्द्र आदि के विराजमान मूर्तियों को उस स्थान से जहाँ वह है कभी न हटावें तथा उसके प्रवेश द्वार व अन्य आने जाने के मार्ग न बन्द करें और पूजा व दर्शन में किसी प्रकार की विघ्न व बाधा न डालें।

**(ग)** वादी को प्रतिवादी गण से इस व्यवहार का कुल खर्चा दिलाया जाय।

**(घ)** अन्य तथा विशेा उपशम जो सब बातो को दृटि में रखते हुए न्याययुक्त हो,वादी को प्रतिवादीगणके विरुद्व दिलाई जावे।

विवरण वाद ग्रस्त स्थानः-.....

पूर्व-जन्म भूमि का भण्डार व चबूतरा

पश्चिम-परती

उत्तर-सीता रसोइया

दक्षिण- परती

मैं वादी मुकिर हूँ कि अरजी दावा की दफा 1 लगायत 5 वइल्म वाँ दफा 6वा 7 वयकीन मेरे सही वाँ दुरूस्त है और दफा 8के सही वॉ दुरूस्त होने को वादा करता हूँ तसदीक तः13.1.50को वमोकाम कचहरी दीवानी फैजाबाद की ।

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**न्यायालय श्री0सिविल जज फैजाबाद,**

**(ओ0ओ0एस0नं01/1989)**

**(आर0एस0नं02-50)**

**बयान तहरीरी मिनजानिब मुद्दालेहुम 1ता 5 हस्ब आ0 8 का0 1 जाब्ता दीवानी**

श्री गोपाल सिंह विशारद वल्द ठाकुर गिरधारी सिंह साकिन मुकाम सर्सद्वारा शहर अयोध्या परगना हवेली अवध जिला फैजाबाद----------वादी

बनाम

1.श्री जहूरअहमद वल्द नूर मुहम्मद

2. हाजी मुहम्मद फायक वल्द हाजी मुहम्मद रमजान 1लगायत 5साकिनान

3,मोहम्मद शमी वल्द मखदूम बक्स अयोध्या परगना हवेली अ वध

4.मुहम्मद अच्छन मिया वल्द जाहिर हसन त0व जिला फैजाबाद

5.हाजी फेकू वल्द छज्जू

6.यू0पी0लखनऊ

7.के0के0के0नैयर डिप्टी कमिश्नर फैजाबाद

8.श्री मार्केन्डेय अडीशनल मंजिस्ट्रेट फैजाबाद

9.श्री रामकृपाल सिंह सुपरिन्टेन्डेन्ट पुलिस फैजाबाद .....मुद्दालेहुम

नम्बर मुकदमा 2सन्50ई0
बयान तहरीरी 21.2.50
तनकीह 2.3.50

**दावा इस्तकरारिया व हुकुम इम्तिनाई दवामी**

**दफा 1**. इनकार है

**दफा 2** कुलम जमून दफा हाजा से इंकार है जिस जायदाद का दावा किया जाता है वह जनमभूमि नही हैं। बल्कि शहन्शाह हिन्द बाबर शाह की तामीर करदा मस्जिद है।

**दफा 3**. इन्कार है । कुल मजमून दफा हाजा महज फरजी व बेबुनियाद वाकयात वज़ा करके मुद्दई ने बदनीयती से दावा हाजा खिलाफ़ मुद्दालेहुम मुजीब व दीगर मुद्दालेहुम दायर किया है।

**दफा 4** यह कि जिस कदर मुताल्लिक मुद्दालेहुम 6 लगायत 9 दर्ज अर्जी दावा हैं उससे बवजह लाइल्मी इंकार है। बकिया मजमून दफा हाजा बिलकुल फरजी व बेबुनियाद है जैसा कि उजरात मजीद से वाजे होगा।

**दफा 5** यह कि इन्कार है मुलाहिजा ही उजरातमजीद।



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**दफा 6** कोई बिनाय मुखासिमत दावा हाजा मुद्दई को हासिल नहीं है।

**दफा 7** यह कि मालियत दावा मुद्दई ने दीदा व दाजिस्ता बहुत कम जाहिर किया है। मालियत दावा हाजा कमअज कम 5लाख रुपया है कोर्ट फीस भी कम अदा किया गया है।

**दफा 8** यह कि मुद्दई किसी दादरसी हाये मतलूबा का किसी सूरत में पाने का मुस्तहक नहीं है।

## उ ज रा त म जी द

**दफा 9** यह कि जिस जायदाद का मुद्दई ने दावा किया है वह शहन्शाह हिन्द बाबर शाह की तामीर करदा मस्जिद मौसूमा बबाबरी मस्जिद है । जिसको शंहशाह मजकूर ने बाद फतेहआबी हिन्दुस्तान दौरान कयाम अयोध्या अपने वजीर व मुदारूल मोहाम मीर बाकी के यहतमाम से सन्1528में तामीर कराया और तामीर करके तमाम मुसलमानान के लिए वक्फ आम कर दिया। जिसमें तमाम मुसलमानान का हक इबादत है।

**दफा10** यह कि बाद तामीर मसजिद मजकूर शहंन्शाह बाबर ने मसजिद मजकूर की खिताबत व मरम्मत व दीगर इख़राजात के लिए मु0 60 रू0 सालाना का अतिया अपने खजाना शाही से मुकर्रर किया। जो दौरान कयाम सलतनत मुगलिया मस्जिद मजकूर को बराबर मिलता रहा और जमाना जवाल सलतनत मुगलिया नवाबीन अवध ने भी इस अतिया को कायम रक्खा और अपने जमाना हकूमत में रकम अतिया मजकूर को इजाफा करके

मु0302रू0आना 6पा0 सालाना अता करना मन्जूर किया जो रकम बाद इंतजाय सलतनत अवध बृटिश गवर्नमेंट ने भी जारी रखा और जमाना बन्दोबस्त अव्वल में गवर्नमेंट बर्तानिया ने मुतवल्लियान को बजाय नकद अतिया मजकूर के मवाजियात सोलापुरी व वहोरनपुर मुतखिल अयोध्या बतौर माफी बिनावर मुसारिफ मसजिद बाबरी अता किया।

**दफा 11** यह कि सन्1885में मु0रघुबरदास महन्त जनमस्थान अयोध्या ने खिलाफ सेक्रेटरी आफ स्टेट्स फार इन्डिया इन काउन्सिल व मु0 असगर मुतवल्ली व खतीब मसजिद बाबर मजकूर 1दावा इजलास जनाब सब जज साहब बहादुर फैजाबाद में बइजहार मिलकियत खुद दायर किया।

**दफा12** यह कि मुकदमा मजकूर के सिलसिले में मुद्दई ने एक नक्शा नजरी भी दाखिल किया था जिसमे मसजिद बहुत साफ व सरीह तौर पर दिखलाया था और उस पर कोई एतराज नहीं किया था। दादरसी सिर्फ एक जुजो आराजी मौसूमा चबूतरा पर माँगी थी। अब मुद्दई मुकदमा हाजा का यह कहना कि कुल इमारत मुतदाविया जनमभूमि का मंदिर है। बिलकुल गलत और बेबुनियाद है और मुकदमा हाजा के लिए बद्यान्ती व बेईमानी से गढ़ा गया है।

**दफा13** यह कि अदालतसिब जज साहब बहादुर फैजाबाद ने बतारीख 24 दिसम्बर सन्85ई0दावा मुद्दई बाबत चबूतरा भी खारिज कर दिया और फैसला मजकूर अदालत अपील से भी बहाल रहा और सिब जज साहब के फैसले में जो रिमार्क मुताल्लिक



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खरिजुल मियाद व मिलिकियत मुद्दई निसबत चबूतरा मुतदाविया मुकदमा मजकूर मुद्दई के हक में था उसको मन्सूख व मुस्तरद कर दिया और मुकदमा व अपील फुकल्लेयतन खारिज कर दिया।

**दफा14** यह कि मुकदमा मजकूर निहायत सनसनी खेज था और उसने तमाममहन्थान अयोध्या व मुजज्जि अहेले हिनूद अयोध्या फैजाबाद मुद्दई मजकूर की हिमायत व पैरवी में थे तमाम अहेले हिनूद को इल्म मुकदमा मजकूर का था और है।

**दफा15** यह कि बमौजिब मुसलिम वक्फ ऐक्ट 13सन्1936चीफ कमिश्नर औकाफ मुकरर हुए और चीफ कमिश्नर मजकूर ने बाद तहकीकात व मुआयना मौका मस्जिद बाबरी यह तय किया मस्जिद बाबरी का तामीर कुनिन्दा शहन्शाह बाबर सुन्नीउल मजहब था और वक्फ मुताल्लिक मस्जिद मजकूर सुन्नी वक्फ है और इसी सिलसिले में कानूनी नोटीफिकेशन भी जारी कर दिया।

**दफा16** यह कि कब्जा मुसलमानन बतौर वक्फ मसजिद बाबरी पर सन्1528ई0 से आज तक मुसलसल चला आता है इस वजह से अगर किसी जमाने मे मुद्दई या कोई और हिन्दू यह साबित भी करे कि मसजिद बाबरी की तामीर के पहले कोई मंन्दिर मुकाम मस्जिद मजकूर पर था जिससे मुद्दालेहुम मुजीब को कतअन इन्कार है तो उस हालत में भी कब्जा मुसलमान जायद अज 400साल और बहरसूरत जायद अज 12 साल से वइल्म व आगाही मुद्दई वदजुमला अहेले हिनूद बतौर मस्जिद वक्फआमः चला आता है। इस वजह से अहले हिन्दू व नीज मुद्दई का कोई हक बाकी नहीं रहा ।

**दफा 17** यह किमुद्दई का कब्जा या कोई हक इमारत मुतदाविया में न कभी था और न है इस वजह से दावा इस्तकरारिया हसब दफा 42कानून दादरसी खास नाकाबिल फजीराई अदालत है।

**दफा18** यह कि दावा मुद्दई किसी हालत में अन्दर मियाद नहीं है।

**दफा19** यह कि मुद्दई ने अपने अर्जी दावा में न कोई जाती इस्तहकाक बाबत इमारत मुतदाविया जाहिर किया है और न उसको कोई इस्तहकाक निसबत जायदाद मुतदाविया कभी पैदा था या है। ऐसी सूरत में दावा हाजाकाबिल अखराज है।

**दफा20** यह कि मुद्दई ने कोई दरख्वास्त हस्ब आ01कायदा 8 जा0दीवानी नहीं दिया है और न किसी और तरीके से अपने को मनजानिब अहले हिनूद बमजाज दावा जाहिर किया है । हाला कि अपने अर्जीदावा में मुद्दई ने तमाम हिन्दू जनता के हुकूक के तहफूज के लिए ईस्तदलाल किया है और दादरसी माँगी है ऐसी सूरत में दावा हजानाकिस वकाबिल एखराज है ।

**दफा 21** यह कि मुद्दई ने मुद्दालेहुम 6 लगायत 9 के खिलाफ कोई नोटिस हस्ब



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दफा 80 जाब्ता दीवानी जारी नहीं किया है इस बिना परभी दावा हाजा नाकिस वनकाबिल फजीराई अदालत है ।

**दफा22** यह कि मुद्दालेह मुजीब को इल्म नहीं है कि जायदाद मुतदाविया यानी मसजिद बाबरी के अन्दर कोई मूर्ति है । ता0 16.12.1949 ई0 तक उसमें नमाज हुई। उस वक्त तक उसमें कोई मूर्ति न थी । लेकिन अगर कोई मूर्ति मस्जिद के अन्दर किसी सख्स ने चोरी व बदनीयती से बाद ता0मजकूर रख दिया हैतो उससे मसजिद की सरीही व बेहुरमती वदनापाकी मुतसव्वर है और फेल मजकूर कानूनन मुजरिमाना है और अगर मुद्दई या कोइ दूसरा सख्त मसजिद मजकूर में मूर्ति पूजने या दर्शन करने की गरज से मस्जिद के अन्दर दाखिल होना चाहता है तो वह जुर्म का मुतकिब है । चुनान्चे ऐसी हालत में अदालत दीवानी दादरसी मतलुबा देने से कासिर है बहरहाल उससे मुद्दईया किसी गैर मुसलिम को मसजिद मजकूर में कोई हक नहीं पैदा हो सकता।

**दफा23** यह कि अर्जीदावा में मुद्दई ने यह नहीं जाहिर किया है कि मुद्दालेहुम 6लगायत 9 ने किस तरह से मुद्दई से मुजाहिमत किया है और न उनके अहकाम का कोइ हवाला दिया है अर्जी दावा नियाहत मोहमिल व लचर है।

**दफा24** यह कि मुद्दई ने यह भी जाहिर नहीं किया है कि मुद्दालेहुम 6 के किन कर्मचारियों ने और किस हैसियत से मुद्दई को रोका है मजमून अर्जी दावा के लिहाज से दा वा महज उन मखसूस कर्मचारियों पर ही हो सकता था।

**दफा 25**, यह कि जहाँ तक मुद्दालेहुम मजीब को इल्म है मुद्दालेह नं09 ने काररवाई हस्ब दफा 145 जाब्ता फौजदारी जायदाद मुतदाविया यानी मसजिद बाबरी के मुताल्लिक किया है कारवाई मजकूर सरासर गलत व खिलाफ इन्साफ व मुद्दालेहुम मुजीब के हकूक को पामाल करने और मुद्दई व दीगर शोरिस पसन्द फिरकावार असखास को मदद देने की गरज से बइइल्म व ईमा मुद्दालेहुम 7 व 8 मुसम्मे गुरुदत्त सिंह साविक सिटी मजिस्ट्रेट फैजाबाद की गयी है।

**दफा 26** यह कि काररवाई दफा 145जा0फौ0से मुद्दालेहुम मुजीब को इत्तिफाक नहीं है लेकिन कानूनन काररवाई दफा मजकूर के होते हुए कोई दावा हुकुम इम्तिनाई काबिल जीराई अदालत नहीं है। अदालत दीवानी मजाज नहीं है कि यह एहकामात ग वर्नमेन्ट या यह कामात अदालत फौजदारी मजाज में कोई मदाखिलत करे।

**दफा 27** यह कि अयोध्या में एक मंदिर मौसूमा बमंदिर जन्मस्थान श्री रामचन्द्र की जनम भूमि पर मुद्दत मदीद से कायम व मौजूद है और उस मंन्दिर में रामचन्द्र जी वगैरह की मूर्तियाँ विराजमान है दावा हाजा निसबत मसजिद बाबरी बइजहार स्थान जनमभूमि



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मुद्दई व उसके दीगर फिरकापरस्त व मुफसिदा परदाज साथियों की जिद्दत व इख्तराह का नतीजा है और आइन्दा इलेक्शन में अकसरीयत की हमदर्दी और वोट हासिल करने की गरज से व नीज कांग्रेस गवर्नमेंन्ट व हिन्दुस्तान की च्ड्ढहद्वथ्ठ्ठद्ध च्द्दठ्ठद्दड्ढ को नाकाम व बदनाम करने की गरज से दायर किया गया है ।

**दफा 28** यह कि मुकदमा हाजा महज मुद्दालेहुम मुजीब को हैरान व परेशान व जेरबार करने की गरज से बदनीयती से बिला किसी इस्तहकाक या वजह से दायर किया गया है इसलिए मुद्दालेह मुजीब हर सूरत में खरचा खास हस्ब दफा 35 अजाब्ता दीवानी अलावा खरचा मुकदमा मुद्दई से दिला पाने के मुस्तहक व मजाज है।

**दफा 29** यह कि मुद्दई एक निहायत मामूली कम हैसियत व बेमाया सख्स है और वह महज इसी गरज से मुद्दई बनाया गया है ताकि अखराजात मुकदमा मुद्दालेहुम वसूल न कर सकें। इसलिए इन्साफन व कानूनन यह जरुरी है कि मुद्दई से माकूल जमानत बाबत खरचा मुकदमा तलब की जावे ।

**दफा 30** यह कि ववजूहात बाला दावा मुद्दई मय खरचा काबिल एखराज है।

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बाबू प्रियादत्त राम वगैरह.....मुद्दालेहुम

**बयान तहरीरी मिनजानिब मुद्दालेहुम 6 लगायत 8**

**धारा 1** इनकार है गलत है।

**धारा 2** इनकार है गलत है।

**धारा 3** इनकार है निहायतमुबहम ओर गलत है ।नक्शानजरी से भी इनकार है ।

**धारा 4** बिलकुल गलत व फर्जी है।

**धारा 5** बिलकुल फर्जी और गलत है।

**धारा 6** जिस तौर पर तहरीर है तसलीम नहीं है।

**धारा 7** फर्जी व गलत है व इनकार है ।

**धारा 8** फर्जी व गलत है व इनकार है ।

**धारा 9** बिलकुल गलत व फर्जी है।

**धारा10** मुद्दैयान को कोई बिनाय मुखासमत पैदा नही है।

**धारा11** मालियत कम लगाई गई है और कोर्ट फीस कम अदा की गयी है ।

**धारा12** इनकार है।

**धारा13** इनकार है।

**धारा14** मुद्दैयान दादरसी मनूलवा के मुस्तहक नहीं है।

**<u>उजरात मजीद</u>**

**धारा15**- यह कि जिस जायदाद का मुद्दैयान ने दावा किया है वह सहनशाह हिन्द बाबर बादशाह की तामीर करदा मशजीद मौसूमे बाबरी मसजिद है जिसको सहनशाह मजकूर ने अपने बजीर व मदारुल मोहाम मीर बाकी के एहतनाम से 1528 ई0में तामीर कराया। और मुसलमान के लिए वक्फ आम कर दिया जिसमे तमाम मुसलमानान का हक इबादत है ।

**धारा16** यह कि वाद तामीर मसजिद मजकूर सहनशाह बाबर रहमतुल्ला अलेह ने मसजिद मजकूर की हिफाजत मरम्मत व दीगर अखराजात के लिए



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मु060 रुपया सलाना का अतिया अपने खजाने शाही से मुकर्रर किया। जो दौरान कयामसलतन मुगलिया मसजिद मजकूर को बराबर मिलता रहा । बाद जैंमाने जबाल सलतनत मुगलिया नौआबीन अवध ने दी इस अतीये को कायम रखा। और अपने जमाने हुकुमत में रकम अतिये मजूकर को इजाफा करके मु0302 रुपये 3 आना 6 पाई सलाना कर दिया । जो रकम बाद रखतीताम सलतनत अवध ब्रिट्रिश गवर्नमेन्ट ने भी जारी रखा। और उस जमाने में बन्दोवस्त अव्वल में गवर्नमेंट बर्तानिया ने मुतबलियान को बजाए नकद अतिया मजकूर के मुआविजियात सोलापुरी व घूरनपुर व बहोरनपुर मुतसीर अयोध्याबतौर माफी बिनाबरमसारित मसजिद बाबरी अता किया।

**धारा17** यह कि सन्1885ई0मुसम्मी रघुबर दास महन्थ जनम स्थान अयोध्या ने खिलाफ सिक्रेटरी आफ स्टेट फार इंण्डिया इन कौसिंल व मुसम्मी मुहम्मद असगर मुतवली व खतीब मसजिद बाबरी मजकूर एक दावा इजलास जनाब सब जज साहब बहादुर फैजाबाद न मे ब इजहार मिलकियत खुद दायर किया।

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**धारा18** यह कि मुकदमा मजकूर के सिलसिले मे मुद्दई ने एक नक्शानजरी में भी दाखिल किया। जिसमें मसजिद बहुनत साफ व सरीह तौर पर दिखलाया था इस पर कोई एतराज नहीं किया था । दादरसी सिर्फ एक जुजबे आराजी मौसूमा चबूतरा की मॉगी थी अब मुद्देयान मुकदमा हाजा का यह कहना कि कुल इमारत मुतदाविया जनम मूमि का मंदिर है बिलकुल गलत और बेबुनियाद है। और मुकदमा हाजा के लिए बयान्ते व बेईमानी से गढ़ा गया है ।

**धारा19** यह कि अदालत सब जज बहादुर फैजाबाद से बतारीख 24दिसम्बर सन्85ई0 दावा मुद्दई बाबत चबूतरा भी खारिज कर दिया और फैसला मजकूर अदालत अपील से भी बहाल रहा और सब जज के फैसले में जो रिमार्क मुंतालिक खारजुल मियाद मिलकियत मुद्दई निस्बत चबूतरा मुतदाविया मुकदमे मजकूर मुद्दई के हक में था



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उसको मनसूख व मुस्तरद कर दिया और मुकदमा व अपील कुल्लीयतन खारिज कर दिया।

**धारा20** यह कि मुकदमा मजकूर निहायत सनसनीखेज था और इसमें तमाम महन्थान अयोध्या व मुआजिज अहले हिनूद अयोध्या व फैजाबाद मुद्दई मुकदमा की हिमायत व पैरवी में थे। तमाम अहले हिनूद को इल्म मुकदमा मजकूर का था और है।

**धारा21** यह कि बमौजिब मुसलिम वक्फ एक्ट 13सन्36 ई0 चीफ कमीश्नर अ वकाफ मुकर्रर हुए । और चीफ कमीश्नर मजकूर ने बाद तहकीकात व मुआयना मौका मसजिद बाबरी यह तय किया कि मसजिद बाबरी का तामीर कुलिन्दा सहनशाह बाबर सुन्नी युल मजहब था और वक्फ मुतवल्ली मसजिद मजकूर सुन्नी वक्फ है। और इसी के सिलसिले में कानूनी नोटिफिकेशन भी जारी कर दिया जो कतई और फाइनल हो चुका है।

**धारा22** यह कि कबजा मुसलमानान बतौर वक्फ मसजिद बाबरी पर सन्1528ई0से आज तक मुसलसल चला आता है इस बजह से अगर किसी जमाने में मुद्देयान या कोई और हिन्दू यह साबित भी करे कि मस्जिद बाबरी की तामीर के पहले कोई मंदिर मुकाम मसजिद मजकूर पर था जिससे मुद्दालेहुम मुजीब को कतान इंकार है सो इस सूरत में भी कब्जा मुसलमानान जायद अज 400साल और बहर सूरन जायद अज 12साल से व इल्म व आगाही मुद्दैयान जुमला अहले हिनूद बतौर मस्जिद वक्फ आम चला आया है इस वजह से अहले हिनूद व नीज मुद्दैयान का कोई हक बाकी नहीं रहा।

**धारा23** यह कि मुद्दैयान का कब्जा या कोई हक इमारत मुतदाविया मे न कभी था और न है । इस बजह से दावा नाकाबिल पिजीराई अदालत है।

**धारा24** यह कि दावा मुदैयान किसी हालत में अन्दर मियाद नहीं है।

**धारा25** यह कि मुद्दैयान से मुद्दालेहुम 1ता 5 के खिलाफ कोई नोटिस दफा 80जा0दी0 जारी नही किया । इस बिना परभी दावा हाजा नाकीस व नाकाबिल पीजिराई



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अदालत है।

**धारा26** यह कि मुद्दालेहुम मुजीब को इल्म नहीं है कि जायदाद मुनदाबिया यानी बाबरी मसजिद के अन्दर कोई मुर्ती है । 16दिसम्बर सन्49 ई0तक उसमे नमाज हुई । उस वक्त तक उसमें कोई मूर्ति नही थी लेकिन अगर कोई मूर्ती मस्जिद के अन्दर किसी सख्श ने चोरी बदनियतीसे बाद तारीख मजकूर रख दिया है तो उससे मसजिद की सरीहीबैहुरमते और ना पाखी मुतसव्वर है और फेल मजकूर कानूनन मुजरमाना है और अगर मुद्दैयान या कोई दूसरा सख्श मस्जिद मजकूर में मूरति पूजने या दर्शन करने की गरज से मसजिद मजकूर के अन्दर दाखिल होना चाहता है तो वह जुर्म का मुरतकिव है । चुनांचे ऐसी हालत में अदालत दीवानी दादरसी मतूलबा देने से कासीर है । बहरहाल इससे मुद्दैयान या किसी गैरमुस्लिम को मस्जिद मजकूर में कोई हक नहीं पैदा हो सका।

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**धारा-27.** यह कि जहाँ तक मुद्दालेहुम मुजीब को इल्म है, मुद्दालेह नं0- 5 ने कार्यवाही हस्ब दफा 145 जा0 फौ0 जायदाद मुनदाबिया यानी बाबरी मस्जिद के मुतालिक किया है । कार्यवाही मजकूर सरासर गलत , खिलाफ इंसाफ और मुद्दालेहुम मुजीब के हकूक को पामाल करने और मुद्दैयान व दीगर शैंरीस पसन्द फिरकेबा राना असखास को मदद देने की गरज से बइल्म व इमा के0के0 नायर साबिक डिप्टी कमिश्नर फैजाबाद व श्री गुरदत्त सिंह साबिक सिटी मजिस्ट्रेट फैजाबाद की गई है ।

**धारा-28.** यह कि अयोध्या में एक मंदिर मौसूमा बमंदिर जनम स्थान श्री राम चन्द्र जी की जनम भूमि पर मुद्दत दराज से कायम व मौजूद है और उस मंदिर में राम चन्द्र जी वगैरह की मुरतियां विराजमान हैं। दावा हाजा निस्बत मसजिद बाबरी व इजहारे इस्तहकाक जनम भूमि मुद्दैयान व उसके दीगर फिरका परस व



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मुफसिदा परदास साथियों की जिद्दत व इस्तराक का नतीजा है। और इलेक्शन में अकसरियत की हमदर्दी और वोट हासिल करने की गरज से वव नीज कांग्रेस गवर्नमेंट व हिन्दुस्तान की सिकुलर स्टेट को ना काम बनाने व बदनाम करने की गरज से दायर किया गया है ।

**धारा-29.** यह कि अर्जी दावा में निहायत मुवहम तरीके से जायदाद मुतदाविया जाहिर की गई है और नक्शा नजरी में बिल्कुल गलत है और जितनी चीजें नक्शा नजरी में दिखलाई गई हैं, वह बिल्कुल गलत और फर्जी हैं। मस्जिद के पूरब व दखिन व उत्तर कब्रिस्तान है जिसमें पोख्ता व खाम कबरें मौजूद हैं और न वहां शंकर चबूतरा है न सीता कोप है, न लोमस चौरा है,न हनुमानद्वार और बारा भगवान व समाधि मारकण्डे वगैरह है नक्शा नजरी में जिस कदर चीजें दी हुई हैं, वह बिल्कुल गलत व फर्जी है और मनमानी है । और बदनीयती से जाहिर की गई है । अलावा इसके यह नहीं पता चलता कि ए0 बी0सी0डी0का नंबर खसरा या नंबर आबादी क्या है और उसकी लम्बाई- चौड़ाई ओर मुकाम बूक क्या है ।

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**धारा-30.** यह कि मुद्दैयान ने यह जाहिर नहीं किया है कि वह किस तरह जायदाद मुतदाि वया के कब से और किस तरह मालिक हुए जब तक मुद्दैयान इस बात की वजाहत न करें उस वक्त तक मुकम्मल जवाबदेही नहीं हो सकती ।

**धारा-31** यह कि मुसम्मी गोपाल सिंह विशारद व परमहंस राम चन्द्र दास ने दो दावे बाबरी मस्जिद के मुतालिक किये हैं। जो जेर कार्यवाही हैं। असखास मजकूर का मुकदमा हाजा में फरीक होना चाहिए अलावा इसके महन्थ जनम स्थान को भी फरीक होना जरुरी है ।

**धारा-32.** यह कि बाबरी मस्जिद मुसल्लमा तौर से मसजिद है। और गवर्नमेंट साबिका और मौजूदा उसको मसजिद मानते चली आई है । ऐसी हालत में दावा मुद्दैयान



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नारबा और ना मुनासिब है और अकलियत पर ना मुनासिब और बेजा जुल्म है।

**धारा-33.** यह कि मसजिद मुतदाविया हस्ब दफा 146 जा0 फौ0 कुर्क है । ऐसी हालत में दावा हाजा जिस तौर पर दायर हुआ है, कानूनन काबिल पिजीराई अदालत नहीं है ।

**धारा- 34.** यह कि दावा बइजहार मिलकियत बहर सूरत बातिल और ना काबिल पीजिराई अदालत है और दावा में तजाद पैदा है ।

**धारा-35.** यह कि मुद्दालेहुम मुजीब को कोई इल्म कार्यवाही हस्ब आ0 1 कायदा 8 जा0 दी0 नहीं है । मुद्दालेहुम मुजीब के पास बमुकदमा हाजालडने के लिए सरमाया है और न वह मुकदमा हाजा लड़ने के अहैल हैं । मुद्दैयान का मनशा है कि मुद्दालेहुम मुजीब को धमका व डरा कर मजबूर कर दे ,दावा हाजा में तमाम मुसलमानान हिन्दुस्तान की दिलचस्पी है चुनांचे इस मुकदमे में ऐसे लोगों को मुद्दालेह बनाना चाहिए जो सही नुमाइन्दगी कर सके।

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**धारा- 36.** यह कि दावा हाजा बदनीयती से जेरबार व परेशान करने की गरज से दायर किया गया है,जो मय खरचा स्पेशल तावान हस्ब दफा 35अ जा0 दीवानी काबिल अखराज है ।

मैं मुद्दालेहुम 6 व 8 मकिर हूँ कि मजमून बयान नतहरीरी हाजा के दफात 1 ता 36 व इल्म यकीन मेरे सही व दुरुस्त है, तसदीक बमुकाम मसकनखुद

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**धारा-1**. से आठ तक जो वादपत्र में लिखा है वह सब ठीक है अब कोई प्रत्युत्तर की आवश्यकता नहीं है ।

**धारा-9**. जो चौहद्दी वादी ने अपने वादपत्र में जन्म भूमि स्थान की दी है, उसमें वादपत्र प्रस्तुत करने के पूर्व से श्री रामचन्द्र जी की मूर्ति का प्रादुर्भाव था और उसका रुप तथानाम वादी मंदिर ही मानकर देखता है-- वास्तव में है और फौजदारी के न्यायालय ने भी उसको (राम जन्म) मंदिर के ही रुप में पाकर भगवान श्री रामचन्द्र जी के पूजा पाठ त भोग रागादिक प्रबन्धार्थ बाबू प्रियादत्त राम चेयरमैन फैजाबाद को सिपुर्ददार नियत करके यह आदेश दिया इत्यादि पूर्ववत चलता रहे, फलतः मुसलमान लोग उस -----कर पाते, सन् 1934 ई0 से मस्जिद के रुप में यह कभी भी आया। बाबरी मस्जिद होने से इन्कार है। बाबर का वक्फ---------- असत्य है। तमाम मुसलमानों को इबादत करने का अधिकार नहीं है ।

**धारा-10**. स्वीकार नहीं है। अप्रासंगिक है ।

**धारा-11** स्वीकार नहीं है, अप्रासंगिक है ।

**धारा-11** से 14 तक उसी अभियोग के सम्बन्ध में है और अप्रासंगिक है।

जिसका कोई प्रभाव इस अभियोग पर नहीं पड़ सकता और न समस्त हिन्दुओं पर उस का बन्धन आ सकता है ।

**धारा-13**. अस्वीकार है ।

**धारा-15**. ऐक्ट नं0-13 सन् 1936 बिल्कुल छथ्द्धद्धठ्ठ ध्त्द्धठ्ठद्म है और उसके सम्बन्ध यदि कोई कार्रवाई की गई तो वह सब ध्दृत्ड्ड है, वादी किसी नोटिस के बन्धन में नहीं है और न किसी कार्यवाही जिसका वर्णन धारा-15 में किया गया है, इस अभियोग पर कोई प्रभाव है। वादी का अनुमान है कि वह अभियोग मुसत्मा परस्पर ाडयन्त्री भावना (साजिशी) से योजित किया था ।

**धारा-16.** अस्वीकार है ।

**धारा-17**. जिस प्रकार लिखा है, अस्वीकार है । प्रार्थी जिस उपशम को चाहता है,



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उसका धारा-42विधान दादरसी से कोई सम्बन्ध नहीं है ।

**धारा-18.** व्यवहार अवधि के अन्तर्गत है ।

**धारा-19.** वादी अपने निजी स्वत्व का अधिकारी है और उपशम पाने का भी अधिकारी है । प्रतिवादीगण ने इस धारा में जिस प्रकार से गोल मोल लिख दिया है ,उसका कोई अर्थ ही नहीं निकलता है ।

**धारा-20.** अस्वीकार है, प्रतिवादीगण ने आर्डर-1 रुल-8 जाब्ता दीवानी की कार्यवाही किये जाने के संबंध में एक प्रार्थना-पत्र 4 अगस्त सन् 1951ई0 को दिया था जिसका उत्तर वादी ने 18अगस्त सन् 1951ई0 को दिया था , अब उसी की पुनरा वृत्ति से कोई लाभ नहीं ।

**धारा-21 .**धारा-80 जाब्ता दीवानी का उज्र (विरोध) वही ले सकता है, जिसके लिए धारा-80 का निर्माण हुआ है। प्रतिवादीगण नं0-1 लगायत 5 को यह उज्र करने का कोई अधिकार नहीं है ।

**धारा-22.** अस्वीकार है । प्रतिवादीगण नं0 - 1 लगायत 5 को अच्छी प्रकार विदित है कि मूर्ति इस स्थान में विराजमान है । वादीगण के - ज्ञान में सन् 1934 ई0 के पश्चात नमाज नहीं हुई और यदि किसी राजकीय कर्मचारी ने कोई ऐसी झूठी सूचना नमाज पढ़ने की दी है तो उसका कोई प्रभाव नहीं और किसी ऐसी असत्य सूचना या बलात दो - चार व्यक्तियों के नमाज़ पढ़ने से वादियों के 1934 ई0 से दिनांक दावे के दिन तक के मुसलसल अधिकार में कोई बाधा नहीं पड़ सकती है, विशेातः जबकि वह अधिकार प्रतिवादीगण के ज्ञान में भली प्रकार चला आ रहा था ।

**धारा-23.** अस्वीकार है,वाद पत्र में इसका विवरण स्पट रुप से अंकित है। राजकीय कर्मचारियों ने हिन्दू जनता तथा वादियों को विशेातः भीतर जाने तथा पूजा पाठ करने से रोक दिया और सरकारी कर्मचारियों का वही अवैध कार्य इस बात का मूल है ।

**धारा-24.** अस्वीकार है, कर्मचारी प्रतिवादी बनाये गये हैं ।

**धारा-25.** प्रतिवादीगण नं0-1 से लेकर 5 की असत्य बातों में आकर धारा-145 जाब्ता फौजदारी की कार्यवाही की,जिस प्रकार प्रतिवादीगण ने उल्लेख किया है, सब असत्य है ।

**धारा-26.** अस्वीकार है । प्रतिवादीगण को स्पट रुप से उस विधान पर प्रकाश डालना चाहिए,जिससे इस न्यायालय को समात का अधिकार नहीं है ।

**धारा-27.** मंदिर जन्म स्थान जिसके संबंध में प्रतिवादियों ने इस धारा में कथन किया है,



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श्री अयोध्या जी में लगभग सभी मंदिरों में श्री रामचन्द्र जी की मूर्ति स्थापित है, जिनसे झगड़े वाले स्थान से कोई संबंध नहीं है । निर्वाचन की चर्चा इस धारा मे व्यर्थ तथा तथ्यहीन है और सर्वथा अप्रासंगिक है ।

**धारा 28.** गलत है ,अस्वीकार है, प्रतिवादीगण कोई खर्चा व हर्जा प्राप्त करने के अधिकारी नहीं हैं।

**धारा-29.** वादी एक वकील है, जो पहले देशी रजवाड़े अर्थात समथर राज्य में वकालत करता था और वहा उसकी बहुत सी सम्पत्ति है, जो सब इण्डियन यूनियन के अन्तर्गत आ गई है, जिससे वादी को यहां भी वकालत करने का अधिकार हो गया है,जैसा कि यू0पी0 राजकीय गज़ट पार्ट- 11,18 अगस्त सन् 1951 ई0 में प्रकाशित है। कोई विधान ऐसा नहीं है, जिससे वादी से जमानत व्यय के विाय में मांगी जाये ।

**धारा-30.** अस्वीकार है, व्यवहार डिग्री होने के योग्य है ।

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**<u>प्रत्युत्तर</u>**

**धारा-31.** जैसा कि प्रतिवादीगण कहते हैं कि यह बाबरी मस्जिद है । इसे प्रमाणित करने में यदि वह सफल भी हों तो भी क्योंकि सन् 1934 ई0 से कभी कोई मुसलमान इस मंदिर के भीतर जाने नहीं पाया और हिन्दुओं का ही तब से अविराम रुप से स्पटतः प्रत्येक व्यक्ति के ज्ञान में अधिकार बना रहा,इसलिए प्रतिवादीगण अथवा अन्य किसी मुसलमान का यदि कोई हक रहा भी हो तो उस सबका अन्त हो गया और वह हक निराकृत हो गया । इस स्थान को मंदिर मानकर हिन्दू होने के नाते प्रत्येक हिन्दू उसमें बराबर आता-जाता रहा है, जिससे मंदिर का होना निश्चित रुप से परिपक्व हो गया है । यदि कभी किसी मुसलमान ने कुछ भी अपना हक प्रदर्शित करने का प्रयत्न किया तो उसके हक को अस्वीकार करते हुए हिन्दुओं ने विशेातः उस स्थान में रहने वालों ने उनको मार भगाया। पता चला है कि मुसलमानों ने परस्पर एक जाली तथा फर्जी व ाडयन्त्री अभियोग किसी सिविलजज के इजलास में योजित करके कुछ फर्जी कार्रवाइयां कराई हैं , जिससे वादी को इन्कार है।



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और उसका कोई प्रभाव इस व्यवहार पर नहीं पड़ सकता है ,विशेातःजबकि किसी हिन्दू को उसका पता भी न था ,सब कार्यवाही व फर्जी की गई है, उस अभियोग के काग़जात बिल्कुल अप्रासंगिक है, किसी प्रकार भी इस व्यवहार में मानने योग्य नहीं है ,

प्रार्थीः ह0/ गोपाल सिंह विशारद

गोपाल सिंह विशारद

वादी

दिनांक 5 दिसम्बर सन् 1952 ई0

टाइप किया

ह0/ दयाशंकर शुक्ल अर्जीनवीस

5-12-52

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Q. In what capacity does the plaintiff seek to exercise the relief which is seeks in the plaint?

Ans. In my individual capacity.

Q. What is your individual capacity?

Ans. My individual capacity is distinct from public capacity and in this matter an idol worshiper . This shows that the plaintiff's counsel is not in a position to answer the court question. The plaintiff must present in court personally on the date fixed.

Q. Has your client any religion?

Ans. The plaintiff is a Sanatan Dharmi.

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Sd/- illegible
CJ
15.09.51

Sd/- illegible
Chaudhary Kedar Nath
15.09.51



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**13.01.60**

Parties as before
sd/-illegible

**Sri Goswami States** ABCDEF is the land and building in suit as indicated in the map of the Commissioner Sri Shiva Shanker Lal dated 25.5.50. It is the temple since 1934. Deities installed are Sri Sri Ram. The building existed prior to 1934. The plaintiff can't say for how long it have been existing. The plaintiff can't say who built it and what it was prior to 1934. Sri Gopal Singh Visharad came in on about 1934 to Ajudhya. He saw the …..... (murti) there, and began to worship them. Sri Paramhans instructs that the …..... (murti) were there from before 1934. Whenever he saw it was a temple. It has always been a temple. He can't say who got it constructed and dedicated.

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The plaintiff do not admit that at any time the building was used for prayer or as a Mosque by the Mohammaden community. Babar never built it. He was never emperor of India. I deny that it was ever used as a mosque.

The plaintiffs confine their case to the construction shown by letters ABCDLKJPOHNGA as shown in the map of the Commissioner dated 25.5.50. The Chabutra and Mandir shown in the map of the Commissioner as “Ram Chabutra” and “Bhandar” are the same as those described in the eastern boundary of the temple in question in the plaint.



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The replication para 31 filed in suit no. 25 of 1950 by Paramhans does not refer to the litigation mentioned in para 14 of the map filed by Zahur Ahmad and others. The proceedings mentioned in the last part of para 31 of the replication relate to those cases and proceedings which were between Mohammedans-sunnies & shias & others i.e. relating to suit no. 29 of 1945 of the Court of Civil Judge, Faizabad.

sd/-illegible
13.1.60

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In the Court of Civil Judge, FD.
Reg. Suit No. 02/50
Gopal Vs. Zahoor
Regular Suit No. 25/50
Paramhans Vs. Zahoor

07.03.62

Defendant Gopal Singh Visharat and Sri Param Hans Ram Chandra plaintiffs of both the suits no. 2/50 and 25 of 1950 accompanied by their counsel state that they do not want any relief with regard to constructions or structures indicated in the map of the Commissioner Shiv Shankar Lal dated 25.05.50. by the terms 'Sita Rasoi', 'Bhandar' and 'Ram Chabutra'. They say that the reliefs are asked for only with regard to property included in the said map by letters A, B, C, D, L, K, J, P, O, H, N, G, A.

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They further add that the term ' Janam Bhumi used in the plaint refers to Janam Bhumi of Sri Ram Chandra Ji and according the plaintiff's belief the property in the suit is the site of the same.

They add that there is no foot prints carved out on any stone or any stone image of any Charan Paduka (….....) referred to in para 2 of the plaint.

According to them at the place in suit near the idol of Bhagwan Ram Chandra Ji are kept wooden sandals or Charan Paduka and also a small pair of silver Charan Paduka . They are not fixed to any stone, structure or floor but are placed loose near the idol.

They are that the idol of Bhagwan Ram Chandra Ji at the place in suit is an Achal (_____) idol.



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They add that in plaintiffs claim right of worship with regard to the said Idol and also with regard to the 'Charan Paduka'.

The plaintiffs also claim a right to worship all the deities and idols situated in the property in suit besides that of Bhagwan Ram Chandra Ji as for example Laxman Ji, Hanuman Ji, Sita Ji, Saliqram Ji, etc. They also claim a right to worship and have Darshan of these as well as they have a right to a Darshan of the site in question, as according to their belief it is the birth place of Sri Ram Chandra Ji.

| | |
|---|---|
| Sd/- illegible | Sd/- illegible |
| Param Hans Ram Chandra Das<br>Gopal Singh Visharat | Civil Judge, Faizabad |
| 07.03.62 | 07.03. 62 |

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In the court of Civil Judge, FD
Reg. Suit No. 2 of 1950
Reg. Suit No. 25 of 1950

07.03.60

Sri Mohd. Ayub, Advocate for the defendants states that the decision referred to in para 11 to 14 of the WS was in original Suit No. 61/280 of 1885 in the Court of Sub-Judge, Faizabad, Raghubar Das Mahanth versus Secretary State for India and Others. He adds that this decision bars the present suit by principle of resjudicata and estoppel.

Sd/-illegible
Sri Mohd. Ayub

Sd/- illegible
Civil Judge

07.03.62

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In the court of Civil Judge, FD
Reg. Suit No. 2 of 1950
Gopal Vs. Zahoor
Reg. Suit No. 25 of 1950
Param Hans Vs. Zahoor

08.03.62

Sri P.D. Goswami, Advocate for defendants states that the reports of the Commissioner spoken in Para 15 of WS has not effect on the rights of plaintiff, nor do the provisions of Section 5 (3) of U.P. Act, 13 of 1936 apply to the present suit as they are based on a right of worship of plaintiff who is a Hindu. According to him the provisions of the Act are applicable to the property and the right of the Muslims only.

He does not give up the plea taken by him in the replication in that connection.

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According to him the said Act has been repelled by U.P. Act 16 of 1960. He further adds that in case the said Act be considered applicable in the present suits it is ultra vires the provisions of the Government of India Act 1935 and is in conflict with the Ancient Monuments Preservation Act. (Act No. VII of 1904.

Sd/-illegible
P. D. Goswami

Sd/- illegible
Civil Judge, FD
09.03.62



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In the court of Civil Judge, FD
Reg. Suit No. 2 of 1950
Gopal Vs. Zahoor
Reg. Suit No. 25 of 1950
Param Hans Vs. Zahoor

09.03.62

Sri Mohd. Ayub Advocate for the defendants states that under para 15 of the WS in Suit No. 2 of 1950, the defendants plead that the suit is barred by provision of Section 5 (3) of Muslim Waqf Act, 1936 (U.P. Act No. 13 of 1936).

He adds that by the plea set up in para 19 of the WS, it is meant that the suit is bad for want of consent in writing of the Advocate in general and other provisions of Section 91 of the C.P.C.

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He adds that from para 9 of WS the plea arises that Almighty God in whom the property in suit vests duly represented by some authorised persons should have been made a party to the suit and the suit is bad for non-rejoinder of parties. He adds that the Muslim in general or the Mutwali

of the said Waqf or Sunni Central Board or Waqf should also have been made defendants in the suit.

He adds that the present suit being a suit for injunction is barred by time under Article 120 of the Indian Limitation Act.

Sd/- illegible
Sri Mohd. Ayub

Sd/- illegible
Civil Judge, FD
09.03.62



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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH: LUCKNOW
OTHER ORIGINAL SUIT NO.1 OF 1989
(Reg. Suit No.2/1950)

Gopal Singh Visharad Vs. Zahoor Ahmad and others
AND
**Regular Suit No.25 of 50**

Param Hans Ram Chandar Versus Zahoor Ahmad and others,

**Issues framed by the Civil Judge Faizabad on 9.3.1962 in the suits noted above:-**

**Issue No.1:-**

Is the property in suit the site of Janam Bhumi of Shri Ram Chandra Ji?

**Issue No.2:-**

Are there any idols of Bhagwan Ram Chandra Ji and are His charan Paduka' sitauted in the site in suit.?

**Issue No.3:-**

Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the place in suit.?

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**Issue No.4:-**

Has the plaintiff the right to have Darshan of the place in suit.?

**Issue No.5 :-**

a. Was the property in suit involved in original suit no.61/280 of 1885 in the court of sub-judge, Faizabad Raghubar Das Mahant Vs. Secretary of State for India & others.?

(b) Was it decided against the plaintiff.?

(c) Was that suit within the knowledge of Hindus in general and were all Hindus interest in the same.?

(d) Does the decision in same bar the present suit by principles of Resjudicata and in any other way.

**Issue No.6:-**

Is the property in suit a mosque constructed by Shansha Babar commonly known as Babri mosque, in 1528A.D.?



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**Issue No.7:-**

Have the Muslims been in possession of the property in suit from 1528A.D.

**Issue No.8-**

Is the suit barrad by proviso to section 42 Specific Relief Act.?

**Issue No.9:-**

Is the suit barred by provision of section (5) (3) of the Muslim Waqfs Act (U.P. Act 13 of 1936);?

a. Has the said act no application to the right of Hindus in general and plaintiff of the present suit, in particular to his right of worship.?

b. Were the proceedings under the said act referred to in written statement para 15 collusive? If so, its effect?

c. Are the said provisions of the U.P. Act 13 of 1936 ulta-vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper No.454-A-?

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**Issue No.10:-**

Is the present suit barred by time ?

**Issue No.11:-**

a. Are the provisions of section 91 C.P.C. applicable to present suit ? If so is the suit bad for want of consent in writing by the advocate general ?

b. Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 C.P.C. ? if not its effect. ?

**Issue No.12:-**

Is the suit bad for want of steps and notices under order 1 Rule 8 C.P.C. ? If so its effect. ?

**Issue No.13:-**

Is the suit No.2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under section 80 C.P.C. ?

**Issue No.14:-**

Is the suit no.25 of 50 Param Hans Ram Chandra Vs. Zahoor Ahmad bad for want of valid notice under section 80 C.P.C. ?



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**Issue No.15:-**

Is the suit bad for non-joinder of defendants. ?

**Issue No.16:-**

Are the defendants or any of them entitled to special costs under section 35-A C.P.C.?

**Issue No.17:-**

To what reliefs, if any, is the plaintiff entitled. ?

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**In the High Court of Judicature at Allahabad**

CRIMINAL SIDE REVISIONAL JURISDICTION

Allahabad, dated the 3rd February 1949-50

PRESENT

The Hon'ble R. Dayal..... Judge

and

The Hon'ble Judge

Miscellaneous No.208 of 1950

REX.
VERSUS
Anisur Rahman

Division
Faizabad

---

**By the Court--**

Issue notice. Stay meanwhile. A copy of the order may be handed over to the learned counsel on payment of the necessary charges.

S.d. R.D.
3.2.50



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I hereby direct the parties described below namely:-

1) Muslims who are bonafide residents of Ayodhya or who claim right of proprietorship or worship in the property in dispute;

2) Hindus who are bona fide residents of Ayodhya or who claim right of proprietorship or worship in the property in dispute.

To appeal before me on 17th day of January at 11.00 a.m. at Ajodhya Police Station in person or by pleader and put in written statement of their respective claims with regard to the fact of actual possession of the subject of dispute.

And the case being one of the emergency I hereby attach the said buildings pending decisions.

The attachment shall be carried out immediately by Station Officer, Ajodhya Police Station who shall then put the attached properties in the charge of Shri Priya Dat Ram, Chairman Municipal Board Faizabad cum Ajodhya who shall thereafter be the receiver thereof and shall arrange for the care of the property in dispute.

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The receiver shall submit for approval a scheme for management of the property in dispute during attachment and the cost of the management shall be defrayed by the parties to this dispute in such proportions as may be fixed from time to time.

This order shall, in the absence of information regarding the actual names and addresses of the parties to dispute to be served by publication in :-

1. The English Daily “The Leader” Allahabad.
2. The Urdu Weekly “Akhtar” Faizabad.
3. The Hindi Weekly “Virakta” Ajodhya.

Copies of this order shall also be affixed to the walls of the buildings in dispute and to the notice board at Ayodhya Police Station.

Given under my hand and the seal of the court on this the 29th day of December, 1949 at Ayodhya.



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Sd.  Illegible
Magistrate Ist Class and
Addl. City Magistrate, Faizabad cum Ayodhya.

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No. 513/XV-37-1 Dated: 30.12.49

From:

The District Magistrate,
Faizabad

To

The Editor,
Urdu Weekly 'Akhtar',
Faizabad.

Please have the attached order Section 145 Code of Criminal Procedure on the question of a dispute between Hindus and Muslims in Ayodhya over rights of proprietorship and worship in the buildings

claimed variously as Babri Masjid and Janmabhumi Mandir, published in the next issue of your newspaper.

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For District Magistrate,
30-12-49



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No. 513/XV-37-1 Dated: 30.12.49

From:

The District Magistrate,
Faizabad

To

Shri R.P.Arora,
Local correspondent 'Leader',
Faizabad.

Please have the attached order Section 145 Code of Criminal Procedure on the question of a dispute between Hindus and Muslims in Ayodhya over rights of proprietorship and worship in the buildings

claimed variously as Babri Masjid and Janmabhumi Mandir, published in the next issue of your newspaper.

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For District Magistrate,
30-12-49



www.vadaprativada.com

No. 513/XV-37-1 Dated: 30.12.49

From:

The District Magistrate,
Faizabad

To

The Editor,
Hindi Weekly 'Virakta',
Ayodhya, Faizabad.

Please have the attached order Section 145 Code of Criminal Procedure on the question of a dispute between Hindus and Muslims in Ayodhya over rights of proprietorship and worship in the buildings claimed variously as Babri Masjid and Janmabhumi Mandir, published in the next issue of your newspaper.

www.vadaprativada.com

For District Magistrate,
30-12-49



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**पेपर नं0-15**

**29-12-49** आज दफा 145 जा0 फौजदारी की नोटिस अयोध्या में बिल्डिंग पर चस्पा की गई।

1 कापी अयोध्या के स्टेशन अफसर को दी गई ।

1 " " " थाने पर नोटिस बोर्ड पर चस्पा की गई ।

1 " अधि सेक्रेट्री जरिये जिलाधीश महोदय भेजी गई ।

1 " सुपरिन्टेंडेंट पुलिस फैजाबाद को दी गई ।

**30-12-49**

1 कापी कमिशनर महोदय भेजी गई ।

2 जिलाधीश महोदय के पास भेजी गई ।

1 चेयरमैन मिनिस्पिल बोर्ड फैजाबाद के पास भेजी गई ।

1 अखबार अख़तर फैजाबाद भेजी गई ।

1 English daily leader के पास भेजी गई ।

1 हिन्दी वीकली विरक्त अयोध्या के पास भेजी गई ।

आदेश हुआ कि,

मुसलमान जो अयोध्या के रहने वाले हैं और जो नहीं हैं , की आराजी मुतदाविया में यह पूजा करते हैं या नहीं । हिन्दू जो अयोध्या के रहने वाले हैं और जो कहते हैं कि आराजी मुतदाविया उनकी है या उसमें पूजा करते हैं, 17-1-49 को 11 बजे दिन को अयोध्या थाने पर खुद या जरिये वकील हाजिर हू और बयान तहरीरी अपने- अपने हकूक का दाखिल करें ।

**पेपर नं0-16**

दण्ड विधि संहिता की धारा-145 के अन्तर्गत मिसिल



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मार्कण्डेय सिंह मजिस्ट्रेट- प्रथम श्रेणी तथा अतिरिक्त सिटी मजिस्ट्रेट फैजाबाद और अयोध्या को पुलिस तथा अन्य विश्वसनीय सूत्रों से यह ज्ञात हुआ है कि अयोध्या के हिन्दुओं तथा मुसलमानों के बीच उस तथाकथित बाबरी मस्जिद अथवा श्री राम जन्म भूमि जो अयोध्या नगरी के रामकोट मुहल्ले में स्थित है, उसके स्वामित्व तथा पूजाधिकार के लिए परस्पर विरोध है, जो किसी समय भी शांति भंग का कारण बन सकता है,

अतएव मैं निम्नलिखित विरोधी दलों को आदेश देता देता हूँ कि वे- (1) मुसलमान जो अयोध्या नगरी के सार्वजनिक अधिकार प्राप्त निवासी हैं या अन्य कोई जो स्वामित्व तथा पूजा का अपने को अधिकारी समझता हो (2) हिन्दू जो अयोध्या नगरी के सार्वजनिक अधिकार प्राप्त निवासी हैं या अन्य कोई जो स्वामित्व तथा पूजा का अपने को अधिकारी समझता हो ,

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मेरे समक्ष आगामी 17 जनवरी सन् 1950 ई0 को ग्यारह बजे दिन को अयोध्या पुलिस थाने पर स्वयं या अपने वकील द्वारा विवादग्रस्त सम्पत्ति से संबंधित अपने-अपने स्वामित्व तथा अधिकार के समर्थन में अपना-अपना लिखित कथन प्रस्तुत करें और संकटदायक परिस्थिति के कारण, मैं इस विवादग्रस्त सम्पत्ति को अन्तरिम काल के लिए जब तक कि न्यायालय से अन्तिम निर्णय न हो जाये, सरकाराधीन करने की आज्ञा देता हूँ -

विवादग्रस्त सम्पत्ति को सरकाराधीन करने की कार्यवाही अयोध्या नगरी के पुलिस थाने के मुख्य अधिनायक के द्वारा तत्काल की जावे और तदन्तर यह विवादग्रस्त सम्पत्ति अयोध्या तथा फैजाबाद की म्युनिस्पैलिटी के प्रधान श्री प्रिया दत्त की संरक्षिता में दी जाये, जो इस विवादग्रस्त सम्पत्ति के संरक्षक रहेंगे और इसकी रक्षा तथा प्रबन्ध के उत्तरदायी होंगे ।

संरक्षक इस सम्पत्ति की अन्तरिम अवस्था में प्रबन्ध के संबंध में



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अपनी योजना शीघ्र मेरी स्वीकृति के लिए प्रस्तुत करेंगे । इस प्रबन्ध के लिए जो धन व्यय होगा, वह विरोधी दलों को एक निर्धारित अनुपात में देना होगा, जो समय-समय पर निश्चित किया जायेगा ।

यह आज्ञा उपर्युकत विरोधी दलों- उनके सदस्यों की नामावली के अभाव में निम्न प्रकार निश्चित की जाती है -

1. अंग्रेजी दैनिक " दी लीडर " इलाहाबाद ।
2. उर्दू साप्ताहिक " अख़तर " फैजाबाद ।
3. हिन्दू साप्ताहिक " विरक्त " अयोध्या ।

इस आज्ञा की प्रतिलिपियाँ विवादग्रस्त भवन की बाहरी दीवारों पर तथा अयोध्या नगरी के पुलिस थाने के विज्ञापन पट्ट पर लगाई जाये ।

मेरे हस्ताक्षर द्वारा तथा न्यायालय की मुहर के साथ 29 दिसम्बर सन् 1949 ई0 को यह आज्ञा दी जाती है ।

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**पेपर नं0-19**

**नकल सुपुदर्गी (**Inventory)

सिटी मजिस्ट्रेट महोदय फैजाबाद

दफा 145 जा0 फौ0 बाबत थाना अयोध्या

फैजाबाद जेर कारर्वाई

रेक्स बनाम जन्मभूमि बाबरी मस्जिद

---

Inventory

1. मूर्ति ठाकुर जी 1 (अ) श्री रामलला जी दो मूर्ति एक बड़ी और एक छोटी

(ब) श्री सालिग राम जी की 6 मूर्ति

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2.सिंहासन चाँदी दो फिट ऊंचा एक ।

3. मूर्ति हनुमानजी की एक ।

4.(इ) गिलास जर्मन सिलवर का एक ।

गिलास चांदी का छोटा एक ।

गिलास चांदी का बड़ा एक ।

5. गरुड़ घण्टी एक ।

6. धूपदानी एक ।

7. आरती एक ।

8. दीवल एक ।

9. हुरसा व चंदन एक ।

10 फोटो बड़ी रामजानकी की दो ।

11. गमला चार ।



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12. फोटो बद्रीनाथ जी (छोटा ) एक ।

13. फोटो रामचन्द्रजी छोटा एक ।

14. भगवान के आभूणः-

दो टोपी रामलला जी और एक हनुमानजी की टोपी

तथा भगवान के वस्त्र आठ नग ।

15. इमारत - तीन गुम्बददार इमारत मय सहन के तथा चहारदीवारी जिसकी चौहद्दी नीचे लिखी है-

उत्तर - हाता छट्टी पूजन और निर्मोही अखाड़ा ।

दक्षिण - आराजी परती व परिक्रमा ।

पूरब - चबूतरा मंदिर रामजी का ममलूक निर्मोही अखाड़ा व मंदिर हाजा ।

पश्चिम- परिक्रमा ।

16. छोटा पीतल का गिलास ।

17. चन्दन की फूल की कटोरी एक ।

18. पंचपस् तथा थाली पीतल एक ।

19. तशतरी पीतल की छोटी एक ।

20. छोटा पटरी लकड़ी का एक ।

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हस्ताक्षरः उपस्थित सज्जनों के जो चार्ज के समय उपस्थित हैं ,



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Assumed charge that day the 5 of January 1950 at 1.00 p.m. above inventory has been found correct after verification.

Sd./ Priya Dat Ram

Witnesses- Sd. Illegible

Receiver

Vakil

5-1-50

5-1-50

5-1-50

G.N. Mishra

5-1-50

Sd. Tulsi Ram Verma

5-1-50

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## पेपर नं0-21

1. मूर्ति ठाकुर जी 1 (अ) श्री रामलला जी  दो मूर्ति एक बड़ी और एक छोटी

(ब) श्री सालिग राम जी की 6 मूर्ति

2.सिंहासन चाँदी दो फिट ऊंचा एक ।

3. मूर्ति हनुमानजी की एक ।

4.(ड्ड) गिलास जर्मन सिलवर का एक ।

गिलास चांदी का छोटा एक ।

गिलास चांदी का बड़ा एक ।

5. गरुड़ घण्टी एक ।

6. धूपदानी एक ।

7. आरती एक ।

8. दीवल एक ।

9. हुरसा व चंदन एक ।

10 फोटो बड़ी रामजानकी की दो ।

11. गमला चार ।

12. फोटो बद्रीनाथ जी (छोटा ) एक ।

13. फोटो रामचन्द्रजी छोटा एक ।

14. भगवान के आभूणः-

दो टोपी रामलला जी और एक हनुमानजी की टोपी  तथा भगवान के वस्त्र आठ नग ।

15. इमारत - तीन गुम्बददार इमारत मय सहन के तथा चहारदीवारी जिसकी चौहद्दीनीचे लिखी है-

उत्तर -  हाता छट्टी पूजन और निर्मोही अखाड़ा ।

दक्षिण - आराजी परती व परिक्रमा ।



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पूरब - चबूतरा मंदिर रामजी का ममलूक निर्मोही अखाड़ा व मंदिर हाजा ।

पश्चिम- परिक्रमा ।

16. छोटा पीतल का गिलास ।

17. चन्दन की फूल की कटोरी एक ।

18. पंचपस् तथा थाली पीतल एक ।

19. तशतरी पीतल की छोटी एक ।

20. छोटा पटरी लकड़ी का एक ।

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हस्ताक्षरः उपस्थित सज्जनों के जो चार्ज के समय उपस्थित हैं ,

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Assumed charge that day the 5 of January 1950 at 1.00 p.m. above inventory has been found correct after verification.

Sd./ Priya Dat Ram

Witnesses- Receiver

5-1-50

Sd. illegible 5-1-50

Vakil

G.N. Mishra

5-1-50

Sd. Tulsi Ram Verma

5-1-50

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In the Court of the Additional City Magistrate, Faizabad
at Ajodhya Police Station.

.....

Application under Section 526 Cr.P.Code.

In Re:

Rex Versus 1. Muslamans
2. Hindus.

Anisul Rahman son of Molvi Waziruddin, resident of Begam-Pura, Ajodhya, Faizabad .....Applicant

The applicant above named begs to submits as under:-

1. That the applicant has a reasonable apprehension that a fair and impartial inquiry cannot be had in the above noted proceedings in courts at Faizabad.

2. That the applicant is going to move an application for transfer in the above noted proceedings in the Hon'ble High Court of Judicature at Allahabad.

Therefore, the applicant prays that the proceedings may be stayed to enable the applicant to move the transfer application in the Hon'ble High Court of Judicature at Allahabad.

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Sd./- Anisul Rahman

Applicant'

Faizabad

The17th January, 1950: through

Counsel for the applicant



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ORDER

The case is stayed subject to the applicant's is executing a personal bond of Rs.200/- to the effect that he will put in an application before the Hon'ble High Court before 15.2.1950. The case will be taken up on March..... by which time the transfer application is to be decided.

Sd./- illegible
17.1.1950

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In the Court of the Additional City Magistrate, Faizabad
at Ajodhya Police Station.

.....

Rex Vs. Hindus & Muslims
Proceedings under Section 145 Cr.P.C.

Whereas I have moved u/s 526 Cr.P.C. to move the Hon'ble High Court Allahabad to get the case transferred to some other district for disposal. I have been asked to furnish personal bond for Rs.200/- for the same. I hearby in compliance of the said order enter into a personal bond of Rs.200/- that I will move a transfer application in the High Court within 15th February, 1950. In default the bond may be forfeited.

Sd./- Anisul Rahman

File

Sd./- illegible
17.1.1950

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To

The District Magistrate, Faizabad

Sir,

In compliance of a proper order duly served on me I assumed charge on the 5th of Jan. 1950 of the premises in dispute in the JNMBHUMI, Ajodhia, which were attached under Section 145. I am required to submit a scheme of its management. The most important item of management is the maintenance of the Bhog and Puja in the condition in which it was carried on when I took over charge.

The number of pujaris cannot be less than three. Two persons are required to keep constant watch to prevent the depredations of monkeys who snatch away the the flowers from the Singhasan and lift away other things.

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Below I give the various Bhogs which are being performed, the items of which they consist, and their daily cost.

Bhog No.1. Mangal Bhog consisting of dry fruits Rs.1/-

Bhog No.2 Shringar Bhog consisting of sweets Rs.1/8

Bhog No.3. Raj Bhog consisting of

| | | |
|---|---|---|
| a. Dal | Rs.1/- | |
| b. Rice | Rs.2/8 | |
| c. Ata | Rs.2/8 | |
| d. Sag | Rs.1/8 | |
| e. Masala | Rs.-/8 | |
| f. Ghee | Rs. 2/8 | Rs. 10/8 |

Bhog No.4 Uthanpan Bhog consisting of fresh fruits and Namkin Rs.2/-

Bhog No.5 Arti bhog consisting of one seer of Laddoos Rs.3/-



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Bhog No.6 Bayaroo Bhog consisting of Puri, Sag, and Milk. Rs.7/-

---

Rs.25/-

Besides the Bhog, other commodities required for the Puja.

| | | |
|---|---|---|
| Kesar | Rs.-/4/- | |
| Agar Bati | Rs.-6/- | |
| Phul Mala in large quantity. | Rs.2/6 | |
| Chandan | Rs.-4/- | |
| Itra | Rs./8/- | |
| Light | Rs.3/- | |
| | Rs.6/12/- | Rs.6/2 |
| | Grand total | 31/2 |

In addition to this staff mentioned above there should be a supervisior at Rs.45/- to look to all these things.

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The three Pujaries will be getting food in the form of Bhog. The Head Pujari will get Rs.15/ p.m. and the other two Rs.5/- p.m. each. There will be a kahar also who will be getting Rs.30/- p.m. This brings the total expenditure on the maintenance of the premises to Rs.1057/- p.m.

On the income side we have the cash offerings only. The income from offerings commencing from 23rd Dec. 1949 upto the 5th Jan. 1950 i.e. during the period before the charge was Rs.233/4/6. But the average monthly income will be Rs.300/- or thereabout only. The maintenance, therefore, becomes much too costly.

I shall, therefore, invite applications from parties willing to perform the Bhog at a cheap contract basis. I shall entrust the Bhog to the most suitable of these parties. My own idea is to spend between Rs. 10/- to s 15/- on all the daily items. Thus will bring down the expenses to about Rs.500/-



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Locked boxes for cash offerings will be provided. The in case receipts will be entered in the account book daily. The cost of Bhog will be paid daily.

The watch and ward arrangement of the premises will continue as heretofore i.e. by the Police. The entry of the portion in dispute area will also be regulated as before. The Pujaris, my local representative and other persons employed by me should be allowed free access.

I await your instructions about funds.

The Magistrate in-charge should be intimated about this.

Yours faithfully

(Priya Dat Ram)

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In the High Court of Judicature at Allahabad.

Original Transfer Application No. 208 of 1950
under Sec. 526/528 Cr.P.c. pending in the Court
of the City Magistrate, Faizabad.

Anisur Rahman son of Moulvi Vaziruddin caste Syed
resident of Mohalla Begampara, Ajodhya (Faizabad)
.....Applicant.

Vs.

Rex ..... Opposite party

To,

The Hon'ble the Chief Justice and his Companion Judges of the aforesaid Court.

The humble petition of the applicant abovenamed most respectfully showeth:-

That for the reasons disclosed in the accompanying affidavit it is respectfully prayed that the criminal case No. of 1949 Rex Vs. Anisur Rahman under Section 145 Cr.P.C. pending in the court of the Additional City Magistrate, Faizabad be transferred to some other court of competent jurisdiction outside the district of Faizabad and further proceedings of the case be stayed meanwhile.

Note: Stay order be sent to the court of the Addl. City Magistrate, Faizabad in the said case.

Sd. M.A. Kazmi
Counsel for Applicant.

Dated 2.2.50



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In the High Court of Judicature at Allahabad.

***

Affidavit

in

Criminal Misc. No. 208 of 1950.

Anisur Rahmam .....Applicant.

Versus

Rex ..... opposite party

Affidavit of Anisur Rahman son of Moulvi Wazirruddin, caste Syed resident of Mohalla Begampara, Ajodhya, Faizabad. I, Anisur Rahman aforesaid solemnly affirm and state as follows:-

1) That I am the sole applicant in this application and am fully acquainted with the facts deposed below.

2) That in Ajodhya there is a historical mosque built by Emperor Babar in 1528 A.D. Called the Babari mosque which has got a grant attached to it and is registered under the Waqf Act and the courtyard of the mosque is separated by a wall from small temple which is situated to its East.

3) That Hindus and muslims of Ajodhya have been peacefully and calmly carrying on their worship in the temple and prayers in the mosque respectively from times immemorial.

4) That on the 9th. Of November, 1949 it was found that two tombs and about 25 graves which lay outside the compound of the Babari mosque had been levelled down and the mosque in the cemetery known as the “Qanati” mosque had been dug up and a new platform adjacent to the aforesaid mosque was constructed and an idol placed on that platform.

5) That from 22.11.1949 the Hindus of the place started their 'Jap' (worship) on that place in which a large number of Hindus were collected and for that reason the police advised the muslims not to say their prayers in the surviving Babari mosque all the 5



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times while the 'Jap' continued but confine it to Fridays only. In order to avoid a communal clash the muslims acted on the advice and continued to say their prayer every Friday up to December 16, 1949. Except for the Friday prayers the mosque used to be kept locked and guarded by the Police.

6) That on the night preceding the next Friday, namely the night between 22nd and 23rd December, 1949 the Hindus surreptitiously and clandestinely introduced an idol inside the mosque itself and put it on the "Member" (pulpit). Pandit Ram Deo Dubey Sub-Inspector Incharge of Ajodhya made the following report of the incident on 23rd December, 1949:

"On information received through Mata Prasad constable No. 1 when I reached the spot at about 7 in the morning., I learned that a crowd of 50 or 60 persons broke the locks which were put on the compound of the Babri Mosque, and by climbing the walls by ladders illegally entered into ("madakhilat") the mosque and have placed the idol of Shri Bhagwan and have written on the walls inside and outside Sita Ramji etc. in red and yellow. Constable no. 2 Hansraj who was on the duty prohibited them but they did not heed. He called the P.A.C. Guard for help which was there, but by that time all the persons had entered the mosque, High Officers of the District came to the spot and engaged themselves in management. Afterwards a crowd of 5000 collected and raised religious slogans and performed "Kriten" and wanted to go inside but nothing untowards happened due to proper arrangements. Abhey Ram Dass, Ram Shukul Dass, Sheodarshan Dass and 50 or 60 other persons whose names are not known have committed riot, trespassed into the mosque and have installed an idol in the mosque and have thus polluted ("napak") the mosque. The police men on duty and many others have been this incident and ..... this check has been prepared.

7) That the muslims of the vicinity were at that time persuaded by the authorities not to say their prayers that Friday. When the



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muslims made a representation on 6th January 1950 they were again asked not to say their prayers for some time to come.

8) That in the meantime the District authorities instead of helping the muslims of the vicinity in getting back their mosque have issued notice on 29th December, 1949 under Section 145 Cr.P.C.

9) That in spite of the fact that all the matters have been within the knowledge of the authorities and the police guard has been posted on the spot since 12th November, 1949, and their strength was increased by posting an armed guard on 22nd November, 1949, the above mentioned incidents have taken place. They have created a tremendous sensation not only in Ajodhya but also in the town and District Faizabad.

10) That it is the petitioner's case that the District authorities are not free from communal bias and are rendering direct and indirect assistance to the ..... pass on the mosque. The petitioner apprehends that he cannot have a fair and impartial trial in that district.

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11) That Ajodhya being a town with a large Hindu population the authorities appear to be wholly overwhelmed.

12) That Shri K.K.K. Nayer the present Deputy Commissioner of Faizabad has acquired a plot of land on a long lease for building purposes in the name of his wife Shrimati Shakuntala Nayer in Ajodhya proper by means of a registered deed dated 7.6.1967 and probably desires to be a resident of Ajodhya. He cannot therefore, go against the wishes the local people of the Hindu Majority of the place, and the applicant apprehends that he can have .....justice at their hands.

13) That the learned Additional City Magistrate, Faizabad Shri Markande Singh has attached the mosque and put in the charge of Shri Priya Dat Ram who has been .....an active part in the present agitation there. In original order he went to the length of ordering Receiver to arrange for the worship in the .....nearly as possible



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as at present but subsequently scored it out.

14) That the local authorities are persisting in ..... of these proceedings and thus affording opportunity for the continued misuse of the mosque .... there is no apprehension of any breach of ..... the muslims are exhibiting a remarkable .....connection and in spite of the institution ..... suit in that connection in the court of the ..... Judge, Faizabad, which is registered as ..... In this suit even a temporary injunction has been issued against (1) Zahoor Ahmad (2) Haji Pheku (3) Haji Mohd. Faiq (4) Mohd. Sami (5) Mohd. Achchan (6) U.P. Govt. (7) Shri K.K.K. Nayer, District Magistrate, Faizabad. (8) Chaudhari Kirpal Singh S.P. and (9) Shri Markande Singh City Magistrate, Faizabad on 16.1.1950 as under:-

"Issue notices. Issue interim injunction in the meanwhile as prayed. The defts should also be informed that a temporary injunction has already been issued exparte."

The prayer in the application for injunction is as follows:-

"Therefore the applicant prays that a temporary injunction be issue against the defts to the effect that they should not remove the idols of Shri Bhagwan Ram Chandra & others from Asthan Janam Bhum the details of which are given in the ..... till the decision of the case, and they further be ordered not to close the Ramesh Dwar and other passages of ingress and egress to the visitors and also that they should not place any obstacle in the Puja and Darshan."

15) That the entire atmosphere in Ajodhya and Faizabad is surcharged with communalism and in view of the highly strained relations between the two communities and also the district authorities not being free from communal bias neither Ajodhya nor Faizabad would be a proper place for the inquiry under section 145 Cr.P.C. proceedings and the life of the witnesses of the applicant would not be safe, as is being demonstrated by the activities near the Babri mosque.

16) That the contents of paras 1 to 15 of this affidavit are true to



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my personal knowledge and belief, nothing has been concealed and no part of it is false. Sd. Illegible

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## पेपर नं0-47

न्यायालय श्रीमान् सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

हस्ब दफा 145 जाब्ता फौजदारी

थाना- अयोध्या ।

बयान तहरीरी मिनजानिब हसनू व0 अलादीन व वली मोहम्मद व0 हसनू

सा0 मोहल्ला कटरा कन्धरपुर गोड़ियाना थाना व शहर अयोध्या।

**1/धारा**- यह कि बाबरी मस्जिद, जन्मभूमि तोड़कर बनाई गई है ।

**2/धारा**- इस जमीन पर और मस्जिद के अन्दर हिन्दू और मुसलमान दोनों इबादत करते रहे । गदर के बाद मस्जिद के अन्दर मुसलमान जुमा के दिन नमाज पढ़ते रहे हैं और बाहरी हाते में श्री रामजी की मूर्ति की पूजा होती रही है । मगर अलावा जुमा के हिन्दू लोग मस्जिद के अन्दर भी पूजा करते रहे ।

**3/धारा**- इस मस्जिद के बाबत अक्सर हिन्दू मुसलमान में बलवा होता रहा । सन् 1934 के बलवे में मस्जिद के कुछ हिस्से को तोड़ दिया गया, मगर सब हिन्दू मुकदमे से बरी हो गये । इसके बाद मुसलमानों ने यहां नमाज पढ़ना बन्द कर दिया और हिन्दू लोग इसमें बराबर पूजा करने लगे और करते आ रहे हैं ।

**4/धारा**- यह कि प्रार्थी को कोई एतराज नहीं है कि गवर्नमेंट इस मस्सजिद को हिन्दुओं को दे दे ।

प्रार्थी,

हसनू व0 अलादीन सा0 मोहल्ला कटरा



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कन्धरपुर

गोड़ियाना शहर अयोध्या ।

ता0 8-2-50 ई0 ।

आज इस दरख्वास्त को हसनू , नि0 अं0- हसनू व0 अलादीन

वली मोहम्मद ने दाखिल किया। नि0 अं0-वली मोहम्मद

आदेश हुआ,

कि शामिल मिसिल हो।

8-2-50

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## पेपर सं0-48

न्यायालय श्रीमान् ज्वाइंट कमिश्नर महोदय फैजाबाद

बयान हलफ़ी मिन जानिब हसनू तथा वली मुहम्मद

राज्य बनाम मुसलिम अयोध्या तथा हिन्दू अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

थाना- अयोध्या ।

मांया कि हसनू वल्द अलादीन तथा वली मुहम्मद वल्द हसनू

उम्र 40 उम्र 18 वर्ा

साकिनान मुहल्ला कटरा थाना अयोध्या तहसील व ज़िला फैजाबाद हलफ़ से तसदीक करता हूँ कि -

**दफा-1.** यह कि बाबरी मस्जिद जन्मभूमि तोड़कर बनाई गई है ।

**दफा-2.** यह कि इस जमीन पर और मस्जिद के अन्दर हिन्दू तथा मुसलमान दोनों इबादत करते रहे । गदर के बाद मस्जिद के अन्दर मुसलमान जुमा के दिन नमाज पढ़ते रहे और बाहरी हाते में श्रीराम जी की मूर्ति की पूजा होती रही । मगर अलावा जुमा के हिन्दू लोग मस्जिद के अन्दर भी पूजा करते रहे ।

**दफा-3.** यह कि इस मस्जिद के बाबत अक्सर हिन्दू मुसलमानों में बलवा होता रहा। सन् 1934 के बलवे में मस्जिद के कुछ हिस्से को तोड़ दिया गया, मगर सब हिन्दू मुकदमे से बरी हो गये । इसके बाद मुसलमानों ने यहां नमाज पढ़ना बन्द कर दिया और हिन्दू लोग इसमें बराबर पूजा करने लगे और करते आ रहे हैं ।

**दफा-4.**हम हसनू तथा वली मुहम्मद को कोई एतराज नहीं है कि गवर्नमेंट इस मस्जिद को हिन्दुओं को दे दे ।

नि0 वली मोहम्मद नि0 हसनू



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हम हसनू तथा वली मुहम्मद आद 8-2-50 को बमुकाम कचहरी फैजाबाद हलफ से तसदीक़ करते हैं कि मजमून मजकूर मेरे इल्म व यकीन से सही व दुरुस्त है। न इसमें कोई बात छिपाई गई है और न कोई बात झूठी है। खुदा मेरी मदद करे।

निशानी वली मुहम्मद नि0अं0 हसनू

मैं हसनू तथा वली मुहम्मद को पहिचानता हूँ ।

लल्लनजी

अरायज नवीस

दीवानी फैजाबाद

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**पेपर सं0-49**

श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान तहरीरी निम्न आदेश-8 नियम-1जा0वि0सा0

राज्य मुद्दई

बनाम

पुलिस अयोध्या मुद्दालेअहुम

मुकदमा दफा 145 जाब्ता फौजदारी

बयान तहरीरी मिनजानिब पीरु वल्द बराती साकिन

मोहल्ला सरॉय चौक शहर अयोध्या जिला फैजाबाद

**धारा-1.** यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनवाई गई ।

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**धारा-2.** यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ करते थे ।

**धारा-3.** यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-4.** यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद मतें इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन थाकि उस मस्जिद में जाने मतें उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।



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**धारा-5.** यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

प्रार्थी,

नि0 अं0 पीरु

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**पेपर सं0-50**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी हस्ब आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुसिला अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मैं पीरु आयु 30 साल वल्द बराती साकिन सराय चौक शहर व थाना व जिला फैजाबाद हलफ से तसदीक करता हूँ -

**धारा-1.** यह कि राम जन्मभूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

**धारा-2.** यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

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**धारा-3.** यह कि नवाबों के जोर से शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

**धारा 4.** यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-5.** यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

**धारा-6.** यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

**धारा-7.**यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।



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**धारा-8.** यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शहर के खिलाफ है ।

नि0 अं0 पीरु

मैं पीरु आज ता0 11-2-50 ई0 को बमुकाम
कचेहरी फैजाबाद हलफ से तसदीक करता हूँ
कि मजमून मजहर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।

नि0अं0

पीरु

मैं पीरु को पहचानता हूँ।

सुरेश दत्त मिश्र बाखुद

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**पेपर सं0-51**

न्यायालय श्रीमान सिटी मजिस्ट्रेट साहब बहादुर फैजाबाद

द्वारा श्रीमान सुपरिन्टेंडेंट साहब जिला जेल फैजाबाद

सरकार वादी

बनाम

अभयराम दास वगैरह प्रतिवादीगण

धारा-145 बाबत जन्मभूमि मंदिर

श्रीमान जी,

सेवा में करबद्ध प्रार्थना है कि श्रीमान जी की अदालत में मेरा मुकदमा तारीख 11 मार्च सन् 52 ई को होना निश्चित था, लेकिन संयोगवश प्रार्थी को ता0 4 मार्च सन् 52 ई0 को सेशन जज साहब के यहां 1 माह की कैद हो गई और इस समय प्रार्थी कारावास में बन्द है, अतः तारीख पेशी पर प्रार्थी हाजिर अदालत नहीं हो सकता, इस कारण आपसे प्रार्थना है कि मुकदमे की तारीख 14 अप्रैल सन् 52 ई0 के बाद रखी जावे ताकि प्रार्थी अपने मुकदमे की पैरवी कर सके या श्रीमान जी हमको जेल से तारीख पर तलब कर लेवें ।

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Forwarded to the City Magistrate,
Faizabad for favour of necessary
action.

( Seal)

प्रार्थी

अभिराम दास

ता0-10-3-52 ई0

Superintendent,
District Jail, Faizabad



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**पेपर सं0-52**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुसिला अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मैं मोहम्मद उमर आयु 30 साल वल्द वजीर साकिन न वगजी शहर- अयोध्या, थाना- अयोध्या जिला फैजाबाद हलफ से तसदीक करता हूँ-

**धारा-1.** यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

**धारा-2.** यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

**धारा-3.** यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

**धारा 4.** यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-5.** यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

**धारा-6.** यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

**धारा-7.**यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर



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भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

**धारा-8.** यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शहर के खिलाफ है ।

हस्ताक्षर/अपठनीय

मैं मोहम्मद उमर आज ता0 11-2-50 ई0 को बमुकाम
कचेहरी फैजाबाद हलफ से तसदीक करता हूँ
कि मजमून मजहर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे।

हस्ताक्षर/ अपठनीय

मैं मुहम्मद उमर को पहिचानता हूँ।

ह0/सुरेश दत्त मिश्र
अर्जी नवीस
बा खुद .

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**पेपर सं0-53**

श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान तहरीरी निम्न आदेश-8 नियम-1जा0वि0सा0

राज्य मुद्दई

बनाम

पुलिस अयोध्या मुद्दालेअहुम

मुकदमा दफा 145 जाब्ता फौजदारी

बयान तहरीरी मिनजानिब मोहम्मद उमर वल्द वजीर साकिन मोहल्ला नवगज़ी शहर अयोध्या जिला फैजाबाद

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**धारा-1.** यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनवाई गई ।

**धारा-2.**यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ करते थे ।

**धारा-3.** यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-4.** यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन थाकि उस मस्जिद में जाने मतें उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।



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**धारा-5.** यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

प्रार्थी,

मोहम्मद उमर

ह0/ अपठनीय

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**पेपर सं0-54**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य वादी

बनाम

मुसलिम अयोध्या प्रतिवादीगण

मुकदमा दफा 145 जाब्ता फौजदारी

मैं अजीमुल्ला वल्द रजब उमर 45 साल साकिन छोटी दे वकाली शहर- अयोध्या, थाना- अयोध्या जिला फैजाबाद हलफ से तसदीक करता हूँ-

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**धारा-1.** यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

**धारा-2.** यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

**धारा-3.** यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

**धारा 4.** यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-5.** यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

**धारा-6.** यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से



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उन लोगों की जान का खतरा है ।

**धारा-7.**यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

**धारा-8.** यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शहर के खिलाफ है ।

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मैं अजीमुल्ला उमर 45 साल आज बतारीख 13-2-50 नि0अं0/ बमुकाम कचेहरी फैजाबाद हलफ से तसदीक करता हूँ

कि मजमून मजकूर मेरे इल्म व यकीन से सही व दुरुस्त है, न इसमें कोई बात छिपी गई है और न कोई बात झूठी है, खुदा मेरी मदद करे ।

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**पेपर नं0-55**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य मुद्दई

बनाम

मुसलिम अयोध्या मुद्दालेअहुम

बयान तहरीरी मिनजानिब अजीमुल्ला पुत्र रजब

साकिन छोटी देवकाली अयोध्या, जिला फैजाबाद

**धारा-1.** यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

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**धारा-2.**यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ करते थे ।

**धारा-3.** यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-4.** यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है।

**धारा-5.**यह कि उसी जमाने से हिन्दुओं मस्जिद के मुख्य स्थान पर भी



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अपना अधिकार कर लिया और तब से बराबर कब्जा किये हुए हैं ।

**धारा-6.** यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

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**पेपर नं0-56**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य वादी

बनाम

मुसलिम अयोध्या प्रतिवादीगण

मुकदमा दफा 145 जाब्ता फौजदारी

मैं लतीफ वल्द अब्दुल अजीज उमर 22 साल साकिन सिंगार हाट शहर- अयोध्या, जिला फैजाबाद हलफ से तसदीक करता हूँ-

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**धारा-1.** यह कि राम जन्म भूमि मंदिर तोडकर बाबरी मस्जिद बनाई गई है ।

**धारा-2.** यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

**धारा-3.** यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

**धारा 4.** यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-5.** यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

**धारा-6.** यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।



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**धारा-7.**यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

**धारा-8.** यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है ।

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मैं लतीफ उमर 22 साल आज बतारीख 13-2-50 नि0अं0/ बमुकाम कचेहरी फैजाबाद हलफ से तसदीक करता हूँ

कि मजमून मजकूर मेरे इल्म व यकीन से सही व दुरुस्त है, न इसमें कोई बात छिपी गई है 13-2-50 और न कोई बात झूठी है, खुदा मेरी मदद करे ।

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**पेपर नं0-57**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य मुद्दई

बनाम

मुसलिम अयोध्या मुद्दालेअहुम

बयान तहरीरी मिनजानिब लतीफ पुत्र अब्दुल अजीज साकिन सिंगार हाट शहर अयोध्या, जिला फैजाबाद

**धारा-1.** यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

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**धारा-2.**यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ करते थे ।

**धारा-3.** यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-4.** यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है।

**धारा-5.**यह कि उसी जमाने से हिन्दुओं मस्जिद के मुख्य स्थान पर भी



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अपना अधिकार कर लिया और तब से बराबर कब्जा किये हुए हैं ।

**धारा-6.** यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

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**पेपर नं0- 58**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

बयान तहरीरी मिनजानिब मोहम्मद हुसैन व0 वसाऊ सा0

मौ0 मिरानपुर डेरावीवी शहर अयोध्या जिला फैजाबाद

**धारा-1.** यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनवाई गई ।

**धारा-2.**यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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**धारा-3.** यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-4.** यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने मतें उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।

**धारा-5.** यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।



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ता0 14-2-50 ई0 निसानी अंगूठा/ मोहम्मद हुसैन

**वल्द वसाऊ मो0 मिरानपुर डेरा**

**वीवी शहर अवध ।**

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**पेपर नं0-59**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी हस्ब आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मोहम्मद हुसैन उम्र 35 साल वल्द वसाऊ मोहल्ला मिरानपुर डेरावीवी शहर अयोध्या जिला फैजाबाद हलफ से तसदीक करता हूँ कि-

**धारा-1.** यह कि राम जन्मभूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

**धारा-2.** यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

**धारा-3.** यह कि नवाबों के जोर से शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

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**धारा 4.** यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-5.** यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

**धारा-6.** यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

**धारा-7.**यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

**धारा-8.** यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर



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हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है ।

मैं आज ता0 14-2-50 ई0को बमुकाम कचेहरी फैजाबाद हलफ से तसदीक करता हूँ कि मजमून मजकूर मेरे इल्म व यकीन से सही व दुरुस्त है, न इसमें कोई बात छिपाई गई और न कोई बात झूठी है, खुदा मेरी मदद करे ।

(उर्दू इबारत ) 14-2-50 निसानी अं0/मोहम्मद हुसैन

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**पेपर नं0-61**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी हस्ब आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

अब्दुल जलील उम्र 19 साल वल्द अब्दुल वहीद सा0 मोहल्ला टेढ़ी बाजार शहर अयोध्या अवध जिला फैजाबाद हलफ से तसदीक करता हूँ कि-

**धारा-1.** यह कि राम जन्मभूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

**धारा-2.** यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

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**धारा-3.** यह कि नवाबों के जोर से शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

**धारा 4.** यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-5.** यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

**धारा-6.** यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

**धारा-7.**यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।



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**धारा-8.** यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है ।

मैं आज ता0 14-2-50 ई0को बमुकाम
कचेहरी फैजाबाद हलफ से तसदीक करता हूँ कि
मजमून मजकूर मेरे इल्म व यकीन से सही व दुरुस्त
है, न इसमें कोई बात छिपाई गई और न कोई बात
झूठी है, खुदा मेरी मदद करे ।

(उर्दू इबारत ) 14-2-50 निसानी अं0/(उर्दू इबारत)

14-2-50

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**पेपर नं0-60**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

बयान तहरीरी मिनजानिब अब्दुल जलील व0 अब्दुल वहीद सा0 टेढ़ी बाजार शहर अवध जिला फैजाबाद

**धारा-1.** यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाई गई ।

**धारा-2.**यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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**धारा-3.** यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

**धारा-4.** यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।

**धारा-5.** यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर



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हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

प्रार्थी,

ता0 14-2-50 ई0 अब्दुल जलील

नि0 अं0/

14-2-50 ई0

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In the Court of the Civil Judge, Faizabad

Copy of an order dated 3.3.51 passed by
Sri Bir Singh, Civil Judge, Faizabad in
Regular suit no. 2 of 1950.

Sri Gopal Singh Visharad

Versus

Zahoor Ahmad and others

---

In the Court of the Civil Judge, Faizabad

Regular Suit No. 2 of 1950

Sri Gopal Singh Vishard

Versus

Zahoor Ahmad and others

---

**Order**

The plaintiff Gopal Singh Visharad filed the present suit on 16.1.50 on the following allegations.

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He is a sanatanist Hindu resident of Ajodhya. He has always worshipped and visited the idol of Shri Ram chandra installed at Janma Bhumi Ayodhya. On 14.1.50 he was prevented from entering Janma Bhumi and worshipping the idol aforesaid by the officers of defendant No. 6 at the baseless instance and unfounded instigation of defendants 1 to 5, thereby jeopardising his right to worship at Janma Bhumi. The defendants 7 to 9 who are the local officers of the defendant no. 6 are exercising undue pressure on the local Hindu public inducing them to refrain from visiting Jaham Bhumi. They are being actively helped in this direction by defendants 1 to 5, who are in collusion with defendants 7 to 9. Neither the defendant No. 6 has nor defendants 7 to 9 have any right to interfere in religious matters or obstruct the plaintiffs right to worship at Janam Bhumi.

The relief sought by him are :-

(a) A declaration to the effect that he is entitled to worship and



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visit without obstruction or disturbance Shri Bhagwan Ram Chandra and others installed at Asthan Janma bhumi, and

(b) A perpetual injunction restraining the defendants from removing the idols of Shri Bhagwan Ram Chandra and other installed at Asthan Janma Bhumi aforesaid.

He prayed per separate application supported by an affidavit for an interim injunction against the defendants pending the decision of the suit. Notices were issued to the defendants and an interim injunction was granted in the meanwhile on 16.1.50. Notices were served on defendants 7 to 9 on 16.1.50. The defendant no. 7 moved an application on 8.4.50 seeking clarification or modification of the ex parte order of injunction issued by me on 16.1.50.

Thereupon the following order was passed:-

"The parties are hereby restrained by means of temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with puja etc. as at present carried on. The order dated 16.1.50 stands modified accordingly."

Defendants 1 to 5 (No. 1 Zahoor Ahmad, No. 2 Haji Pheku, No. 3 Mohd. Faiq No. 4 Mohd sami, No. 5 Mohd Achchan Miyan) filed objection against theinterim injunction of 13.2.50 challenging it on the grounds that the disputed site was part of the Babri Mosque, which was built by Emperor Babar; that it has been in the use of the Muslims as a mosque ever since; that the Hindus never worshipped or performed any puja there; and that the idols at present on the site were recently planted they also pleaded that suit was defective for want of notice under section 80 C.P.C. No further objections were filed by the defendants 6 to 9 (6. Uttar Pradesh State, 7 Deputy Commissioner Faizabad, 8 City Magistrate Faizabad, 9 Superintendent of Police, Faizabad) by 25.3.50. The objections dated 13.2.50 came up for hearing on 25.3.50 and Sir Iqbal Ahmad on behalf of the defendants 1 to 5 in his able arguments referred to various features of the building and the



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surroundings to support his contentions which were controverted on behalf of the plaintiff. This necessitated the issue of a commission to prepare a map of the building in question. On the date of the appointment of the commission, defendants 1 to 5 applied for taking of a photograph of building which were granted. Maps and photographs were accordingly prepared and now form part of the record.

The case came up for hearing again on ..... when the District Govt. Council (representatives of defendants 6 to 9 adopted the contentions of defendants 1 to 5 and further pleaded that the suit is bad for want of notice under Section 80 C.P.C. .....Plea of Section 80 C.P.C. is open to defendants 1 to 5. 1942 Bombay 339 is a case in point. It can, however, certainly be raised by defendants 6 to 9 who place reliance on the well known case of Bhagchand Versus Secretary of State, reported in 1927 P.C. 176 on behalf of the plaintiff it is strenuously urged that Bhagchand's case has no application to the facts of the present case. He bases his argument on Krishna Swami Versus Syed Ahmad, reported in 136 I.C. 777 (1932) and other earlier cases. The decisions on the point are without doubt conflicting. It will, therefore, be premature to decide at this stage as to whether the suit is liable to be thrown out for want of notice under section 80 C.P.C.

For the purpose of these proceedings it has to be seen whether the plaintiff has a fair question to raise as to the existence of the right alleged, whether he is endanger of loosing that right and whether irreparable injury or inconvenience is likely to result to him, in case the injunction order is drawn. It is conceded on all hands that the idol in question were on the disputed site before filing of the suit. It further appears from the copies of a number of affidavits of certain muslims residents of Ayodhya that at least from 1936 onwards the muslims have neither used the site as a mosque nor offered prayers there and that the Hindus have been performing their puja etc. on the disputed site. Nothing has been pointed out to



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discredit these affidavits, which along with the existence with the idols on the disputed site clearly show that the plaintiff has got the fair case to go to the trial. The defendants 1 to 5 rely on a number of documents to show that the building in dispute has always been mosque. It is not possible at this stage to anticipate any decision on this point because it will have to be decided after considering all the oral and documentary evidence that may be adduced by the parties in this case. The undisputed facts remains that on the date of the suit the idols of Shri Ram Chandra and others did exist on the site and that worship was being performed by the Hindus .....The affidavits referred to above does make out a prima facie case in favour of the plaintiff.

As to the balance of convenience, it is obvious that the effect of vacating the interim injunction at this stage is likely to deprive the plaintiff of the right claimed by him in the suit. Moreover, it is matter of admission between the parties that there are several other mosques in the Mohalla in question. The local muslims will not therefore, be put to much inconvenience if the interim injunction remains in force during the pendency of the case.

For these reasons, I hold that the status quo should be maintained.

**Order**

The interim injunction order dated 16.1.50 as modified on 19.1.50 shall remain in force until the suit is disposed off.

Sd. Bir Singh
Civil Judge
3.3.51



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पेपर नं0-67

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम वादी

मुस्लिम अयोध्या प्रतिवादीगण

बयान तहरीरी

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

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धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

(उर्दू इबारत)
ता0 14-2-50 ई0

प्रार्थी,
जान मोहम्मद
मोहल्ला कटरा शहर
अवध
नि0 अं0/



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**पेपर नं0-68**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य वादी

बनाम

मुसलिम अयोध्या प्रतिवादीगण

मुकदमा दफा 145 जाब्ता फौजदारी

मैं जान मोहम्मद वल्द हुसैनी उमर 40 साल साकिन मो0 कटरा शहर त0व जिला फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

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धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।



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नि0अं0/जान मोहम्मद

मैं जान मोहम्मद उमर 40 साल आज 13-2-50

नि0अं0/जान मोहम्मद बमुकाम कचेहरी फैजाबाद हलफ से तसदीक करता हूँ

कि मजमून मजकूर मेरे इल्म व यकीन से सही

14-2-50 व दुरुस्त है, न इसमें कोई बात छिपी गई है

और न कोई बात झूठी है, खुदा मेरी मदद करे ।

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पेपर नं0-69

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि अब्दुल सत्तार उम्र 30 साल वल्द शमशेर खां साकिन मोहल्ला सैदवाड़ा शहर अवध त0व जिला फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

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धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।



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धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं अब्दुल सत्तार खां आज 16-2-50 बमुकाम हस्ताक्षर/उर्दू

कचेहरी फैजाबाद हलफ से तसदीक करता हूँ
कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।

ह0/उर्दू

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पेपर नं0-70

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

बयान तहरीरी मिनजानिब अब्दुल सत्तार खां उम्र 30 साल वल्द शमशेर खां पठान सा0 मोहल्ला सैदवाड़ा शहर अवध त0 व जि0 फैजाबाद

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज



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पढ़ना मुसलमानी शरह के खिलाफ है ।

प्रार्थी,

| | | |
|---|---|---|
| 3-11-50 ई0 | ह0/अपठनीय | निसानी |
| | 2-7-56 | अब्दुल सत्तार खां |

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पेपर नं0-71

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि अब्दुल गनी उम्र 40 साल वल्द अला बक्श कौम रईस मोहल्ला बरगदहिया रामगंज फैजाबाद (जि0) शहर अयोध्या हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।



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धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं अब्दुल गनी आज 16-2-50 बमुकाम नि0अं0
कचेहरी फैजाबाद हलफ से तसदीक करता
हूँ अब्दुलगनी
कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।
(उर्दू इबारत) निसानी अंगूठा अब्दुल गनी

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**पेपर नं0-72**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

बयान तहरीरी मिनजानिब अब्दुल अब्दुल गनी उम्र 40 साल व0 अलाबक्श कौम रईस सा0 मोहल्ला बरगदहिया रामगंज शहर अवध जिला फैजाबाद

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज



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पढ़ना मुसलमानी शरह के खिलाफ है ।

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**पेपर नं0-73**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि अब्दुल रोजीद उम्र 25 साल वल्द टुन्नू मोहल्ला सरगद्द्वार शहर अयोध्या मौजा फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

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धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर



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भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं आज 16-2-50 बमुकाम प्रार्थी
कचेहरी फैजाबाद हलफ से तसदीक करता हूँ रोजीद
कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।
16-2-50

(उर्दू इबारत) निसानी रोजीद

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**पेपर नं0-74**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

बयान तहरीरी रोजीद उम्र 25 साल वल्द टुन्नू मोहल्ला स्वर्गद्वार शहर अयोध्या मौजा फैजाबाद

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।



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धारा-6. मेरे परिवार में भाई और माँ भी हैं।

प्रार्थी,

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**पेपर नं0-75**

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बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि हौसलदार उम्र 60 साल वल्द घिराऊ नदाया सा0 मोहल्ला मातगैंड़ शहर अवध जिला फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

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धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।



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धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं आज 16-2-50 बमुकाम प्रेंथीं कचेहरी फैजाबाद
हलफ से तसदीक करता हूँ हौसलदार
कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।
16-2-50

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पेपर नं0-77

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि रमजान उम्र 45 साल वल्द जुमन सा0 मोहल्ला कटरा शहर अवध जिला फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर



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भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं आज 16-2-50 बमुकाम प्रार्थी
कचेहरी फैजाबाद हलफ से तसदीक
करता हूँ रमजान
कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।
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**<u>पेपर नं0-78</u>**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

बयान तहरीरी मिनजानिब रमजान वल्द जुमन उम्र 45 साल कौम सेख हाल साकिन मोहल्ला कटरा शहर अवध जिला फैजाबाद

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।



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धारा-6. मेरे परिवार में मेरी माँ है ।

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**पेपर नं0-79**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि गुल्ले खाँ उम्र 55 साल वल्द नवाब अली सा0 मोहल्ला रायेगंज शहर अवध जिला फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

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धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर



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भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं आज 16-2-50 बमुकाम प्रार्थी
कचेहरी फैजाबाद हलफ से तसदीक करता हूँ गुल्ले खाँ
कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।
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**पेपर नं0-80 __**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

मनकि गुल्ले खाँ उम्र 55 साल वल्द नवाब अली सा0 मोहल्ला रायेगंज शहर अवध जिला फैजाबाद ।

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।



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धारा-6. मेरे परिवार में मेरी माँ है ।

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**पेपर नं0-81**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि मोहम्मद इस्माइल उम्र 35 साल सा0 चौक सराय, फैजाबाद शहर अवध जिला फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

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धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।



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धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं आज 16-2-50 बमुकाम प्रार्थी
कचेहरी फैजाबाद हलफ से तसदीक करता हूँ मोहम्मद इस्माइल
कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।
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**<u>पेपर नं0-82</u>**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

बयान तहरीरी मिनजानिब मोहम्मद इस्माइल उम्र 35 साल वल्द ईदू कौम सेख अनसारी, चौक सराय, जिला फैजाबाद

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

धारा-6. मेरे परिवार में मेरे माता पिता हैं ।



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2-7-56

ता0 16-2-50 ई0 (उर्दू इबारत )

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**पेपर नं0-83**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि अब्दुल सकूर उम्र 30 साल वल्द ईदन कौम सेख सा0 मोहल्ला उरदू बाजार शहर अयोध्या जि0 फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

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धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर



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भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं अब्दुल सकूर आज ता0 16-2-50 बमुकाम निसानी अंगूठा/अब्दुल सकूर कचेहरी फैजाबाद हलफ से तसदीक करता हूँ

कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।

निसानी अंगूठा/अब्दुल सकूर

(उर्दू इबारत)

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**पेपर नं0-84**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

मनकि अब्दुल सकूर उम्र 30 साल वल्द ईदन कौम सेख सा0 मोहल्ला उरदू बाजार शहर अयोध्या जि0 फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज



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पढ़ना मुसलमानी शरह के खिलाफ है ।

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**पेपर नं0-85**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

बयान तहरीरी मिनजानिब अब्दुल रज़ाक उम्र 30 साल वल्द वजीर कौम सेख सा0 राज सदन अयोध्या जी मोहल्ला रायेगंज अवध जिला फैजाबाद -

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।



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ता0- 16-2-50 ई0

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**पेपर नं0-86**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

बयान हल्फी आर्डर 19 रुल-1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जाब्ता फौजदारी

मनकि अब्दुल रज़ाक उम्र 30 साल वल्द वजीर कौम सेख मोहल्ला सा0 राज- सदन अयोध्याजी सा0 मो0 राईगंज बाजार शहर अयोध्या जि0 फैजाबाद हलफ से तसदीक करता हूँ-

धारा-1. यह कि राम जन्म भूमि मंदिर तोड़कर बाबरी मस्जिद बनाई गई है ।

धारा-2. यह कि मस्जिद बनने के बाद श्री हिन्दुओं ने अपना कब्जा नहीं छोड़ा ।

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धारा-3. यह कि नवाबों के जोर से सिर्फ शुक्र के दिन मुसलमान लोग मस्जिद में नमाज पढ़ पाते थे और हिन्दू लोग बराबर अपनी मूर्ति का पूजन वहां करते रहे ।

धारा 4. यह कि अंग्रेजी हुकूमत के बाद भी मुसलमान लोग सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-5. यह कि सन् 1934 में हिन्दू मुसलमान झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये ।

धारा-6. यह कि मुसलमानों को यह यकीन था कि मस्जिद में जाने से उन लोगों की जान का खतरा है ।

धारा-7.यह कि हिन्दुओं ने भी उसी जमाने से मस्जिद के मुख्य स्थान पर



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भी अपना अधिकार कर लिया और तब से बराबर कब्जा किये हैं ।

धारा-8. यह मुजहिर को इसमें कोई आपत्ति नहीं है कि मस्जिद पर हिन्दुओं का अधिकार कायम रखा जाये क्योंकि उस स्थान पर नमाज पढ़ना मुसलमानों की शरह के खिलाफ है।

मैं अब्दुल सकूर आज ता0 16-2-50 बमुकाम निसानी अंगूठा/अब्दुल रज़ाक कचेहरी फैजाबाद हलफ से तसदीक करता हूँ

कि मजमून मजकूर मेरे इल्म व यकीन से सही
व दुरुस्त है, न इसमें कोई बात छिपी गई है
और न कोई बात झूठी है, खुदा मेरी मदद करे ।

निसानी अंगूठा/अब्दुल रज़ाक

(उर्दू इबारत)

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**पेपर नं0-87**

वकालतनामा

राज्य बनाम 1. हिन्दू जनता )
2. मुस्लिम जनता ) अयोध्या

दफा-145 जा0 फौजदारी
थाना- अयोध्या

दावा 145 जा0 फौ0

हम अभिरामदास चेला श्रीनागा जमुनादास इत्यादि व बाबू गोपाल सिंह वल्द ठा0 गिरधारी सिंह इस वकालतनामा के जरिये से वकील ठा0 सूर्यपाल सिंह व बाबू राधाचरन व पं0 श्रीराम वल्द रामनाथ सेंगर व बाबू बिन्देश्वरी प्र0 व बाबू मदन मोहन, इस मुकदमा की सम्पूर्ण पैरवी के लिए नियुक्त करते हैं । वकील साहबान को सम्पूर्ण अधिकार बयान तहरीरी व तकरीरी पैरवी करने को देते हैं ।

अतः यह वकालतनामा लिख दिया कि सनद रहे और वक्त पर काम आवे ।

ह0/ अभिरामदास पुजारी जन्मभूमि
अयोध्या जि0 फैजाबाद।



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**पेपर नं0-88**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जा0 फौ0

नसीबदार वल्द जहान सा0 मुहल्ला सुटेहटी अयोध्या उमर 25 साल कौम मुस्लिम नाऊ प0 हवेली अवध जि0 फैजाबाद

दफा-1. यह कि बाबरी मस्जिद मंदिर जन्म भूमि मुंहदिम कराके उसी मुकाम पर उसी मंदिर के मलवा से जबरन बनवाई गई है जिससे उस मस्जिद की नमाज कबूल खुदा नहीं होती।

दफा-2. यह कि मस्जिद बाबरी में अहले हिन्दू हुकूमत इस्लामिया में भी परसतिस बराबर करते रहे और कभी- कभी अहले इस्लाम भी नमाज पढ़ लेते रहे ।

दफा-3. यह कि सन् 34 ई0 में हिन्दू मुसलमान अयोध्या में मजहबी बल वा हुआ ,जिसमें अहेले हिन्दू जिन पर मुकदमा चला, मुकदमा से बरी हो गये ।

दफा-4. यह कि इन लोगों को सन् 34ई0 के बलवा में पता चला कि अहेले हिन्दू और अहेले इस्लाम अयोध्या में बाबरी मस्जिद की वजह से जो कि श्रीराम चन्द्र जी के जन्मभूमि पर बनी है तफरुफा व नफरत रखती है और चूँकि हम लोगों को अहेले हिन्दू से मिलकर रहना था, इसलिए मस्जिद बाबरी को हम लोगों ने वर्क कर दिया और हिन्दुओं का तनहा कब्जा हो गया और वही तब से बराबर मस्जिद मजकूर में परसतिश करते रहे हैं ।

दफा-5. यह कि बाबरी मस्जिद अब हिन्दुओं की जन्मभूमि है, हम मुसलमानों को इससे कोई वास्ता नहीं है, उसकी बाबत अहेले इस्लाम व



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अहेले हिन्दू में कोई नजा नहीं है ।

दफा-6. हमें खुशी है कि बाबरी मस्जिद हिन्दुओं की मिल्कियत मकबूजा करार दी जावे ।

ह0/अपठनीय

नसीबदार व0 जहान सा0

सुटेहटी अयोध्या

नि0अं0/

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**पेपर नं0-89**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद
बयान हलफी हस्ब आर्डर19 कायदा 1 जाब्ता दीवानी

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145 जा0 फौ0

नसीबदार वल्द जहान सा0 मुहल्ला सुटेहटी अयोध्या उमर 25 साल कौम मुस्लिम नाऊ प0 हवेली अवध जि0 फैजाबाद

मुजहिर हस्ब जैल उजहार करता है ,

दफा-1. यह कि बाबरी मस्जिद मंदिर जन्म भूमि मुंहदिम कराके उसी मुकाम पर उसी मंदिर के मलवा से जबरन बनवाई गई है जिससे उस मस्जिद की नमाज कबूल खुदा नहीं होती।

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दफा-2. यह कि मस्जिद बाबरी में अहले हिन्दू हुकूमत इस्लामिया में भी परसतिस बराबर करते रहे और कभी- कभी अहले इस्लाम भी नमाज पढ़ लेते रहे ।

दफा-3. यह कि सन् 34 ई0 में हिन्दू मुसलमान अयोध्या में मजहबी बल वा हुआ ,जिसमें अहेले हिन्दू जिन पर मुकदमा चला, मुकदमा से बरी हो गये ।

दफा-4. यह कि इन लोगों को सन् 34ई0 के बलवा में पता चला कि अहेले हिन्दू और अहेले इस्लाम अयोध्या में बाबरी मस्जिद की वजह से जो कि श्रीराम चन्द्र जी के जन्मभूमि पर बनी है तफरुफा व नफरत रखती है और चूँकि हम लोगों को अहेले हिन्दू से मिलकर रहना था, इसलिए मस्जिद बाबरी को हम लोगों ने वर्क कर दिया और हिन्दुओं का तनहा कब्जा हो गया और वही तब से बराबर मस्जिद मजकूर में परसतिश



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करते रहे हैं ।

दफा-5. यह कि बाबरी मस्जिद अब हिन्दुओं की जन्मभूमि है, हम मुसलमानों को इससे कोई वास्ता नहीं है, उसकी बाबत अहेले इस्लाम व अहेले हिन्दू में कोई नजा नहीं है ।

दफा-6. हमें खुशी है कि बाबरी मस्जिद हिन्दुओं की मिल्कियत मकबूजा करार दी जावे ।

निसान अंगूठा

नसीबदार

मैं नसीबदार मुकिर हूँ कि दफा-1 से लेकर दफा-6 तक बाइल्म हमारे सही और दुरुस्त है, खुदा मेरी मदद करे, तसदीक बमुकाम कचहरी फैजाबाद में ता0 24-2-50 .

(उर्दू इबारत )

ता0- 24-2-50

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**पेपर नं0-76**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य बनाम मुस्लिम अयोध्या

मुकदमा दफा 145

बयान तहरीरी मिनजानिब हौसलदार उम्र 60 साल वल्द घिराऊ कौम नदाफ सा0 मोहल्ला मातगैंड़ शहर अयोध्या जिला फैजाबाद

धारा-1. यह कि जिस स्थान पर इस समय बाबरी मस्जिद है,उस स्थान पर जन्मभूमि मंदिर था और उसी को तोड़कर मस्जिद बनाया गया है ।

धारा-2.यह कि मस्जिद बनने के बाद भी हिन्दुओं ने अपना कब्जा नहीं छोड़ा और सिर्फ नवाबों के जोर से शुक्र के दिन मुसलमान नमाज पढ़ने पाते थे और हिन्दू लोग बराबर वहां पर अपनी मूर्ति का पूजा पाठ कराते थे ।

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धारा-3. यह कि बाद अंग्रेजी हुकूमत के भी मुसलमान सिर्फ शुक्र के दिन बाबरी मस्जिद में नमाज पढ़ते थे ।

धारा-4. यह कि सन् 1934 ई0 में हिन्दू मुसलमान के झगड़े के बाद मुसलमानों का जाना बाबरी मस्जिद में इस वजह से बन्द हो गया कि हिन्दू बलवाई 3 मुसलमानों के कत्ल करने पर भी बरी हो गये और मुसलमानों को यह यकीन था कि उस मस्जिद में जाने में उनको जान का खतरा है, हिन्दुओं ने उसी जमाने से मस्जिद के मुख्य स्थान पर भी अपना अधिकार कर लिया औरए तब से बराबर कब्जा किये हुए हैं ।

धारा-5. यह कि प्रार्थी को कोई उजर नहीं है कि बाबरी मस्जिद पर



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हिन्दुओं का कब्जा बहाल रखा जावे, उस वास्ते कि उस स्थान पर नमाज पढ़ना मुसलमानी शरह के खिलाफ है ।

प्रार्थी,

निसानी अं0/हौसलदार

ता0- 16-2-50

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**<u>145 CR.P.C.</u>**
**<u>IN VOL. 1 & II</u>**
**<u>VOL-II PAGE 133-322</u>**

The reply of other connected papers have been submitted to the Deputy Commissioner in the English Dak on 18.3.50.

.....
City Magistrate
Faizabad.

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From-

Shri K.S. Varma, B.A., LL.B.,
Depty Registrar, High Court of
Judicature at Allahabad,
Post Box. No. 23.

To,

The District Magistrate,
Faizabad.

Crl. Misc. 208-50
No. 3220/dated/ April 1950.

Criminal Miscellaneous No. 208-1950
---
Anisur Rahman Versus State.

Case under Section 145 Cr.P.C., pending in the Court of the Addl., City Magistrate, Faizabad.

Sir,

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I am directed to invite your attention to the Court's letter No. 2388, dated 9.3.50, enclosing therewith copies of application and affidavit filed in the case noted on the margin and to ask you kindly to submit with the least possible delay your explanation as well as of the learned Additional City Magistrate.

Yours faithfully,

Deputy Registrar.
3.4.50



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From-

Shri K.S. Varma, B.A., LL.B.,
Depty Registrar, High Court of
Judicature at Allahabad,
Post Box. No. 23.

To,

The District Magistrate,
Faizabad.

Crl. Misc. 208-50
No.2388 /dated/ 9th March, 1950.

Criminal Miscellaneous No. 208-1950
---
Anisur Rahman Versus State.

Case under Section 145 Cr.P.C., pending in the Court of the Addl., City Magistrate, Faizabad.

Sir,

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I am directed to invite your attention to the Court's letter No. 2388, dated 9.3.50, enclosing therewith copies of application and affidavit filed in the case noted on the margin and to ask you kindly to submit with the least possible delay your explanation as well as of the learned Additional City Magistrate.

Yours faithfully,

Deputy Registrar.
11.3.50



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**In the High Court of judicature at Allahabad.**

---

**Criminal Transfer Application no. 208 of 1950 under Section 526/528 Cr.P.C. pending in the court of the city Magistrate Faizabad.**

---

Anisur Rahman son of Moulvi Vaziruddin caste Syed resident of Mohalla Begampara, Ajodhya (Faizabad)

..... Applicant

Versus

Rex ..... Opposite Party

To,

The Hon'ble the Chief Justice and his Companion Judges of the aforesaid Court.

The humble petition of the applicant abovenamed most respectfully showeth:-

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That for the reasons disclosed in the accompanying affidavit it is respectfully prayed that the criminal case No. of 1949 Rex Vs. Anisur Rahman under Section 145 Cr.P.C. pending in the court of the Additional City Magistrate, Faizabad be transferred to some other court of competent jurisdiction outside the district of Faizabad and further proceedings of the case be stayed meanwhile.

Note: Stay order be sent to the court of the Addl. City Magistrate, Faizabad in the said case.

Sd. M.A. Kazmi
Counsel for Applicant.

Dated 2.2.50



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In the High Court of Judicature at Allahabad.

***

Affidavit

in

Criminal Misc. No. 208 of 1950.

Anisur Rahmam .....Applicant.

Versus

Rex ..... opposite party

Affidavit of Anisur Rahman son of Moulvi Wazirruddin, caste Syed resident of Mohalla Begampara, Ajodhya, Faizabad.

I, Anisur Rahman aforesaid solemnly affirm and state as follows:-

1) That I am the sole applicant in this application and am fully acquainted with the facts deposed below.

2) That in Ajodhya there is a historical mosque built by Emperor Babar in 1528 A.D. Called the Babari mosque which has got a grant attached to it and is registered under the Waqf Act and the courtyard of the mosque is separated by a wall from small temple which is situated to its East.

3) That Hindus and muslims of Ajodhya have been peacefully and calmly carrying on their worship in the temple and prayers in the mosque respectively from times immemorial.

4) That on the 9th. Of November, 1949 it was found that two tombs and about 25 graves which lay outside the compound of the Babari mosque had been levelled down and the mosque in the cemetery known as the “Qanati” mosque had been dug up and a new platform adjacent to the aforesaid mosque was constructed and an idol placed on that platform.

5) That from 22.11.1949 the Hindus of the place started their 'Jap' (worship) on that place in which a large number of Hindus



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were collected and for that reason the police advised the muslims not to say their prayers in the surviving Babari mosque all the 5 times while the 'Jap' continued but confine it to Fridays only. In order to avoid a communal clash the muslims acted on the advice and continued to say their prayer every Friday up to December 16, 1949. Except for the Friday prayers the mosque used to be kept locked and guarded by the Police.

6) That on the night preceding the next Friday, namely the night between 22nd and 23rd December, 1949 the Hindus surreptitiously and clandestinely introduced an idol inside the mosque itself and put it on the "Member" (pulpit). Pandit Ram Deo Dubey Sub-Inspector Incharge of Ajodhya made the following report of the incident on 23rd December, 1949:

"On information received through Mata Prasad constable No. 1 when I reached the spot at about 7 in the morning., I learned that a crowd of 50 or 60 persons broke the locks which were put on the compound of the Babri Mosque, and by climbing the walls by ladders illegally entered into ("madakhilat") the mosque and have placed the idol of Shri Bhagwan and have written on the walls inside and outside Sita Ramji etc. in red and yellow. Constable no. 2 Hansraj who was on the duty prohibited them but they did not heed. He called the P.A.C. Guard for help which was there, but by that time all the persons had entered the mosque, High Officers of the District came to the spot and engaged themselves in management. Afterwards a crowd of 5000 collected and raised religious slogans and performed "Kriten" and wanted to go inside but nothing untowards happened due to proper arrangements. Abhey Ram Dass, Ram Shukul Dass, Sheodarshan Dass and 50 or 60 other persons whose names are not known have committed riot, trespassed into the mosque and have installed an idol in the mosque and have thus polluted ("napak") the mosque. The police men on duty and many others have been this incident and ..... this check has been prepared.



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7) That the muslims of the vicinity were at that time persuaded by the authorities not to say their prayers that Friday. When the muslims made a representation on 6th January 1950 they were again asked not to say their prayers for some time to come.

8) That in the meantime the District authorities instead of helping the muslims of the vicinity in getting back their mosque have issued notice on 29th December, 1949 under Section 145 Cr.P.C.

9) That in spite of the fact that all the matters have been within the knowledge of the authorities and the police guard has been posted on the spot since 12th November, 1949, and their strength was increased by posting an armed guard on 22nd November, 1949, the above mentioned incidents have taken place. They have created a tremendous sensation not only in Ajodhya but also in the town and District Faizabad.

10) That it is the petitioner's case that the District authorities are not free from communal bias and are rendering direct and indirect assistance to the ..... pass on the mosque. The petitioner apprehends that he cannot have a fair and impartial trial in that district.

11) That Ajodhya being a town with a large Hindu population the authorities appear to be wholly overwhelmed.

12) That Shri K.K.K. Nayer the present Deputy Commissioner of Faizabad has acquired a plot of land on a long lease for building purposes in the name of his wife Shrimati Shakuntala Nayer in Ajodhya proper by means of a registered deed dated 7.6.1967 and probably desires to be a resident of Ajodhya. He cannot therefore, go against the wishes the local people of the Hindu Majority of the place, and the applicant apprehends that he can have .....justice at their hands.

13) That the learned Additional City Magistrate, Faizabad Shri Markande Singh has attached the mosque and put in the charge of Shri Priya Dat Ram who has been .....an active part in the present



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agitation there. In original order he went to the length of ordering Receiver to arrange for the worship in the .....nearly as possible as at present but subsequently scored it out.

14) That the local authorities are persisting in ..... of these proceedings and thus affording opportunity for the continued misuse of the mosque .... there is no apprehension of any breach of ..... the muslims are exhibiting a remarkable .....connection and in spite of the institution ..... suit in that connection in the court of the ..... Judge, Faizabad, which is registered as ..... In this suit even a temporary injunction has been issued against (1) Zahoor Ahmad (2) Haji Pheku (3) Haji Mohd. Faiq (4) Mohd. Sami (5) Mohd. Achchan (6) U.P. Govt. (7) Shri K.K.K. Nayer, District Magistrate, Faizabad. (8) Chaudhari Kirpal Singh S.P. and (9) Shri Markande Singh City Magistrate, Faizabad on 16.1.1950 as under:-

"Issue notices. Issue interim injunction in the meanwhile as prayed. The defts should also be informed that a temporary injunction has already been issued exparte."

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The prayer in the application for injunction is as follows:-

"Therefore the applicant prays that a temporary injunction be issue against the defts to the effect that they should not remove the idols of Shri Bhagwan Ram Chandra & others from Asthan Janam Bhum the details of which are given in the ..... till the decision of the case, and they further be ordered not to close the Ramesh Dwar and other passages of ingress and egress to the visitors and also that they should not place any obstacle in the Puja and Darshan."

15) That the entire atmosphere in Ajodhya and Faizabad is surcharged with communalism and in view of the highly strained relations between the two communities and also the district authorities not being free from communal bias neither Ajodhya nor Faizabad would be a proper place for the inquiry under section 145 Cr.P.C. proceedings and the life of the witnesses of the applicant



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would not be safe, as is being demonstrated by the activities near the Babri mosque.

16) That the contents of paras 1 to 15 of this affidavit are true to my personal knowledge and belief, nothing has been concealed and no part of it is false. Sd.

Illegible

**D.M.**

With reference to your order dated 11.3.50 on the .....of the Deputy Registrar in connection with the Crl. Misc. No. 208/50 Anisul Rehman Vs. State, I beg to offer my explanation parawise as follows:-

1. I have no knowledge regarding allegations contained in paras 1,2,3,4,5 & 7 of the affidavit filed by Shri Anisul Rehman and therefore I am not in a position to say anything about them.

2. I am not in a position to note any comment on the allegation in para 6, since the matter referred to therein are the the subject of a proceeding pending before me.

3. Regarding allegations contained in para 8, I beg to say that on being satisfied from credible sources that a dispute likely to lead to a breach of the peace between Hindus & Muslims in Ayodhya over the question of rights of proprietor ship & worship in the buildings claimed variously as Babri Masjid & Janam Bhumi Mandir, I passed an order u/s 145 Cr.P.C. and attached the said building. The parties were called upon to put in written statement of their respective claims with regard to the fact of actual possession of the subject of the dispute. As a matte of fact the order u/s q45 Cr.P.C. was meant to check an imminent breach of the peace.

4. Regarding allegations contained in para 9 I have to say that it is not clear what matters are alleged to have been within the knowledge of the authorities and therefore no explanation is possible. If however, it refers to existence of tension between the two communities on account of the building in dispute, Section u/s 145 Cr.P.C. was appropriately taken and it had the desired effect of



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preventing breach of peace.

5. The allegations in para 10 of the affidavit are vague & baseless and are denied.

6. With regard to the contents of para 11, I beg to state that it is a fact that Ayodhya has a large Hindu population, but it is wholly incorrect that the authorities were overwhelmed by the Hindus.

7. I have learnt that a Nazul plot in Ayodhya was acquired sometime ago by Shrimati Nayar, but I have no information that Shrimati Nayar acquired it for her. In this connection it may be worthwhile to mention that Shri Nayar is no more the District Magistrate of Faizabad.

8. As regards contents of para 13, I beg to say that the said buildings were attached & put incharge of Shri Priya Dutt Das. It is incorrect to say that he has been taking active part in the agitation. The alleged portion of my order scored out before signing and promulgating it, is, in no sense, a part of my order. I may, however, and that this portion was scored out as the time of signing the order as I felt that it was superfluous.

9. As regards contents of para 14, the court is equally eager to dispose of this case as speedily as possible. The case was stayed when the petitioner applied for the stay of the proceedings.

10. As for the allegations of para 15 I have to say that the allegations are unfounded, incorrect and unjustified.

(Markandeya Singh)
CityMagistrate, Faizabad.
5-4-1950



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No. 1234/XV-37-9 Dated 6.4.50

From

Shri J.N. Ugra,
District Magistrate,
Faizabad.

To

The Deputy Registrar,
High Court of Judicature at Allahabad.
Post Box No. 23.

Sir,

With reference to your letter No. Crl. Misc. 208-50. 2320 dated April 1, 1950 I have the honour to forward the explanation of the city Magistrate Shri Markandeya Singh who is seized of the case u/s 145 Cr.P.C.

With regard to my own explanation, I have to submit that I have taken over charge as District Magistrate, Faizabad on the afternoon of 14th March 1950 and have had nothing to do with the case at any stage.

Yours faithfully,

District Magistrate.



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**पेपर नं0-101**

न्यायालय श्रीमान सिटी मजिस्ट्रेट महोदय फैजाबाद

राज्य अभियोगी

विपरीत

अभयराम दास तथा अन्य विपक्षी

अभियोग धारा-145 दण्ड विधि संहिता के अनुसार

लिखित कथन श्री अभयराम दास की ओर से

पेशी दिनांक- 29-12-50 ई0

धारा-1.यह कि सूचनाःनोटिसः जो धारा 145 दण्ड विधि संहिता के अधीन प्रवृत्त हुई है, व अवैध तथा अनुचित है ।

धारा2. यह कि धारा-1 कथित सूचनाःनोटिसःकिसी व्यक्ति विशेा के नाम न होने के कारण अवैध व अनियमित तथा अमान्य है ।

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धारा-3. यह कि सूचना दिनांक 29-12-49 के प्रवृत्त होने के पूर्व तथा उसके पश्चात मंदिर जन्म भूमि तथा एतत्सम्बन्धी भूमि या भवन के विाय में शांति भंग की आशंका अथवा भय न था और न है, ऐसी दशा में कार्यवाही धारा-145 दण्ड विधि संहिता के अनुसार सर्वथा असंगत तथा अनावश्यक है ।

धारा-4. यह कि मंदिर जन्मभूमि तथा एतत्सम्बन्धी भवन व भूमि पर सम्वत् 1934 ई0 से वैणव मतानुयायी हिन्दू मात्र को भोगाधिकार पुजारी मुझ उत्तरदायी तथा अन्य सहकारी पुजारियों द्वारा अद्यावधि निरन्तर अक्षुण रुप से चला आता है, अन्य किसी व्यक्ति विशेा अथवा सम्प्रदाय विशेा का भोगाधिकार इस अवधि के भीतर कभी नहीं रहा है और न सम्प्रति है ।

धारा-5. यह कि जो-जो व्यक्ति विशेा अथवा सम्पद्राय विशेा अपना अधिकार कथन करते प्रतीत हों, उनका अभियोग पक्ष बनाना अति आ



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वश्यक था, किन्तु ऐसा न होने के कारण समस्त कार्यवाही अवैध तथा निराकरण योग्य है ।

धारा-6. यह कि यह निर्विवाद विाय है कि विवादास्पद भूमि के बाहर कुछ भूमि व भवन निर्मोही अखाड़ा की सम्पत्ति है और उस पर उनका निर्विघ्न भोगाधकार आज भी है ।

धारा-7. यह कि सम्वत् 2006 विक्रमी के पूर्व से विवादास्पद मंदिर पर पूजा एवं राग भोग मुझ उत्तरदायी प्रतिवादी द्वारा साधारणतया समस्त हिन्दू जनता की सहायता से तथा विशेातया वैणव सम्प्रदाय के हिन्दू मात्र की सहायता से सम्पादन हो रहा है ।

धारा-8.यह कि सम्वत् 1935 से अद्यावधि कोई मुसलमान विवादास्पद भूमि के भीतर  नही आता-जाता और न कभी कोई मुसलमान उस अवधि के भीतर उक्त भवन के भीतर ईश्वर प्रार्थना किया है ।

धारा-9. यह कि कतिपय कलहप्रिय तथा षडयन्त्रकारी मुसलमानों के दुराग्रह से कुछ राजकीय कर्मचारीगण ने मुसलमानों को मंदिर में प्रार्थना करने के निमित्त प्रवेश कराने का प्रयत्न किया और मंदिर स्थित मूर्ति को भी हटवाने की कुचेटा की और असफल रहे , कारण कि सिविल जज महोदय के न्यायालय में वाद प्रस्तुत हो गया और  निोघ आज्ञा भी प्रवृत्त हो गई ।

धारा-10. यह कि उपरोक्त कथनानुसार समस्त कार्यवाही धारा-145 दण्ड ि वधि संहिता अनुसार जो की जा रही है, वह सर्वथा अनुचित व अवैध है और निरस्त होना  चाहिए । मुझ उत्तरदायी का भोगाधिकार पूर्ववत् स्थापित रहना चाहिए ।

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ता0 पेशी 27-9-50 ई0

स्टेट मुद्दई/ प्रार्थी

बनाम

नामालूम विपक्षीगण

वादपत्र निम्न धारा- 145 जा0 फौजदारी

लिखित बयान बाबा बल्देव दास चेला महन्त मोहनदास पंच निर्मोही अखाड़ा व पुजारी मंदिर जन्मभूमि सा0 मोह0 राम कोट शहर अ वध.

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धारा-1.यह कि मंदिर जन्मभूमि तथा वह भूमि जिस पर मंदिर स्थित है, मिल्कियत अखाड़ा निर्मोही महन्थ निर्मोही व पंचान अखाड़ा के अधिकार के अधीन है और वही उस पर बराबर काबिज चले आते हैं ।

धारा-2. यह कि नोटिस दिनांक 29-12-49 अवैध और नाजायज है ।

धारा-3.यह कि नोटस 145 धारा के अधीन किसी व्यक्ति विशेा के नाम न होने के कारण नाजायज है ।

धारा-4.यह कि 29-12-49 तथा उसके पूर्व किसी शांति भंग बहोने का कोई भय मंदिर जन्मभूमि या उससे सम्बन्धित भूमि या भवन के सम्बन्ध में नहीं था और न अब है, अतः धारा 145 सर्वथा अनुपयुक्त है ।

धारा-5.यह कि जो व्यक्ति मंदिर जन्म भूमि या उससे संबंधित भवन इत्यादि पर अपना कब्जा चाहते हों या जिनको ऐसे कब्जे से वंचित रखना हो, उनका मुकदमा में फरीक होने आवयक है और ऐसा न होने पर नोटिसय तथा उसके बाद की सब कार्यवाही नाजायज और कानून के ि



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वरुद्ध है और तत्काल भंग कर देने के योग्य है ।

धारा-6. यह कि कुल भूमि व भवन ,जिसकी चौहद्दी निम्नलिखित है, निर्मोही अखाड़ा की मिल्कियत है और वही अखाड़ा उस पर 12 वर्ा से अधिक से काबिज है ।

धारा-7.यह कि प्रार्थी अखाड़े की ओर से चैत 2006 से बहैसियत पुजारी मंदिर का पूजा-पाठ राग भोग और वहां स्थित साधुओं और अन्यागतों की सेवा करता चला आता है और कम से 5 साधु 3 पुजारी 2 रसोइया और एक पंच निर्मोही अखाड़ा हमेशा वहां पर रहते हैं और उस विशाल भवन में रहते और सोते हैं,ञ जो मंदिर की चहारदीवारी के पश्चिम तरफ स्थित है।

धारा-8. यह कि सन् 1935 या 1936 से कभी कोई मुसलमान इस मंदिर के अन्दर जिसकी चौहद्दी नीचे लिखी है, नहीं आता है और न वह स्थान इस बीच में कभी नमाज के लिए इस्तेमाल किया गया ।

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धारा-9. यह कि कुछ मुसलमानों के दुराग्रह से कुछ सरकारी कर्मचारियों ने मुसलमानों को मंदिर के अन्दर नमाज पढ़ाने का प्रयत्न किया और मंदिर में मूर्तियाँ जो वहां विराजमान हैं, उन्हे हटाने की दुश्चेटा की,जिसके विरुद्ध यू0पी0सरकार तथ उसके कर्मचारियों और उन मुसलमानों पर जिनके दुराग्रह से अन्यायपूर्ण आचरण सरकारी कर्मचारियों का , दीवानी में दायर कर दिया गया है, जो सिविल जज महोदय के इजलास पर चल रहा है, अतः कार्यवाही 145 धारा के अधीन अनावश्यक और निरर्थक है, भंग कर देने योग्य है ।

धारा-10. यह कि किसी मंदिर या मस्जिद में पूजा व नमाज इत्यादि के झगड़े के लिए धारा-145 सर्वथा अनुचित और नियम विरुद्ध है ।

अतः प्रार्थना है कि नोटिस दिनांक 29-12-49 खारिज किया जावे ।।



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तरफसील चौहद्दी मंदिर जन्म भूमि वाके मोहल्ला राम कोट शहर अयोध्याः

| पश्चिम | उत्तर | दक्षिण |
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**पेपर नं0-105**

न्यायालय जनाब सिटी मजिस्ट्रेट साहब फैजाबाद

दरख्वास्त हस्ब दफा 145 जा0 फौ0

राज्य मुस्तमीस 1.अहले हिन्दू अयोध्या- फरीक अव्वल

2.मुसलमानान अयोध्या- फरीक दोम

श्रीमान जी, सेवा में निवेदन है कि इमारत मुतदाविया मसाजिद बाबरी शहनशाह आज़म आवीमाह फिरदौस मुक़ाम बाबर शाह मरहूम की तामीर करदा है जिसको शहनशाह आजम मज़कूर ने सन् 1528 ई0 में तामीर कराके मुसलमानों के लिए वक़्फ़े आम कर दिया जिसमें आम मुसलमानों को हक़े इबादत हासिल है हम सायलान अयोध्या निवासी हैं और मसाजिद मज़कूर यानी इमारत मुतनाज़या में मुसलमानान बहक बिना किसी रोक टोक दिसम्बर सन् 1949 ई0 तक बराबर नमाज अदा करते रहे हैं और इस तरह से आम मुसलमानों और, और सायलान का कब्जा व दख़ल इमारत मुतनाज़िया यानी बाबरी मस्जिद पर सदैव से चला आता है , लिहाजा प्रार्थना है कि सायलान को फरीक मुकदमा बजुमरे फरीक दोम गरदजा जावे और जो बयान तहरीरी मिनजानिब फरीक दोम मौलवी अनीसुरर्हमान साहब की जानिब से दाखिल अदालत है, वह हम सायलान तरफ से भी तसअउर किया जावे और सायलान को भी पैरवी मुकदमा की इजाज़त दी जावे ।

प्रार्थी,

(उर्दू इबारत) सालार मुहम्मद वल्द बरसानी मु0 सुतहटी व

मुहम्मद हाशिम उर्फ वफाती वल्द करीम बख्श

मु0 कुटिया शहर अयोध्या थाना

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**पेपर नं0-106**

न्यायालय श्रीमान हाकिम इन्चार्ज सरिश्ता नकल फैजाबाद

श्रीमान - सेवा में निवेदन है कि 9 जनवरी सन् 1951 ई0 को प्रार्थी ने एक दरख्वास्त नकल दिया जिसका नम्बर 2788 है, जो बमुश्किल तमाम 2-2-51ई0 को तैयार होकर 5-2-51 ई0को मिली, आज देखने पर मालूम हुआ कि नकल नवीस ने गलती से बजाय बयान तहरीरी के बयान हलफी की नकल दे दिया, लिहाजा जरिये दरख्वास्त हाजा मुस्तदई हूँ कि बयान तहरीरी मिनजानिब ( मुसलमानान) की नकल दिला दी जावे- गलत नकल जो इजरा हो गई है- वह बिनावर मुलाहिजा मुन्सलिफ दरख्वास्त हाजा है और इस गलत नकल का फोलियो बयान तहरीरी मिनजानिब मुसलमानान में लगा दिया जावे।

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**<u>पेपर नं0-107</u>**

बअदालत जनाब सिटी मजिस्ट्रेट साहब बहादुर फैजाबाद

रेक्स मुस्तगीस

बनाम

1.अहले हिन्दू अयोध्या फरीक अव्वल

2.मुसलमानान अयोध्या फरीक दोयम

कार्रवाई हस्ब दफा 145 जाब्ता फौजदारी

बयान तहरीरी मिनजानिब फरीक दोयम

दफा-1. यह कि इमारत मुतनाजिया वाके मोहल्ला रामकोट शहर अयोध्या शहनशाह हिन्द बाबर शाह की तामीर करदा मस्जिद मौसूम बबाबरी मस्जिद है, जिसको शहनशाह मजकूर ने बाद फतेहयाबी हिन्दोस्तान दौरान कयाम अयोध्या सन 1528 ई0 में तैयार कराया और तामीर करके तमाम मुसलमानान के लिए वक्फ कर दिया, जिसमें आम मुसलमानान का हक इबादत है ।

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दफा-2. यह कि बाद तामीर मस्जिद मजकूर शहनशाह बाबरने मस्जिद मजकूर की खिताबत व दीगर अखराजात के लिए एक रकम अतिया सालाना अपने खजाना शाही से मोकर्रर किया , जो दौरान सल्तनत मुग़लिया मस्जिद मजकूर को बराबर मिलता रहा, और बाद जवाल सल्तनत मुग़लिया नवाबीन अवध ने इस अतिया को कायम रखा, और नवाब आसफद्दौला बहादुर ने अपने जमाना हुकूमत में रकम अतिया मजकूर को इजाफा करके मुबलिग़ 302 रु0 3 आना 6 पाई सालाना अता करना मंजूर किया, जो रकम बाद इन्तजा सल्तनत अवध ब्रिटिश गवर्नमेंट ने भी जारी रखा और जमाना बन्दोबस्त अव्वल में गवर्नमेंट बरतानिया ने मुत्त



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वल्लियान को बजाय नकद अतिया मजकूर के मवाजियात शोलापुरी व बहोरनपुर मुत्तसिल अयोध्या बतौर माफी बिनावर मसारिफ मस्जिद बाबरी अता किया ।

दफा-3. यह कि आम मुसलमानान और फरीक दोयम का कब्जा बतौर वक्फ आम इमारत मुतनाजिया यानी मस्जिद बाबरी पर 1528 से आज तक मुसलसल चला आता है।

दफा-4. यह कि फरीक दोयम व आम मुसलमानान जायद अज 400 साल बइल्म व आगाही फरीक अव्ल व आम अहले हिन्दू इमारत मुतनाजिया में बतौर मस्जिद वक्फ आम बिला किसी रोक टोक के अपनी इबादत करते और नमाज पढ़ते चले आये हैं ।

दफा-5. यह कि फरीक अव्वल या आम अहले हिन्दू का कोई हक इमारत मुतनाजिया यानी मस्जिद बाबरी में न था और न है, और न उनका कब्जा कभी इस पर रहा है और न है ।

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दफा-6. यह कि इमारत मुतनाजिया यानी मस्जिद बाबरी न कभी मंदिर जन्मभूमि थी और न है, और न कभी श्री रामचन्द्र जी का मंदिर रहा ।

धारा-7. यह कि फरीक दोयम व दीगर मुसलमानान ने इमारत मजकूर यानी मस्जिद बाबरी में 16 दिसम्बर सन 49 ई0 तक नमाज जुमा बजमात अदा की ।

धारा-8. यह कि कुछ शोरिस पसन्द अहेले हिन्दू ने, जिसमें कुछ मुकामी फरीक अव्वल भी शामिल थी, 12 नवम्बर सन्1949 ई0 को इमारत मुतनाजिया यानी मस्जिद बाबरी के करीब शुमार हदूद मस्जिद से बाहर में जाप शुरु किया, जिसमें एक अम्बोह कसीर अहेले हिन्दू का जमा हुआ,जिसने कि कुछ कबरें औरे कनाती मस्जिद की बेहुरमती की, जब फरीक दोयम ने इसकी खबर हुक्काम जिला को दी, तो उन्होंने एक पुलिस गार्ड इस मुकाम पर तैनात कर दिया कि आइन्दा इस किस्म की



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हरकत सरज़द न हो ।

धारा-9. यह कि 22 नवम्बर सन् 49 ई0 को जब यह मशहूर हुआ कि इमारत मुतनाजिया बाबरी मस्जिद पर कुछ शोरिश पसन्द मुफसिद हमला करना चाहते हैं, तो उसकी इत्तला हुक्काम जिला को दी गई,तो उन्होंने पुलिस गार्ड में इजाफा कर दिया और हर नमाज के बाद मस्जिद मजकूर में ताला लगाया जाने लगा ।

धारा-10. यह कि इमारत मुतनाजिया यानी बाबरी मस्जिद मजकूर इसके बाद से बराबर हमारे हकूक व कब्जा के तहफ्फुज की ग़रज से पुलिस गार्ड की हिफाजत में मोकफ्फल की गई, मगर 22 व 23 दिसम्बर सन् 49 की शब में कुछ मुफशिद और शरर पसन्द अहेले हिन्दू ने मस्जिद मजकूर में मदाखलत बेजा करे चोरी और बददयानती से एक मूर्ति श्री रामचन्द्र जी भगवान की उसके मेम्बर पर रख दी , जिसकी रिपोर्ट रामदेव दूबे सब-इन्सपेक्टर थाना अयोध्या ने चेकबुक दस्त अन्दाजी में दर्ज की और मुकदमा हस्ब दफा 147, 295 व 448 ता0हि0 खिलाफ अमैराय खास व 50, 60 दीगर अहेले हिन्दू कायम किया फरीक अव्वल की इस हरकत (अप0 इबारत) व फैल नाजायज मुजरिमाना व खिलाफ कानून से कोई हक उनको पैदा नहीं हो सकता ।

दफा-11. यह कि फरीक अव्वल के इस फैल मुजरिमाना व खिलाफ कानून के फौरन ही बाद हुक्काम जिला व मुकामी पुलिस ने फौरन मस्जिद मजकूर से फरीक अव्वल को निकाल दिया और दफा 144 जाब्ता फौजदारी का निफाज कर दिया ।

दफा-12. यह कि फरीक अव्वल के मुन्दर्जा बाला अफाल नाजायज व हरकात मुजरिमाना से हम फरीक दोयम को हमेशा फरीक अव्वल से नुक्ज अमर का अन्देशा है और मिनजानिब फरीक दोयम कोई अन्देशा नुग्ज अमन का नहीं है ।

धारा-13. यह कि इमारत मुतनाजिया यानी मस्जिद बाबरी जेर एहतमाम



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सुन्नी सेन्ट्रल बोर्ड आफ वक्फ यू0पी0 है, इसलिए वह जरुरी फरीक मुकदमा है, लेहाजा बअदालत बयानतहरीरी फरीक दोयम मुस्तदई है कि उसका कब्जा बहक इबादत की कि उसको इमारत मुतनाजिया यानी बाबरी मस्जिद में हासिल था औरहै, बहाल रखा जाये और फरीक अव्वल को मुमानियत कर दी जाये कि वह फरीक दोयम के कब्जा और इबादत में मुखिल न हो और मस्जिद मजकूर में मदाखलत न करे और श्रीभगवान की मूर्ति जो रख दी गई है, उसको फौरन हटवा देवें और इमारत मुतनाजिया यानी मस्जिद बाबरी फरीक दोयम के हक में वागुजार फर्माई जावे ।

ता0 8-7-50ई0

29-12-50 ई0 उर्दू इबारत

प्रार्थी अनीसुर्रहमान सा0 मु0

बेगमपुरा शहर अयोध्या जिला फैजाबाद ।

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The District Magistrate,
Faizabad.

**In the matter of case under Section 145 Cr.P.C. relating to Ramjanambhumi and Babri Mosque.**

---

**In the Court of the City Magistrate, Faizabad.**

******

Sir,

I beg to submit for your kind consideration and favourable orders:-

1) That in December 1949 proceedings referred to above were started in the court of the City Magistrate, Faizabad.

2) That I filed a Civil suit for declaration and injunction in the court of the Civil Judge, Faizabad suit No. 2 of 1950.

3) That one Ram Chandra Paramhans also filed a similar suit in the same court no. 250 of 1950.

4) That on the application of Mohammadan defendants the two suits were consolidated.

5) That in the case under Section 145 Cr.P.C. certain Muslim residents of Ajodhya had filed their written statements with affidavits.

6) That certified copies of about 20 affidavits were taken from the case under Sec. 145 Cr.P.C. and were filed in the said civil suits.

7) That I have come to know in the case under Section 145 Cr.P.C. no dates are now being fixed.

8) That the said filed of the case under Sec. 145 Cr.P.C. will be required in the court of the Civil Judge, Faizabad but as the file is before the High Court at Allahabad the Civil Judge, Faizabad will not be in a position to summon it.

**P R A Y E R**

The applicant therefore prays that the entire rile of the case



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under Section 145 Cr.P.C. referred to above be preserved ( and not weeded out) until such time as it is not summoned by the Civil court, even though under the rules time may come or its weeding out.

Applicant.

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Faizabad
The 22nd, July, 1954 Gopal Singh Visharad
State Vs. Janam Bhumi & Babri Mosque
under section 145 Cr.P.C.

**ORDER**

This is a case under Section 145 Cr.P.C. in which Shri Markandey Singh, Magistrate Ist class and Additional City Magistrate, Faizabad cum Ayodhya on 29th December, 1949 passed an order for attachment of the building claimed as Babri Mosque/Janam Bhumi Mandir and handed over possession of the same to Shri Priya Dat Ram, Chairman, Municipal Board, Faizabad cum Ayodhya as receiver for arranging for the care of the property in dispute. Shri Priya Dat Ram on January 5, 1950 assumed charge of the premises in dispute in Janam Bhumi Ayodhya.

An application for transfer of the case was moved in the high court of the judicature at Allahabad by Anisur Rahman s/o Molvi Waziruddin, but it was rejected on 30.5.50 by the Hon'ble High Court.

A Regular suit no. 2 of 1950 was filed in the civil court by Shri Gopal Singh Visharad against Zahoor Ahmad and others and the U.P. State, Deputy Commissioner, Faizabad, City Magistrate, Faizabad and Superintendent of Police, Faizabad are also parties to that suit. A temporary injunction as follows was issued on 3.3.51 by the learned civil judge, Faizabad.

"The parties are hereby restrained by the means of temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with puja etc. as at present carried on. The order dated 16.1.50 stands modified accordingly."

This case under Section 145 has been lingering on unnecessarily and dates are being fixed in the hope that the civil suit might be disposed of or the temporary injunction vacated.

The disputed property i.e. Babri Mosque/Janam Bhumi



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premises are already in possession of the receiver Sri Priya Dat Ram appointed by the Additional City Magistrate under his order dated 29th December, 1949 referred to above and the said receiver has been looking after the property since 5.1.1950, the date of assuming charge. As the finding of the civil court will be binding on the criminal court, it is no use starting proceedings in this case under Section 145 Cr.P.C. and recording evidence specially when a temporary injunction stands, as it cannot be said what may be finding of this Court after recording the evidence of the parties. From the administrative point of view the property is already under attachment and no breach of peace can occur.

I, therefore, order that the file under Section 145 Cr.P.C. be consigned to record as it is and will be taken out for proceeding further when the temporary injunction is vacated.

Sd/- Prem Shanker
City Magistrate, Ist class,
Faizabad.

30.7.53.

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**D.M.**

Kindly see the headlines in "Virakt" about the case under section 145 Cr.P.C. about "Janam Bhumi". The information has been very wrongly given in it.

The case under Section 145 Cr.P.C. had been pending for a long tme and dates after dates were being given in it. Under my order dated 30.7.53 I consigned this file as it is to be taken out for proceeding further as soon as the temporary injunction issued from the civil court is vacated.

I submit this file under my order for perusal.

Sd/- Illegible

18.8.57

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**In the court of the city Magistrate, Faizabad.**

*****

**In re:**

Case under Section 145 Cr.P.C. relating to
Shri Ram Janam Bhumi Ayodhya Faizabad.

Sir,

In the above mentioned case the humble petition of Srivastava N.P. Sinha son of Srivastava Bindha Prasad, president of Pura Sherjang Qanungoyan Ayodhya district Faizabad respectfully showeth as under :-

1. That certain property relating to Shri Ram Janam Bhumi has been attached by this Hon'ble court under the said proceeding.

2. That the petitioner is the proprietor of Shri Ram Janam Bhumi and as his proprietorship is not disputed by any party is entitled to retain possession of the entire property of the temple such as Arti village Tahsil and district Faizabad, Muafi Ramkot and Pramod Ban &c and also the property which has been attached by this Hon'ble court under the above mentioned proceedings.

3. That the petitioner was a necessary party in the aforesaid proceeding but has not been impleaded and the entire proceeding have been taken behind his back and are void and illegal.

Wherefore it is prayed that in the circumstances in the case the property attached be ordered or recommended to be released in favour of the petitioner who along with his three some sons Srivastava A.K. Sinha, Srivastava V.K. Sinha and Srivastava V.K. Sinha is entitled to remain in peaceful possession of the same so that justice be .....



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**पेपर नं0-**

कार्यालय वरिठ पुलिस अधीक्षक , फैजाबाद

संख्या- एस0टी0/सी-47/08 दिनांक अगस्त 01,2008

सेवा में,

श्री एच0एस0 दूबे,
विशे कार्याधिकारी " रा0ज0भू0 "
मा0 उच्च न्यायालय,
लखनऊ खण्डपीठ,लखनऊ

कृपया आप अपने पत्र संख्या-3904 आर0जे0बी0-बी0एम0/2008 दिनांक-29-7-2008 का सन्दर्भ ग्रहण करने का कट करें, जो मु0अ0सं0-215/1949 धारा-147/295/448 भा0द0वि0 थाना कोतवाली अयोध्या फैजाबाद की प्रगति/परिणाम के सम्बन्ध में है ।

उक्त सम्बन्ध में सादर अवगत कराना है कि थाना कोतवाली अयोध्या व रा0ज0भू0 जनपद फैजाबाद के अभिलेखों का गहनता से अ वलोकन किया गया और गोपनीयता को ध्यान में रखते हुए अन्य विश वसनीय सूत्रों के माध्यम से भी जानकारी की गई । प्रकरण काफी पुराना होने के नाते वाँछित आख्या के सम्बन्ध में काफी प्रयास करने पर जो तथ्य संकलित किये गये हैं, उसका विवरण निम्न है -

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मु0अ0सं0 -215/1949 धारा- 147/215/448 भा0द0वि0 थाना कोतवाली अयोध्या फैजाबाद पर दिनांक 23-12-1949 को तत्कालीन थाना इंचार्ज उप निरीक्षक श्री रामदेव दूबे की रिपोर्ट पर विरुद्ध अभिराम दास, शिव दर्शन दास, राम सकल दास और 50-60 नफर अन्य व्यक्ति नाम पता अज्ञात पंजीकृत हुआ था । इस मुकदमे में विवेचनोपरान्त श्री अभिराम दास आदि 05 लोगों के विरुद्ध आरोप पत्र दिनांक 01-02-1950 को प्रेति हुआ था, सुलभ सन्दर्भ हेतु ग्राम अपराध रजिस्टर नं0-8 मोहल्ला आलमगंज कटरा से प्राप्त उद्धरण सम्बन्धित मु0अ0सं0-215/1949 व आरोप पत्र की छायाप्रति संलग्न है ।

प्रकरण काफी पुराना होने के नाते फैजाबाद जनपद के विभिन्न न्यायालयों में पता लगाने के उपरान्त भी उस मुकदमा के विचारण के परिणाम के बारे में कि मुकदमा में क्या निर्णय हुआ, की जानकारी नहीं हो सकी । थाना अभिलेखों में भी मुकदमा के परिणाम ( ट्रायल के पश्चात) सजा या रिहा हुए के सम्बन्ध में कुछ भी अंकित नहीं पाया गया ।

आख्या कृपया अवलोकनार्थ एवं आवश्यक कार्यवाही हेतु उप निरीक्षक/ना0पु0 श्री डी0डी0 मिश्रा कोतवाली अयोध्या जनपद फैजाबाद के माध्यम से भेजी जा रही है ।

संलग्नक- उपरोक्तानुसार ।



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ह0/

वरिठ पुलिस अधीक्षक,

फैजाबाद।

प्रतिलिपि- वरिठ उ0नि0/ना0पु0 श्री वी0डी0 मिश्रा को इस निर्देश के साथ कि मा0 उच्च न्यायालय जाकर नियमानुसार कार्यवाही करायें ।

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# I N D E X

# ANNEXURE-III

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| 3 | Report of Archaeological Survey of India. | 16 to 25 |
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| 7 | Examination in Chief of O.P.W. 17, Dr. R. Nagaswamy on affidavit under order 18, Rule 4 C.P.C. | 164 to 167 |
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| 12 | Statement of D.W. 20/5, Jayanti Prasad Srivastav in support of ASI report. | 282 to 350 |

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ORDER

IN

O.O.S. No. 4 of 1989

Sunni Central Board of Wakf Vs. Sri Gopal Singh Visharad

Connected with

O.O.S. No. 1 of 1989,

O.O.S. No. 3 of 1989,

AND

O.O.S. No. 5 of 1989

The basic issue in all the suits is as to whether there was a Hindu temple or any Hindu religious structure existed and the alleged Babri Masjid was constructed after demolishing such temple at the site in question.

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Issue No. 1 (b) in O.O.S. No. 4 of 1989 Sunni Central Board of Wakf Vs. Sri Gopal Singh Visharad reads as under:-

> "Whether the building has been constructed on the site of an alleged Hindu Temple after demolishing the same as alleged by defendant No. 13?"

Issue No. 14 in O.O.S. No.5 of 1989 Bhagwan Sri Ram Virajman and others Vs. Rajendra Singh and others reads as under:-

> "Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma Sthan Temple at its site?"

The Hon'ble President of India had referred the following question to the Supreme Court under Article 143 of the Constitution:-



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"Whether a Hindu Temple or any Hindu religious structure existed prior to the construction of the Ram Janm Bhoomi Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

The Archaeological Science can help to resolve the question. In the modern age the Archaeological Science has achieved the great accuracy and points out from the excavation the past history particularly in regard to the past existence of the construction. Sri D.Mandal in his Book "AYODHYA ARCHAEOLOGY AFTER DEMOLITION" has opined as follows:-

***"However, archeology can answer with a considerable degree of certainty, many questions about various past activities of people, for which material evidence is available. It is for this reason that archaeological research continues and is of importance. It is believed that sufficient archaeological material is available regarding the temple-mosque issue, pre-empting the need for further excavations at Ayodhya." (page 16)***

He further states that "Archaeology does not generally deal with super structures, as these seldom remain standing and awaiting excavation. All that usually remains of structures is their foundations. It may well be that demolition notwithstanding, the remains of the foundations of the walls of the mosque are still *in situ." (page 52)*



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If there was any temple or religious constructions on the disputed site or if it ever existed, foundation can be traced by excavation.

If it is ultimately decided to excavate the disputed land, in that event the excavation will be done by the Archaeological Survey of India under the supervision of five eminent Archaeologists (Excavators), even though retired, including two Muslims and the following procedure may be adopted.

(1) The videography of excavation work be done and if any artifacts are found, their photographs (coloured as well as black and white and slides) may be taken. Such artifacts/materials, if found, may be kept under the custody of the State of U.P.

(2) Complete documentation as sites, artifacts be done properly.

(3) The debris of disputed structure as existing after its demolition shall be removed.

(4) The excavation or removal of the debris may be done between 9.00 A.M. to 5.00 P.M.

(5) The Court may appoint observer for the excavation work.

(6) At present at the disputed site the idol of "Shri Ramlala" has been placed and its devotees are



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worshiping, it may be placed at the Chabutra situate east to the site till the excavation work is complete.

Before the final orders are issued in above terms, all the parties are invited to submit in writing, within two weeks, their views/suggestions.

We make it clear that the above proposal in regard to excavation is tentative till final decision is taken on this issue.

In the meantime before excavation, the Archaeological Survey of India will survey the disputed site by Ground-Penetrating Radar or Geo-Radiology and obtain the report with the aid including financial assistance by the Central Government of India.

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Dt. 01.8.2002

Sd/-
Sudhir Narain
S. Rafat Alam
Bhanwar Singh



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ORDER

IN

O.O.S. NO. 4 OF 1989

Sunni Central Board of Waqfs & Others

Versus

Gopal Singh Visharad (now deceased) & Others

***Hon'ble Sudhir Narain, J.***
***Hon'ble S.R. Alam, J.***
***Hon'ble Bhanwar Singh, J.***

One of the important issues in the suit is whether there was any temple/structure which was demolished and mosque was constructed on the disputed site. We took the view that archaeological evidence will be of importance to decide such an issue. We had made a suggestion in regard to excavation of the site in question by an order date 1.8.2002 and invited the suggestions from the parties in this regard. It was further observed that till excavation order is passed the Archaeological Survey of India will get surveyed the disputed site by Ground Penetrating Radar and Geo-Radiology and will submit its report in this regard.

Certain objections were filed challenging our power to suo moto exercising such power. We rejected the objections on 23.10.2002 holding that the Court has power to suo moto summon any witness to record evidence, to summon any document from any person, to make local inspection or to appoint a commission for investigation if it thinks necessary or expedient in the interest of



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justice.

The Archaeological Survey of India placed the order for Ground Penetrating Radar Survey to Tojo-Vikas International Pvt. Ltd. It has conducted GPR survey and has submitted report along with annexures on 17th February 2003. the conclusion in the report is as follows:- (Numbering is done by us)

"1. In general terms, the main georadar features detected by the present survey are "anomaly alignments" across the main platform, north and south of the Sanctum Sanctorum extending to the Ram Chabutra area, the high amplitude "ringy sequence" towards the sough, and the mound structures to the east.

2. In their cross-section appearance and their areal pattern, the "anomaly alignments" may correspond to a wall foundation of some sort. In the Ram Chabutra area, the crossing patterns of those alignments and the different stratigraphic units from where they ((emerge)) suggest that they belong to successive construction periods rather than being contemporary to one another. As mentioned earlier, similar indications of successive structures are shown in other areas of the site such as shown on the example radar cross section 2 (Annex-D).

3. The ((ringy) and high amplitude)) sequence in the southern portion of Ram Chabutra area extends across the fences to the east to the main platform area to cover a rather large area. This sequence may be indicative of a flooring



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structure of some sort, possibly stone slabs if its origin is ancient.

4. A third type of buried structures covers the entire eastern boundary of the site. It consists of buried mound structures with some internal texture or structure indicative of collapsed material. Similar types of anomalies have been detected to the south-west area just before the terrain slopes down.

5. Many small discrete anomalies have been detected at various depths – from 0.5 to 5.5 meters. Some of those anomalies appear to line up in some directions but could not be detected on some survey lines between them. As such they have been referred to "discontinuous alignment" on the geophysical interpretation map of Annex. A. They may correspond to pillars alignment, broken up sections of wall foundations or fortuitous patterns of independent objects or natural features.

6. In the zones of reworked material or rubbles indicated on the map, little penetration was achieved as the signal was severely scattered in those units. It is possibly that some of the trends or alignments stopping in those zones actually also extend further.

7. In the slope area to the west, which is undulating, filled with rubbles and steeply dipping, only small anomalies were detected at relatively shallow depths. They appear to line up



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somewhat as indicated on the map; however, the wider line spacing and the poor data quality, on account of ground conditions in this area, due to bad coupling of the antenna with the ground, makes this interpretation difficult. This area as explained earlier is a debris zone where heterogeneous material was apparently dumped from the upper platform and the origin of those detected anomalies could also be debris.

8. We are also showing some indications on the map relative to the radar signal that are most probably related to geological factors such as dipping layers, recent fill sequence and zones of higher soil conductivity. They are part of the geophysical interpretation.

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9. ***In conclusion, the GPR survey reflects, in general a variety of anomalies ranging from 0.5 to 5.5 meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site. However, the exact nature of those anomalies has to be confirmed by systematic ground truthing, such as provided by archaeological trenching".***

In para 9 of the report it is clearly stated that the exact nature of the structure, pillars, foundation walls, slab flooring etc. can be confirmed by excavation.

Learned counsel for the parties have filed objections to the report submitted by Tojo-Vikas International (Pvt.) Limited. They have also submitted their objections to the excavation as it was



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proposed in our order dated 1.8.2002.

We have heard Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mushtaq Ahmad Siddiqui learned counsel appearing for plaintiffs and, Sri Vireshwar Dwivedi, Sri M.M. Pandey, Sri R.L. Varma, Ranjana Agnihotri for the defendants in O.O.S. NO. 4 of 1989, Sri Ved Prakash appearing for the plaintiffs in O.O.S. No. 5 of 1989 and Sri P.L. Misra appearing for plaintiffs of O.O.S. No. 1of 1989. We have also heard Sri D.S. Randhava appearing for Union of India and Sri R.S. Tripathi learned Standing Counsel for the State of U.P.

We deal with their objections in seriatum:

1. The first objection is that the report submitted by Tojo-Vikas International (Pvt.) Limited cannot be read as substantive evidence in the suit unless it is duly proved in accordance with law. It is urged that the persons who have prepared the report must be examined in the Court and secondly, the data collected by Tojo-Vika International (Pvt.) Limited should be made part of the record.

The report has been submitted on the basis of the results obtained by it by Ground Penetrating Radar system. The data is collected on the computer. It is reflection of Radar base and whenever any anomaly (in common parlance object) was found it has noted it. It is itself not conclusive and the report itself says that the measurements of Geo-Radar is based on the returning signals by a dielectric constant change. It is only guidance



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to an Archaeologist where to excavate. We are not recording any finding in regard to any foundation/construction on the basis of the report submitted by Tojo-Vikas International (Pvt.) Limited. The report itself states that the exact nature of anomalies/objects has to be confirmed by systematic truthing such as provided by archaeological trench.

2. The second objection of the learned counsel for the plaintiff is that the order of excavation will be in contravention of Section 7(2) of Acquisition of Certain Aria at Ayodhya Act, 1993 which reads as under:-

"7(2) – In managing the property vested in the Central Government under Section 3, the Central Government or the authorized person shall ensure that the position existing before the commencement of the Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi – Babri Masjid, stood in village Kot Ram Chandra in Ayodhya, pargana Haveli Avadh, in Tahsil Faizabad Sadar, in the District of Faizabad of the State of Uttar Pradesh is maintained."

The aforesaid provision is a direction to the Central Government or the authorized person that it shall ensure that the position existing before the commencement of the Act in the area on which the structure, including the premises of inner and outer



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courtyards of such structure, commonly known as Ram Janma Bhumi-Babri Masjid is maintained. There is no direction for the Court restraining it in passing appropriate order in regard to trace out any evidenced, which is underneath the land.

**3.** The third objection is that Hon'ble Supreme Court passed an order on 24th October, 1994 in ***Dr. M. Ismail Faruqui and others v. Union of India and others, (1994) 6 SCC 360,*** wherein the Hon'ble Supreme Court in paragraphs 86 and 87 directed for maintaining status quo. Further the judgment of the High Court dated 23rd February 1996 was challenged before the Hon'ble Supreme Court and in that appeal an order was passed on 10.5.1996 directing the parties to maintain status quo. It is contended that as Hon'ble Supreme Court has passed the order to maintain status quo, this Court should not do anything which amounts violation of the order passed by the Apex Court.

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We have highest respect for the orders of the Apex Court. In our view the Apex Court has not restrained this Court from passing any order for excavation of the land in question to find the truth in regard to rival contentions of the parties. The order of the Hon'ble Supreme Court must be read in the context in which it was passed, namely, the parties should not raise any construction or do anything in regard to possession of the land till the matter is decided. We do not find that the excavation of the land in any way amounts to contravention of the order of the Hon'ble Supreme Court. The



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parties themselves led archaeological evidence. They themselves say that archaeological evidence is important evidence to determine one of the important issues involved in the suit, namely, whether any religious structure existed prior to the disputed structure which has been demolished. In our order dated 1.8.2002 we have given detail reasons as to how foundation of walls, pillars etc. reflects upon the nature of construction. The earth may bear the testimony and the Court in appropriate circumstances can pass order for excavation of the land. The excavation is by digging the land and after it is dug, the earth is again filled in. Such excavation does not alter the nature of the land by putting any structure or in any way affecting the user of the land in future.

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We, however, make clear, as observed by the Hon'ble Supreme Court in Dr. M. Ismail Faruqui's case (supra), that worship by Hindu devotees in the disputed area shall not be affected while excavation is in operation.

4. The fourth objection raised by Shri Vireshwar Dwivedi, Advocate is in regard to power of this Court to pass order for excavation. We have already discussed in detail on this aspect in our order dated 23rd October, 2002 that the Court has power to pass appropriate order for scientific investigation under Order XXVI Rule 10A of Code of Civil Procedure and in any case the principles under Order XVI Rule 4 and Order XVIII Rule 8 C.P.C. Read with Section 151 C.P.C. are applicable. We relied upon the decisions given in ***R.M.***



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***Seshadri v. Vasantha Pai & others – AIR 1969 SC 692, Shaikh Mohamad Umarsaheb v. Kadalaskar Hasham Karimsab and others – AIR 1970 SC 61, Khaje Khanavar Khadarkhan Hussain Khan v. Siddavanahalli Nijalingappa and another – AIR 1969 SC 1034, Bishwanath Rai v. Sachhidanand Singh – AIR 1971 SC 1949 and Ram Chand and Sons Sugar Mills Pvt. Ltd. v. Kanhaya Lal Bhargava and others – AIR 1966 SC 1899.***

Considering the entire facts and circumstances the Archaeological Survey of India is directed to get the disputed site excavated as under:-

"The area shown in the report of the Commissioner submitted in Suit No. 2 of 1950 (OOS No. 1 of 1989) covering an area of approximately 100x100 shown in the map plan no. 1 referred to by letters A,B, C,D,E,F and thereafter northern portion up to the end of the raised platform and further to the west, south and east to the said site to the extent of 50 feet.

If it is necessary to excavate towards north or any area more than 50 feet to the disputed area, it can do so to find out the true position as regards to any foundation.

It is made clear that the archaeologists (excavators) shall not disturb any area where the idol of Shri Ram Lala is existing and approximately 10 feet around it and they shall not affect the worship of Shri Ram Lala and thus, status quo



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as regards His Puja and worshippers' right of Darshan shall be maintained.

The excavation shall be done by Excavation Branch concerned specialized in excavation work within a period of one month from today. If they are engaged in other work it shall be suspended till the excavation in question is complete. If any additional staff is required the Archaeological Survey of India and Central Government shall provide it.

Tojo-Vikas International (Pvt.) Limited which has surveyed the site in question by GPR etc. shall assist the excavators by providing technical assistance at the time of excavation.

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The work will commence within one week from today. The report will be submitted within one week from the date of completion of the excavation.

The archaeological Survey of India shall intimate the date of the commencement of the work to the Officer on Special Duty, Ram Janma Bhumi Babri Masjid. On receiving such information he shall intimate the date to the parties who can watch the excavation work.

Learned counsel for the parties can also appoint nominee including Archaeologist to watch the excavation work. IT is made clear that only one nominee of each contesting party at one time shall be entitled to remain present."



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Put up on 24th March, 2003 by which date the Archaeological Survey of India shall intimate to the Court of the progress made by it in regard to excavation.

Sd/-
Sudhir Narain
S.Rafat Alam
Bhanwar Singh
05.03.03

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## Archaeological Survey of India
## Introduction (pages 1 and 2)

The present excavation report deals with the excavation carried out by the Archaeological Survey of India during March-August 2003 at the disputed area of Rama-Janmabhumi-Babri Masjid located between Latitude 26º 47' 43.6" to 26º 47' 45.0" N and Longitude 82º 11' 31.1" to 82º 11' 39.9" E and around within the fifty feet limit. The excavated area is located in the town of Ayodhya in the district of Faizabad of Uttar Pradesh, within a close proximity of river Sarayu, on its right bank.

## Topography and Climate

With the Ghaghra (ancient Gharghara) or Sarayu as the main river, the plain of the area are drained by seasonal water channels mostly flowing from north-west to south-east as per the general slope of the land and interspersed by numerous smaller water bodies where surface water gets collected after the rains. The region around Ayodhya along the river comes under its flood-plain having "scattered strips of alluvial land along the bank of the river which are very narrow in some parts and extensive in others. It is marked by large stretches of waste land covered with thick wild growth of *jjhau* (Tamarix) and *Kasehri* (thatching grass) providing shelter for wild animals. In this region the quality of soil varies from good clayee alluvium to pure white sand. The clay deposits yield a good *rabi* crop with very little labour but the *kharif* is usually precarious. The rest of the district is an upland in which wide expanses of cultivated fields are relieved only by habitations, with groves of mango and *mahua* and by small lakes and patches of *dhak."*

All the early geological formations have been buried to the



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depth of more than 300 meters due to Pleistocene and sub – recent alluvial deposits of rivers of the Indo-Gangetic system. The alluvium consists of inter-bedded deposits of sand, clay and gravel with varied thickness. The clay has been used for manufacturing bricks, tiles and pottery and "Inter-bedded with them also occur bands of *kankar* which is an irregular concretion of impure calcareous matter and occurs both in the nodular and block forms in almost all parts of the district, particularly in the vicinity of *usar* land. It is generally found in the same bed with clay in bands 10 to 30 feet thick occurring at depths varying from 20 to 70 feet below the surface." This calcareous mater has been used thoroughly in the past for lime making as well as in the form of structural blocks of buildings.

Ayodhya has a generally salubrious climate with four seasons round the year. The annual rainfall is 1026.5 mm having 45.3 average rainy days with rain of 2.5 mm or more mostly during monsoon. The average minimum temperature in January is about 8º C. (47º F.). Occasionally, it has been noticed that western cold waves bring down the temperature within a degree or two below the freezing point. Day temperature during summers in later May or early June reaches 46º C. (115º F). Violent dust and thunderstorms at times accompanied with hail are experienced in summer months.

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**High Court's Direction and GPR Survey**

Hon'ble Special Full Bench of Allahabad High Court, Lucknow, in the matter of OOS No.4 of 1989- Sunni Central Board of Waqfs & others V/s Gopal Singh Visharad (now deceased) and others, took a view in the order dated 5 March, 2003 that archaeological evidence will be of importance to decide the issue "whether there was any temple/structuer which was demolished and mosque was constructed on the disputed sit" and observed that till excavation order is passed the Archaeological Survey of India will get the disputed site surveyed by Ground Penetrating Radar and



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Geo-radiology and will submit its report in this regard.

The Archaeological Survey of India placed the order for GPR Survey to Tojo-Vikas International (Pvt.) Ltd. (TVIPL), which conducted the GPR Survey and submitted its report along with annexures on 17.02.2003. The detailed GPR Survey was conducted "using State-of the -Art Ground Penetrating Radar ZOND-12 C. In addition to the GPR Survey, two resistivity profiles and many resistivity soundings were carried out. This survey was carried out from December 30, 2002 to January 17, 2003. The resistivity profiles and soundings were done to ensure the correctness of the depth single penetration in GPR and also to get a general idea about the nature of sub soil conductivity as GPR signal penetration gets largely affected by soil conductivity. The total area surveyed was about 3900 sq. meters demarcated by boundary slabs inscribed with the roman letters A, B, C, D, E, F, and thereafter northern portion to the end of the raised platform and further to the west, south and east the said site to the extent of 40 feet. The entire area was first mapped using DGPS (Differential Global Positioning System) and digital Total Station and a Geo-referenced Bse Map were prepared. Then the entire area was physically marked and divided into a 1 x 1 meter grid. The GPR Survey was carried out on this grid using 100 MHz high power antenna and 300 and 500 Mhz antennas." (Final Report on GPR Survey of the Disputed Site at Ayodhya, Abstract, p.2).

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**Pages No. (6 and 7)**

Considering the entire facts and circumstances, the Archaeological Survey of India was directed by the Hon'ble Court through order dated 05.03.2003 to excavate disputed site as under:-

"The area shown in the report of the Commissioner submitted in Suit No.2 of 1950 (O.O.S No.1 of 1989) covering an area of approximately 100 x 100 shown in the map plan No. 1 referred to by letters A, B, C, D, E, F and thereafter northern portion up to the end of the raised platform and further to the west, south and east to



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the said site to the extent of 50 feet.

"If it is necessary to excavate towards north or any area more than 50 feet to the disputed area, it can do so to find the true position as regards to any foundation.

"It is made clear that the archaeologists (excavators) shall not disturb any area where the idol of Shri Ram Lala is existing and approximately 10 feet around it and they shall not affect the worship of Shri Ram Lala and thus, status quo as regards His Puja and worshippers' right of Darshan shall be maintained.

"The excavation shall be done by Excavation Branch concerned specialized in excavation work within a period of one month from today. If they are engaged in other work it shall be suspended till the excavation in question is complete. If any additional staff is required the Archaeological Survey of India and Central Government shall provide it.

"Tojo-Vikas International (Pvt.) Limited which has surveyed the site in question by GPR etc. shall assist the excavators by providing technical assistance at the time of excavation.

"The work will commence within one week from today. The report will be submitted within one week from the date of completion of the excavation.

"The archaeological Survey of India shall intimate the date of the commencement of the work to the Officer on Special Duty, Ram Janma Bhumi-Babri-masjid. On receiving such information he shall intimate the date to the parties who can watch the excavation work.

"Learned counsel for the parties can also appoint nominees including Archaeologist to watch the excavation work. It is made clear that only one nominee of each contesting party at one time shall be entitled to remain present."

"Put up on 24th March 2003 by which date the Archaeological Survey of India shall intimate to the Court of the progress made by it in regard to excavation."

In compliance of the Hon'ble High Court's direction, The



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Director General, Archaeological Survey of India, Janpath, New Delhi formed a 14 member team headed by Dr. B.R. Mani, Superintending Archaeologist, Archaeological Survey of India to start excavation at the disputed site vide letter no. F. No. 29/01/95-Pt IV, Dated 08.03.2003, addressed to Shri Narendra Prasad, OSD, Ram Janma Bhumi, Lucknow.

**Summary of Results**

**Pages No. 268-272**

Excavation at the deputed site of Rama Janmabhumi-Babri Masjid was carried out by the Archaeological Survey of India from 12 March 2003 to 7 August 2003. During this period, as per the directions of the Hon'ble High Court, Lucknow, 82 trenches were excavated to verify the anomalies mentioned in the report of the Ground Penetrating Radar Survey which was conducted at the site prior to taking up the excavations. A total number of 82 trenches along with some of their baulks were checked for anomalies and anomaly alignments. The anomalies were confirmed in the trenches in the form of pillar bases, structures, floors and foundation though no such remains were noticed in some of them at the stipulated depths and spots. Besides the 82 trenches, a few more making a total of 90 finally were also excavated keeping in view the objective fixed by the Hon'ble High Court to confirm the structures.

The result of the excavation are summarized as hereunder :-

The Northern Black Polished Ware (NBPW) using people were the first to occupy the disputed site at Ayodhya. During the first millennium B.C. Although no structural activities were encountered in the limited area probed, the material culture is represented by terracotta figurines of female deities showing archaic features, beads of terracotta and glass, wheels and fragments of votive tanks etc. The ceramic industry has the collection of NBPW, the main diagnostic trait of the period besides the grey, black slipped and red wares. A round signet with legend in Asokan



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Brahmi is another important find of this level. On the basis of material equipment and 14 C dates, this period may be assigned to *circa* 1000 B.C. To 300 B.C.

The Sunga horizon (second-first century B.C.) comes next in the order of the cultural occupation at the site. The typical terracotta mother goddess, human and animal figurines, beads, hairpin, engraver etc. represent the cultural matrix of this level. The pottery collection includes black slipped, red and grey wares etc. The stone and brick structure found from this level mark the beginning of the structural activity at the site.

The Kushan period (first to third century A.D.) followed the Sunga occupation. Terracotta human and animal figurines, fragments of votive tanks, beads, antimony rod, hair pin, bangle fragments and ceramic industry comprising red ware represent the typical Kushan occupation at the site. Another important feature of this period is the creation of large sized structures as witnessed by the massive structure running into twenty two courses.

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The advent of Guptas (fourth to sixth century A.D.) did not bring any qualitative change in building activity although the period is known for its Classical artistic elements. However, this aspect is represented by the typical terracotta figurines and a copper coin with the legend *Sri Chandra (Gupta)* and illustrative potsherds.

During the Post-Gupta-Rajput period (seventh to tenth century A.D.), too the site has witnessed structural activity mainly constructed of burnt bricks. However, among the exposed structures, there stands a circular brick shrine which speaks of its functional utility for the first time. To recapitulate quickly, exteriorly on plan, it is circular whereas internally squarish with an entrance from the east. Though the structure is damaged, the northern wall still retains a provision for *pranala, i.e,* waterchute which is distinct feature of contemporary temples already known from the Ganga-Yamuna plain.

Subsequently, during the early medieval period (eleventh-



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twelfth century A.D.) a huge structure, nearly 50 m in north-south orientation was constructed which seems to have been short lived, as only four of the fifty pillar bases exposed during the excavation belong to this level with a brick crush floor. On the remains of the above structure was constructed a massive structure with at least three structural phases and three successive floors attached with it. The architectural members of the earlier short lived massive structure with stencil cut foliage pattern and other decorative motifs were reused in the construction of the monumental structure having a huge pillared hall (or two halls) which is different from residential structures, providing sufficient evidence of a construction of public usage which remained under existence for a long time during the period VII (Medieval-Sultanate level-twelfth to sixteenth century A.D.). It was over the top of this construction during the early sixteenth century, the disputed structure was constructed directly resting over it. There is sufficient proof of existence of a massive and monumental structure having a minimum dimension of 50 x 30 m in north-south and east-west directions respectively just below the disputed structure. In course of present excavations nearly 50 pillar bases with brick bat foundation, below calcrete blocks topped by sandstone blocks were found. The pillar bases exposed during the present excavation in northern and southern areas also give an idea of the length of the massive wall of the earlier construction with which they are associated and which might have been originally around 60 m (of which the 50 m length is available at present). The centre of the central chamber of the disputed structure falls just over the central point of the length of the massive wall of the preceding period which could not be excavated due to presence of Ram Lala at the spot in the make-shift structure. This area is roughly 15 x 15 m on the raised platform. Towards east of this central point a circular depression with projection on the west, cut into the large sized brick pavement, signify the place where some important object was placed. Terracotta lamps from the various



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trenches and found in a group in the levels of Periods VII in trench G2 are associated with the structural phase.

In the last phase of the period VII glazed ware sherds make their appearance and continue in the succeeding levels of the next periods where they are accompanied by glazed tiles which were probably used in the original construction of the disputed structure. Similarly is the case of celadon and porcelain sherds recovered in a very less quantity they come from the secondary context. Animal bones have been recovered from various levels of different periods, but skeletal remains noticed in the trenches in northern and southern areas belong to the period IX as the grave pits have been found cut into the deposition coeval with the late disputed structures and are sealed by the top deposit.

It is worthwhile to observe that the various structures exposed right from the Sunga to Gupta period do not speak either about their nature of functional utility as no evidence has come to approbate them. Another noteworthy feature is that it was only during and after Period IV (Gupta level) onwards upto Period IX (late and post Mughal level) that the regular habitational deposits disappear in the concerned levels and the structural phases are associated with either structural debris or filling material taken out from the adjoining area to level the ground for construction purpose. As a result of which much of the earlier material in the form of pottery, terracottas and other objects of preceding periods, particularly of Period I (NBPW level) and Period III (Kushan level) are found in the deposits of later periods mixed along with their contemporary material. The area below the disputed site thus, remained a place for public use for a long time till the Period VIII (Mughal level) when the disputed structure was built which was confined to a limited area and population settled around it as evidenced by the increase in contemporary archaeological material including pottery. The same is further attested by the conspicuous absence of habitational structures such as house-complexes, soakage pits, soakage jars, ring



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wells, drains, wells, hearths, kilns or furnaces etc. from Period IV (Gupta level) onwards and in particular from Period VI (Early Medieval-Rajput level) and Period VII (Medieval-Sultanate level).

The site has also proved to be significant for taking back its antiquarian remains for the first time to the middle of the thirteenth century B.C. (1250 ± 130 B.C.) on the analogy of the C14 dates. The lowest deposit above the natural soil represents the NBPW period and therefore the earliest remains may belong to the thirteenth century B.C. Which is confirmed by two more consistent C14 dates from the NBPW level (Period I), viz. 910 ± 100 B.C. And 880 ± 100 B.C.) These dates are from trench G&. Four more dates from the upper deposit though showing presence of NBPW and associated pottery are determined by Radio-Carbon dating as 780 ± 80 B.C., 710 ± 90 B.C., 530 ± 70 B.C. And 320 ± 80 B.C. In the light of the above dates in association with the Northern Black Polished Ware (NBPW) which is generally accepted to be between *circa* 600 B.C. To 300 B.C. it can be pushed back to *circa* 1000 B.C. And even if a solitary date, three centuries earlier is not associated with, NBPW, the human activity at the site dates back to *circa* thirteenth century B.C. on the basis of the scientific dating method providing the only archaeological evidence of such an early date of the occupation of the site.

The Hon'ble High Court, in order to get sufficient archaeological evidence on the issue involved "whether there was any temple/structure which was demolished and mosque was constructed on the disputed site" as stated on page 1 and further on P. 5 of their order dated 5th March, 2003, had given directions to the Archaeological Survey of India to excavate at the disputed site where the GPR Survey has suggested evidence of anomalies which could be structure, pillars, Foundation walls, slab flooring etc. which could be confirmed by excavation. Now, viewing in totality and taking into account the archaeological evidence of a massive structure just below the disputed structure and evidence of



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continuity in structural phases from the tenth century onwards up to the construction of the disputed structure along with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, *amalaka, kapotapali doorjamb* with semi-circular *pilaster*, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having *pranala* (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India.

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**Other Original Suit No.4 of 1989**
**(Regular Suit No.12 of 1961)**
**Connected with**
**O.O.S. Nos. 1/1989, 3/1989 and 5/1989**

The U.P. Sunni Central Board of Waqfs
U.P. and others .....Plaintiffs

Vs.

Gopal Singh Visharad (now dead) and others. .....Defendants.

**Hon'ble S.R. Alam, J.**
**Hon'ble Khem Karan, J.**
**Hon. Bhanwar Singh, J.**

**(Delivered by Hon. Khem Karan, J.)**

1. By this order, we are disposing of the objections/additional objections against the report of Archaeological Survey of India (for short ASI), which it filed under sub-rule (1) of Rule 10, of Order XXVI of the Code of Civil Procedure (hereinafter referred to as the Code), in compliance of our order dated March 5, 2003.

2. One of the Central or core issues, to be decided by this Court in these four title civil suits, is as to whether the disputed structure namely Babri Masjid was built after demolishing a Hindu Temple. Vide orders dated August 1,2002 and October 23, 2002, we asked the ASI to carry out Ground Penetrating Survey/Geo Radiology Survey (GPR), of approximately 100 x 100 area of the disputed land, so as to ascertain possibility of proof of remnants of some earlier structure. In compliance of these orders, the ASI with the help of Tozo Vikas international Pvt. Ltd. undertook this exercise and submitted a report to the Court somewhere in February, 2003, indicating as many 184 anomalies, some of which find mention on pages 19 to 36 of ASI Report Volume-I. After considering this report and the views of the respective parties, this Court suo moto passed a detailed order on March 5, 2003, issuing a Commission to ASI under Order XXVI of the Code, to investigate into the matter by excavating the relevant area of the disputed land as indicated in the order and submit a report. Considering the sensitive nature of



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the dispute, the Court provided certain safeguards to ensure transparency in the task of ASI. Besides others, the Court permitted the parties or their counsels to remain present on the spot during the course of excavation proceedings. The Court also asked ASI to photograph and video-graph the process of excavation and to maintain record pertaining thereto. As it was not practicable for the Court to note and sort out day to day hurdles and objections, so it appointed two experienced judicial officers of Faizabad Judgeship to act as observer and obtain orders of the Court wherever the need might be.

3. A 14 members team of ASI initially headed by Dr. B.R. Mani, Superintending Archaeologist and subsequently by Sri Hari Majhi, Director (Antiquity) assisted by several officials of the Public Works Department and labourers, took about five months period (from March 12 to August 7, 2003) in carrying out the excavation work and thereafter submitted a bulky report in two volumes together with 45 site note-books, 12 albums containing 329 black and white photographs, w8 albums having coloured photographs, 11, video-cassettes (VHS), digital photographs in compact disc (6 DVD cassettes), Registers of Pottery, unsealed bones, architectural objects stored in tin-shed at the excavated site, individual list of 9 boxes containing bones, glazed-wares, antiquities etc. day to day Registers, Antiquity Registers.

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4. **Salient Features of ASI Report**

"Volume-1 (Text), contains ten chapters, namely, Chapter-I Introduction, Chapter-IV Structure, Chapter-V Pottery, Chapter-VI Architectural Fragments, Chapter-VII Terracotta Figurines, Chapter VIII Inscriptions, Seal, Sealings & Coins, Chapter-IX Miscellaneous Objects and Chapter-X Summary of Results, running into 309 pages, appendices etc. With a view to verify 184 anomalies so pointed out in GPR Survey Report dated 17.02.2003, the ASI dug as many as 90 trenches, separated from each other by 0.50 M baulk all around ranging from 0.50 to 5.5 meter in depth, after dividing



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the entire area into five parts namely (1) The Eastern Area (2) The Southern Area (3) The Western Area (4) The Northern Area and (5) The Raised platform. Of 184 anomalies so indicated in GPR Survey, 39 were found confirmed at specified depth and location, 74 were not found in spite of digging up to required depth and remaining 44 could not be probed owing to unavoidable constraints. The details of anomalies so verified by ASI can be seen on pages 19-36 of Volume-I.

5. The total deposit of about 10.80 m thick, was divided into 9 cultural periods namely (1) Period-I (Northern Balck Polished Ware Level referring to period prior to 200 B.C.) (2) Period-II (Sunga Level referring to 200 B.C. to 100 A.D.) (3) Period-III (Kushan Level referring to 100-300 A.D. (4) Period-IV (Gupta Level 400-600 A.D. (5) Period-V (Post Gupta Rajpur Level 700-1000 A.D. (6) Period-VI (early Medieval-Pre Sultanate Level 1100-1200 A.D. (7) Period-VII (Medieval Level 1200 to the beginning of 1600 A.D., (8) Period-VIII (Mughal Level and (9) Perood-IX (Late and Post Mughal Level). According to the description given on pages 38-46 of Volume-I, period-I yielded only broken weights fragments of votive tanks, ear-studs discs, hopscoches, a wheel made on disc, broken animal figurine (all in terracotta), an iron knife (broken), glass beads, bone point having no bearing on the point in issue. It was Period-II which indicated for the first time structural activity in stone and brick as noted in trench No.J 3. The Period -III (Kushan Level), evidenced huge-kiln, animal and human figurines, bangle fragements votive tank (all in terracotta), a hairpin in bone, *a massive brick construction running* into 22 courses at the bottom of Trench Nos. J 5 - J 6. Gupta Level was found to have 2M thick deposit, represented by layers 7 and 8 in Tr.N.G-7, layers No.9 and 10 in Tr. J5, J 6, layers No.7 and 8 in Tr.N.E-8 and F-8. It was from layer No.8 of Tr. No.G.7 that a Coin was recovered bearing image of king on obverse side and that of *Garuda* on the reverse side. The ASI reports in para-I of page-40 that it appeared that with a view to



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raise the level of the land, earth excavated from nearby area of the mound was utilized at this level as pottery and wares of early period were also found. The Period-V (Post Gupta-Rajpur Level) is said to have yielded a *"Subsidiary Circular Shrine* from baulk of Tr. Nos. E 8 and F 8 (figure 24 and 24-A of Vol.1), which according to ASI was built around 1000 A.D. And could be associated with Lord Shiva, as the shrine had water-parashute *(parnala)* towards north, resembling with chirenath brick temple of Shrawasti (U.P.), circular Shiva Temples near Rewa in M.P. At chardreha and mason, belonging to 950 A. D. and temples at Kurari and Tindauli in District Fatehpur (U.P.). The ASI says on page 41 of Vol. 1 that *Period-VI, evidenced a massive north-south oriented brick wall* (No. 17), markedly inclined towards east) in Tr. No.D-7, E-2, E-1 and ZF-1, possibly built around 1100-1200 A.D. Period-VII is said to have evidenced existence of a massive wall-16 in north-south orientation having length of about 150 feet, and also pillar bases towards east of this wall. The ASI says that a column based massive structure might have been raised on wall-16 and the 50 pillars, bases of which were noticed. This wall-16, which according to ASI was built around the end of 12$^{th}$ Century A.D., was having *niches* (Mehrab) facing towards east and was above the level of wall-17 (page-68). In sub-period-B of Period -VII there was found *"a circular depression"(ghata shaped)* (see plate 67) made by cutting the large brick pavement having the diameter of 1.05 m with a rectangular projection of 0.46 x 0.32 m towards west in the centre of the pavement, (if the central point was calculated on the basis of extent of length of wall-16 or wall-17 and longitudinal length of the alignment of pillar bases from north to south) suggesting as if the place was of importance (see page-42 of Report). The period -VIII (Mughal Level) having total ghickness of 23 to 25 cm., evidenced *disputed structure-3.* Its western wall-5 measuring 3.0m wide having five courses of calcrete blocks with occasional use of sand stone bricks, was found to be resting on wall-16 (see page-52, plate 24



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and figure-5). Southern foundation wall-6 of disputed structure was found, resting over two pillar bases of earlier period (pillar base No. 34, 35, plate No.30 and also see page 52 of Vol.1). This wall-6 had three courses of clacrete blocks. It was taking turn at south-east corner forming wall-7 of eastern side of southern chamber of structure-3. Wall-7 in front of southern chamber of the disputed structure-3, rested over three pillar bases of the earlier period (see figure-6 of Vol.I). Width of this Wall-7 was 1.54 m with entrance to southern chamber having a gap of 2.65 m. Wall-8 that is northern wall of southern chamber of the disputed structure was 8.3 m. in length with an entrance to central chamber. The ASI could not probe into the site of central chamber, due to its close proximity to makeshift temple of Ram Lalla.

6. Reference to other salient features of ASI Report, can conveniently be made, by reproducing chapter X of Volume-I, which not only describes the features referred to above but also other such features which according to ASI, have some importance. Chapter X, reads as under:-

*"Excavation at the deputed site of Rama Janmabhumi-Babri Masjid was carried out by the Archaeological Survey of India from 12 March 2003 to 7 August 2003. During this period, as per the directions of the Hon'ble High Court, Lucknow, 82 trenches were excavated to verify the anomalies mentioned in the report of the Ground Penetrating Radar Survey which was conducted at the site prior to taking up the excavations. A total number of 82 trenches along with some of their baulks were checked for anomalies and anomaly alignments. The anomalies were confirmed in the trenches in the form of pillar bases, structures floors and foundation though no such remains were noticed in some of them at the stipulated depths and spots. Besides the 82 trenches, a few more making a total of 90 finally were also excavated keeping in view the objective fixed by the Hon'ble High Court to confirm the structures.*

*The result of the excavation are summarized as hereunder:-*



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*The Northern Black Polished Ware (NBPW) using people were the first to occupy the disputed site at Ayodhya. During the first millennium B.C. Although no structural activities were encountered in the limited area probed, the material culture is represented by terracotta figurines of female deities showing archaic features, beads of terracotta and glass, wheels and fragments of votive tanks etc. The ceramic industry has the collection of NBPW, the main diagnostic trait of the period besides the grey, black slipped and red wares. A round signet with legend in Asokan Brahmi is another important find of this level. On the basis of material equipment and 14 C dates, this period may be assigned to circa 1000 B.C. To 300 B.C.*

*The Sunga horizon (second-first century B.C.) comes next in the order of the cultural occupation at the site. The typical terracotta mother goddess, human and animal figurines, beads, hairpin, engraver etc. The stone and brick structure found from this level mark the beginning of the structural activity at the site.*

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*The Kushan period (first to third century A.D.) followed the Sunga occupation. Terracotta human and animal figurines, fragments of votive tanks, beads, antimony rod, hair pin, bangle fragments and ceramic industry comprising red ware represent the typical Kushan occupation at the site. Another important feature of this period is the creation of large sized structures as witnessed by the massive structure running into twenty two courses.*

*The advent of Guptas (fourth to sixth century A.D.) did not bring any qualitative change in building activity although the period is known for its Classical artistic elements. However, this aspect is represented by the typical terracotta figurines and a copper coin with the legend Sri Chandra (Gupta) and illustrative potsherds.*

*During the Post-Gupta-Rajput period (seventh to tenth century A.D.), too the site has witnessed structural activity mainly constructed of burnt bricks. However, among the exposed structures, there stands a circular brick shrine which speaks of its functional*



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*utility for the first time. To recapitulate quickly, exteriorly on plan, it is circular whereas internally squarish with an entrance from the east. Though the structure is damaged, the northern wall still retains a provision for pranala, i.e, waterchute which is distinct feature of contemporary temples already known from the Ganga-Yamuna plain.*

*Subsequently, during the early medieval period (eleventh-twelfth century A.D.) a huge structure, nearly 50 m in north-south orientation was constructed which seems to have been short lived, as only four of the fifty pillar bases exposed during the excavation belong to this level with a brick crush floor. On the remains of the above structure was constructed a massive structure with at least three structural phases and three successive floors attached with it. The architectural members of the earlier short lived massive structure with stencil cut foliage pattern and other decorative motifs were reused in the construction of the monumental structure having a huge pillared hall (or two halls) which is different from residential structures, providing sufficient evidence of a construction of public usage which remained under existence for a long time during the period VII (Medieval-Sultanate level-twelfth to sixteenth century A.G.). It was over the top of this construction during the early sixteenth century, the disputed structure was constructed directly resting over it. There is sufficient proof of existence of a massive and monumental structure having a minimum dimension of 50 x 30 m in north-south and east-west directions respectively just below the disputed structure. In course of present excavations nearly 50 pillar bases with brick bat foundation, below calcrete block stopped by sandstone blocks were found. The pillar bases exposed during the present excavation in northern and southern areas also give an idea of the length of the massive wall of the earlier construction with which they are associated and which might have been originally around 60 m (of which the 50 m length is available at present). The centre point of the length of the massive wall of the preceding period which could not be excavated due to presence of Ram Lala at the spot*



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*in the make-shift structure. This area is roughly 15 x 15 m on the raised platform. Towards east of this central point a circular depression with projection on the west, cut into the large sized brick pavement, signify the place where some important object was placed. Terracotta lamps from the various trenches and found in a group in the levels of Periods VII in trench G2 are associated with the structural phase.*

*In the last phase of the period VII glazed ware sherds make their appearance and continue in the succeeding levels of the next periods where they are accompanied by glazed tiles which were probably used in the original construction of the disputed structure. Similarly is the case of celadon and porcelain sherds recovered in a very less quantity they come from the secondary context. Animal bones have been recovered from various levels of different periods, but skeletal remains noticed in the trenches in northern and southern areas belong to the period IX as the grave pits have been found cut into the deposition coeval with the late disputed structures and are sealed by the top deposit.*

*It is worthwhile to observe that the various structures exposed right from the Sunga to Gupta period do not speak either about their nature of functional utility as no evidence has come to approbate them. Another noteworthy feature is that it was only during and after Period IV (Gupta level) onwards upto Period IX (late and post Mughal level) that the regular habitational deposits disappear in the concerned levels and the structural phases are associated with either structural debris or filling material taken out from the adjoining area to level the ground for construction purpose. As a result of which much of the earlier material in the form of pottery, terracottas and other objects of preceding periods, particularly of Period I (NBPW level) and Period III (Kushan level) are found in the deposits of later periods mixed along with their contemporary material. The area below the disputed site thus, remained a place for public use for a long time till the Period VIII (Mughal level) when the disputed*



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*structure was built which was confined to a limited area and population settled around it as evidenced by the increase in contemporary archaeological material including pottery. The same is further attested by the conspicuous absence of habitational structures such as house-complexes, soakage pits, soakage jars, ring wells, drains, wells, hearths, kilns or furnaces etc. from Period IV (Gupta level) onwards and in particular from Period VI (Early Medieval-Rajput level) and Period VII (Medieval-Sultanate level).*

*The site has also proved to be significant for taking back its antiquarian remains for the first time to the middle of the thirteenth century B.C. (1250 ± 130 B.C.) on the analogy of the C14 dates. The lowest deposit above the natural soil represents the NBPW period and therefore the earliest remains may belong to the thirteenth century B.C. Which is confirmed by two more consistent C14 dates from the NBPW level (Period I), viz. 910 ± 100 B.C. And 880 ± 100 B.C.) These dates are from trench G&. Four more dates from the upper deposit though showing presence of NBPW and associated pottery are determined by Radio-Carbon dating as 780 ± 80 B.C., 710 ± 90 B.C., 530 ± 70 B.C. And 320 ± 80 B.C. In the light of the above dates in association with the Northern Black Polished Ware (NBPW) which is generally accepted to be between circa 600 B.C. To 300 B.C. it can be pushed back to circa 1000 B.C. And even if a solitary date, three centuries earlier is not associated with, NBPW, the human activity at the site dates back to circa thirteenth century B.C. on the basis of the scientific dating method providing the only archaeological evidence of such an early date of the occupation of the site.*

*The Hon'ble High Court, in order to get sufficient archaeological evidence on the issue involved "whether there was any temple/structure which was demolished and mosque was constructed on the disputed site" as stated on page 1 and further on P. 5 of their order dated 5th March, 2003, had given directions to the Archaeological Survey of India to excavate at the disputed site where*



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*the GPR Survey has suggested evidence of anomalies which could be structure, pillars, Foundation walls, slab flooring etc. which could be confirmed by excavation. Now, viewing in totality and taking into account the archaeological evidence of a massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards up to the construction of the disputed structure along with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having pranala (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India."*

7. Volume-II contains photographs, (referred to as plates in the report of 235 objects/finds such as *Ram Chabutra* (Plates No. 14, 15, 16, 17), *makara Pranala* (Plate No.23), Southern wall of disputed structure resting over an earlier brick wall (Plate No.24), North-South oriented wall with plastered inner face (Plate No.29), Pillar-bases (Plate Nos. 35, 36, 37, 38, 42, 43, 44, 46, 47), a niche in north-south oriented brick-wall (plate no.52), Excavated graves in northern area (plate no. 58), partly damaged east facing brick built circular shrine (plate No. 59), Chirenath brick Temple of Shrawasti (plate no. 60), Ghata-shaped pit cut into large brick paving (plate no.67), glazed-ware large bowl (plate no.72), Rechiseled lotus medallion (plate no. 79), amalka stone (plate no.81), intact pillar with ghata-pallava (plate no. 82), broken Jamb with semi-circular pilaster (plate no. 85), architectural member with srivatsa motif stone (plate no. 88) glazed tiles fragments, terracotta (plates no. 99, 100, 101,102), smiling human head terracotta (plate no. 120), coins (plates no. 144 to 172), large amalaka shaped bead terracotta (plate no. 188), votive tank terracotta (plate no. 224), Divine couple stone (plate no. 235).



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8. **Main objections against the ASI report**

The Sunni Central Board of Waqfs (plaintiff in O.O.S. No.4 of 1989) Mohd. Hashim (defendant No.5 in O.O.S. No.5 of 1989), Mahmood Ahmad (plaintiff No.9 in O.O.S. No.4 of 1989) and defendants No.6/1 & 6/2 in Suit No.3/1989 have filed separate objections/additional objections contending inter alia that ASI report should not form part of evidence and should be rejected out rightly for the following reasons.

1. that the report is one sided and is greatly influenced by certain preconceived theory or notions;

2. that ASI has adopted a biased and selective approach, as is evident from the fact that importance and impact of presence of several animal bones having cut marks, recovered from different floor levels of the respective trenches, has purposely and designedly been kept out of consideration and had the same been scientifically studied and the result taken into consideration, it would have not been possible for ASI to opine that things found were indicative of remains which are distinctive features found associated with temples of north India;

3. that in spite of clear cut directions of this Court to file all the papers-documents relating to the excavation, the ASI not only delayed the filing of certain relevant documents, but also destroyed the notes prepared by it at the time of study/analysis of various finds/architectural objects, which raises a grave doubt about the veracity of report;

4. that while the names of the authors of chapter 1 to IX are mentioned, but it is not known as to who authored chapter X captioned “summary of results” and so the whole of Chapter X deserves to be scored out from the report and cannot be allowed to form part of the evidence;

5. that on complaint, this Court directed that Sri B.R. Mani should not head the excavation team and in compliance of those orders Sri Hari Manjhi was deputed to head the team, but it is not



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know as to how Sri B.R. Mani continued his association with the task of excavation and how he co-authored the report;

6. that periodization done by ASI in Chapter III captioned "stratigraphy and Chronology" (pages 37 to 47 of Vol. 1) has no scientific basis;

7. that in absence of concordance of different layers/floors of respective trenches with each other, the basis of the report itself becomes doubtful;

8. that the report is full of inconsistencies and discrepancies and the conclusions therein appear to have been tailored to support a particular theory;

9. that theory of existence of massive structure on wall-16 and the 50 pillars, as shown in figure 23-B page 42-C of Volume I, is a concoction and unacceptable for the reasons inter alia that there were no pillar-bases and the same had no alignment with each other nor were at the same level nor had capacity to support load bearing pillars;

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10. that theory of massive structure is totally ill-founded because ASI report is silent on the point as to where were the remaining three walls of that structure, if wall 16 was one of the walls;

11. that so called "circular shrine" (which according to ASI, had a waterchute in the north and could be associated with Lord Shiva) could also be a structure relating to Buddhism or Jainism, as considering the thin passage and little diameter, it was not possible for even a single person to enter and offer "Abhishekha";

12. that ASI has, without any firm basis, characterized mutilated stone sculpture (plates 235 of Vol. II of the report) as 'divine couple' and appears to have invented it at some later stage, as reference to it does not find in corresponding Site note-book or Day to Day Register;

13. that pillar door jam, octagonal shaft of pillars, amalka, divine couple stone with Srivatsa motif, lotus medallion, which ASI has taken into consideration for saying that there were remains of



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temple on the site in question, were of no significance as the same has been recovered from debris;

14. that alleged Srivatsa (see Plate No. 88) could equally be associated with Jainism and lotus with Buddhism and Islamic religion;

15. that terracotta figurines (62 human & 131 animal) discovered from different trenches, belonged to ancient period and had no relevance;

16. that glazed-wares and glazed-tiles so recovered during the course of excavation spoke against the theory of existence of temple as all these were found below floor No.4 relating to Medieval Sultanat period;

17. that in view of what has been written by S.K. Meermira in his book “Indian Pottery” glazed tiles were proof of Muslim habitation;

18. that wall-16 had niches (mehrab) on the inner side which are distinctive features of Islamic building and even if it is accepted that the same existed prior to construction of Babri Masjid, the same could have been a Idgah or Kanati (roofless mosque);

19. that no idol, or statue of any Hindu deity and no object of Hindu worship was found on the site so as to entitle the ASI to say that there were remains of existence of temple of north India;

20. that how the conclusions of ASI came in the Indian Express in its issue of 13.8.2003, much before 22.08.2003, when the report was filed in Court an that indicates that ASI tailored the report on the lines given in S.P. Gupta's book titled “Ayodhya Puratatva Evam Itihas.”

9. Nirmohi Akhara (defendant No.3 in O.O.S. No.3 of 1989) filed its objection saying that some more area towards east of trenches NO.G-2,G-3,G-4 & G-5 should have been excavated so as to reach a correct conclusion. It however supports the ASI report.

10. The other side has also filed replies to these objections and additional objections, saying that objections are for the sake of objections and are not sufficient enough to reject the ASI report.



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**Rival contentions**

11. The Court had the advantage of hearing Sri Sidharth Shanker Ray, the learned Senior Advocate, Sri Z.Jilani, Sri Mustaq Ahmad Siddiqui, Sri Abdul Mannan and Sri Irfan Ahmad, appearing for the objectors, Sri Krishna Murti, the learned Senior Advocate, Sri R.L. Verma, Sri Bireshwar Nath Dwivedi, Sri Madan Mohan Pandey, Sri P.L. Mishra, Sri Ved Prakash and Km. Ranjana Agnihotri, supporting the ASI Report.

12. Sri Sidharth Shanker Ray has argued that the ASI was asked to excavate the site and report as to whether the disputed structure was raised after demolishing any Hindu temple, but the ASI is silent on the point of alleged demolition of Hindu temple and so the report can not be said to be as per directions of the court and deserves to be rejected. Sri Ray goes on to argue by referring to Kalhans Raj Tarangini, written somewhere in 12th Century A.D., that a historian desiring to peep into the bygone age mus keep a detached mind, rather like a Judge, and must avoid both bias (Dwesh) and prejudice (Raga). The learned counsel says that selective approach of ASI would reveal that it could not keep itself detached and unbiased. The learned counsel has also taken the Court through relevant pages especially pages 142, 143 of "Indian Archaeology in retrospect Vol. IV Archaeology and Historiography" edited by S. Settar Ravi Korisettar so as to say that one needs to adopt a critical openness of mind towards our pluralistic past and the present. Sri Ray has also referred to Chapter XIII captioned "The Evolution of the temple" of "Indian Architecture (Buddhist and Hindu Periods) written by PERCY BROWN, wherein the learned author says:

"The principal architectural features of the temple are as follows. Throughout the greater part of the country, the sanctuary as a whole is know as the *vimana,* of which the upper and pyramidal or tapering portion is called the *sikhara,* meaning tower or spite. Inside the *vimana* is a small and generally dark chamber or cella for the reception of the divine symbol. This cella is the *garbha griha,*



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or "womb-house" and was entered by a doorway on its inner and usually, eastern side. In front of the doorway was a pillared hall, or *mandapa,* actually a pavilion for the assembly of those paying their devotions to the divine symbol in the cella. Some of the earlier temples indicate that the mandapa, was a detached building, isolated from the sanctuary by a definite open space, as in the "shore" temple at Mamallapuram, and originally in the Kailasanatha at Conjeeveram, both near Madras, and built about 700 A.D. A little later it became the custom to unite the two buildings, this forming an intermediate chamber, or vestibule, and called the *antarala.* Leading up to the main hall, or mandapa, is a porch or *ardhamandapa,* while there may be a transept on each side of this entral hall, known as the maha-mandapa. The most complete illustrations of the fully formed and co-ordinated temple structure,
are the tenth century examples at Khajuraho, Central India, especially that known as the Kandariya Mahadeo (Chapter XXII). In this class of temple, each portion named above, has its separate pyramidal roof, rising in regular gradation, from the lowest over the porch (*ardha-mandapa),* to the lofty spire over the sanctum. In some parts of the country it became the practice to enclose the temple building within a rectangular courtyard by means of a continuous range of cells, facing inwards, the whole forming a substantial containing wall, and thus ensuring seclusion. One of the first temples of combine all these attributions, and to present a coordinated plan was that of the Vaikuntanath Perumal at Conjeeveram (cir. A.D. 740). Most of these early temples have a processional passage or *pradak-shina patha* consisting of an enclosed corridor carried around the outside of the cella."

13. Sri Ray wonders as to how in absence of these architectural features, ASI could opine about existence of temple of north India and how it could conceive existence of a "massive structure" in absence of other three walls, if wall-16 was one of the walls. According to Sri Ray, the story of existence of pillar bases which



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might have supported the pillar to bear the load of massive structure, is totally ill-founded for the simple reason that one of the pillar bases was having load bearing foundation nor was having alignment with each other nor being at the same level of the floor. He says that how is it that none of those alleged pillars said to have supported the massive structure, was found on the spot. Sri Ray says that alleged 'circular shrine' found in bulk of trench nos. E-8 and F-8, said to have been constructed in 10th century A.D., could not have been associated with Lord Shiva and could be associated with Lord Budha. Sri Ray goes on to argue that the passage was not sufficient enough to allow even one person to enter inside it and so the question of offering 'Abhishekh, could not have arisen. The learned counsel says that so called *Parnala* is nothing, but a space between the two rows of the bricks. According to Sri Ray, 'circular shrine' could also be said to be Ton, used to constructed by Jains, for commemorating Tirthankars. The learned counsel also contends that ASI did not apply its mind in giving the report and has not exhibited requisite "reasonableness" in terms of Wednesbury Principles, so deserves to be rejected. Sri Ray characterizes the report as intrinsically erroneous.

14. Sri Abdul Mannan, Sri Jilani, Sri M.A. Siddiqui and Sri Irfan Ahmad have also contended that the report being one sided, imaginative and unscientific and full of discrepancies, should not form part of the record. They argue, firstly there is no firm basis of say that western wall of disputed structure was resting on any pre-existing wall and secondly, even if it is accepted for the sake of argument that it was so, W-16 having niches could have been a Idgah or roofless mosque, as the question of construction of a temple after advent of Muslim Rule was unthinkable. They have also attacked theory of pillar bases, massive structure etc. and have criticized the ASI, for adopting partisan approach and in not considering the importance of animal-bones, having cut marks. It is argued that such a report must be rejected as placing it on record is



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likely to create confusion and increase the volume of evidence. The learned counsels have referred to certain judicial pronouncements to support their contentions that if the report is ex-facie absurd or unacceptable, has to be rejected before the Court gives its final verdict in the matter and unless the objections are considered and rejected, report can not be acted upon. We will deal with these judicial pronouncements at appropriate stage.

15. Sri Krishnamurty, Sri Veereshwar Dwivedi, Sri R.L. Verma, Sri M.M. Pandey, Sri Ved Prakash, Sri P.L. Misra and Km. Ranjana Agnihotri have submitted that there is no provision under Order XXVI of the Code, to reject the report of the commissioner and it becomes evidence under sub-rule (2) of Rule 10 without any express orders of the Court. Sri Krishnamurty has fairly conceded that the report of the commissioner such as the report of ASI in this case is not binding on the Court and has to be looked into in the light of other evidence. What Sri Krishnamurty says is that ASI report cannot be rejected simply on the ground of alleged bias, prejudice, selective approach etc., that too without giving an opportunity to ASI to explain its position. The learned counsel argues that allegations against ASI are totally ill-founded and in fact all possible transparency was observed as per directions of the Court and nothing was concealed from the parties or their counsels. It is argued that such a scientific investigation cannot be doubted on the basis of layman view and only expert can be pressed into service, to dispute the correctness of the contents of the report. The learned counsels supporting the ASI report and disputing the tenability of the objections against it, say that it has never been the case of objectors that there existed any Idgah or roofless mosque, earlier to the construction of disputed structure, and so they cannot say now that wall-16 could have been a wall of Idgah or roofless mosque. They say that no example of such roofless mosque or Idgah has been cited in the objections. The learned counsels have pointed out by referring to relevant portion of the Report and especially figure



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3-B of volume-I, that there were found 17 rows of pillar-bases having five in each of the rows and these had load bearing foundation and so could have supported column based 'massive structure' in conjunction with wall-16. According to them, the objectors could not point out as to what architectural error the ASI committed or which widely accepted mode or method of excavation or analysis was violated by the ASI, in executing the task assigned to it. They have highlighted the same points which have been relied on by ASI for concluding that there were remains of temple on the site of the disputed structure. They say that possibility of bones in Hindu residences was not ruled out. The learned counsels have referred to certain judicial pronouncements so as to say that such a report cannot be rejected and must be looked into in the light of other evidence and the objections of the parties concerned. Sri R.L. Verma said some more area nearer to raised platform, should have been excavated so as to make things more clear.

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**Discussion and conclusion:**

16. In considering the question as to whether ASI report should be rejected on the grounds raised in the objections or should the same be kept on record as a piece of evidence subject to these objections and evidence of the parties, this Court can not loose sight of the following aspects of the matter. The first thing which this Court would like to observe is that perhaps it was for the first time that any Court of law, issued a commission under Order XXVI of the Code, for investigation into a matter through a process of excavation of such a vast area covering about 100 feet X 100 feet area. The ASI itself says on page 9 of its report (see Vol. I) that in its career of more than 100 years, it was its first experience to execute a commission like this. The second aspect that we would like to highlight is that task assigned to ASI was not such, which could have been performed by a person or a body of persons, having no expertise in the field of archaeology. In other words the commission was not pure and simple under rule 9 of Order XXVI,



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but also one under Rule 10-A. Another important feature of this commission is that the work assigned to ASI, was not only gigantic from the point of view of its volume, but was also otherwise sensitive. The enormity of the task can be gauged from the fact that team of more than a dozen officials of the department assisted by a number of labourers, took about five months in carrying out the excavation part and during this process dug as many as 90 trenches, ranging from 0.50 finds/archaeological objects. We were told during the course of arguments and rightly, so that once an area is subjected to such excavation, the second such exercise in the same area, is practically ruled out as the original position stands disturbed. This practical aspect has to be kept in mind, as no fresh commission for the same purpose is possible.

17. We do not find it necessary to refer to any judicial pronouncement on the point that commissioner's report under Rule 10 or 10-A of Order XXVI of the Code even if allowed to be a piece of evidence, is not binding on the court and its weight and evidentiary value is to be evaluated in the light of other evidence on record. Sri Krishnamurty has pointed out that provisions contained under Rules, 9,10 and 10-A of Order XXVI, do not envisage express orders of the court, for confirming or rejecting the report or for keeping it on record and according to sub-Rule (2) of Rule 10, it becomes evidence in the case without any orders of the Court. Some what similar views were echoed by a Division Bench of this Court in State of U.P. Vs. Smt. Ramshri and another AIR 1976 Allahabad, page 121. But Sri Krishnamurty was fair enough to concede that if Commissioner's report was absurd on the very face or was unacceptable on account of apparent flaw, the Court could refuse to treat it as evidence or to take it on record, in spite of the plain language of sub-rule (2) of Rule 10. The point can be more elaborated by giving one or two examples. Suppose a court issues a commission under rule 9, for investigating the matter relating to property 'A' and the commissioner files report about property 'B',



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should not the court reject such a report? In an another case, a court asks the commissioner to prepare a survey map, and to report whether the disputed well situate in plot 'A' or 'B' and the commissioner prepares the survey map, with the help of disputed or unauthenticated settlement or municipal map or without taking any fixed points, should the court treat such a report and map as evidence in the case and thereby deprive itself of having assistance of a accurate survey map, in deciding the point in issue. What we want to say is that sub-rule (1) of Rule 10 should not be dissected or isolated from sub-rule (3) which indirectly hints at rejection of such a report, when it says 'where the court is for any reason dissatisfied with the proceedings of the commissioner, it may direct such further enquiry to be made as it thinks fit.' The observations of Privy Council, as made in Chandan Mall Vs. Chiman Lal AIR 1940 P.C. Page-3 and as construed by two learned Judges of this Court in Order dated 8.8.1991, passed in these very suits, also speak to the effect that where defects in the report are substantial and go to the root of the matter, it may be rejected, but where the defects are such that can be explained at the trial, it may be kept on record subject to the objections and evidence of the parties.

18. Relying on Parag Tools Corporation Ltd. Vs. Mahboobunissa Begum (Smt.) and others (2001) 6 SCC 238, Amarnath Tandon Vs. G.K. Bhargava LCD 1987 65, Harbans Lal Vs. Jagmohan Saran LCD 1986 (4) SC 235, Harbhajan Singh Vs. Smt. Shakuntala Devi Sharma and another AIR 1976 Delhi 175, Rajender and Co. Vs. Union of India and others (2000) 6 SCC 506 and Gopal Behar and others Vs. Lokanath Sahu and others AIR 1991 Orissa page-6, Sri S.S. Ray and other learned counsels appearing in support of the objections, have argued that unless the objections are rejected, the ASI report cannot form part of the record and the same cannot be treated as evidence, deferring the consideration of their objections to be decided in the light of other evidence. With due respect to the learned counsels, we find nothing in these cases, laying down that



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the objections against the commissioner's report should necessarily be accepted or rejected, before the conclusion of the trial of the suits. What the learned Judges have said in these cases is that the commissioner's report cannot be acted upon without first considering the objections against it. Parag Tools Corporation's case (supra) was not directly on the point. There the Apex Court remitted the matter to the commissioner for recording a finding on certain points. The authority issued a survey commission and recorded a finding, taking into account the report of the Commissioner. The State of Andhra Pradesh contended before the Apex Court that it was not within the scope of reference to issue a commission, but the Court was not impressed by this argument. In Harbans Lal's case (supra) the facts were that in proceedings under U.P. Act No. 13 of 1972, the Prescribed Authority as well as the learned Addl. District Judge, recorded a finding of fact, ignoring the report of commissioner against which objections were there. In a writ petition, the High Court considered the same and upset the finding of fact so recorded by the Prescribed Authority. On matter being taken to the Apex Court, their Lordships said firstly the High Court should not have upset the finding of fact in exercise of its writ jurisdiction and secondly the report of the commissioner should not have been treated final, when objections against the same were pending. In Amarnath Tandon's case, a learned Single Judge of this Court (as his Lordship then was), though based his decision on Harbans Lal's case, went a step ahead in observing in para-12 that report of the commissioner becomes final only when it is confirmed by the court. We think those observations were made in the peculiar facts and circumstances of that case and cannot be construed as laying down a law that the report and objections against it cannot be dealt with at the time of final disposal f the matter. Likewise in Harbhajan Singh's case (supra) a learned Single Judge was not considering the question as to when the report and objections against it, should be dealt with. What his Lordship said was that



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report of the commissioner should not have been acted upon without first dealing with the objections against it. In Rajinder & Co. (supra) the Apex Court left the report to be dealt with by the authority concerned in the light of respective contentions, Gopal Behar's case (supra) related to a survey report. A learned Single Judge of Orissa High Court (D.P. Mahapatra J., as his Lordship then was), said that the report of the commissioner was simply and item of evidence and was to be considered along with other evidence in the case, with the observations that if the same was full of errors of serious discrepancies, it would not be safe to act upon it.

19. So, none of the above mentioned cases cited by the learned counsels for the objectors, is an authority to support the proposition that commissioner's report and objections against it, must necessarily be accepted or rejected, before the final verdict in the suit is pronounced and the same cannot be left to be decided along with other evidence.

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20. We have no hesitation in saying even at the cost of repetition hat it all depends on the facts and circumstances of the case concerned, as to whether objections against commissioner's report can suitably be dealt with, before the suit goes for judgement or deserve to be dealt with, at the time of final disposal in the light of other evidence. Take for an example, survey report and map and the objections against it. Such type of report and the objections against it, can conveniently be dealt with them and there, as the matter may simply be confined to accuracy of fixed points, measurements, conformity of the map with field book etc. and no factual determination is necessitated. But cases where the commissioner's report relates to disputed facts, it may not be practicable for the court to accept or reject, except in the light of other acceptable material on record. Such report and the objections against the same are invariably dealt with and accepted or rejected in the light of other evidence on record.

21. As observed earlier, ASI report is also a report under Rule 10-



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A of Order XXVI, that is to say it is a kind of report submitted after a scientific investigation. The excavation, periodization of various floor levels of the respective trenches on the basis of figurines, the material found in the respective layers, archaeological importance of such finds/objects etc., is an expert work and is not a layman's job, which could be performed by anybody. Whether a particular structure found at floor level 3 or 4 was a 'shrine' associated with Lord Shiva as described by ASI or whether the same could also be associated with Buddhism or Jainism or whether so called pillar bases, were really the pillar bases and were having load bearing material or whether wall 16 said to have been constructed at the end of 12th century A.D., was the wall of alleged massive structure or was Idgah wall or roofless mosque or whether the objects/finds like Srivatsa, Amalka, door jamb, referred to in Chapter X of Vol. I, have any relevance, are the matters which cannot be decided here and now and can be decided only in the light of other evidence on record or that may be brought on record.

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22. No doubt, the objections taken against the report have to be considered before ASI report is acted upon. But that situation will arise only when the Court decides the matter finally. It would also not be advisable nor expedient to make any comments at this stage as regards the tenability or otherwise of the objections. Whether the report is biased or one sided or suffers from discrepancies or infirmities, or is unacceptable on account of rough notes having been destroyed, delay being caused in placing of the documents before the Court or for any other reasons stated in the objections, has to be considered along with the rest of the evidence that has been brought on record or that may be brought on record. We are of the considered view that this is not proper stage to pronounce on those points. Whether analysis of animal bones and its result was material for giving any opinion as to existence or non-existence of any temple or Hindu temple, is also an aspect which has to be kept in mind when evidentiary value of this report is considered.



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Whatever was found in the respective trenches is there, photographs video-graphs are there and this Court will have an occasion to consider all those things in the light of other evidence.

23. So we order that this ASI report shall be subject to the objections and evidence of the parties in the suit and all this shall be dealt with when the matter is finally decided.

Feb. 03, 2005
**GHF/-**

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C.M. Application No. 25(O) of 2006
In Re:
O. O. S. No. 5 of 1989
Bhagwan Sri Ram Lala Virajman & others ..... Plaintiffs
Versus
Rajendra Singh and others ..... Defendants
And
C.M. Application No. 27 (O) of 2006
In Re:
O.O. S. No. 5 of 1989
Bhagwan Sri Ram Lala Virajman & others ..... Plaintiffs
Versus
Rajendra Singh and others ..... Defendants

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**Hon'ble S. R. Alam J.**
**Hon'ble Bhanwar Singh, J.**
**Hon'ble O.P. Srivastava, J.**

Dr. Bhuwan Vikaram was one of the members of excavation team, which carried out excavation at the disputed site under the orders of the Court. He had also joined other excavators in preparing the two chapters of the report.

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On prayer of the plaintiff of O.O.S. No. 5 of 1989, Dr. Bhuwan Vikram was summoned to appear as witness before this Court. In response to the summons issued to him, he has moved an application being No.25 (O) of 2006 expressing his desire to appear as court witness instead of a witness of any party to the suit for the reason that the excavation was carried out under the orders of the Court.

Learned counsel for the opposite parties no. 4, 6 and 26 of the O.O.S. No. 5 of 1989 has field objections against the application of Dr. Bhuwan Vikram.

Plaintiff of O.O.S. No. 5 of 1989 at whose behest Dr. Bhuwan Vikram has been summoned as witness has also moved an application No. 27 (O) of 2006 consenting to the request of Dr. Bhuwan Vikram for permission to appear as court witness.

Learned counsel for the parties, namely, Sri Ravi P. Mehrotra



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on application of Dr. Bhuwan Vikram, Sri Z. Jilani on objections and Sri Ved Prakash on application of plaintiff of O.O.S. No. 5 of 1989 have been heard and since common questions are involved in all the applications, we, with the consent of all the counsel named above, are disposing of the said application by this common order.

As it appears from the subject involved precisely two questions arise:- firstly whether Dr. Bhuwan Vikram be permitted to appear as witness of the plaintiff of O.O.S. No. 5 of 1989 summoned in the case and secondly, whether he be asked to appear as court witness.

So far as the first question is concerned, Dr. Bhuwan Vikram has expressed his unwillingness to appear as witness to any of the parties to the suit for the reason that he was a member to the excavation team which was conducting excavation under the orders of the Court and not at the behest of any party. The plaintiff of O.O.S. No. 5 of 1989 has not said anything in regard to this prayer of Dr. Bhuwan Vikram, instead he has also prayed that Dr. Bhuwan be called to appears as court witness. Absence of any objection to the prayer of Dr. Bhuwan Vikram in this regard and the silence in regard to the prayer of plaintiff requiring Dr. Bhuwan Vikram to appear as its witness leads, to the presumption as may be drawn by us that in view of the reason stated by Dr. Bhuwan Vikram, the plaintiff is now not willing to examine him as his witness. Therefore, there appears implied consent to exempt/discharge Dr. Bhuwan Vikram from appearing as witness of the above plaintiff. We are, therefore, inclined to accept the prayer of Dr. Bhuwan Vikram so far as this part of this prayer is concerned. He need not appear as witness of the plaintiff of O.O.S. No. 5 of 1989 as summoned.

As regards the other part of the issue, namely, his examination as court witness, it may be observed that it cannot be allowed for the reason that it is for the Court to take decision at the appropriate stage as to who should be examined as court's witness or not.



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Therefore, it would be open for this Court to take decision at the appropriate stage as to who should be called upon to be examined from amongst the members of the excavating team of the ASI.

In view of the above, we hereby exempt Dr. Bhuwan Vikram from appearing as witness of plaintiff of O.O.S. No. 5 of 1989.

With the above observations, applications and objections against the application of Dr. Bhuwan Vkram stand disposed of.

4.12.2006
Sanjay/-

Sd/- S.R. Alam
Sd/- Bhanwar Singh
Sd/- O.P. Srivastava
4.12.2006.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE OF ALLAHABAD LUCKNOW BENCH, LUCKNOW**

C.M.Application No.107 (O) of 2003

Sunni Central Board of Waqfs, U.P. ……Plaintiff No.1 –Objector
In Re:

O.O.S. No.4 of 1989

Sunni Central Board of Waqfs, U.P. and others ……..Plaintiffs
Versus
Gopal Singh Visharad (now dead) and others ……Defendants

**OBJECTION AGAINST THE REPORT OF ARCHAEOLOGICAL SURVEY OF INDIA FILED ON 22.8.2003**

The plaintiff No.1- Sunni Central Board of Waqfs, U.P. begs to submits as under:-

1. That the A.S.I. report has been prepared with a prejudiced mind and with one sided presentation of evidence. Although the A.S.I. Team was fully aware of the fact that a mosque known as the "Babri Masjid stood at the site, but in the repot, almost invariably, it has been referred to as "the Disputed Structure" e.g. on pages 15,16,17,48,51,54 and on many other pages. It is surprising that the A.S.I., which has already described the "disputed structure" in its earlier publications as "Babri Masjid", was reluctant to describe the same as Babri Masjid in its report under objection. Had the report been given without any pressure of the B.J.P. Govt. at the Centre, the A.S.I. would have referred to the structure, which stood before 06-12-1992, as "Babri Masjid" or atleast as Masjid or mosque. On the other hand, the A.S.I. has frequently used the word "Ram Chabutra" for describing the platform that existed in the outer courtyard of the mosque.



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2. That the platform in the outer courtyard of the mosque described as “Ram Chabutra” by the A.S.I., was considered to be a water tank at some stage (P.49) and the report describes the squarish masonary platform of 1.50 x 1.55 m. found there to have been the earliest form of the Ram Chabutra, allegedly matching with the description of Vedi (Bedi) said to have been given by the Austrian traveller, Joseph Tiefenthaler, who visited the site around 1766-71and whose account was published in Latin and translated in French in 1786. This reference has been given without consulting the original Latin book or its translation in French but relying upon the unauthentic version of the same contained in the book written by Koenraad Elst, published in 1990 (Ram Janmabhoomi Vs. Babri Masjid). Without verifying the correctness of the said reference, the A.S.I. should not have relied upon the same in its report and specially so when the Book of Koenraad Elst was neither the work of any Archaeologist and nor was an authentic or reliable Book of History but rather the Author of the same had quoted some Mr. Abhas Kumar Chaterjee from his article published in India Express dated 26-3-90.

3. That the so called restraints/constraints, during the excavations, referred in the report regarding excavation of 90 trenches in a limited time of 5 months (P.9 to 10), have been exaggerated and the description about the time available for documentation, study, photography, drawing and chemical preservation etc. could also not be said to be limited to just a few hours. In fact the court had granted the A.S.I. extra time for this purpose and there was ample time for documentation and study and if any more time was required, the same should have been applied for, instead of making complaint about the alleged shortage of time in the report.



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## 4. ARCHAEOLOGICAL EVIDENCE OF "MASSIVE STRUCTURE":-

**4.1.** That the theory of a so called "massive structure" below "Babri Masjid" (P.54), given by the A.S.I., is based mainly upon nearly 50 m long wall (wall 16) in the west and the dumps of brick bats which it claims to be "pillar bases", to its east. According to the A.S.I. they found 17 rows of the so called pillar bases from North to South; each row having 5 pillar bases while actually they have referred to 50 only, out of which only 12 were said to be completely exposed, 35 were said to be partially exposed and 3 could be traced in section only. The A.S.I. also asserts that the central part of the pillared structure was important and special treatment was given to its architectural planning. The A.S.I. also claims that the so-called pillar bases found in these excavations have settled the controversy regarding association of these so called pillar bases with different layers and load bearing capacity while the report fails to give any details about the actual regular layers and accurate depth of all these so called pillar bases. The remarks of the A.S.I. about the central part of the pillared structure also seem to be without any evidence. On what basis the A.S.I. is saying that this part was important and special treatment was given to it in architectural planning, is also not evident from the report.

**4.2.** That the A.S.I. failed to take into account that any medieval temple in classical style would be expected to have a Central portion with thick internal walls to support a high superstructure like a Shikhara, while the Key Plan of Structures shows, in H1, two lengths of a narrow wall or two walls, each less than a metre long, with a gap of about 70 cm. between them. No further information is given to convince us that there is an "exposed entrance" as stated on P.69.

**4.3.** That the A.S.I. Report itself describes traces of inner walls



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having a width of 0.48 m to 0.55 m, attached with the earliest activities along with wall 16. These internal walls not only appear to be narrow and not more than two or three brick courses high, but also consisting of brickbats only. They are plastered over the sides and upper surface and it is difficult to infer that they were load bearing walls:

**4.4.** That regarding the said wall 16, an unexplained anomaly is that from the inner side its first phase of 10 courses is said to be plastered while on the exterior side plaster was provided in the second phase of its raising (four courses).

**4.5.** That no single example is offered by the A.S.I. of any temple of pre-Moghal times having such a lime- Surkhi floor, though one would think that this is an essential requirement when a purely Muslim structure is being appropriated as a Hindu one. Once this appropriation has occurred (page 41), we are then asked to imagine a "Massive Structure Below the Disputed Structure", the massive structure being a temple. It is supposed to have stood upon 50 pillars, and by fanciful drawings (Figures 23, 23A and 23B), it has been "reconstructed". [Though one may still feel that if was hardly "massive" when one compares Figure 23 (showing Babri Masjid before demolition) and Figure 23B (showing the reconstructed temple with 50 imaginary pillars!)] Now, according to the A.S.I.'s Report, this massive structure with "bases" of 46 of its alleged 50 pillars now exposed, was built in Period VII, the Period of the Delhi Sultans, Sharqi rulers and Lodi Sultans (1206-1526): This attribution of the alleged Grand Temple, to the "Muslim" period is not by choice, but because of the presence of "Muslim" style materials and techniques all through. This given the distorted view of medieval Indian history, must have been a bitter pill for the A.S.I.'s, mentors to swallow; and, therefore, there has been all the more reason for them to imagine a still earlier structure



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assignable to an earlier time. Of this structure, however, only four alleged "pillar bases', with "foundations" attached to Floor 4, have been found; and it is astonishing that this should be sufficient to ascribe them to 10th-11th century and to assume that they all belong to one structure. That structure is proclaimed as "huge", extending nearly 50 metres that separate the "pillar-bases" at the extremes. Four "pillar bases" can hardly have held such a long roof; and if any one tried it on them it is not surprising that the result was "short-lived" (report, p. 269). All of this seems a regular part of the Mandir propagandist archaeology rather than a report from a body called the Archaeological Survey of India.

**4.6.** That the four alleged pillar bases dated to 11th-12th centuries are said "to belong to this level with a brick crush floor". This amounts to a totally unsubstantiated claim that *surkhi* was used in the region in Gahadavala times (11th –12th centuries). No examples are preditably offered. One would have though that Sravasti (Dist. Bahraich), from which the A.S.I. team has produced a linga-centred Shavite "circular shrine" of the said period for comparison with the so-called "circular shrine" at the Babri Masjid site, would be able to produce a single example of either surkhi or lime mortar from the Gahadavala-period structures at Sravasti. But such has not at all been the case. One can see now why it had been necessary to call this period (Period V) "Medieval-Sultanate" (p. 40) though it is actually claimed to be pre-Sultanate, being dated 11th-12th century. By clubbing together the Gahadavalas with the sultanate, the *surkhi* is sought to be explained away; but if so, the "huge" structure too must come to a time after 1206, for the Delhi Sultanate was only established in that year. And so, to go by A.S.I.'s reasoning, the earlier allegedly "huge" temple too must have been built when the Sultans ruled!



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**4.7.** That the way the A.S.I. has distorted evidence to suit its temple theory is shown by its treatment of the *mihrab* (arched recess) and *taq* (niche) found in the western wall, which it turns into features of its imagined temple. The absurdity of this is self evident and particularly so when the inner walls of the niche are also found plastered, and the A.S.I. is able to produce no example of similar recess and niche from any temple.

**4.8.** That the structure denoted by wall 17 and a brick Crush floor in Period VI has not been allotted any number by the A.S.I. and the A.S.I.'s claims about the attribution of the walls and floors of "Periods VI and VII" to two successive temple structures cannot be accepted. The A.S.I.'s report in this respect also is full of contradictions and other infirmities.

**4.9.** That the reason why would the western wall be so massive (1.77 m) and the other walls so thin (0.48-0.55) is quite obvious. It should be noted that Wall 17 also was 1.86 m wide. Such wide western walls are a feature of mosque construction and not of temples. Temple walls, in fact, are of uniform thickness. If, as the A.S.I. points out, the Babri Masjid used this Wall 16 as a foundation for its western wall, then this Wall 16 can only have been the foundation of the Babri Masjid itself. Moreover, no Hindu temple has a long continuously straight western wall-this is only a feature of the mosque in India. In the case of a temple, a plinth or raised platform would be required and the walls would be broken by offsets, providing a cruciform plan to the temple form. Moreover, the temple would have *mandapas* in front of the *grabagriha* (the sanctum sanctorum) and any at the side of the latter would be very small and insignificant in nature. According to Krishna Deva, "the main compartments of the temple are axially articulated." (See temples of India by Krishna Dewa, 1995, Vol. I) In this case, as being suggested



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by the A.S.I., the central area now under the makeshift structure was the *garbagriha* and hence if so, the rest of the temple structure should have mainly projected towards the east, and not to such an extent to the north and south (as in Fig. 23A or 23B). The kind of structure as indicated in Fig.23B indicates the pre-eminence of the western wall which can only be the case in a mosque.

**4.10.** That the foundation of the Babri Masjid has some decorated stone blocks along with plain sandstone and calcrete blocks and bricks. This is natural in the construction of a foundation where any available motley material would be used, ass the foundation would not be visible. it has been pointed out by the A.S.I. (pp. 68, 269-70) that material from the structure associated with Wall 17, was reused to make Wall 16. However, if this had been the case, decorated blocks would have been used for the upper portions of walls rather than in the foundation. To corroborate their statement of the reuse of decorated blocks, the A.S.I. gives the example of the Dharmachakrajina vihara of kumaradevi of the 12th century A.D. at Sarnath. However, as can be seen in Plates 27-28, decorated blocks were used not for the foundations but in the enclosure wall of a *vihara.* Moreover, this structure was a *vihara* and cannot in any way be compared with a Hindu temple.

**4.11.** That it can also be pointed out here that Krishna Deva mentions (on P.11) that a temple customarily has a *vedibandha* consisting of moulded course. Even if the southern part of Wall 16 has not been excavated on its outer face to indicate the presence or absence of mouldings, we have the evidence of the outer face of Wall 16 in Trench ZE1, to the north , where no mouldings are to be seen. This kind of a plain wall with nothing but niches on its inner face can only be a mosque/Eidgah wall.



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**4.12.** That On p.68 are described two niches in the inner side of Wall 16 at an interval of 4.60 m in trenches E6 and E7. These were 0.20 m deep and 1 m wide. A similar niche was found in Trench ZE2 in the northern area and these have been attributed to the first phase of construction of the so called' massive structure' associated with Wall 16. Such niches along the inner face of a western wall, are again characteristic of mosque/ Eidgah construction. Moreover, the inner walls of the niche are also plastered (as in Plate 49) which indicates that the plaster was meant to be visible. A temple niche (and if found, would be on the outer wall) would not be plastered if it were to hold a sculpture or a relief. In the first phase of construction, the supposed massive structure was confined to the thin wall found in Trenches ZE1-ZE1 in the north and E6-H5/H6 in the south (p. 41). How then does one explain the location of niches outside the floor area of the said massive structure? This is typical of a mosque, which has a long, wide north-south wall, with niches at intervals on its inner face and there may be a small covered area in the center. Which would have narrow demarcating walls.

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**4.13.** That according to the A.S.I. (p. 42), the massive structure in sub-period B collapsed and its debris of brick and stone was levelled to attain height. "In this deposit, foundations to support pillars or columns were sunk which were overlaid with a 4-5 cm thick floor, which had a grid of square sandstone bases for pillars projecting out, only a few still survive."

If, as implied, the structure of sub-period B had collapsed and another floor constructed with another set of pillar bases, then these are not phases of construction of a structure but three separate structures. What is perhaps a more plausible explanation is that in the beginning of the 13$^{th}$ century, some Muslim structure was built with a well-polished lime-surkhi floor. There was a low enclosure



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wall (0.40-0.50 m wide) demarcating the area from E6 to ZE! And extending east to the H series of trenches. Within this enclosure was probably a small central covered area of which the northern wall with a niche can be seen in Trench F2. This wall was narrower (0.35-40 m) thick. Probably this was wall structure only as can be seen by the narrow walls with no deep foundation. When this collapsed, the entire area was filled in with brickbats, stone slabs, calcrete blocks, brick nodules and mud to raise the level in order to construct the next lime-surkhi floor. This floor probably now functioned as an Eidgah or so as no structural activity has been observed in association. when this floor was degraded, another floor was raised, both floors being of poor quality.

**4.14.** That wall recesses or niches are observed in the mosque/Eidgah structure in a higher stratum also (P. 53) but the report fails to discuss about the same.

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## 5. THE MYTH OF SO CALLED "PILLAR BASES":-

**5.1.** That the so called pillar bases are one or more calcrete stones resting upon brickbats, just heaped up, though A.S.I. claims that mud-mortar was also sometimes used. In many of them the calcrete stones are also not found at all. As one can see from the descriptive table on pages 56-57 of the Report not a single one of these supposed "pillar bases" has been found in association with any pillar or even a fragment of it; and it has not been claimed that there are any marks or indentations or hollows on any of the calcrete stones to show that any pillar had rested on them. The A.S.I. Report nowhere attempts to answer the question (1) why brickbats and not bricks were used at the base, and (2) how mud-bonded brickbats could have possible withstood the weight of roof-supporting pillars without themselves falling apart. It also offers not a single example of any medieval temple where pillars stood on such brick –bat bases.



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1. That the Report's claim of these so called "pillar bases" being in alignment and their being so shown in infancy drawings (Figures 23, 23A and 23B), is not borne out by the actual measurements and distances, and there is indeed much doubt whether the plan provided by A.S.I. is drawn accurately at all, since there are enormous discrepancies between Fig. 3A (the main plan) and the Table in Chapter IV on the one hand, and the Report's Appendix IV, on the other.

2. That even those "pillar bases" that lie in the first north-south "row" on the west, lie at different distances from thick western wall: the distances varying between 3.60 and 3.86 m. The east-west distance between any two features (center to center) can vary from 2.9 to 3.3 m (a difference of 40 cm) (p. 55) whereas in the north-south direction there is greater variation between each feature and its neighbour: 3- 3.3 m in the north and in the south, and about 5.25 m in the central area. The use of the term "rows", therefore, is incorrect.

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3. That the entire manner, in which the A.S.I. has identified or created the so called "pillar-bases" is a matter of serious concern. Complaints were regularly made to the Observers appointed by the High Court that the A.S.I. was ignoring calcrete-topped brickbat heaps where these were not found in appropriate positions and selected only such brickbat heaps as were not too far-off from its imaginary grids, and there creating the so called "bases" by clearing the rest of the floor of brick-bats. In this respect reference may be made to the complaints dated 21-5-2003, 7-6-2003, 28-6-2003, 26-7-2003 and 2-8-2003 etc.

5.5. That the most astonishing thing, that the A.S.I. so casually



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brushes aside, relates to the varying levels at which the so called "pillar-bases" stand. Even if we go by the A.S.I.'s own descriptive able (pages 56-67), as many as seven of these so called 50 "bases" are definitely above Floor 2, and one is in level with it. At least six rest on Floor 3, and one rests partly on Floor 3 and 4. Since at least Floors 1 to 3 are even recognised by the A.S.I. to be floors of the Mosque, how can so many pillars be said to have been erected after the Mosque had been built, in order to sustain a so called earlier temple structure! Moreover, as many as nine so called "pillar bases" are shown as cutting through Floor No.3. So, are we to presume that when the Mosque floor was laid out, the so called "pillar bases" were not floored over? It is thus clear that the said structures are simply not "pillar bases" at all, but some kind of loosely-bonded brickbat deposits, which continued to be laid right from the time of Floor 4 to Floor 1.

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**5.6.** That the comparative stratigraphy of these 50 alleged bases also requires comment. The tabulation on p.p. 56 to 67 gives us the following data:-

2 bases (nos. 16, 26) were <u>cut through Floor 4.</u>

25 of them (from the Z-trenches in the north to the G 10 and H 10 trenches in the south) rested <u>on Floor 4.</u>

6 of them <u>on Floor 3</u> (nos. 19,21,23,24,30,37).

1 (no. 28) actually is said to rest "at the <u>junction of Floor 3 and 4"</u>

2 of them <u>cut through Floor 3</u> (nos. 12 , 15)

7 of them project above Floor 2 (nos. 1,2,3,5.7,8 and 14).

We thus see that these 50 features belong to different floors and therefore <u>could not all have been functional at the same time.</u> They lack coherence as architectural features. It is irresponsible, therefore, to repeatedly refer to "rows" of these features, as has been



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done in the report.

Some o these features appear to incorporate all sorts of material: pieces of brick, small stones and brick pieces, long stone slabs, and D-shaped large stones, etc. This also leads to the inference that all these structures could not belong to any one period.

**5.7.** That even the table on pages 56-67 o the A.S.I.'s Report may not correctly represent the layers of the alleged pillar bases, since its information on floors does not match that of the Report's Appendix IV, which in several trenches does not attest to Floor No. 4 at all, which the said "pillar-bases", in many cases, are supposed to have been sealed by, or to have cut through or stand on!

**5.8.** The most of these so called pillar bases of the northern side comprise of square sandstone slabs, perhaps resting on calcrete blocks (only one has been excavated that reveals the calcrete block). The inner dimensions of these pillar bases range from 48.5 x 43, 50 x 50, 47 x 46, 48 x 56, 49.5 x 49 and 51 x 51 cm. These dimensions are completely different from those of the pillars that have actually been recovered. The dimensions of the latte range from 21 x 21 to 24 x 24 cm. Thus, the pillars that could be said to have stood on the said northern pillar bases would certainly not be the blackstone pillars, used in the mosque, or any other pillars of the same or similar type.

**5.9.** That the A.S.I.'s assumption is that the floor, with which are associated these so called pillar bases in the north, is the same as Floor 2 in the south. However, it cannot be definitely said that the floors in E2, F2 or G2can be easily correlated with E1,F1 or G1 or with ZF! or ZG1.



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**5.10.** That the A.S.I.'s own information on the said pillar bases is highly confusing and marked with discrepancies. For example, in the tabulation of so called pillar bases in Chapter IV, 50 'pillar bases' have been described and have been illustrated in Fig. 3A. The number and the location of these 'pillar bases', however, do not tally with information given in Appendix IV as illustrated in the following Table:-

……..

**5.11.** That, two 'pillar bases' are mentioned in H5, H10, G10 and ZH1 whereas only one in these trenches have been illustrated and described in the text. 'Pillar bases' in the L series of trenches and J2 have not been indicated in the Tabulation as illustrated above.

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**5.12.** That on p. 55, distances between 'pillar bases' have been given, that in the east-west direction, center-to Centre distance was 2.90-3.30 m. However, the distance between 'pillar bases' 37 and 38 is 3.80 m. Similarly, these are not always in alignment as is the case with 'pillar base' 30 in Trench G6. "Pillar bases' 37 and 38 in Trench F8 are also not in alignment with each other.

**5.13.** That the dubious nature of the 'pillar bases' is illustrated by the figures attached with the complaints. The collection of calcrete and brickbats at a lower level than the above has been ignored by the A.S.I. even though it resembles their so called 'pillar bases'. At times, walls were cut to make 'pillar bases' as in Trench F6. The confusion between walls and 'pillar bases' is apparent in Trenches E1 and E2. The same is the case with 'pillar base' 27 in Trench H5. This is nothing



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but the southern part of Wall 18B.

**5.14.** That more serious problem has been created by giving Figs. 23A and 23B, showing the 'pillar bases' hypothetically. An incorrect impression is being created, by showing some 'pillar bases' where no structure was exposed at all and where no excavation was also done.

**5.15.** That there is an additional problem with the "pillar base" interpretation. Load carrying pillar bases require to rest on hard and resistant surfaces, on floor slabs or rammed floors of say 30 to 40 cm height, or else to be set into or enclosed in pits that are packed tight with filled material. The various sections in the report indicate that this is not the case (see, e.g., Figures 8,9,10 where the features appear to have only been set without packing into the ground, and interrupt the continuity of Floor 2, which is only a few entimeters thick, and les over a stratum not said to be homogeneous earth filling, or of rammed earth. Thus the very use of the words "rows" and "bases" is incorrect and misleading. These features could in some cases represent a pile of unused bricks, broken or entire. In other cases, they may have been used to fill hollows or to raise the level of the mound. In yet other cases they could have been used to shore up a heavy wall or else to function as an apron for a building.

**5.16.** That the A.S.I. should have surely looked about for other explanations of these heaps of brickbats, before jumping to its so called "pillar base" theory. There was another clear and elegant explanation when the surkhi-lime mortar bonded Floor No.4 was being laid out over the mound, sometime during the Sultanate period, its builders must have had to level the mound properly. The hollows and depressions then



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had to be filled by brickbats topped by calcrete stones (the latter often joined with lime mortar) to fill them and enable the floor to be laid. When in time Floor 4 went out of repair, its holes had similarly to be filled up in order to lay out Floor 3. And so again when Floor 3 decayed, similar deposits of brickbats had to be made to fill the holes in order to lay out Floor 2 (or, indeed, just to have a level surface). This explains why the so called “”pillar bases” appear to “cut through” both Floors 3 and 4, at some places, while at others they “Cut through” Floor 3 or Floor 4 only. They are mere deposits to fill up holes in the floors. Since such repairs were at times needed at various spots all over the floors, these brickbat deposits are widely dispersed. Had not the A.S.I. been so struck by the necessity of finding pillars and “pillar bases” to please its masters, which had to be in some alignment, it could have found scattered over the ground not just fifty but perhaps over a hundred or more such deposits of brickbats.

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**6. THE ALLEGED “CIRCULAR SHRINE”**

**6.1.** That the sub-heading given to the discovery of a structure of burnt bricks as “The Circular Shine” at page 70 is indicative of the mindset with which the A.S.I. team did the excavation work. The A.S.I. team should have just said “The circular structure” because there is no evidence to make this structure a shrine. Just by comparing it with certain temple structures and not with circular walls and buildings of Muslim construction one can not come to the conclusion that the circular structure was a Hindu Shrine. No object of Hindu worship was found on this layer. The story of “parnala” is also a sheer figment of imagination and a conjecture without any evidentiary basis. The comparison at page 71 is irrelevant and also unrealistic. The layer on which this circular structure



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was discovered did not throw up any material to justify the naming of this circular structure as a shrine. The surviving wall, even in A.S.I.'s own drawing, makes only a quarter of circle and such shapes are fairly popular in walls of Muslim construction. And then there are Muslim built domed circular buildings also.

**6.2.** That the scale of the Plan (as given in Figure 17 of the Report), would have an internal diameter of just 160 cms or barely 5½. Such a small "shrine" can hardly be worth writing home about. But it is, in fact, much smaller. The plan in Fig. 17 shows not a circle (as one would have if the wall shown in Plates 59 and 60 are continued) but an ellipse, which it has to be in order to enclose the entire masonry floor. No "elliptic (Hindu) Shrine" is, however produced by A.S.I. for comparison the few that are shown re all circular. As Plate 59 makes clear the drawing in Fig. 17 ignores a course of bricks which juts out to suggest a true circle, much shorter than the elliptic one: this would reduce the internal diameter to even less than 130 cms. or just 4.3 feet! Finally, as admitted by the A.S.I. itself, nothing has been found in the structure in the way of image or sacred piece that can justify it being called a "shrine".

**6.3.** That "the southern part of the said structure was found resting over a 0.75m wide brick wall (Wall 19 A ) of 9 courses belonging to earlier period which runs in east-west direction and joins the end of the north-south oriented brick wall(Wall 19 B) having 7 extant courses of bricks and a width of 0.55 m, making the south-western corner of the earlier structure."

The wall 19A rests over a still earlier wall (Wall 20) which is 0.62 m wide." Another wall (Wall 21) is about 0.51 m away from structure 5 and northeast of it.

Wall 19 A and Wall 20 are considered to belong to the Post Gupta (Period V) and Gupta (Period IV) periods respectively. It



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appears from their description and from Plate 59 that the 'circular shrine' was built over existing walls without removing the walls. These earlier walls were of the preceding period as well as the same period. These earlier walls could not have been used as the foundation for the structure as they are of completely different dimensions and shape.

**6.4.** That the size of Structure 5 has an outer diameter of 1.6 m and measures 0.6 m in the inner area. The entrance is 0.5 m wide and length of the 'passage', from the entrance to the inner area is 0.4 m. Comparisons are being made with circular brick temples at Sravasti, Kurari, Masaon, Tinduli and Chandrehe (p 71, Fig. 18). The outer diameter of these structures range from 6.1 m (Masaon), 5.8 (Chandrehe and Chirenath), 5.5 m (Tinduli), 4.9 m (Kurari I ) and 3.6 m (Kurari II) (see Fig 18). The inner area of Kurari II, the nearest in size to the Ayodhya structure is 1.4 m, Kurari I is about 1.8 m and Chirenath is 2 m. The entrance measurements are 0.9 m for Kurari II and 0.7 m for Kurari I. The length of passage is 0.6 m for Kurari II and 1.5 m for Kurari I.

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**6.5.** That all the circular shrines have a mandapa except for the Kurari temples Kurari I is also on a plinth with steps on the east. The closest in size to structure 5, Kurari II, is more than double the former structure. the inner area of Structure 5 is too small to even allow anyone to enter it. Where is the possibility, then, of performing any kind of abhisekha?

Out of all the temples illustrated in Fig. 18, four have the entrance from the west, one from the north and one from the east . Thus, it seems that the comparison between Structure 5 and these shrines is being stretched too far . Structure 5 has been dated to the 10th century AD. However, as will be evident from the Report, the



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layers associated with this structure have mixed material, preventing any chronological determination of the structure.

**6.6.** That if, as pointed out by the A.S.I., subsequent structural activity (in Period VI) damaged the circular shrine, it is surprising that a letter so called temple would destroy an earlier Hindu religious structure. Moreover, a later temple could easily have incorporated an earlier temple into its plan and maintained the sanctity of the earlier structure. Instead, what is being suggested is that the central part of the later temple is much further away to the north, about 20 m away. Thus, it seems highly unlikely that this structure was a Hindu religious shrine.

**6.7.** That Structure 5 could well have been a *stupa* , belonging to perhaps the 6th or 7th century AD. Figure 24 giving a bird's eye view of the structure, shows a slight difference in diameter between the first few lower courses of bricks and the courses above them. This difference recalls the two parts of the stupa, the medhi (or the drum) ands the anda (or the higher rounded portion of the stupa). The 'opening' towards the east could well have been a niche for a Buddha figure. One of the reasons for considering this structure as a *stupa* is that it is too small to enter, which one would not have to do in the case of a Buddist Stupa. These religious structures symbolizing the Buddha are meant to be walked around and not entered.

**6.8.** That according to the Table placed after Page 37 (A.S.I. Report) this period V is represented by layers 6 and 5. Layer 6 is a flood deposit and layer 5 belongs to Gupta period. So the formulation of Period V assigned to Post Gupta – Rajput times is arbitrary. Thus whatever structures are said to have belonged to Period V, in fact, they belong to Period IV (Gupta



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Period).

**6.9.** That the Text says that layer 5 A is a contemporary layer of the shrine (structure 5 ) "below which lie walls 19 A and 20……..The layer below their working level is layer 7……." (page 72 of A.S.I. Report). There is existence of only one layer between layers 5A and 7, the layer 6 (A.S.I. Section, F8, Fig 16). Layer 7 has been dated 140 – 80 BC on 14c determination. The calibrated date read AD 90 – 340 (Page 72 A.S.I. Report). The range of calibrated date is extremely wide. However, on its maximum range it reds about 4th C.A.D. While layer 7 is dated to 4th century A.D. and layer 5A is being said to be contemporary to the Shrine which has been dated to 10th century A.D. The shrine on stylistic grounds has been dated to 10th century A.D. (Page 71, A.S.I. Report). The concerned two layers (i.e. 5A and 7) is intervened by only one layer. That is layer 6 could this lone layer represent a temporal duration of about six centuries ? It is ridiculous and fantastic. It is simply not possible. Thus the dating of the shrine to about 10th Century A.D. is arbitrary. The structure 5, whatever it may be either a simple structure or a Buddha circular stupa, in view of the radiocarbon data seems to have belonged to slightly later than circa 4th Century A.D. That is Gupta Period.

**6.9.** That there is yet another important feature of the so called Shrine that needs comment. it is about it's suggested water channel. Stylistically, its northward orientation has been marked to have some special significance.

The channel does not have a uniform width throughout. It does not have been a gradually decreasing width from south to north. It becomes suddenly very narrow at nearing its end. Thus it appears that it was not made for the purpose is has been suggested. It seems to have taken the existing from by the removal of mortar during excavations as was filled therein.



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It did not function for draining water from south to north is evident by the fact there is no evidence of slope towards the direction in question. It has been measured by the levelling instrument at three at points of the channel. It was found that there is no sloe on its surface.

Further, had the so-called channel been in use for draining water for a longtime, then there should have been the remains of water residuals in the channel. Such evidence could be expected on the northern side of the circular wall corresponding along to the area of water discharge. But there is no such evidence either in the channel or on the surface of the wall in question.

## 7. THE "DIVINE COUPLE" AND OTHER ARCHITECTURAL MEMBERS:-

**7.1** That the stone "mutilated sculpture of a divine couple" (p 272) is described on p.130 (Reg. No. 1184) and Plate 235. The lower portion alone is present, below the waist. The piece is so damaged that it is almost undecipherable. What aspects of this incomprehensible piece make it a "divine" couple, we are not told. Thus the report shows clear bias in the use of the adjective "divine" and also "couple".

**7.2** That further, and more important, the recorded findspot (p.130) of this piece is Trenches K3-K4 (in the east ) and the recorded layer is "Debris". Clearly, this piece of sculpture does not come from a stratified context, leave alone the strata of Period VII.

**7.3** That so too, a black schist pillar with a square base and octagonal shaft and intricate carving comes from surface debris above the topmost floor (Floor 1) in Trench F3 (p. 140), which is also of no relevance.

**7.4** That regarding the octagonal stone that was said to have been



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carved in twefth century style, it may be noted that according to the text (on p 56), it was found in Trench F-7, on pillar base 32 but as per table (on p.63) that was "resting on Floor 2", in Trench F6-F-7, while its foundation was resting on floor 4. It may be notice that in the Section Facing South West-East (E-F), no floor marked "Floor 4" is indicate.

**7.5** That the theory of so-called temple rests on some other repotted architectural fragments also. Out of about 380 pieces that have been tabulated, 205 are featureless with only marks of dressing or in some cases are completely undressed stones. To give examples, No 122 (Reg. No. 882) kept in Manas Bhawan is a rectangular piece with pecking marks and partially polished (p 129), No.131 (Reg. No. 953) is a "rectangular slab with one of its sides nicely polished" (p.129), No. 3 (Reg. No. AYD-1 / 74) kept in the tin shed at the excavated site is "a rectangular partly dressed sand stone slab with an open groove meant for dowel" (p. 131). the majority of these came from the dump or fill and were in many cases part of the Babri Masjid walls. There were numerous others (particularly of calcrete) that were removed from the dump from trenches, during excavation, that were thrown away and are not tabulated. Out of 383 architectural fragments, only 40 came from stratified context. Out of this 40, too, none were specific to a temple, even the 8 that have been separately mentioned, pillar, doorjamb, octagonal shaft of pillar, amalaka, divine couple, slab with srivatsa motif, lotus medallion and a rechielled slab with lozenge design, are of no significance. <u>The srivatsa design is associatd with Jainism ands the lotus design could as well be Budist or even Muslim</u>. The lozenge design could well belong to a Muslim structure. It is also interesting that the floral design on the architectural fragment in Plate 90 matches the lower portion



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of the Arabic inscription in Plate 92. The latter depicts a floral design and the design, as well as the method of carving, in the two pieces are very similar. It is also mischievous to label a sculpture showing the waist portions of two human figures as representing a divine couple. Moreover, all the above noted 8 pieces came from the debris. The octagonal shafts has, in fact, not even been tabulated. Many of the architectural fragments are, as admitted, of different materials (pink sandstone), buff sandstone, spotted red sandstone, calcrete, and so forth), and it is well known that temples do not use stones of diverse colors and types for decoration.

**7.6** That report admits that there are few architectural members (plates 92 to 94 ) which can clearly be associated with Islamic architecture and on stylistic grounds which might belong to 16th century A.D. onwards (page 122). On the same page in earlier sentences the report described certain architectural members. The photographs of these architectural members appear on plates 79, 80, 81, 84, 85, 86, 87, 89 and 90. The report says that stylistically these architectural members in general and pillars in particular may be placed in a time bracket of 10-12 century A.D. In Indo-Muslim architecture elements of early Indian architecture which were consistent with Islamic traditions were freely used. Foliage, floral and geometric designs as found in early Indian architecture were copied and used in the Indo-Muslim architecture and this is the important feature which distinguished Indo-Muslim architecture from that of Arabian Land and Persia. The elements and designs in Plates 79, 80, 81, 85, 86, 87, 89 and 90 are found in many muslim religious and other buildings. Lotus medallian as in pl. 70 are found as apex-stone in domes.

On what basis the style and design contained in plate no. 93,



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94 is attributed to 16 century, is also not mentioned.

The architectural members shown in plate no. 79, 80, 81, 84, 85, 86, 87, 89 and 90 do not contain any carving of a Hindu deity. Such elements and designs have been used in Indo-Muslim architecture and hence these architectural members may have been parts of a muslims structure. On what basis the A.S.I. remarks that these "emphatically speak about their association with temple architecture", is not known. What is the basis for placing these architectural members in time bracket of 10-12 century A.D. is also not given in the report. Plate No. 81 is not amalaka but a part of petal design. It has to e noted that the so-called amalaka (pl. 81) is a surface collection found in debris above floor-1 (page 141 Sr. No. 125).

7.7. That the octagonal stone block having so-called floral motif has been dated to 12th century A.D. on its alleged similarity with that one found in the Dharmachakrajina Vihar of Kumardavi at Sarnath (Plates 39 and 40 ). Even a cursory inspection clearly reveals that there is not the least similarity between the two. The Sarnath Specimen is rectangular on Plan while the Ayodhya one is Octagonal. Again the Sarnath specimen has depiction of floral motif but the Ayodhya specimen has different motif. Further, apart from the stylistic dissimilarity there is dissimilarity in their architectural technique as well. On the Sarnath Specimen the depiction of motif is in slightly low relief while on the Ayodhya one it is in very bold relief.

There is of course one very distinct similarity between the two. Both belong to the category of reused material. The Sarnath Vihar in question has been built mainly by reused earlier materials such as broken bricks, stone architectural members, both plain as well as decorated etc. The stone pilaster as cited for comparison



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with octagonal stone block is also a reused specimen. It, thus, cannot be contemporary to the builder of the Vihar in question. There is no question on the date of Kumardevi. There is no question on the date of Kumardevi. It is early 12th Century A.d. But there is of course a big question over the date of the pilaster cited for comparison. It is certainly of some earlier date it could be even of Gupta period.

So it is obvious that of the listed architectural members(stored in Manas Bhawan as well as in the Tin Shed at the excavation site, mostly collected from the surface or debris above floor1) majority of them are fragmentary and plain in nature. It is also obvious that they cannot be dated on stylistic ground.

7.8. That in view of the evidence drawn from the depositional history of the site there was no habitation at this site after Gupta period for a long time. It was reoccupied after a long desertion in 13th century A.D. Under this situation, many of the remains of architectural members having so called association with temples, as alleged, could have belonged to Gupta period.some of these said to have belonged to 10th – 12th century A.D. could ha e been brought here to be used as building material from some neighboring sites. This is the situation also of the decorated/moulded bricks. Needless to mention that moulded bricks were quite prevalent in Gupta Period.

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## 7.9. INADEQUANCIES OF THE STRTIGRAPHY:-

8.1 That an essential requirement in an excavation report is a chapter that describes, one after the other, the main strata or levels found in the excavation, their nature (soil texture, colour,etc. ) and contents. For example in H.D. Sankalia and S.B. Deo, Report on the Excavations, at Nasik and Jorwe,



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Poona Deccan College, 1951, Chapter Two, entitled "Strata and Sturctures" contains on pp. 9-19 a description of all the strata in the different excavated areas of the site. Earth colours, textures, the presence of charcoal or ash, the slope of the strata, their depth, etc. are described. so also, in M.K. Dhavalikar et a., *Excavations at Inamgagaon,* Pune: Decan College, 1988, Chapter 7 on "Cuttings and Stratigraphy" describes the 16 layers of the site (pp. 121-125). Even though Inamgaon was occupied only in the chalcolithic period and is not a multi period site like Ayodhya, there is information on each of the 16 layers of themound inthis chapter. Veerapuram is a site on the Krishna river in Andhra Pradesh, with neolithic, megalithic (iron age), early historic, and early medieval (AD 300-400 ) levels. For this site too, the excavators have given a description of each of the 15 strata. See T.V.G. Sastri, M. Kasturi Bai, and J.V. Prasada Rao, *Veerapuram: A type Site for Cultural Study in the Krishna Valley. Hyderabad:* Birla Archaeological and cultural Research Institute, 1984, pp 15-19. But there is no such section, leave alone a chapter, in the Ayodhya repot. There are serious conseuences of this lacuna in basic excavation and recording procedure. Moreover, the descriptions in Chapters II (Cuttings), III (Stratigraphy and Cuttings) and IV (Structures) very rarely allude to the drawn sections presented in the report while sections present, n a sense, an "X-ray" of the history of a mound. It is on the basis of sections that the sequence and history of a mound is constructed.

8.2 That it may also be pointed out that, the descriptions given in the report are not always matched by the sections. The reverse is also true. The text does not state the periods to which the following layers belong:

(i) Trench 13: layer 6 with the inscribed stone (Figure 22);



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(ii) Trenches ZE1-ZF1: Layers 4 to 6 (*Section Facing South, West-East (K-L);* and

(iii) Trench E7 Layers 3 to 6 *(Section Facing South, West-East (E-F).*

8.3 That the text mentions (p.40, pp.68-69) a red brick crush floor of Period VI, attached to Wall 17, and states (p.40) that this floor can be traced in Trenches E8 and F8, G7, J5 and J6 and ZF 1. It is seen in the east section of F1. As regards trench G 7, we see this red floor in Photograph No. V, and we find a floor marked "Floor 4" in the section Facing South, West-East (E-F). But as regards E8, the Section Facing South, West-East *(E-F).* But as regards E8, the Section Facing South, West-East (C-D) marks (or numbers) Floors "1" and "2" only: which, the text indicates, belong to later periods, layers 3 and 4, below "Floor 2", are assigned to Period VI on p. 41. As for J5 and J6, the Section Facing South, West East *(E-F)* indicates "Floor 2" below layer 4, and, at a lower level, a very thick or flooring of brickbats.

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The same problem is faced as regards ZF 1: the *Section Facing South, West-East (K-L)* does not mark or number any floors in the layers1 to 6, Layers 4 to 6, are not assigned to any of th periods of the sequence. ZF 1, was found to have been dug down 1 m against the north section, in which some broken bricks can be seen, but these are not the same as the red brick crush floor. Thus the numbering of the floors and other details are not according to the stratigraphy and the report is full of confusion.

8.4 That chapter II, III and IV mention the actual layer numbers, in specific trenches assigned to Periods 1 to VI. For instance, <u>to Period VI</u> which lies below the "massive structure ", belong the following (pp. 40-41).



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| | |
|---|---|
| layers 5,6,7, | in Trench G2; |
| layers 3,3A, 4 | in Trench G7 |
| layers 5, 6 | in Trench J 5 and J 6; and |
| layers 3, 4 | in Trench E8 and F8 |

However, the text fails to mention which particular layers, in these and other trenches, pertain to Period VII (pp. 41-43), which very stratum is claimed to represent the alleged massive pillared hall. we could assume that in the published sections either one or two layers above those listed for Period VI would pertain to the so called "massive structure" Also, on page 42 is given the confusing information that the period is represented by

"layers 1 and 2 in almost all the trenches except those in the eastern area where the deposit was disturbed.... an in the northern area where the floor of the period VII-C remained exposed and under use till late. In the northern areas layers 2 and 3 belong to this period . The three floors of this period were not found in all the trenches uniformly.

We can only assume that in the southern area it is layers 1 and 2 (with Floors "2" and "3" as marked on the *Section Facing South, West-East E-F)* that represent this allegedly significant period and, by default, that nothing but the mosque floor lies over it. significantly, and as stated above, we are not told the periods to which layers 3, 4, 5 and 6 of Trench E 7 are assigned.

If G2 whose layers 5, 6 and 7 belong to Period VI, is counted as one of the "northern" trenches and layers 2 and 3 belong to period VII as the paragraph quoted above indicates, to which period can we assign its layer 4? If it is counted as one of the "southern" trenches (where, the para quoted above says, layers 1 and 2 belong to Period VII, to which period do layers 4 and 3 belong? With no



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section drawing of G2 available, we are none the wiser. In the *Schematic Cross Section of the Disputed Mound ands the Tentative Periodization of the Disputed site,* in fact, no layer below layer 3 is mentioned in the relevant column.

Thus we see the consequences of the serious inadequacy of the report, mentioned above. Nowhere does the report tell us the content/colour/texture of the northern layers2 and 3, or the southern layers 1 and 2. No evidence is cited to show that layers 1 and 2 in the south of the mound are contemporary with layers 2 and 3 in the north of the mound. the paragraph on P. 42 of the report, quoted above, remains without substance.

**8.5.** that below "Floor 1" obviously belonging tot he mosque, we expect to see, in the sections and plans of the various trenches, a sequence of 3 floors, presumably from "Floor 2" downwards to a "Floor 4" of period VII with a Floor 5 belonging to period VI. But nowhere is there any section showing Floors numbered "4" (which we expect, from the text, to the lowest floor of the alleged "massive structure" of Period VII) or "5" (which we would expect to be of the Period VI below), and no section show a sequence of floors numbered "1" to "5".

On p. 42 the text mentions the most extensive floor of the mound, assigned to Phase C of Period VIII, but fails to state what number has been assigned to it in the relevant trenches.

In Photograph 24 of Trench E 7, we see a floor marked "Floor 3" at the bottom of the trench, uniformly touching the remnant plaster on the east face of the western wall, within the south chamber of the mosque. The acceptable inference would be that this "Floor 3" about 1 m below surface, belonging to the so called "massive structure", is actually in functional relationship with the brick-course levels of the north south wall on the west.



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Below Floor 3, which is very approximately 1 m below surface in various trenches (as seen in several sections), a floor is marked "4" in the *section Facing South, west-East (E-F),* as also in Trench G7 (see also Photograph 5). This Floor 4, however, is shown as laying between layers 4 and 3A in the section (between layers 3 and 4 in the photograph). These layers 3 and 4, the text tells us (p.41), belong to the earlier Period VI. Thus "Floor 4" in this section cannot belong to Period VII or the "massive structure". moreover, this floor is quite different from the floors that lay above it in the west section of G7, as evident in Photograph # 5. Thus it would be "Floor 3" that belonged to period VII, which means that in this trench only two floors, 3 and 2, may possibly be assigned to that period.

In Photograph # 53, "Floor 4" is mentioned in the caption as the "first" floor associated with the north-south wall. It is shown at the base of the excavation. The trench is without number in both photograph and caption. The floor at the base of the trench lies several (30-40?) centimeters below what is marked "Floor 1" on the section. Moreover, the section labels above this floor mark only layers 3 and 2, with "Floor 1" between these layers.

The only other mention of "Floor 4" is in the hypothetical isometric reconstruction of the mosque and 'temple' in Figure 23A. This is only a suggested reconstruction.

True, it is said (pp. 42-43) that the numbering of the floors of Period VII differs from trench to trench. yet the question still remains s to which section in the report shows phases A to C of Period VI and their three floors. , whatever the numbers assigned to them. As pointed out earlier, the report nowhere states the nature and content of the layers distinguished as VIII A, VII B and VII C.

In strtigraphic terms, ten, the characteristics and contents of the 3 phases of "Period" VII as given in the text of the report, are



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thrown in doubt by lacunae and inconsistencies. Lacunae include not only an absence of 3 sequential floors in the sections of the relevant layers, but also the absence of information as to the content of the Strata below those assigned to Period VII in Trench E7, one of the more important on the mound as it contains an undisputed part of the mosque, the South chamber.

**8.6.** That a simple stratigraphic principle is that no wall can be accurately dated vis-à-vis floors, unless we can see from which level the foundation trench for the western wall was cut, an which floor seals (or runs over) that vertical foundation cut (running close along the wall). A wall can be used, even raised higher, in periods after it was originally built. If a floor runs right up to a wall, with no gap or interruption between them. We assume that the wall and floor are functionally related, i.e. that they belong to the same building it may be that the floor was laid after the wall was built, but not vice versa. the stratum to which the first construction of the wall dates, is indicated by the level from which the cut was for made its foundation. That cut, in its turn, will be dated by the floor or surface that seals the cut. The report does not state which layer or floor seals the so-called foundation trench mentioned on p. 41and p.69.

*Photograph no.52* (Trench E8) purports to show a cut, indicating the date of the massive west wall, in the north face of the trench, but (a) this face or section (technically, the "Section Facing South") shows an animal burrow sloping away from the west wall towards the east. the burrow cuts the second floor from the top, and also the read crush floor below it. From the level of the latter, the read stratum, a cut goes down vertically, but is too far (about 75cm.) from the west wall to be appreciated as its foundation trench cut.

Besides, (b) there is no "proof" because I the photograph the cut in the floor at the bottom of the trench (this floor lies several



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centimeters below what is marked.

"Floor 2" on the second in the Photograph) is neither close to, nor parallel to, the line of the wall, and does not therefore, indicate the edge of a trench dug to make a wall.

In *Photograph 55 of Trench ZE1* we see labels marking "Floor 1" and "Floor 2" in the section, and a floor (without number) at the base of the excavation area below, but there is no cut visible in the trench section close to the east face of the north-south running wall. the upper and lower floors run right up to the east face of the wall. Thus we cannot say that either of these floors was earlier than, and cut to make room for, the upper courses of the north-sough wall. the same observation follows from the Section Facing South, West-East (K-L), pertaining to Trench ZE1, east of Wall # 5 A.

So too no cut is visible in the Section E-F, Facing South, in E 7 inside the South Chamber of the mosque. Al that we have in this I a sequence of surfaces or strata below "Floor 3" coming straight up to the western wall in E7. There is no cut line, vertical or sloping, near the vertical edge of the wall.

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**9.TERRACOTA FIGURINES ____RELEVANCE OF:-**

**9.1** That during the excavation, the A.S.I. found 62 human 131 animal figurines. These discoveries are irrelevant to the question under inquiry. A large number of them belong to ancient period. The A.S.I. unnecessarily took pains to give details of terracotta figurines and to include their 33 plates (Pls. No. 104 to 136) knowing well that these figurines, most of which belong to ancient periods, were not at all relevant to the question contained in the Hon'ble Court's order. The chart below gives an idea of this exercise in futility. It is possible that the A.S.I. gave detailed description of human figurines and their photographs to lead



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credence to its theory of an alleged temple-like structure beneath Babri Masjid.

| Plate No. | Period of the figurine | Page of Vol.1 |
|---|---|---|
| 104 | Late level (period not specified) | 177 |
| 105 | 2nd Cent. A.D. | 179 |
| 106 | 1st Cent. A.D. | 179 |
| 107 | 2nd Cent. A.D. | 177 |
| 108 | 2nd Cent. A.D. | 183 |
| 109 | 3rd Cent. A.D. | 181 |
| 111 | 3rd Cent. A.D. | 177 |
| 112 | Gupta level | 180 |
| 113 | Gupta level | 182 |
| 114 | 6th Cent. A.D. | 182 |
| 115 | 1st Cent. A.D. | 184 |
| 116 | 4th Cent. A.D. | 184 |
| 123 | 3rd Cent. A.D. | 185 |
| 124 | Pre-Mauryan | 184 |
| 125 | 3rd Cent. BC. | 185 |
| 126 | 3rd Cent. BC | 176 |

9.2. That there are a large number discrepancies also in the description of these Terracotta finds, which also create doubts upon the bonafides of the A.S.I. Team giving such incorrect descriptions. it is true that when archaeological deposits are disturbed, it is not surprising to find earlier material in later levels. This happens when construction or leveling activities require the bringing in of soil from peripheral areas or the clearing and mixing of older deposits. On the other hand, the reverse is impossible, that is we cannot, in an earlier stratified



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context, find material of later periods. However, the latter appears to the be case at Ayodhya in the context of terracota figurines as seen in the tabulation provided on pp.174-203. We find in numerous cases figurines of later periods in far earlier levels, as is evident from the following Table:-

**Table of Discrepancies in stratigraphy in relation to terracotta figurines**

| Artefact details | Discrepancies |
|---|---|
| **S.N. 50. R. No. 1027. Part of human Figurine. Mughal level. G5, layer 2, below Floor 2** | |
| **S.No.52, R.No.393 Animal figurine. Late Medieval period. E8, layer 5** | |
| **S.No.67, R.No.549, Animal figurine. early Medieval. F9, layer 5** | |
| **S.No.69, R.N.594. Animal figurine. Mughal. E8, layer 6** | |
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9.3. That it may also be pointed out that on p.93 the Report mentions that shapes like sprinkler appear in Period IV (Gupta period). However, on p.80, sprinklers are mentioned from Period II (Sunga level) that evolved into their diagnostic forms in the subsequent Period III or Kushan period. So also on p.41, it is stated that layers 5,6 and 7 in Trench G2 belong to the Medieval Sultanate level. In the schematic cross-section and tentative periodization, layer 2 and 3 belong to the Medieval level. Hence, what is then layer 4?

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## 10. GLAZED WARES AND GLAZED TILES:-

10.1. That the glazed ware, often called "Muslim" glazed ware, constitutes an equally definite piece of evidence, which militates against the presence or construction of a temple, since such galzed ware was not at all used in temples. The ware is all pervasive till much below the level of "Floor No.4", which floor is falsely ascribed in the Report to the "huge" structure of a temple allegedly built in the 11$^{th}$-12$^{th}$ centuries. The report tells us that the glazed ware sherds only "make their appearance" "in the last phase of the period VII" (p. 270). Here we directly encounter the play with the names of periods. On page 270, Period VII is called "Medieval Sultanate", dated to 12$^{th}$ –16$^{th}$ century A.D. But on p. 40 "Medieval- Sultanate" is the name used for Period VI, dated to 10$^{th}$ and 11$^{th}$ centuries. In Chapter V (Pottery), there is no statement made to the effect that the galzed ware appears in



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"the last phase of Period VII" as is asserted in the Summary. Rather, it is there definitely stated that "the pottery of Medieval-Sultanate, Mughal and Late-and-Post Mughal period (Periods VII to IX)…indicates that there is not much difference in pottery wares and shapes" and that "the distinctive pottery of the periods is glazed ware: (p. 108). The placing of the appearance of Glazed Ware in the "last phase" of Period VII is thus a last-minute invention in the Report, to keep its "massive" temple, allegedly built in Period VII, clear of Glazed-Ware by a sleight of hand, because otherwise it would militate against a temple being built in that period. All this gross manipulation has been possible because the items of galzed pottery have not been attributed to their trench and stratum even in the select list of 21 items of glazed ware (out of hundreds of items actually obtained) on pages 109-11]. Seeing the importance of glazed ware as a factor for elementary dating (pre or post- Muslim habitation at the site), and in view also of the Hon'ble High Court's order dated 10-4-2003 about the need for recording of glazed ware, a tabulation of all recorded galzed-ware sherds according to trench and stratum was essential. That this has been entirely disregarded shows that, owing to the glazed-ware evidence being totally incompatible with any alleged temple construction activity in Period VI, the A.S.I. has resorted to the most unprofessional act of ignoring and manipulating the archaeological finds.

10.2. That Going by the Pottery Section of the Report (p. 108), not by its "summary", the presence of Glazed Ware throughout Period VII (Medieval, 12$^{th}$-16$^{th}$ centuries) rules out what is asserted on page 41, that a "column-based structure"---- (on the alleged pillar bases)-----was built in this period. How could Muslims have been using glazed ware inside a temple?



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(To say that glazed ware was found at Multan and Tulamba before the 13th century, is hardly germaine to the issue, since, obviously these were towns under Arab rule with Muslim settlements since 714 AD onwards, and so the use of glazed ware over there can be expected.) The whole point is that glazed ware is an indicator of Muslim habitation, and is not found in medieval Hindu temples.

10.3. That the question whether particular sorts of glazed ware made by Muslim potters, could have been used in any medieval Hindu temple was dealt with by S.K. Mirmira, in *Indian Pottery* (Chanda: Gramodyaya Sangh, 1973) who states (pp. 5-7):-

"India was invaded and ruled by the Moslem dynasties since 1000 AD for a few centuries and along with them they had brought certain arts and crafts. Decorative pottery was one o them. In the 12th century AD Muslim rulers had encouraged many potters from their homelands to come and settle in India. These potters especially from Persia, knew hot to superimpose bluish green glaze on red clay wares…….As a result of this, the potters near Delhi have become famous for their bluish decorations… An enthusiastic Maharaja of Rajasthan near Jodhpur brought some potters from Arab countries…..

It is presumed that the reason for not adopting the glazing technique of Muslim craftsmen in religious; the orthodox Hindu potters did not relish the idea of learning the new technique from those who eat beef. In Khurja near Delhi there still a few Muslim potters, descendants of the Persian settlers, who still use this technique of glazing."

Concerning porcelain wares the author writes,



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"Indians because of religious prejudices did not like these, as they thought that bones were used in the clay for whitening the wares. Even in this day, in rural parts people call whitewares as 'farangi'……..Therefore, nobody even tried to adopt these techniques."

10.4. The story of Glazed Tiles is very similar. These too are an index of Muslim habitation. yet 2 Glazed Tiles are found in layers of Period VI which means that the layers are wrongly assigned and must be dated to period VII (Sultanate period). There could be no remains of any "huge temple" in these layers then.

10.5. That On p. 163, it is mentioned that glazed tiles "mainly come from debris and dump of the disputed structure. However, some of the glazed tile pieces have also been recovered from the depth which is lower than the disputed structure but from the levels of Period VIII and IX only." These are completely false statements and show the level of inaccuracy in the Report. Fist of all, the glazed tiles do not come from the debris and dump of the disputed structure. The debris and dump was removed from Trenches E2, F2, G5, F6, E6, D6, F3 and F4/F5 out of the excavated trenches. Glazed tiles that have been found from these trenches come from levels below the Babri Masjid floor and not from the debris or dump lying about it. some of the debris that had rolled down the western slope, was recovered from the B and C series of trenches. Glazed tiles from this debris add up to a total of 14, Second, of the 155 pieces of glazed tiles in the table provided by the A.S.I., 96 come from pits or fill in various trenches. Of the remaining 45, 29 come from Period VII but 14 are from Medieval levels (Period VII) and 2 from the Early Medieval level (Period VI). This has been gleaned



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from the table provided by the A.S.I. on opp. 164-72. Thus, the A.S.I.'s own information falsifies their claim that the glazed title pieces mainly come from Period VIII and IX.

## 11. GROSS OMISSION: EVIDENCE OF ANIMIAL BONES:-

11.1. One decisive piece of evidence, which entirely negates the possibility of a temple, is that of animal bones. Bone fragments with cut marks are a sure sign of animals being eater at the site, and, therefore, rule out the possibility of a temple existing at the site at the relevant time. As no record of bones was being maintained by the A.S.I. Team, the plaintiffs had moved application and thereupon directions were given by the Hon'ble High Court to the A.S.I. to record "the number and size of bones and glazed wares" (Order dated 10-4-2003). The Report in its "Summary of Results" admits that "animal bones have been recovered from various levels of different periods" (Report, p. 270). Any serious archaeological report would have tabulated the bones, by periods, levels and trenches, and identified the species of the animals. There should, indeed, have been a chapter devoted to animal bones/ remains. But despite the statement in its "Summary", there is no word about the animal bones in the main text of the Report. This astonishing omission is patently due to the A.S.I.'s prejudiced mindset with which the excavations were carried out and far of the fatal implications held out by the animal bone evidence for its preconceived temple theory. A partial table is being provided of animal bones as found in the various trenches at different levels as noted by the nominess of the plaintiffs (which may also be verified from the Day-to-Day register) and it is shown how these are found at all levels all over the site. The A.S.I.



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perhaps knows that sacrificial animals' bones (if we are dealing here with a temple where animals were sacrificed, which, incidentally, has not been claimed for any Rama temple) cannot be represented by bone fragments with cut-marks strewn all over, but need to be found at particular spots, practically whole and entire, which is not here at all the case in even a single instance.

11.2. That the statements on pages 45, 55 and 271 etc. of the report, suggesting that probably this site was not a habitational site and had stratified cultural material only from the first seven periods or that it was only during and after Period IV (Gupta level) onwards upto Period IX (Late and Post Mughal level) that the regular habitational deposits disappear and the area below the disputed structure remained a place for public use for along time till the Period VIII (Mughal level) stand belied and negatived by the animal bone evidence and perhaps that is why the Animal bones were totally ignored.

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Given below is a Table of animal bones found in various trenches at various levels, from records maintained by nominees during the excavations and more detailed and accurate Table may be prepared and filed by the A.S.I. with the help of day to day register.

**Table showing Examples of finds of animal bones:-**

| Trench, Layer and Depth | Affiliated Period |
|---|---|
| E8, 8: 280-85 | Gupta |
| E7, 7: 245-60 | Gupta |
| G7, 7: 228-45 | Gupta |
| E9, 4:96-124 | Early Medieval |
| F9, pit, s/b 5: 195 | Early Medieval/Post Gupta |



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| | |
|---|---|
| E8, 5:230-68 | Post Gupta |
| G7,7: 248-53 | Gupta |
| E8, 6: 168-86 | Post Gupta |
| F6, 2, below Floor 2: 48-77 | Medieval |
| G7,8: 285-90 | Gupta |
| E8, 6: 186-215 | Post Gupta |
| F6, 2: 77-123<br><br>G8, 6: 135 (changed to layer 5) | Medieval<br><br>Post Gupta |
| G8, 5: 185 | Post Gupta |
| G8, 5: 230 | Post Gupta |
| F4/F5, dump s/b 5: 182-220 | Post Gupta |
| G7, 20: 1140-1170 | NBP |
| G7, 21: 1167-1207 | NBP |
| G4/G5, pit s/b Floor 2: 93-113 | Medieval |
| J5/K5, 2: 45-80 | Fill |
| J6/K6, 2: 45-80 | Fill |
| ZE1, 2: 180 | Medieval |
| G7, pit s/b 21: 1207-1240 | NBP |
| G4/G5, filling: 113-140 | - |
| G2, 1, below Floor 1:22-35 | Mughal |
| J3/K3, 1: 73 | Fill |
| G2, 1: 30-45 | Mughal |
| J3/K3, 2: 30-70 | Fill |
| E1/ZE1, 3:90 | Medieval |
| G8, 6:135 | Post Gupta |
| G8, 5: 230 | Post Gupta |
| E1/E2, 2: 30-40 | Medieval |

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| | |
|---|---|
| K5, 3:92-103 | Mughal |
| K3, 2: 30-25 | Late and Post Moghal |
| F4/F5, 2: 26-46 | Medieval |
| F4/F5, 4 pit s/b: 140-166 | Early Medieval/Medieval |
| F3, below Floor 4: 364 | Early Medieval/Medieval |
| G7, 18, 19: 1050-1115 | NBP |
| G1/ZG1, 3: 100-165 | Medieval |
| G7, 20: 1115-1140 | NBP |
| E6, 2: 53-70 | Medieval |
| G9, below Floor: 15-20 | Medieval |

[All measurements given above are in meters and centimeters based on the information given by the A.S.I. at the site]

11.3. That from the above table it is clear that animal bones have been found in NBP, Gupta, post Glupta, Early Medieval, Medieval and Mughal levels, in other words, practically from all levels. It should also be clear that bones were also found from the central supposedly significant area, as in Trenches F3 and F4/F5. In the case of F3, bones are coming from Early Medieval levels and in F4/F5 from Early Medieval and Medieval levels. If, as according to the A.S.I., post-Gupta levels onwards are not residential in nature but attest to levels with temples, and these levels are supposedly stratified, it is to be wondered at as to why animal bones were found even from the central part of the alleged temple. If, as the A.S.I. says, soil from earlier levels was used for construction, then it is surprising that for the construction of a temple, no sorting or sieving was done, as bones and other such materials are regarded as highly polluting.



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## 12. POTTERY:-

12.1. That in Chapter V on Pottery, it is highly significant that the pottery of Periods VI, VIII and IX is all described together (see pp. 108-120). If stratum VII contained a structure so radically different from the mosque in VIII above, why were their finds not kept separate?

12.2. That the moreover, it is stated (p. 108) that the pottery of Periods VII, VIII and IX is combined together because "there is not much difference" in either wares or shapes. Thus the pottery of an insinuated "temple" structure is said to be of the same types as that of a mosque! Incidentally, *chillum* and *hukka* pieces are also recorded in this combined batch of pottery (p. 115). Can we expect such finds in a temple?

## 13. INSCRIPTIONS:-

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13.1. That the short report on Inscriptions (on pages 204-06) one of which is in Nagari, and are are in Arabic, show how casual and preconceived in its notions was the A.S.I. The first is not to be dated with any certitude to the 11th century: its time range could be 7th –12th centuries; and it could be a Pala record of a Buddhist provenance--- a piece of evidence negativing the presence of a Hindu temple. On purely palaeographic rounds, the Arabic inscriptions can be dated to the 13th century with a much reason as to the 16th century.

13.2. That the so-called "Nagari" inscription has only five letters whose right-ward sloping limes in their lower portions proclaim their affinity to the Siddhamatrika script, 7th –12th centuries, out of which the Devanagari script has originated. Five letter are not sufficient to declare the letters as belonging to the 11th century (where the A.S.I. places construction of the "huge" temple. (See for the Sidhamatrika script and



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characters_ Richard Salomon, *Indian Epigraphy,* New Delhi, 1998, pp.32, 39-41). Thus the time-range of the inscription should be 7th –12th centuries. The decipherment is also hasty. The reading of the character next to la is *ja* (with a as in "jar"), not simple *ja* with 'a' as *'u'* "judge". Further the A.S.I. should have asked itself about the suffix pala, which suggests a possible reference to one of the Pala rulers of Bengal and Bihar (8th- 11th centuries) who also held eastern U.P. (as shown by an inscription at Sarnath), and used the Siddhamatrika script. Their well-known patronage of Buddism seems to be the sole reason why the A.S.I. has avoided any further enquiry into the name-Pala found in this inscription.

13.3. That the bias of the A.S.I. is again manifest in how the two Arabic inscriptions found in the debris of the Mosque, are dealt with in the Report, (pages 205-6), with Plates 91 and 92. The A.S.I. epigraphist dates them both to the early sixteenth century, allegedly on the basis of the *naskh* characters employed. He gives no reason why the writing cannot be dated earlier, or placed within a larger range, say 13th- 18th century. In this respect reference may be given to the inscriptions on fronts of the Qutub Minar and the tomb of Iltutamish, both belonging to the first half of the 13th century (given in Tatsuro Yanamoto, et al., *Delhi: Architectural Remains of the Delhi Sutanate Period,* Tokyo, 1967, Plates 2b, 6b). It will be seen that the naskh is of the same style. Clearly, the A.S.I. epigraphist has not even considered the possibility of an earlier date, because he know he was expected to hold that all mosque materials must be dated to 1528, so that there be no thought that anything could belong to an earlier mosque/Eidgah on the site.

13.4. That the floral design of the stone slab in which the word



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"Allah" has been carved (Plate 92) should show to everyone how absurd it is to take a floral motif as a sure sign of a temple!

## 14. OTHER CONTRADICTIONS AND DISCREPANCIES:-

**14.1.** That there appears to be considerable confusion on the point as to when structural activity first began at the site. For example, on p. 37 it is mentioned that, "the site had seen successive structural activities which began from the middle of the Kushan level (Period III)." On p. 38 in the section on Period II (Sunga level) it is mentioned that, "it is this period that the site witnessed first structural activity in stone and brick, as noticed in J3."

**14.2.** That the descriptive term used for certain period changes from one chapter to another. For example, in Chapter III (Stratigraphy and Chronology), Period VI is described as the Medieval-Sultanate level. In the same chapter, the tentative periodization and schematic cross-section of the mound describes the period as Early Medieval-sultanate. however, in Chapter V (Pottery) and Chapter X (summary of Results) this same period is described as Early Medieval. In Chapter X, this period is also described as Early Medieval-Rajput. Period VII in Chapter III is described as Medial but the Chapter V and Chapter X, it is described as Medieval Sutanate.

**14.3.** That on p.44, it is stated that, "no deposit contemporary to the Mughal period exists on the mound presently." The next page (45) it points out that the last two periods (Mughal and Late Post Mughal) are only represented by structural activities. Further, on p. 271, the Report points out that, "there is an increase in contemporary archaeological material including pottery in the Mughal period.



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**14.4.** That on page 41, it is mentioned that the earliest floor extended in the eastern area up to the H series of trenches in sub-period VIIA. In sub-period VIIB, the next floor extended up to trenches J4-J5-J6. On p. 42, it is indicated that in sub-period VIIC, the floor associated with the "pillar bases" is the most extensive on the mound. In Fig. 23A, however, Floor 4 (the said earliest floor) is shown as extending all over the mound while Floor 3 and 2 are more restricted providing a comolete contradictory picture.

**14.5.** That In Chapter III, on p. 42, Period VII is described thus: "Total deposit of this period is approximately 50 to 60 cm thick which includes layers 1 and 2 in almost all the trenches except those in the eastern area where the deposit was disturbed by the construction in the later periods and in the northern are where the floor of the Period VIIC remained exposed and under use till late." However, according to the tentative periodization and schematic cross-section in the southern area, layer 1 is shown to be clearly belonging to the Mughal period. So does layer 1 in the southern area belong to period VII or VIII?

**14.6.** That on p. 44, while discussing Period IX (Late and Post Mughal level), it is mentioned that first a partition wall was added and later an enclosure wall was built for the complex. However, it is well known that the Babri Masjid was built with an enclusure wall and around the mid-19$^{th}$ century, the area of the Babri Masjid was partitioned with a wall.

**14.7.** That on the same page (p.44) and on pp. 70 and 270 it is mentioned that there were burials in the late and post Mughal period (Period IX) in the north and south that have cut the top floors and were sealed by layer 1. According to the A.S.I.'s own admission, on p. 42, layer 1 in the southern area is



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supposed to be of the medieval period while in the schematic cross-section and tentative periodization, layer 1 is of the Mughal period. Therefore, if these burials are sealed by layer 1, then either they belong to the medieval period (Period VII- 12th to 16th centuries) or to the Mughal period (period VIII). It may be pointed out that it is in the former period that the alleged temple supposedly stood here.

**14.8.** That the tabulation of the "pillar bases" from pp. 56-57 mentions the floors on which they rest and in some cases to which they are contemporary. However, the floor numbers do not tally with the information provided in Appendix IV at the end of the text. For example, "pillar base" 22 on pp. 60-61 is indicated as resting on Floor 4 but on p.6 of the appendix, there is no Floor 4 in Trench F2. This discrepancy has been found in 21 cases out of 50.

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**14.9.** That the tabulation of stone architectural fragments, in Chapter VI, also includes non-architectural members like S.No.3 (saddle), S.No.20 (bowl), S.No.48 (pestle), S.No.51 (pestle), S.No.76 (*diya),* S.No.78 (pestle), S.No.81 (elephant), S.No.90 (muller) and S.No.145 (dish). These, if of stone, should have been described in Chapter IX, on miscellaneous objects.

**15. SUMMARY:-**

**15.1.** While summarizing the objections against the A.S.I. Report it can be safely said that the objections mentioned above cannot be said to be exhaustive but rather the same are only indicative of the shortcomings, lacunae, partisan attitude, bias and unprofessional style and method of the said report and in short it can be said that the well wishes of Indian Archaeology have to consider that how the credibility and reputation of the A.S.I. can be revived after such a report,



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which has virtually destroyed the 142 years old image and distinguished past of such an erstwhile renowned organisation.

**15.2.** That since the "Summary of Results (P.P. 268-272 of the report) is not based upon the archaeological finds and material, no member of the A.S.I. Team takes responsibility for the same and that is why chapters I to IX are ascribed to one or more authors, but not so the last, chapter X, (Summary of Results).

**15.3.** That the conclusion drawn in the report (P. 272) about the alleged "remains" mentioned therein, being indicative of the "distinctive features found associated with the temples of north India" is totally baseless, unfounded and without support of any archaeological evidence.

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**15.4.** That about the evidence of continuity in structural phases from the tenth century A.D. onwards up to the construction of the disputed structure, statigraphically, the situation is not so as has been alleged. The depositional history of the site clearly reveals that the site was abandoned and remained deserted for about six centuries after Gupta Period. That is, from about six to twelfth century A.D. It was reoccupied in 13th century by the people who used glazed ware, glazed titles, made floors of lime and surkhi and lived on food animals.

**15.5.** That the available positive material evidence relating to stratigraphy, depositional history, cultural assemblages and architectural technology clearly reveal that the structures lying below the Babri Masjid belong to the Islamic Period. There is nothing to indicate at all that there were any remains of an alleged temple.



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PRAYER

It is therefore, prayed that this Hon'ble Court may kindly be pleased to reject the A.S.I. Report filed on 22-8-2003 and such other order/ orders as may be deemed just and proper in the circumstances of the case may also be passed in the ends of justice.

Lucknow: Dated
October 8, 2003

(Z. Jilani)
Advocate
(Counsel for the Plaintiff No.1- Objector)

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**IN THE HON'BLE HIGH COURT OF JUDICATURE OF ALLAHABAD**
**LUCKNOW BENCH, LUCKNOW**

C.M.Application No.17 (O) of 2004

Sunni Central Board of Waqfs, U.P. ……Plaintiff No.1 –Objector
In Re:

O.O.S. No.4 of 1989

Sunni Central Board of Waqfs, U.P. and others ……..Plaintiffs

Versus

Gopal Singh Visharad (now dead) and others ……Defendants

**ADDITIONAL OBJECTION, AS PER ORDER DATED 19-1-2004, AGAINST THE A.S.I. REPORT OF AYODHYA EXCAVATION**

The plaintiff No.1- Sunni Central Board of Waqfs, U.P. begs to submit as under:-

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1. That in addition to the objections already filed against the A.S.I. report of Ayodhya Excavation these Additional objections are being filed in pursuance to the order dated 19-1-2004.

2. That at the very outset it may be pointed out that the papers submitted by the ASI do not contain an essential document Viz. the concordance of numbered layers in each trench with the Periods attributed by ASI to the same in its Report. It is, therefore, not at all clear as to how the ASI could make statements in its Report about the finds like pottery type, terra cotta artefacts, sculpute pieces and structural remains as belonging to certain periods. This is not possible without such a concordance covering all trenches. If such a concordance does not exist and was not prepared at all, it would mean that the ASI has made its statements about the



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periods of structural remains and artefacts without any basis in stratification just to please its masters. If, on the other hand, a concordance was prepared, and it is now being withheld or has been destroyed, it would suggest that the ASI was itself apprehending that the same may go against their findings and as such they did not want their report to be tested on the basis of the same.

3. That even otherwise, from the ASI report and from other informations / papers etc. supplied to this Hon'ble Court by the ASI Team Leader, it can not be believed that the said report could have been directly feeded in the Computer by the authors of the same, as shown in the said report, and that being so a serious doubt has been created about the authenticity an genuineness of the said report and further submissions about the same can be made only after getting response of the ASI, as per order of this Hon'ble Court, passed on 20-1-2004 on the objection filed by the plaintiffs against the rely of Sri Hari Manjhi filed on 19-1-2004 against the application under section 340 Cr.P.C. As such the plaintiffs and other objectors may require to file further objections after perusing the response of the ASI to the aforesaid objections dated 20-1-2004.

4. That it is quite unimaginable that the entire report of excavation was directly feeded on Computer by the so called authors of the same without preparing any rough notes or draft report and the efforts made by the ASI not to bring those rough notes and draft reports etc. on record create serious doubts about the genuineness and correctness of the said report filed in this Hon'ble Court. In this respect the objections filed by the plaintiffs on 20-1-2004, against the reply of Sri Hari Manjhi filed on 19-1-2004 against the



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application moved under section 340 Cr.P.C., may be treated as a part of these Additional Objections.

5. That the stand taken by the ASI, for explaining the delay in depositing the photographs taken from the Digital Camera and Digital Cassettes of the same and the averments that the photography of the Digital Camera was done as a parallel reording with the manual photography and Video Filming, was also misleading and this indicated atleast negligence and carelessness of the ASI Team Leader. The very fact that Digital Cassettes were said not to have been ever seen by the ASI Team Leader also goes to establish as to how and to what extent he was in the control of the said excavation. Even the wrong mention of dates in these Digital Cassettes, as pointed out in the reply of the plaintiffs dated 4-12-2003 filed against the response of the ASI dated 1-12-2003, was of much significance and the said reply may also be perused in this respect and for other incidental matters to show the performance of the said ASI Team Leader regarding the preparation of this report.

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**BONES:-**

6. That although this Hon'ble Court had taken care to ensure that the Bones and Glazed Wares etc. may also be preserved so that the same may be taken note of at the relevant time and from the affidavit of Sri Hari Manjhi dated 12-11-2003 it appears that apart from the sealed packets of bones preserved in pursuance to the order dated 26-3-2003 there were some other bones also which were mentioned on the register but the ASI report makes only casual and cursory mention about the said bones and perhaps no study and observation of the said bones was ever done by any member of the ASI Team. This deliberate omission on the part of the ASI team appears to be



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the result of some preconceived notions about the report which was to be given by the ASI because the study of bones was bound to lead o the inference that the layer in which the said bones were found could not belong to any period during which the alleged existence of any temple could be claimed as it was evident that in no temple, least of all in a Ram Temple, animals could be said to have been eaten and their bones left around.

7. That there is no chapter about the study of bones in the entire report and a casual reference about the bones on page 270 in the chapter of summary of results, without mentioning any contextual relationship of the said bones with the structural remains including those which were attributed by the ASI to a temple, goes to establish that the said conclusion made by the ASI (page 272) is totally unreliable, unfounded and incorrect. In this respect it may also be possible that the original report did contain such a chapter or sub chapter about the study/ observations regarding the bones but such information being found to be inconvenient to the pre-determined assumptions of the ASI, the same might have to be deleted from the report. however for the convenience of the court and for a better appreciation of the arguments to be advanced in this respect a chart showing layers and trenches etc. where the said bones were reported to have been found during the course of excavation may be submitted at the time of arguments for the disposal of the ASI Report.

8. That as the ASI has not offered any concordance of trench wise layers with the periods assigned to those layers by the ASI it was difficult to be accurate about the said periods. This omission may be said to be on account of lack of



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professionalism shown by the ASI Team but this may also be deliberate in order to evade any close checking of their claims and assumptions.

9. That from the ASI's own record we find that animal bones are found in the layers of Period VI, in practically every trench, whose layers have been attributed to specific periods by the ASI. This may be seen from the following Table:-

| Trench No. | Layer No. assigned to Period VI |
|---|---|
| E-6 | 4 (below Period VII layer 3) |
| E-7 | 4 (below Period VII layer 2) |
| F-4/F5 | 4 (below period VII layer 3) |
| F-8 | 3 |
| G-2 | 6, 6A |
| G-7 | 4 |
| J-2/J-3 | 4 |
| J-3 | 5 |

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How so many animal bones could have been scattered about in the layers of Period VI when allegedly a "massive" temple came to exist at the site in this very period? is a question that finds no answer in the Report. indeed, the doubts as to Floor 4, said to have been allegedly laid out as a temple floor in this period, also gow immensely when we find animal bones recorded in the context of Floor 4in trenches J-7 and E-9. Furthermore, animal bones continue to be found between Floor No.4 and Floor No.3 (claimed by ASI to be a temple floor laid out in Period VII) in trenches No.H-7 and G-7.

10. That the calm of ASI that the temple was rebuilt in period VII, resting on Floor No.3, it is worth mentioning that the animal bones were very much found in the layers of this period also in the central trenches:-



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| Trench No. | Layer No. belonging to period VII |
|---|---|
| E6 | 2 |
| F8 | 2 above layer 3 belonging to period VI |
| G-2 | 3 |
| J3/J4 | 3 |

It is thus evident that animal bones have been found just below Floor 3, belonging to this period (according to ASI) in trench G-7 as well as in J-7 and H-7. What should have surprised the ASI team still more is the presence of animal bones below Floor 2 (and so between Floors 2 and 3) in G-7. Sine Floor 2 is alleged by ASI to be the earliest mosque floor and Floor 3 to be that of the alleged temple, how could these animal bones be said to have remained there into a temple?

The number of animal-bone remains from these periods would be far more numerous, if in the case of the central trenches, where alone the ASI has identified layers with periods, the layers of bone-finds had been universally specified and/or if the ASI were to provide a concordance of layers with period in all the trenches.

Taken together, the animal-bone evidence clearly refutes any suggestion that there could have been a temple on the site in question in the period 11th to 16th century (ASI's periods VI and VII) and the Floors 4 and 3 could have belonged to an alleged temple.

**GLAZED WARES AND GLAZED TILES**

11. That in its Report the ASI makes, both explicitly and implicitly, an assertion that the kinds of glazed pottery and tiles found at the disputed site in Ayodhya through its excavations belong solely to the period after the arrival of the Muslims, i.e. from the 13th ce ntury onwards.

In Chapter V (Pottery), in the section on Period VI



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("Medieval Pre-Sultanate", 11th and 12th centuries- by the ASI's own description and dating) not a single glazed potsherd is described under Period VI (pages 104-108). The three periods VII, VIII and IX ("Medieval-Sultanate", "Mughal" and "Late-and-Post- Mughal), i.e. from 13th to 18th centuries, have their pottery described together (pages 108-120). In the very beginning on page 108 it is stated: "The *distinctive pottery* of these periods is the glazed ware made of well lavigated clay having ordinary terracotta core or whitish sandy core." (Italics ours.)

12. That regarding the glazed tiles, discussed on pages 163-73 of the Report, it is firmly stated (page 163): "Some of the glazed tile pieces have also been recovered from the depth which is lower than the disputed structure, but *from the levels of Period VIII and IX only."* (Italics ours.)

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13. That there is thus a deep anxiety to project that all finds of glazed pottery and glazed tiles come from such levels as belong to the period after 1200 and preferably after 1526, so that none may think that there are glazed potsherds and glazed tiles anywhere about the levels where the ASI alleges a temple was first built and then rebuilt. The ASI can get away with this because nowhere in its Report does it provide any concordance of its numbered layers trench-wise with the Periods it has established.

14. That if we take up the evidence of the few trenches where the ASI has had to indicate in the text and charts of Chapter III ('Stratigraphy and Chronology'), the relationship between its numbered layers and the Periods it has established, it would be evident that there was no basis for the same. Now let us take Trench J-3. On the two Charts (placed between pages 37-8) the following layers of this trench are assigned to



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particular periods:-

Layer 1: Period VIII "Mughal (16th –17h centuries)

Layer 2: Period VI "Medieval- Sultanate" (13th–15th centuries)

Layer 3: Period VII: "Medieval - Sultanate" (13th–15th centuries)

Layer 4: Period VI: "Early Medieval-Pre-Sultanate" (11th -12th centuries)

Layer 5: Period V: "Post-Gupta, Rajput" (7th–10th centuries AD)

(The nomenclature of periods is given here as per ASI application for "correction" submitted to the Court, and the dates, in terms of centuries, are also as stated by the ASI in Chapter III of its Report)

This position will be more clear from the **Chart** prepared on the basis of the ASI's records, made available to the parties as per orders of this Hon'ble Court, which has 3 Tables. This Chart is being filed herewith as **Annexure No.1.**

This assertion stands belied if we refer to the ASI's own recording made about different layers of the trench J-3, which shows as under:-

| Period | Layer | Description | Serial No. of the Table I of the Annexure No.I |
|---|---|---|---|
| VI | 4 | Glazed ware sherds (two pieces) | 8 |
| VI | 4 | Glazed ware sherds (J2/J3) | 186 |
| VII | 3 | Glazed ware sherds (J2/J3 baulk) | 190 |
| VII | 3 | Glazed ware sherds (J3/J4 baulk) | 191 |
| VII | 2 | Glazed ware sherds (three pieces) (J3/K3 baulk) | 213 |



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In addition Gritty Glazed Ware was found in Layer 5 (Annexure 1, Table II, S.N.3) and Blue Glazed Ware in Layer 5 (Annexure 1, Table III, S.N.9) and one piece of Glazed Ware with T.C. core (Annexure I, Table III, S.N.18) in Layer 4.

With such amplitude of glazed ware in Layers 4 and 5 in J-3, how can these layers be dated before the 13th century? The same result is obtained if one looks at Glazed tiles from the list of glazed tile fragments in the ASI Report itself (pages 164-173):-

| | | | |
|---|---|---|---|
| Period V | Layer 5 | Large rectangular fragment in three pieces | Serial No.9 |
| Period V | Layer 5 | 14 fragments of glazed tiles, floral designs, bluish green glaze | Serial No.18 |
| Period V | Layer 5 | Fragment of green glazed tile | Serial No.21 |
| Period V | Layer 5 | 10 fragments of green- and blue- glazed tiles | Serial No.23 |
| Period V | Layer 5 | Blue- glazed tile | Serial No.26 |
| Period V | Layer 5 | Rectangular strip with green glaze | Serial No.33 |
| Period V | Layer 5 | Fragment with greenish glaze | Serial No.34 |
| Period V | Layer 5 | Greenish glaze, perforated | |
| Period V | Layer 5 | Greenish glaze, perforated knob (fragment) | Serial No.35 |
| Period V | Layer 5 | Two glazed title pieces | Serial No.11 |
| Period V | Layer 5 | Three geenish glazed-tile fragments | Serial No.30 |
| Period VI | Layer 4 | Glazed tile fragment, blue glaze | Serial No.31 |
| Period VI | Layer 4 | Four fragment with blue green glaze | Serial No.11 |
| Period VI | Layer 4 | Blush green tile | Serial No.30 |



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| | | | |
|---|---|---|---|
| | | (fragment) | |
| Period VII | Layer 3 | Decorated blue-glazed tile (fragment) | Serial No.3 |
| Period VII | Layer 3 | Green glaze (two fragments) | Serial No.110 |
| Period VII | Layer 3 | Green glaze, one piece | Serial No.111 |
| Period VII | Layer 3 | 2 fragments, green glaze | Serial No.112 |
| Period VII | Layer 3 | Rectangular piece, dark green glaze | Serial No.113 |
| Period VII | Layer 3 | 2 pieces, green glaze | Serial No.114 |

15. That even if we ignore the finds from J-3, attributed to pits or not assigned to any layer, yet from the numerous pieces of glazed wares of Muslim provenance (as admitted in effect by the ASI's report) found in layer 4, attributed to Period VI, the same will be treated as of a period when the initial Floor No.4 of the alleged Rama temple is supposed to have been laid out, and in layer 3 attributed to Period VII, when the alleged second temple floor, 'Floor 3' was allegedly laid out. It is thus clear that not only the ASI's periodization is wrong but that there did not exist any temple over either Floor 4 or Floor 2 and so none existed at any time, since glazed tiles are not known to have been used in any temple before the seventeenth century- a reason why the ASI cleverly wishes to assign all glazed tiles found at the site to the 16th century and later.

16. That it may be mentioned here that besides a glazed ware sherd (Annexure 1, Table I, S.No.16) found in context of Floor 4, a 'diamond motif with green-glazed' tile has been found in J7 *below Floor 3* (see item 24, page 165), along with a fragment with green glaze, also found below Floor 3 (item 25) in the same trnch, so that these glazed tiles are scaled by Floor 3, and, so must have come from a structure built on Floor 4. How could, then, the structure built on Floor 4 have



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been a temple or might have belonged to the 11th – 12th centuries (ASI's Period VI")?

**PILLAR BASES:-**

17. That while speaking about "pillar bases" (allegedly fifty of them), the ASI does not produce a single instance of any pillar base found anywhere else which might be of similar or identical nature in appearance and may as those which were claimed to have been discovered at the Babri Masjid site. This was so, also, because no load bearing pillar could ever have stood on mere mud-bonded heaps of brickbats. On the other hand we find at Sanghol as to how pillar bases actually look when archaeologists find them in excavation. Three Photographs of the Pillar Bases found at SANGHOL are being filed herewith as ANNEXURE NOS.2,3 and 4.

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18. That the aforesaid Photographs illustrate how brick pillar bases should be constructed. These are probably of the Kushan period from the site of Sanghol in Punjab. Sanghol in Samrala Tehsil of Ludhiana district was excavated with gaps, from 1968 to 1990. These excavations were jointly conducted by the Department of Cultural Affairs, Archaeology and Museums, Government of Punjab and Excavation Branch 2 of the Archaeological Survey of India. Sanghol is a multi-period site with evidence of Late Harappan Bara culture and Sunga, Kushan, Gupta and Medieval periods. The site was evidently a flourishing center in the Kushan period when stupas and monastries were built.

The pillar bases in these photographs belong to a stupa-cum-monastery complex, the second and smaller complex that was excavated. The pillar bases are rectangular, made of large bricks neatly set in place with a depression in the



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middle to set the pillar. Annexure No.3 also shows clearly that the pillar bases are all uniform in size and in method of construction, and are accurately aligned. The contrast with the so-called "pillar bases" at Ayodhya is more than apparent. At Ayodhya the alleged "pillar bases" have no means to secure and hold pillars in place. They are all of varying dimensions and materials and are not in any accurate alignment. In short, they could not have, in actually, been pillar bases.

**OTHER CALCRETE AND BRICK BUILDINGS OF AYODHYA:**

19. That the ASI Team did not even bother to make a survey of other buildings made of Calcrete and Bricks situated in Ayodhya in order to appreciate the tentative period of the use of similar Calcrete Stones and Bricks at Ayodhya. In this respect the photographs taken from three different spots are being filed herewith as **ANNEXURE NOS. 5 to 11.** The photographs being filed herewith as **ANNEXURE NOS. 5 to 9** are of the famous Mosque of Begum Barias site and the platform of the same built of Calcrete Stones and Bricks, while **Annexure NO.10** is of a wall of the Mosque situated at Ram Ki Pauri, Ayodhya and the Photograph being filed herewith as **ANNEXURE NO.11** is also of a wall of the Calcrete and Bricks situated at a place known as Mani Parbat at Ayodhya.

**INHERENT CONRADICTIONS AND ANOMALIES:-**

20. That from a perusal of the Day to Day Register, Antiquity Register and other documents as well as from a perusal of the



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final report it is evident that a large number of entries mentioned therein vary in description from each other and as such it is difficult to understand as to which entry and what material was relied upon by the authors of the report. These contradictions, variations and discrepancies will be pointed out in detail during the course of arguments, which have already been mentioned to some extent at earlier occasions. To illustrate this point it may be mentioned that what is now being called as "Divine Couple" was an ordinary stone when it was found and how and by whom it was described as a "Divine Couple" is not borne out from any record?

**CONCLUSION:-**

From the aforementioned points as well as from the points mentioned in the earlier objection dated 8-10-2003 it is evident that the ASI report filed on 22-8-2003, is full of confusions, contradictions and discrepancies and the same does not appear to be based upon the material found during the course of excavation and most of the finds/antiquities have alsobeen either mis interpreted or ignored for arriving at the pre-determined conclusion. The said Report is, therefore, liable to be rejected and such other order/orders as may be deemed just and proper in the circumstances of the case are also liable to be passed in the ends of justice.

Lucknow: Dated
February 3, 2003

(Z.Jilani)
Advocate
(Counsel for the Plaintiff No.1- Objector)



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**In the Hon'ble High Court of Judicature at Allahabad,**
**Lucknow Bench, Lucknow**

**ANNEXURE NO.1**

**IN RE**

**Additional Objection against ASI Report**

**IN RE**

**O.O.S. NO. 4 OF 1989**

Sunni central Board Of Waqfs, U.P. and others …Plaintiffs

Versus

Gopal Singh Visharad (now dead) and others …Defendants

**CHART SHOWING RECOVERY OF GLAZED WARE SHERDS DURING EXACAVATION AT AYODHYA**

TABLE NO.I

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| S.No. | Trench | Layer | Depth in cm | object |
|---|---|---|---|---|
| 1. | K7 | - | -223 to –253 | Recovered glazed ware sherds |
| 2. | K8 | - | -252 to 285 | Recovered glazed ware sherds |
| 3. | K8 | - | -285 to –325 | Few sherds recovered |
| 4. | J5 | - | -52 to –70 | Recovered glazed ware sherds |
| 5. | K7 | - | -280 to –295 | Recovered glazed ware sherds |
| 6. | K8 | - | -325 to –345 | Few sheds recovered |
| 7. | K7 | - | -295 to –348 | Recovered glazed ware sherds |
| 8. | J3 | 4 | -100 to –180 | Recovered glazed ware |



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| | | | | sherds (two pieces) |
| 9. | J4 | 3 | -20 to –50 | Recovered glazed ware sherds |
| 10. | K6 | - | -10 to –60 | Recovered glazed ware sherds |
| 11 | K3 | - | -180 to –240 | Recovered glazed ware sherds |
| 12. | J5 | - | -7 | Recovered glazed ware sherds |
| 13. | J5 | - | -107 to –146 | Recovered glazed ware sherds |
| 14. | J6 | - | -80 to –100 | Recovered glazed ware sherds |
| 15. | K6 | - | -160 | Recovered glazed ware sherds |
| 16. | J7 | Floor No.4 encounter | -77 | Recovered glazed ware sherds |
| 17. | E7 | - | -30 to –45 | Recovered glazed ware sherds |
| 18. | E8 | - | -30 to –48 | Recovered glazed ware sherds |
| 19. | G7 | Below floor 2 | -18 to –50 | Recovered glazed ware sherds |
| 20. | J3 | - | -80 to 180 | Recovered glazed ware sherds |
| 21. | J3 | - | -180 to –280 | Recovered glazed ware sherds |
| 22. | E8 | - | -65 to –90 | Recovered glazed ware sherds |
| 23. | J3 | - | -280 to –335 | Recovered glazed ware sherds |
| 24. | D7 | - | -25 to –55 | Recovered |



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| | | | | |
|---|---|---|---|---|
| | | | | glazed ware sherds |
| 25. | H1 | - | -05 to –45 | Recovered glazed ware sherds |
| 26. | C1 | - | -350 | Recovered glazed ware sherds |
| 27. | G8 | - | -20 to –48 | Recovered glazed ware sherds |
| 28. | J3 | - | -335 to –380 | Recovered glazed ware sherds |
| 29. | F8 | - | -18 | Recovered glazed ware sherds |
| 30. | E7 | - | -40 to –65 | Recovered glazed ware sherds |
| 31. | F8 | - | -18 to –38 | Recovered glazed ware sherds |
| 32. | C1 | - | -43 | Recovered glazed ware sherds |
| 33. | F8 | - | -38 to –58 | Recovered glazed ware sherds |
| 34. | ZH1 | Below floor 2 | -51 to –65 | Recovered glazed ware sherds |
| 35. | C1 | - | -430 to –450 | Recovered glazed ware sherds |
| 36. | J3 | - | -520 | Recovered glazed ware sherds |
| 37. | F8 | - | -55 to –80 | Recovered glazed ware sherds |
| 38. | ZH1 | - | -61 to –88 | Recovered glazed ware sherds |
| 39. | G1 | - | -10 to –35 | Recovered glazed ware sherds |
| 40. | E7 | - | -50 to –70 | few glazed |



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| | | | | |
|---|---|---|---|---|
| | | | | ware sheds recovered |
| 41. | G1 | - | -45 to 60 | Recovered glazed ware sherds |
| 42. | G1 | - | -70 | Two pieces glazed ware sherds recovered |
| 43. | G8 | - | Surface | On piece glazed ware sherdsrecovered |
| 44. | G1 | - | -93 | Recovered glazed ware sherds |
| 45. | ZH2 | - | -10 | Recovered glazed ware sherds |
| 46. | J6 | - | -70 to –150 | Recovered glazed ware sherds |
| 47. | K8 | - | -335 to –345 | Recovered glazed ware sherds |
| 48. | G7 | - | -70 to –100 | Recovered glazed ware sherds |
| 49. | J6 | - | -100 | Recovered glazed ware sherds |
| 50. | K8 | - | -25 to –38 | Recovered glazed ware sherds |
| 51. | G7 | - | -3500 | Recovered glazed ware sherds |
| 52. | J4 | - | -160 to –175 | Recovered glazed ware sherds |
| 53. | F8 | - | -25 to –38 | Recovered glazed ware sherds |
| 54. | C1 | - | -3500 | Recovered glazed ware sherds |
| 55. | K8 | - | -160 to –175 | Recovered glazed ware |



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|---|---|---|---|---|
| | | | | sherds |
| 56 | J3 | - | -180 to –280 | Recovered glazed ware sherds |
| 57. | K7 | - | -362 to –400 | Recovered glazed ware sherds |
| 58. | J6 | - | -5 to –40 | Recovered glazed ware sherds |
| 59. | G9 | - | -7- to –95 | Recovered glazed ware sherds |
| 60. | E5 | - | -65 | Recovered glazed ware sherds |
| 61. | E7 | - | -45 to –65 | Recovered glazed ware sherds |
| 62. | E8 | - | -90 to –135 | Recovered glazed ware sherds |
| 63. | K8 | - | -335 to –345 | Recovered glazed ware sherds |
| 64. | K8 | - | -165 to –180 | Recovered glazed ware sherds |
| 65. | F8 | - | -55 to –80 | Recovered glazed ware sherds |
| 66. | K6 | - | -20 to –30 | Recovered glazed ware sherds |
| 67. | G9 | - | -2- to –45 | Recovered glazed ware sherds |
| 68. | K7 | - | -190 to –223 | Recovered glazed ware sherds |
| 69. | K4 | - | -24 to –75 | Recovered glazed ware sherds |
| **70.** | **G1** | **-** | **-45** | Recovered glazed ware sherds |
| **71.** | **C1** | **-** | **-400** | Recovered glazed ware |



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|---|---|---|---|---|
| | | | | sherds |
| 72. | J6 | - | -40 to –70 | Recovered glazed ware sherds |
| 73. | K8 | - | -115 to –145 | Recovered glazed ware sherds |
| 74. | K7 | - | -485 | Recovered glazed ware sherds |
| 75. | K7 | - | -80 | Recovered glazed ware sherds |
| 76. | K7 | - | -80 to –100 | Recovered glazed ware sherds |
| 77. | G8 | - | -48 to –56 | Recovered glazed ware sherds |
| 78. | F8 | - | -10 | Recovered glazed ware sherds |
| 79. | F9 | - | -29 to –45 | Recovered glazed ware sherds |
| 80. | J3 | - | -80 to –100 | Recovered glazed ware sherds |
| 81. | H1 | - | -50 to –71 | Recovered glazed ware sherds |
| 82. | H1 | - | -50 | Recovered glazed ware sherds |
| 83. | F8 | - | -55 to –80 | Recovered glazed ware sherds |
| 84. | E8 | - | -55 to –65 | Recovered glazed ware sherds |
| 85. | J4 | - | -25 to –60 | Recovered glazed ware sherds |
| 86. | J5 | - | -27 to –100 | Recovered glazed ware sherds |
| 87. | E8 | - | -30 to –40 | Recovered glazed ware |



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|---|---|---|---|---|
| | | | | sherds |
| 88. | K7 | - | -192 to –223 | Recovered glazed ware sherds |
| 89. | J6 | - | -60 to –275 | Recovered glazed ware sherds |
| 90. | G9 | - | -35 | Recovered glazed ware sherds |
| 91. | K7 | - | -30 to –55 | Recovered glazed ware sherds |
| 92. | E8 | - | -40 to –50 | Recovered glazed ware sherds |
| 93. | K2 | - | -80 to –100 | Recovered glazed ware sherds |
| 94. | K4 | - | -30 to –70 | Recovered glazed ware sherds |
| 95. | H1 | - | -50 to –110 | Recovered glazed ware sherds |
| 96. | J3 | - | -280 to –335 | Recovered glazed ware sherds |
| 97. | C1 | - | -50 to –70 | Recovered glazed ware sherds |
| 97. | E7 | - | -55 to –70 | Recovered glazed ware sherds |
| 99. | E7 | - | -50 to –70 | Recovered glazed ware sherds |
| 100. | G8 | - | -20 to –50 | Recovered glazed ware sherds |
| 101. | G7 | - | -147 | Recovered glazed ware sherds |
| 102. | D7 | Layer 2 | -55 to –60 | Recovered glazed ware sherds |
| 103. | D8 | Layer 1 | -8 to-25 | Recovered glazed ware |



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|---|---|---|---|---|
| | | | | sherds |
| 104. | F1 | - | -30 | Recovered glazed ware sherds |
| | D7 | - | -82 to –100 | Recovered glazed ware sherds |
| 106. | D8 | - | -25 to –32 | Recovered glazed ware sherds |
| 107. | D7 | 2 | -80 to –85 | One piece glazed ware sherds recovered |
| 108. | E9 | 4 | -60 | One piece glazed ware sherds recovered |
| 109. | D8 | 2 | -25 to –32 | Four pieces glazed ware sherds recovered |
| 110. | E9 | Below floor 2 | -65 to –70 | Recovered glazed ware sherds |
| 111. | F1 | 1 | -45 | Recovered glazed ware sherds |
| 112. | F9 | 4 | -105 to –120 | Recovered glazed ware sherds |
| 113. | D8 | 2 | -55 | Recovered glazed ware sherds |
| 114. | G7 | 3 | -144 to –167 | Recovered glazed ware sherds |
| 115. | E8 | 6 | -205 to 225 | Recovered glazed ware sherds |
| 116. | E9 | 3 | -74 | Recovered glazed ware sherds |
| 117. | ZE1 | - | -30 | Recovered glazed ware sherds |
| 118. | K7 | 3 | -160 to –220 | Recovered glazed ware |



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|---|---|---|---|---|
| | | | | sherds |
| 120. | F1 | 2 | -65 | Recovered glazed ware sherds |
| 121. | F1 | 2 | -74 | Recovered glazed ware sherds |
| 122. | ZE1 | 1 | -30 | Recovered glazed ware sherds |
| 123. | D6 | - | -77 to –120 | Recovered glazed ware sherds |
| 124. | K7 | - | -120 to –220 | One piece glazed ware sherds recovered |
| 125. | D6 | 2 | -77 to –120 | One piece glazed ware sherds recovered |
| 126. | F9 | 3 | -100 to –160 | One piece glazed ware sherds recovered |
| 127. | ZB1 | 1 | -30 to –43 | Two pieces glazed ware sherds recovered |
| 128. | K7/K8 | Dump S.B.3 | -55 | Three pieces glazed ware sherds recovered |
| 129. | D6 | 3 | -120 to –140 | One piece glazed ware sherds recovered |
| 130. | D9 | 3 | -90 | One piece glazed ware sherds recovered |
| 131. | K7/K8 | Baulk dump S.B.3 | -90 to –120 | Two pieces glazed ware sherds recovered |
| 132. | ZF1 | 1 | Surface | Three pieces |



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| | | | | glazed ware sherds recovered |
| 133. | F1 | 3 | -1.32 | Three pieces glazed ware sherds recovered |
| 134. | ZF1 | 1 | -40 | Six pieces glazed ware sherds recovered |
| 135. | F7 | 2 | -60 to –83 | Two pieces glazed ware sherds recovered |
| 136. | F6 | 2 | -77 to –108 | Three pieces glazed ware sherds recovered |
| 137. | ZH1 | Pit S.B. floor 2 | -77 | Recovered glazed ware sherds |
| 138. | ZG1 | 1 | -100 | Four pieces glazed ware sherds recovered |
| 139. | D8 | 2 | -62 | Recovered glazed ware sherds |
| 140. | H2 | pit | -50 to –70 | Recovered glazed ware sherds |
| 141. | F7/G7 | 1 | -20 to –51 below floor 1A | **Two pieces glazed ware sherds recovered** |
| 142. | ZJ1 | Surface | | One piece glazed ware sheds recovered |
| 143. | F6 | Below floor 2 | -23 to –100 | One piece glazed ware sheds recovered |
| 144. | ZJ1 | 1 | -45 | Two pieces |

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| | | | | glazed ware sherds recovered |
| 145. | D9 | 1 | -30 | Three pieces glazed ware sherds recovered |
| 146. | G6 | 2 below floor 2 | -58 to –86 | Two pieces glazed ware sherds recovered |
| 147. | ZF1 | 1 | -30 | |
| 148. | G2 | Surface | - | Two pieces glazed ware sherds recovered |
| 149. | G6 | 2 | -86 to –111 | |
| 150. | ZJ1 | 2 | -90 | |
| 151. | G2 | Surface | - | Two pieces glazed ware sherds recovered |
| 152. | ZG2 | 1 | -42 | Two pieces glazed ware sherds recovered |
| 153. | G7 | 4 | -140 | Two pieces glazed ware sherds recovered |
| 154. | G2 | 1 | -60 | Two pieces glazed ware sherds recovered |
| 155. | J5/J6 | Pit 1 S.B. floor 1 | -490 to –510 | |
| 156. | J1 | 1 | -45 | |
| 157. | J1 | 1 | -50 | |
| 158. | ZJ2 | 1 | -40 | |
| 159. | F10 | 1 | Section scrapping | |
| 160. | G5 | From loose debris | -150 | |
| 161. | L4 | 2 | -21 to –37 | Two pieces glazed ware sherds recovered |

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| 162. | F6 | 1 | -30 to –40 | Two pieces glazed ware sherds recovered |
| 163. | L3 | 2 | -30 to –55 | |
| 164. | L4 | 2 | -39 to –53 | |
| 165. | G5 | 1 | -183 | |
| 166. | E6 | 2 | -52 | |
| 167. | E4 | 2 | -72 | Two pieces glazed ware sherds recovered |
| 168. | L4 | 3 | -130 | Two pieces glazed ware sherds recovered |
| 169. | L7 | 1 | -60 | |
| 170. | L7 | 4 | -175 | |
| 171. | L7 | 4 | -230 | Two pieces glazed ware sherds recovered |
| 172. | L7 | 5 Pit | -272 | Two pieces glazed ware sherds recovered |
| 173. | F3 | Below floor 1D | -245 (kept for drawing) | |
| 174. | F3 | Below floor 1D | -246 | Two pieces glazed ware sherds recovered |
| 175. | L1 | Surface | - | |
| 176. | L1 | 1 | -188 | |
| 177. | F3 | Section scrapping | - | |
| 178. | H9 | 2 | -35 to –50 | |
| 179. | H10 | 1 below floor 1 | -32 to –45 | |
| 180. | K1 | 1 | -20 to –30 | |
| 181. | K1 | 1 | -20 to –35 | |
| 182. | K1 | 1 dump | -244 | |
| 183. | H9/H10 | 1 | -25 to –30 | Two pieces glazed ware sherds recovered |
| 184. | H9/H10 | 1 | -30 | |

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| 185. | L1 | 6? | Section scapping | |
| 186. | J2/J3 | 4 | -55 | |
| 187. | J3/J4 | Dump S.B.3 | -35 to –85 | |
| 188. | F2 | Below floor 1 | -262 to –280 | |
| 190. | J2/J3 | 3 baulk | -40 | |
| 191. | J3/J4 | 3 baulk | -45 | |
| 192. | F2 | 2 | -68 | Two pieces glazed ware sherds recovered |
| 193. | K4 | - | -80 to –88 | |
| 194. | K5 | - | -92 to –103 | Two pieces glazed ware sherds recovered |
| 195. | J3/J4 | 3 baulk | pit S.B. 3 – 200 | |
| 196. | K3 | 2 | -20 to –35 | |
| 197. | J3/J4 | Dump S.B.3 | -205 to –270 | |
| 198. | F4/F5 | Baulk | -213 to –269 | Two pieces glazed ware sherds recovered |
| 199. | F4.F5 | From floor 2 | -56 | |
| 200. | J3/J4 | Pit S.B.3 | - | |
| 201. | H3/J3 | - | -80 | |
| 202. | F2 | - | -28 to –228 | Two pieces glazed ware sherds recovered |
| 203. | F2 | 1 below floor 1 | -50 to –55 | |
| 204. | F2 | - | -65 to –85 | Two pieces glazed ware sherds recovered |
| 205. | J4 | 2 | -83 | Two pieces glazed ware sherds recovered |
| 206. | J5/K5 | 2 baulk | -48 | |
| 207. | J5/K5 | 3 baulk | -90 to –103 | |
| 208. | J4/K4 | 3 baulk | -88 to –93 | |



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| 209. | G4/G5 | 2 | -61 | |
| 210. | J6/K6 | 3 | -93 to –103 | |
| 211. | J1/K1 | 1 baulk | -80 | |
| 212. | G2 | 1 below floor 1 | -40 to –50 | Two pieces glazed ware sherds recovered |
| 213. | J3/K3 | 2 baulk | -73 to –80 | |
| 214. | G5/G6 | 1 baulk | -25 | |
| 215. | J3/K3 | 2 baulk | -75 | |
| 216. | G2 | 2 below floor 2 | -58 to –85 | |
| 217. | G5/H5-H5/H6 | 1 baulk | -20 to –30 | Two pieces glazed ware sherds recovered |
| 218. | G5/H5-H5/H6 | 2 baulk | -42 to –87 | Two pieces glazed ware sherds recovered |

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH, LUCKNOW**

**C. M. APPLICATION NO. 141 (O) OF 2003**

Mahmood Ahmad ..... Plaintiff No. 9-Objector

In Re:

O.O.S. No. 4 of 1989

Sunni Central Board of Waqfs, U.P. and others ..... Plaintiffs

Versus

Gopal Singh Visharad (now dead) and others .....Defendants

**OBJECTION AGAINST THE REPORT OF ARCHAEOLOGICAL SURVEY OF INDIA FILED ON 22.8.2003**

The plaintiff No. 9-Mahmood Ahmad begs to submit as under:-

1. That the A.S.I. Report had been prepared with motivated mind and pre conceived notion to convey the impression that as if there existed some temple like structure at the disputed site prior to the construction of the mosque known as the "Babri Masjid" while the fact is that the excavations in question have not revealed the existence of any such alleged Hindu structure of 11-12th century but rather the same have established the existence of Muslim constructions/ structures of 13th century existing at the time of construction of Babri Masjid.

2. That against the A.S.I. Report other plaintiffs have already filed some objections and the same are being adopted by this objector also and further objections may be filed after the examination/study of the day-to-day register. Filed Books, Video-graphs and photographs etc. which could not be properly studied so far due to shortage of time and non filing of complete documents by the A.S.I. Within time.

3. That if the mosque (period VIII) is said to lie directly over the structure of Period VII. implied to be an alleged temple, we must examine the stratigraphic relationship between the foundations of



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the stratum VIII structures and its lowest fill and floor on the one hand, and the uppermost strata/floors of VIIC (lying below such foundations) on the other. It is stated on p. 43 that the "floor of the previous period (Period VII-C) is found cut by the stone block (mostly calcrete) foundations of the disputed structure (mosque)". This is belied by the sentence that immediately follows "However, the north-south wall of the Period VII-A is retained as foundation for the back wall." Thus there is no question of a foundation cut for the western wall. It is also significant that this statement is not accompanied by any reference to a section or trench in which one can see this cut.

The first mosque floor (Floor I) is said to lie over a rammed earth packing, a layer of grey kankar, and then a thin white surface in that order (top to bottom) (p.43).

No section included in the report shows, between the mosque floors and the layers below them, any interruption or layer of debris, or a burnt level *Photograph* 55 of ZEI shows Floors 3 to 1 in sequence against the face of the latter. The same applies to *Photograph* 49 showing the north-south wall with a niche in ZE2 no cut is visible in strata 2 to 6 against its offset, no loose or burnt layer either.

4. That it could be argued that since the western wall of the VII Structure is said to have been used for the mosque, no interruption or cut could be expected against it. But what about the South Chamber of the mosque? Did its wall (labeled #6- #7 when it turns north), about 1.5 m wide and consisting of a foundation of 3 calcrete courses and 15 cm offset or footing of brick, cut through the strata of the alleged "massive pillared hall"?

To answer this question, let us first turn to (A) the north section of F7 (*Section Facing South, West-East (E-F))*. It shows the South Chamber wall against the north section of F7. There are no visible cuts in that floor, said to belong to the "massive structure". (B) In the west section of E7 (Section Facing East South-North (G-



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H), the South Chamber wall runs up to the west wall (#5, #16) and therefore there is no excavated section here.)

(C) Figure 6 shows the sectional elevation of the west face of F7. The major part of this trench is occupied by the South Chamber of the mosque. Not only is it shown that the upper floors, Floors 1 and 2, run right up to the blocks of the chamber wall, and flush with its face, but so too the line depicting Floor 3, on which a "pillar base" is shown to rest, is also shown continuing right up to the (north) face of that wall. To the south of that wall in the same trench, another "pillar base" lies against it (the south chamber wall) and obstructs the reading of the section.

(D) Personal observation of the South Chamber wall, in E7, showed that it rises above a cement floor about 85 cm below surface. In the east section of E7 it was observed that the white strip that is this lower Floor 3, runs up to touch the South Chamber wall- it has not been cut.

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In our study of Trench E7 at the site it was observed that the lime floor that lies about 1 m (or less) below the surface in a small part of E7, south of the Chamber wall (i.e. outside the Chamber) runs all the way up to the plaster on the exterior (south) face of the lowest bricks of the footing of the South Chamber wall.

5. That the footing marked as wall 18 D projects about 20-25 cm out from the base of the calcrete-block built South Chamber wall. It can be observed not only in E7 against the west-to-east run of the wall, but also against its south-to-north stretch. (See *Figures 4 and 6* of the report, where both are clearly drawn.) The footing is 68 cm below the top of the upper calcrete-block course in the west-to-east stretch, 72 cm below in the south-to-north stretch. It is about 25 to 33 cm high.

6. That both footings are plastered. It can be seen that both are integral with the floor that lies about 85-95 cm below surface. The plaster on the footing of the south-to-north stretch is actually one with the material of that floor- the two are continuous. This is the



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clinching evidence that Floor 3 actually belongs to the Babri Masjid, and is not a floor of the alleged "massive structure" as stated in the report. The floor runs up, continuously as one layer over the east face of the footing in F7.

7. That it is interesting to observe that the footing against the south-to-north run of the wall, confirms our interpretation that it is a footing and not an earlier wall. Where Wall 7 meets, in F6, an east-west wall of stone blocks (the entrance to the Chamber), there lies a so-called "pillar base", a scatter of bricks perhaps supporting the corner 1.1 m to the south of the southern edge of this so-called "pillar base" begins the footing. This 1.1 m gap is extremely significant because along it we can see NO holes or gaps, nor bricks to indicate the presence of an earlier wall. This confirms that this brick work was a footing and not earlier and independent.

8. That while the South Chamber wall has no extant plaster, the west-east running North Chamber wall (Wall # 12 in E2) with a foundation of four courses of calcrete blocks was plastered with 4 cm thick lime plaster." (p.53). This was observed by us in trench E2. Plaster lay on the north face of the stone block courses as well as further east on the brick work that continues this wall. This reaffirms the connection between the Babri Masjid structure and Floor 3.

Therefore, the lime floor that lies about 1 m below surface would have been in a functional relationship with the South Chamber of the mosque. Both would then be of the same date.

9. That together with the absence of foundation cuts and any destruction level-there are, instead, layers that represent filling and raising of the surfaces of the mound-then, evidence of the South Chamber construction shows that alleged uppermost floor (VIIC) of the alleged massive structure was in fact functionally related to the mosque.

10. That if we were asked to infer that the construction found in so-called Period VII was an alleged "temple", we would need to



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prove the existence of a plinth on which that alleged temple, with its so-called “pillar bases”, was raised but we find that the floors and fill of period VI are only foundation of the earliest floor of Period VII in phase A.

11. That in view of the averments made above and also for the objections taken by other co-plaintiffs, it would be expedient and in the ends of justice to reject the A.S.I. Report

It is, therefore, prayed that A.S.I. Report onexcavation may kindly be rejected and any other appropriate order, deemed proper, may also be passed.

Lucknow: Dated
October 8/9/2003

( Abdul Mannan)
Advocate
(Counsel for the Plaintiff No. 9-Objector)

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH, LUCKNOW**

**C.M. Application No. 16 (O) of 2004**

Mahmood Ahmad ..... Plaintiff No. 9-Objector

In Re;

**O.O.S. No. 4 of 1989**

Sunni Central Board of Waqfs, U.P. and others ....Plaintiffs

Versus

Gopal Singh Visharad (now dead) and others .... Defendants

**ADDITIONAL OBJECTION AGAINST THE REPORT OF ARCHAEOLOGICAL SURVEY OF INDIA FILED ON 22.8.2003**

The plaintiff No. 9-Mahmood Ahmad begs to submit as under:-

1. That these objections are being filed in addition to the objections already filed, on behalf of plaintiff No. 9, on 9.10.2003.

2. That the A.S.I. Report of excavation at Ayodhya does not at all comply with the requirements of well settled principles of excavation and submitting report on the basis of the same.

3. That the aforesaid report does not al all provide any concordance of its numbered layers in a trench wise manner giving periods which could be said to have been established on the basis of the same, although such a concordance was very essential in the instant report as the excavation covered a large number of trenches situated at least in an area of about 100 feet by 100 feet.

4. That in the absence of any such concordance having been prepared by the A.S.I. Or given in its report it was almost impossible to suggest with any definiteness and accuracy as to which layer pertained to which period, specially in the context of the finds of Glazed Wares and Glazed Tiles and as such the inference drawn in the report, that some of the Glazed Tiles pieces could be attributed to the level of period VIII and IX only, could not



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be a said to be a correct conclusion.

5. That the A.S.I. Report mentions about the bones only in a casual manner without giving any details about the proper identification of the species of animals to which they belonged, or whether they had cut marks or not and in a large number of cases no layers or strata were even recorded.

6. That even the notes and draft of the report etc. which must have been prepared before finalizing the report under objection, have not been brought on record and this also suggests the motive and deliberate effort of the A.S.I. Team leaders to conceal the real position.

7. That the following contradictions in the report also lead to the conclusion that the report and specially the last chapter of the report is not based on the material found during the course of excavation and study of the same but rather the same appears to be based upon some preconceived notions or may be the result of an afterthought:-

(i) On p. 37 it is mentioned that, " the site had seen successive structural activities which began from the middle of the Kushan level (Period III)." On 38, in the section on Period II (Sunga level) it is mentioned that, "it is this period that the site witnessed first structural activity in stone and brick, as noticed in J3."

(ii) In Chapter III (Stratigraphy and Chronology), Period VI is described as the Medieval-Sultanate level. In the same chapter, the tentative periodization and schematic cross-section of the mound describes the period as Early Medieval-Sultanate. However, in Chapter V (Pottery) and Chapter X (Summary of Results) this same period is described as Early Medieval. In Chapter X, this period is also described as Early Medieval- Rajput. Period VII in Chapter III is described as Medieval but in Chapter V and Chapter X, it is described as Medieval-Sultanate.



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(iii) On p. 46, “in Trench J3, layers 1-6 belong to a pit” and on p.47 it is stated that layers 2-6 belong to a pit.

(iv) On p. 44, it is stated that, “no deposit contemporary to the Mughal period exists on the mound presently.” On the next page (45) it points out that the last two periods (Mughal and Late Post Mughal) are only represented by structural activities. Further, on 271, the Report points out that, “there is an increase in contemporary archaeological material including pottery in the Mughal period.”

(v) On p. 41 it is mentioned that, a “new style of construction is noticed in this period” (Period VII). But Wall 16 of Period VII is very similar in construction to Wall 17 of the previous period. There are also supposedly “pillar bases” in the earlier period as well. So what is this new style of construction ?

(vi) On the same page (p.41), it is mentioned that the earliest floor extended in the eastern area up to the H series of trenches in sub-period VIIA. In sub-period VIIB, the next floor extended up to trenches J4-J5-J6. On p. 42, it is indicated that in sub-period VIIC, the floor associated with the “pillar bases” is the most extensive on the mound. In Fig. 23A, however, Floor 4 (the earliest floor) is shown as extending all over the mound while floor 3 and Floor 2 are more restricted, providing a completely contradictory picture.

8. That the plaintiff No. 9 adopts the Additional objections filed by other plaintiffs also, especially those filed on behalf of the plaintiff No. 1.

9. That it would be very crucial for this Hon'ble court to know as to who had prepared the last chapter of the final report, namely, the chapter of summary of results and when was the same prepared and why the name/names of the author/ authors of the said chapter was/were not given in the report itself. As a matter of fact the report does not at all indicate as to when was it finalised and when was the same, if at all, signed and dated. There appears to be no



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indication in the report even about the dates of preparation of different chapters by different persons and all these details also are required to be furnished to this Hon'ble Court in order to determine as to what value is to be attached to this report and in the absence of all these details the report is of no worth and is liable to be rejected.

In view of the facts and circumstances stated above the A.S.I. Report filed on 22.8.2003 is liable to be rejected.

Lucknow: Dated
February, 3, 2004

(Abdul Mannan)
Advocate
(Counsel for the Plaintiff No. 9-Objector)

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH LUCKNOW**

**C.M. Application No. 19 (O) of 2004**
**IN**
**O.O.S. No. 4 of 1989**

Sunni Central Boards of Waqfs U.P. & others ...Plaintiffs
V/S
Shri Gopal Singh Visharad (Now dead) & others ...Defendants

**Connected with**
O.O.S. No. 1 of 1989
O.O.S. No. 3 of 1989
O.O.S. No. 5 of 1989

**Parawise reply on behalf of plaintiffs of O.O.S. No. 5 of 1989 to the objection and additional objection filed by Sri Mahmood Ahmad, Plaintiff No. 9 of O.O.S. No. 4 of 1989 against The Archaeological Survey of India's Report**

The plaintiffs of O.O.S. No. 5 of 1989 most respectfully submit as under:-

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1. That it is submitted that plaintiffs filed suit R.S. No. 12 of 1961 (Now O.O.S. No. 4 of 1989) jointly having united cause of action through one set of counsels and let one set of evidence, the objections dated 8/9.10.2003 and additional objections dated 03.2.2004 filed by plaintiff No. 9 of above suit against the repost of the A.S.I. Are not entertain able in face of the fact that objections dated 08.10.2003 and additional objections dated 03.2.2004 filed on behalf of U.P. Sunni Central Board of Waqfs, which has alleged the disputed property as Waqf property and other plaintiffs have merely alleged their right of offering namaz. The other plaintiffs have not claimed their any Title in the disputed property in view of above fact the objections and additional objections filed by plaintiff No. 9 are illegal, against law and against established procedure which are liable to be rejected outright and same are not liable to be considered at all as the plaintiff No. 9 is not entitled to file separate objections and additional objection against the report of the A.S.I.

2. It is wrong to say that the Archaeological Survey of India



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report is prepared with motivated mind etc. rather the objector Sri Mahmood Ahmad himself seems to be having the preconceived notion to malign the image of the Archaeological Survey of India which is an institution of repute having secular feelings combined with its scholarly and highly professional working. The excavation at disputed site have clearly exposed the remains of pre-Mosque structures one over the other and continuously three structural levels of Pre-Islamic religious constructions having affinity in the style of north Indian temple architecture.

3. Once the objector Sri Mahmood Ahmad filed the objection against the report, he has not right to file further objections in the circumstances of the case.

4. It is submitted that the objector Sri Mahmood Ahmad has not rightly studied the stratigraphy, drawings and photograph which clearly relates in the report how the massive wall No. 16 with its three phases A, B and C of period VII lies below the structure of the disputed structure of period VIII. It is very clearly mentioned in the report supported by photograph and drawings that the foundation of the disputed structures rests on wall No. 16 and it cuts the floors of the phase C of the temple below the disputed structure. The sections in Figs. 5, 6, 19 etc. and the key plan of structure (Fig. 3, 3A, 3B) and other plans given in the report clearly show the picture.

Floor-I can be clearly seen in sections at Figs. 5, 19 etc. and as such the allegation of the objector Sri Mahmood Ahmad is wrong and misleading, made with a motivated mind against the Archaeological Survey of India team which worked at the site and submitted its report in record time. It is wrong to attribute floor 2 and 3 to the mosque along with floor-I as they lie below floor-I and below the level of the foundation of the mosque and thus they are clearly floors of the structure of pre-mosque origin. The photo-plate at 55 and 49 are very clear in this respect which show the succession of structural levels. It is not understood as to what sort of cut is being searched there by the plaintiff.



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5. Since the western wall of period VII structure was used for the construction of the mosque as its foundation, it directly rests over it and no "Cut" should be searched there as thought by the objector Sri Mahmood Ahmad who does not seem to have a sound knowledge and understanding of the structure. It is quite clear from the excavations that foundations of rest of the walls of the south chamber cut the top floor of the structures lying below it and the three courses of calcrete blocks in the foundation do not require a footing of bricks or brickbats below them.

(A) The section at E-F (Fig. 19) clearly shows the eastern wall of disputed structure cutting the floor 2 of the massive structure.

(B) In the Section at G-H (Fig.5) the south Chamber wall is clearly shown running over the brick wall of the massive structure and floor 2 & 3 are also shown in the section up to the levels excavation was down and hence the contention of the objector Sri Mahmood Ahmad is wrong, misleading and against the truth.

(C ) The Section elevation in Fig. 6 clearly shows the southern wall of disputed structure cutting the floor 2 of Period VII and floor shown in the interior side of the disputed structure to which it belongs in Period VIII. The floor 3 also runs below floor 2 and continues to run below the southern wall of the disputed structure as it is crystal clear in the Fig. 6 and not as per the contention of the objector Sri Mahmood Ahmad who has failed to understand the sections.

(D) The objection filed by the objector Sri Mahmood Ahmad that "a cement floor about 85 cm below surface exists with wall of south chamber rising over it", is wrong and misleading as no cement floor runs below 85 cm in the trench E7. Even the objector Sri Mahmood Ahmad is wrong in stating that floor 3 runs up to touch the south chamber wall. Actually the floor 3 runs much below the level of the last course of the foundation of the south chamber wall and there is no question of it touching the south chamber. Both the statements are based on no evidence.



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The objector Sri Mahmood Ahmad has tried to confuse the situation by stating that the lime floor lying 1m (or less) below surface "runs all the way to the plaster on the exterior (south) face of the lowest bricks of the footing of the south chamber wall". This is due to wring approach and misreading, presuming that the brick wall (No. 18D) below the calcrete stone foundation of south chamber is a footing of it. It is very clear that a calcrete foundation can not have brick footing and that too with plastered surface.

6. The objector Sri Mahmood Ahmad's objection about the wall no. 18-D and its projection and location connects the disputed structure to the south chamber is wring and misleading. The brick wall is connected to the pillar bases down below the disputed structure and runs along the alignment of wall No. 18-C to its parallel. The wall is plastered and therefore it cannot be footing of the foundation of south chamber. Thus in no way it can be connected to the structure of south chamber structure of the mosque of period VIII.

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7. The contention of the objector Sri Mahmood Ahmad that floor 3 belongs to Babri Masjid and the plastered brick wall below the clacrete stone foundation of the south chamber is a footing of the wall of the mosque is baseless and the conclusion as drawn is based on wrong reading of the report and wrong understanding of the structure. No footing of the foundation can ever be plastered-a fact which the objector Sri Mahmood Ahmad has either forgotten to understand or mischievously trying to mislead the Hon'ble Court.

8. The gap in between two pillar bases is significant not to show any continuation of an earlier wall, but to show that there exists two pillar bases. It is ridiculous to search for a hole or gap there.

9. The plaster on wall has been noticed above the floor level over ground and not on its foundation. There can be no connection of the plaster of the wall with the floor 3 down below and as such



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the contention of the objector Sri Mahmood Ahmad is baseless and does not carry any meaning and based on no evidence to prove the functional relationship of the floor 3 with south chamber of the so so called mosque.

10. The cutting of floor 2 is visible wherever it has been disturbed due to construction of the disputed structure whose foundation has cut the floor 2. Floor 2 lies much below this level and therefore there can be no relation of it with the wall or even the foundation of wall of the so called mosque.

11. The foundation of brick wall No.16 made of stone blocks are clear evidences of the constructional pattern of the temple below the mosque with existing pillar bases projecting over its floors. The objector Sri Mahmood Ahmad is wrong in searching for a foundation of a floor of period VII as only walls have foundation and not floors.

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12. It is very much clear that the Archaeological Survey of India's report is correct, it should be upheld and the objections against the report should be rejected.

**REPLY TO ADDITIONAL OBJECTION**

13. That with reference to para 1 of additional objection it is submitted that the plaintiff No.9 has no right to file objection and additional objection, which are liable to be rejected as mentioned in para 1 above.

14. That with reference to the para 2 of additional objections it is submitted that they are vague. The plaintiff No.9 has failed to indicate what are the “well settled principles of excavation.” and out of them what has been voilated by the A.S.I.



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15. That the contents of para 3 of the additional objection are vague, wrong and denied. The A.S.I. has filed all the records before this Hon'ble High Court on the basis of which is submitted its report with in the limited time granted by the Hon'ble Court on the particular point which the A.S.I. Answered. The plaintiff No.9 must have studied the report and also must have inspected all the records before filing his objections and additional objections but plaintiff No.9 I has failed to point out the mistake and irregularity committed by the A.S.I. In the report. It is also submitted that in case of regular excavations done by the A.S.I. Or such other organisations or persons, years are taken in it and then years are taken in preparation and submission of the report giving details in it, as may be observed by looking of the excavations and reports submitted in the past. In case the Hon'ble court need at any stage. The Hon'ble Court may direct the A.S.I. To appear and clarify anything. It is also submitted that the all the excavation work was done by the A.S.I. in the presence of the parties, their representatives experts nominees and the observers appointed by the Hon'ble Court who noted the records prepared by the A.S.I. on the spot and parties, their representatives signed on them.

16. That the contents of para 4 of the additional objections are vague wrong and denied. It is submitted that Glazed wares/Tiles has been carefully set out trench and layer wise at pages 164 to 172 of the report which has been studied by on behalf of plaintiffs. The plaintiff No.9 wanted to be mentioned in the report of the A.S.I. that the above wares were the exclusive invention of Muslims in India which fact is absolutely wrong and denied. Plaintiff No.9 has forgotten that sporadic Muslim invasion were for loot and plunder and return through North west frontier and which could not grow in to reign in North India (in which Ayodhya lies) till early 11$^{th}$ century A.D. Or regular sultanate Rule after Qutubuddin Aiback took over Delhi in 1192-93. On Sunniu Central Waqf Board showing the



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sultanate rule began in 1206 A.D. i.e. early 13th century and any imagination of the plaintiff No.9 that the wares/tiles recovered by the A.S.I. was of only Muslim period are totally wrong and denied. It is also submitted that with an intent to avoided repeatation of para 10 of the reply submitted against the objection of Sunni Central Waqf Board may be seen. It is also submitted Glazed Wares/Tiles were used in our country much prior to the period when Muslims invasion.

17. That the contents of para 5 of the additional objections are vague wrong and misconceived. It is submitted that the A.S.I. has complied with the directions contained in order dated 26-3-2003 mentioned in para 9 and order dated 10-4-2003 of the Hon'ble Court. The plaintiff No.9 has no where alleged that the A.S.I. failed to comply with the aforesaid orders. It is also submitted that the Hon'ble Court directed vide order dated 26-3-2003 para (1) (iii) "The register should further specify the nature of the finds i.e. bones and Glased wares etc." and the same is contained again in order dated 10-4-2003.

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18. That the contents of para 6 of additional objectors are wrong, misconceived, based on unwarranted presumptions and irrelevant. The A.S.I. has confirmed that all the records relating to excavation has been filed by them. The rest of the contents of this para are denied. Order 26 of code of civil procedure does not require the Court commissioner to file his "notes or drafts." of report. Under the Evidence Act, they do not fall with in the definition of "Velvent" fact/evidence. The Hon'ble Court passed orders directing the A.S.I. to maintain records during excavation and the said record has been filed before this Hon'ble Court. There is no allegation by the plaintiffs that the A.S.I. failed to maintain the records during excavation as directed by this Hon'ble Court and ailed to file the records so maintained. There is a presumption under Section 114, Indian Evidence Act, that every official Act has been performed in a



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regular manner. The imputations of objector plaintiff No.9 have been alleged with an oblique motive which deserves to be struck off forthwith.

19. That the content of para 7 of the addition objections are specifically wring and denied excepting the extract of the report mentioned in sub-paras "(1) to (vii)" which may be seen with its reference and contents.

20. That the plaintiff No. 9 is fully aware that his objection and additional objections are not maintainable as mentioned in para 1 of this reply to the objection as plaintiffs have jointly filed the suit with a common cause of action seeking joint relief and he has not Locus standi in the circumstances of this case to file the same separately.

21. That with reference to para 9 of additional objections it shall be presumed that objection and additional objection had been filed after studying the whole report of the A.S.I. containing the names given in it who contributed to the report of which chapter to x is expressly a summary of chapters 1 to IX. It is also submitted that the Hon'ble Court directed A.S.I to do the work of excavation on the spot which carried out the excavation work through it team, the number of which was enhanced from time to time as directed by the Hon'ble High Court which plaintiff No. 9 is fully aware in view of above para 9 of additional objection has no meaning at all and mentioned only with an intents to enhance the number of paragraphs to please plaintiff No. 9.

Wherefore it is respectfully prayed that the objections and additional objections be rejected and the Archaeological Survey of India's Report on excavation be confirmed. Any other appropriate order which be deemed proper and just may also be passed.

Lucknow

Dated February 17, 2004 Sd/- Ved Parkash, Advocate

Counsel of the plaintiffs of O.O.S.No. 5 of 1989



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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH LUCKNOW**

Reply of CM App. No. 25(O) of 2004 of plffs

Nirmohi Akhara ..... Applicant

Inre:-

O.O.S. No. 4/89

Sunni Central Board of Waqf .....Plffs.

Vs.

Gopal Singh Visharad etc ..... Deffs.

Written Reply against objection filed by plff. No. 9 Mahmood Ahmad on behalf of Nirmohi Akhara.

The answering defendant no. 3 Nirmohi Akhara puts the following reply of the objection aforesaid as follows.

1. That reply to facts stated in para 1 and 2 are his own opinion which are based on wrong assumption of law and therefore are denied.

2. That allegation para 3 and 4 are subjected to only with regard to the harmony of the report, which was replied by the defendant no. 3 in detail against the objection of Sunni Central Board of Waqf. Therefore, the same reply is added. The word “Concordance” has been very liberally used by the Sunni Central Board. The word concordance is the word of art only, it is not basis of any such logic which is being canvassed by the plff no. 9 only two trenches i.e. 1/3 and G/7 have been tested up till natural soil and harmony of layers in these two trenches tallies with the section and plan and also with artifacts. Therefore, one need not always to search for a concordance in every trenches.

3. That the bones cannot work as a material object for searching the truth of the substance of a primitive temple or place of big worship and therefore finding whether it is incised work or lacerated one is immaterial.

4. That contents of paras 6 and 7 are repetition of early objection



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filed other plff. and therefore of denied. Trench 1/3 and G/7 are only deep trenches dug till the natural soil and their section did bear the layer symptoms of cultural period.

Thus the reply may be taken to record.

Date: 17.02.2004
Lucknow

Applicant
R.L. Verma
Advocate for
Nirmohi Akhara

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH, LUCKNOW**

C.M. APPLICATION NO. 142 (O) OF 2003

1. Haji Mahboob
2. Haji Abdul Ahad — Defendants No. 6/1 & 6/2 of O.O.S. 3/89-Objectors

In Re:

**O.O.S. No. 4 of 1989**

Sunni Central Board of Waqfs, U.P. and others ..Plaintiffs

Versus

Gopal Singh Visharad (now dead) and others ...Defendants

**Objection against the A.S.I. Report filed on 22.8.2003.**

The Defendants Nos. 6/1 and 6/2 of O.O.S. 3 of 1989-objectors beg to submit as under:-

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1. That on 25.8.2003 this Hon'ble Court had granted 6 weeks time to the parties to file objections against the A.S.I. report and in compliance thereto the objectors are filing these objections.

2. That, however these objections are not complete as the objectors' counsel as well as their experts have not yet been able to examine and study all the required papers and photographs etc. as the same could not be submitted with time by the A.S.I. as per orders and directions given by this Hon'ble Court regarding the submission of the documents connected with excavation.

3. That while filing these separate objections, the objectors adopt and rely upon the objections filed by the plaintiffs of O.O.S. No. 4 of 1989.

4. That the report of the Archaeological Survey of India (A.S.I.) submitted to the Hon'ble Court, on 22nd August, 2003 is an unprofessional document and full of motivated inferences. It is full of internal contradictions and discrepancies, a number of which are set out in the objections of Sunni Waqf Board, which are not being



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repeated here to avoid the bulk. The A.S.I.'s aim seems to be to so ignore and twist the evidence as to make it suit its "conclusions" tailored to support the fictions of the Sangh Parivar about the previous existence of an alleged temple. That follows in these Objections is only a list of some of the A.S.I.'s aim seems to be to so ignore and twist Snagh Parivar about the previous existence of an alleged temple. What follows in these Objections is only a list of some of the A.S.I.'s major acts of omission while leaving the detailed treatment of a whole series of A.S.I.'s deliberate oversights and suppressions of facts for the objections filed by the plaintiffs of O.O.S. No. 4 of 1989.

5. **THE MANIPULATION OF PERIOD NOMENCLATURE AND STRATIGRAPHY**

5.1 That the A.SI.'s Report is so lacking in elementary integrity that it tries to achieve its object by manipulating nomenclature. In Chapter III, "Stratigraphy and Chronology" it has names for Periods VI and VII that are coolly altered in the other Chapters in order simply to transfer inconvenient material of Period VI to Period VII and thus make Period VI levels purely "Hindu". On pages 30-41, the nomenclature for Periods v, VI and VII is given as follows:

Period V: Post-Gupta-Rajput, 7$^{th}$ to 10$^{th}$ Century

Period VI: Medieval-Sultanate, 11th-12$^{th}$ Century

Period VII: Medieval, 12th-16$^{th}$ Century

Now let us turn to "Summary of Results" (pp. 268-9). Here the nomenclature is altered as follows:-

Period V: Post-Gupta-Rajput, 7$^{th}$ - 10$^{th}$ Century

Period VI: Early Medieval, 11th-12$^{th}$ Century

Period VII: Medieval-Sultanate, 12th-16$^{th}$ Century

5.2 That transference of "Medieval-Sultanate" from Period VI to Period VII has the advantage of ignoring Islamic-period materials like Glazed ware or lime-mortar bonding by removing them arbitrarily from Period VI levels to those of Period VII so that their actual presence in those levels need no embarrass the A.S.I. in its



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placing of the construction of a “massive” or “huge” temple in Period VI. The device is nothing but a manipulative fraud.

5.3 That this brings us to the way in which the entire stratigraphy has been fixed, and certain layers obviously of Islamic provenance pressed into pre-Muslim periods (Period VI and earlier). This kind of false stratigraphy had led to situations that are impossible in stratified layers, namely the presence of later materials in earlier strata. (The presence of earlier materials in later or upper layers is possible, but not the reverse). Obviously the entire stratigraphy has been falsified to invent an alleged temple in “post-Gupta-Rajput” times.

6. **THE FANTASY OF ALLEGED TEMPLE STRUCTURES**

6.1 That while digging up the Babri Masjid site, the excavators found four floors, numbered, upper to lower, as Nos. 1,2,3 and 4, Floor No. 4 being the lowest and so the oldest. FloorNo. 3 is linked to the foundation walls of the Babri Masjid-the A.S.I.'s “demolished” or “disputed structure”- built in 1528. Floor No. 4 is described by the Report as “a floor of lime mixed with fine clay and brick crush”, i.e. a typically Muslim style *surkhi* and lime floor. It is obviously the floor of an earlier mosque (qanati or open mosque or an *idgah);* and a *mihrab* and *taq* were also fond in the associated foundation wall (not, of course, identified as such in the A.S.I.'s report). Such a floor, totally Muslim on “stylistic grounds” (a favourite formula in the Report), is turned by the A.S.I. into a temple floor, “over which a column-based structure was built”.

6.2 That description of the semi circular brick structure as a circular shrine is a conjuncture without any basis and similarly the whole theory of a massive structure just below Babri Masjid is creation of an imaginative mind without any material evidence to support this fiction. The inferences drawn from various architectural members that they are indicative of remains which are distinctive features found associated with the temples of North India are totally incorrect as most of them might have been elements of a



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muslim architecture and the remaining architectural members, i.e. the so-called divine couple are surface collections of no significance and also may be planted material.

6.3 That so called divine couple and so called amalaka have been recovered from the debris of the demolished Babri Masjid. The divine couple is certainly a planted piece. There is no evidence to describe the circular brick structure as a shrine Pranala or water-chute is figment of imagination. The discoveries made by the A.S.I. in the excavation prove that there was no Temple/Structure which was demolished to construct Babri Masjid on its site. There is nothing in the report to support the theory of demolition of a temple or structure to make place for construction of Babri Masjid.

6.4 That the most note worthy point is that no object of Hindu worship, no idol and no statue of any Hindu deity was recovered. Foliage patterns, so called Amalaka which is nothing but par of a stone block having petal design, broken octagonal shaft, lotus design medallions are not indicative of temple structure. These have been adopted and used in Indo-Muslim (Indo-Saracenic) architecture.

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7. **STRAY ALLEGED "TEMPLE" FINDS**

That No Vaishnavite images have been found. All finds are stray ones, such as the black schist pillar, was visible within it when the Masjid had stood but was broken by the Karsevaks and buried in the Masjid debris in 1992. Whatever little in stone has come out (as one decorated stone or inscribed slab-used in a wall), like stones with "foliage patterns, *amalaka, Kapotapadi* door jamb with semi-circular pilaster, lotus motif" (Report, p. 271), are in total very few and all easily explicable as belonging to ruins elsewhere and brought for re-use during the construction of the Babri Masjid or the earlier mosque/Eidgah. Moreover, the lozenge design (plate 90) is probably Islamic (compare Plate 92, with Arabic inscription). The extremely short list that the A.S.I. is able to compile of such doubtful temple-relics shows that they did not come from any



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alleged “massive” temple at the site, but brought randomly from different earlier ruins. Moreover, the presence of Buddhist, Jaina and Shaivite sculpted stones and terracotta figures must also be taken into account, so that we can say, on the basis of the A.S.I.'s logic, that there could be a composite “Buddhist-Jaina-Shaivite” temple here, if at all, on the basis of all these stray finds Needless to say no example exists of there ever having been any such a temple anywhere in India. There was, therefore, no temple here.

**8. ARCHAEOLOGICAL SURVEY OF INDIA, NOT ACTING AS AN INDEPENDENT ORGANISATION: THE IMPOSED SAFFRON BIAS.**

8.1 That bias, partisanship and saffronised outlook of the A.S.I.'s Report takes one's breath away. In almost everything the lack of elementary archaeological control is manifest. The one-page carbon-date report, without any description of material, strata and comments by the laboratory, is meaningless, and open to much misuse. There has been no thermoluminescence (TL) dating of the pottery, nor any carbon-dating of the animal or human bones, although these are necessary for dating the remains themselves and the strata in which they are found, in order to test the A.S.I.'s own manipulated chronology. Indeed, no care has been exercised in its references to chronology, and Period I “Northern Black Polished Ware” has been pushed back to 1000 B.C. in the “Summary of Results” (page 268), when even in Chapter II “Stratigraphy and Chronology”, the earlier limit of the period is rightly placed at 6$^{th}$ century B.C. (page 38). The urge is obviously to provide the maximum antiquity to habitation at Ayodhya, however absurd the claim may be. Whatever should please the masters,must be asserted, was motto of the A.S.I.

8.2 That Quite obviously saffronization and professional integrity cannot go together. What all well-wishers of Indian Archaeology have to consider is how, with a Report of the caliber we have examined, there can be any credibility left in the Archaeological



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Survey of India, an organisation that has had such a distinguished past. Today there is no professional head of the A.S.I., a civil servant completely subject to the desires of the Government of the day, is in charge as Director-General. It cannot be overlooked that the occupant of the office of Director-General was changed almost simultaneously with the Hon'ble High Court's direction to the A.S.I to begin the excavations in early March. The signal given thereby was obvious, and the present Report should come as no surprise. Politicians gloating ever it are precisely those who have got it written.

8.3 National honour was deeply compromised when the Babri Masjid was demolished. Now the good repute of the Archaeological Survey of India had also suffered an irremediable blow. It has been shown up as entirely partisan and subservient to its master's wishes and its so-called "Conclusions" should be rejected by the Hon'ble High Court.

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It is therefore prayed that this Hon'ble court may kindly be pleased to reject the A.S.I. Report in toto and any other order which may be deemed just and proper in the facts circumstances of the case may also be passed.

Lucknow:Dated

October 8, 2003

Advocates
Counsel for the Defendants 1 and 2 of O.O.S. No. 3 of 1989-Objectors



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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH, LUCKNOW**

**C.M. APPLICATION NO. 143(O) 2003**
**MISC. APP. NO. (O)/2003**

Nirmohi Akhara ....Def. No. 3-Objector

Inre

003-4/89 Leading case

Suni Centra Board of Walkf Petts

Vs.

Gopal Singh Visharad ...Defends

Objection against of ASI Dated 22.08.03 on behalf of Nirmohi Akhara Def No. 3.

The Objector puts following Objection:-

1. That much earlier to this day the Objector Nirmohi Akhara had chosen to file an objection requesting this Hon'ble Court to issue direction to A.S.I. to expose the relevant trenches covering the main domb (shikhar) of Sri Ram Janam Bhoomi's and had suggested to excavate properly the trench no. F/4, F/5, F/3 and towards east of these trenches G/2, G/3, G/4 and G/5.

2. That it would be relevant here to point out that Sri B.R. Mani the then leader of A.S.I. Team had himself thought it proper on the basis of G.P.R. Report of Tojo Vikas Ltd. And sought permission to excavate the said trenches.

3. That the report regarding exposition of Trench's F/3, F/4 and F/5 may kindly be scrutinize on the subject:-

(I) Under the head Raised platform at Page 17 report speaks excavation of ten trenches partly and its reference is given at serial no. 31 for F/3 no. 32 for F/D, 33 for F/4, 34 F/5 and 36 for F/6. Where according to own report of A.S.I. excavation was not conducted due to area restriction on the raised platform.

(II) An Autocad prepared by computer at figure 23 of the A.S.I. report vol. (I) after page 42 exactly shows the situation of three



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domb (Shiker) along with figure 23-A shows two row of pillar bases surrounding the inner courtyard are shown. But the main central santuoereim where floor no. (I) marked in Auto cad figure 23(A) and were in the western and eastern side of the pillar and the wall trench no. F/4, F/5 and G/4, G/5 have been marked as shown in figure 3B after page no. 51. Remain un-excavated in trench no. 3 two pillar base squarish in nature only was exposed without detecting other pillar bases of the other trench, therefore excavation of Trench no. F/3, G/3, F/4, G/4, F/5, G/5 along with baulk is necessary to make the A.S.I. Report a complete and sound historical report in the excavation History.

4. That the A.S.I. Report is well reasoned and fully supported with instances and deserves to be brought on record as approved. Under chapter III statigraphy and chronologically Nine successive cultural period were arrived by the ASI Report based an human deposits potteries and artifacts and human amimal figurine based on the carbon determination of the charcol samples. The report is further supported by the embellishment in-tercota having seen large scale use of stone mainly for decorated architectural members. It is further strengthen by the achievement of a circumamambulatory passage i.e. pavement prior to Twelve century A.D.

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It is therefore prayed the report of A.S.I. be brought on record as approved with the direction to excavate further trench-F/3, F/4, F/5, G/3, G/4, G/5.

Lucknow: 8.10.03

Objector

Nirmohi Akhara
Def. No. 3
Through
R.L. Verma
Advocate



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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH LUCKNOW**

**C.M. AN. 147 (O) 2003**

Nirmohi Akhara ..... Applicant/Def. No. 3

Inre: O.O.S. 4/89
Leading Case

Sunni Central Board of Waqf ..... Plaintiffs

vs.

Gopal Singh Visharad etc ..... Defds.

Written reply to contents of Objection No. (O) filed by Shri S. Irfan Ahmed for Def. No. 6/1, 6/2 in O.O.S. 3/89 along with against other three objection namely of plf No. 9 of O.O.S. 4/89 of Plf 1 of O.O.S. 4/89 and of objection of Def. No. 5 of O.O.S. 5/89 Compositively on behalf of Nirmohi Akhara.

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The Defendant No. 3 Nirmohi Akhara puts the following reply against the said objections filed by the plaintiff of Suit No. O.O.S. 4/89 respectively:-

**Reply against Mahmood Ahmad**

1. So far the contents of this para are self exposed:-

Since opening line and is the real intention to malign and attack the A.S.I. team which they are attempting to do since the start of excavation work and further no case of any muslim- construction or structure of 13th century A.D. Have been ever set-out by any Muslim or any party of this case or even plaintiff's Sunni Central Board.

2. That more than 25 Experts were engaged by the plf of O.O.S. 4/89 and Mohamadon parties besides local nominee in abundance who kept on visiting the excavation site every day- during the course of excavation of work. At least 6 to 7 experts or archaeologist or historian or senior scholar of such subject along with parties and their nominee kept on keeping continuous watch on



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every work of excavation. Three members of their team always took every notes on spot and through they seldom signed the daily register where artifacts are noted but their presence cannot be denied inface of the entry register of excavated area. A list of such names are being appended as Annexure (A). Therefore, the excuse that they could not examine the day to day register etc., therefore they want to keep their right to file objection alive till unknown date is only a lame excuse.

3. That all the four objections which have been filed by the Muslim parties against the A.S.I. excavation report can be classified jointly in four categories namely as follows:-

**A.** Tainted with B.J.P. Govt. pressure, SAFFRON'S BIAS, with MOTIVATED MIND. Twist report to support the fictions of SANGH PARIVAR=

Respectively by (i) Sunni Central Board (2) Plf. no. 9 Mahmood Ahmed (3) Hazi Mehboob (4) Moh. Hashim.

(I) Basically four set of Composite pelfs having similar pleading have filed separate objection even adopting each other, are nothing but an attempt to create four Track for running the way to similar destination but one by one so that valuable time of court be wasted and confusion may be created by different argument by all the four counsel respectively. Is it not at all legally necessary to give and hear each plf's separately one by one. Are their pleading are distinct ? No but is certainly a device to misuse the process of law.

(II) That the attempt of plf of O.O.S. 4/89 had been from the very beginning was motivated to malign the good will of A.S.I. team initially indicating the name of one of the politician and a cabinet minister of central Govt. who in fact has not concern with ASI dept.

(III) That further immediate attempt was made by tendering an application by team leader of ASI without any legal right to do so, the plf. Attempt was to any how confront the team leader and to pressurise him that similar attack against ASI team was made on 21.5.03, 28.5.03, 8.6.03 and the most interesting event was made by



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an application dt. 7.6.03 given by Shri Z. Zilani Advocate with five pages with map with a statement that pillar should not be dismentle, therefore the record of the file itself speaks that attempt of plaintiff was from very inception to any how put alive sum attack against the ASI, so that in future if the report comes on the fact finding truth the same may be attacked unnecessarily.

**B. <u>Archaeological terms and Abbreviations</u>**

1. The Act No. 24/58 The Ancient Movement and Archaeological sites and Remains Act defines:-

Sec. (2)-

III- any article, object or thing illustrative of science and arts, craft, literature, religion customs morals or politics in bygone ages.

2. Some nomenclature and abbreviation used by ASI report and used in archaeology are narrated as below:-

| | | |
|---|---|---|
| "Having Courses" | = | it forms construction |
| " No courses" | = | They do not form any construction |
| "Free standing wall" | = | Means without foundation |
| "Natural Soil" | = | Where no human deposits |
| "N.B.P.W." | = | 6 to 3 century B.C. |
| "SUNGA" | = | Second first century B.C. |
| "KUSHAN" | = | Ist to 3rd century A.D. |
| "GUPTA" | = | 4 to 6 century A.D. |
| "Post Gupta Rajput" | = | 7 to 10 century A.D. |
| "Early Medieval Sultanant age" | = | 11 to 12 century A.D. |
| MADIEVAL MUGHAL | | |
| Late Post MUGHAL | = | 12 to beginning of 16th A.D. |

3. Abbreviation used by A.S.I. Report has been given by ASI team on 7.11.03 which is being appended as Annexure (1).

**C. <u>Massive Structure pavement</u>**

(I) The presence of huge pavement towards eastern part of the inner and outer courtyard which has been shown in the report by series of trenches J-I onward K-1 onward with north projection with



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ZJ-1 and ZkI, a sample close photograph is being appended as Annexure (2) shows the esquire big-brick used before 12th century A.D. Therefore attack by the plaintiff on the report of the pavement is uncalled for and not sustainable.

**D. <u>Temple Structure and temple find</u>**

(1) That there was no ease of plff confined to their pleading or any statement of witness as the plff has closed the evidence to the effect that the large structure found beneath the outer and inner courtyard by the A.S.I. team has been a Muslim construction/structure of 13th century A.D existing at the time of the allege mosque. Therefore, the finds, the artifacts, the terracotta, figurien of animal, of Godess, of deity belonging to the religious emblem of Hindu Vedic Sanatan religion or dazzling evidence of a concrete fact finding of a existence of a huge Hindu Vedic religions structure which may be shown by the photograph appended as Annexure (3) to (7) with this reply.

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**E. <u>Ram Chabutra</u>**

(1) That the revelation of the inner chabutra on the same place J-6, J-7, K-6, K-7 and after 7 feet beneath of the surface based on concrete stone placed again on a surface shows the existence of the divine shrine which was closed by seven layers of the concrete stone covering nine meter by nine meter of the inner and outer courtyard is an indication of existence of inner chabutra belonging to the religious faith of Nirmohi-Akhara.

(2) That the said chabutra has-projection towards east which is very much clear from the photograph appended as Annexure (8 to 15) with this reply.

**F. <u>Existence of the foundation wall</u>**

The western wall has many courses which is based upon decorated stones therefore the said wall which is shown clearly in the photograph appended as Annexure ( ) are not free standing wall and further on the northern side the said wall has been turning toward east as shown on the photograph appended as Annexure (16



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to 26) therefore this wall cannot be said by the pff. As being the wall of Idgah.

**G. <u>DIVINE SHRINE</u>**

That how can plf explain the existence of the Shiv Argha which has all the indication of having a water chute toward north that is the recognized shape by the vedic Hindu sanatan cult and therefore the examples given by the ASI report are correct and cannot be assailed by the objection by the plaintiff on the flismy ground. A close photograph is being appended as Annexure (27 to 29) will show natural water chute.

**H. <u>PILLAR BASE</u>**

The pillar base and the structure which are shown by figure 23 and 23a are Autocad and exactly reveals the excavation works, therefore all the pillar which are shown in the report are there and there dismentling was objected by the plaintiff, therefore now they cannot say that it is assemblage of brick-bat. The exact photograph is being appended as Annexure (30 to 33)

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(2) The figurine, strong slab are still there, the photograph of figurine are appended as Annexure (3 to 7).

(4) That the applicant reserves it further right to put a reply as the inspection of the further register filed by ASI is yet to be done.

It is therefore prayed that the written reply may kindly be taken on the record.

Date
21.11.03
Lucknow

Applicant
Nirmohi Akhara
(Def. No. 3)

Through:-
R.L. Varma
Advocate



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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH LUCKNOW**

**O.O.S. NO. 4/89**

Sunni Central Board ...Plfl.

Vs.

Gopal Singh Visharad ...Def

**Annexure . A.**

**List of Expert, Historian Archaeologist on behalf of plff. And Def. 6/1 and 6/2 of O.O.S. 3/89**

| | | | |
|---|---|---|---|
| 1. | Ms Supriya Varma | : | Reader History Punjab University, Archaeologist Punjab. |
| 2. | Ms Jaya Menon | : | Reader, History Baroda University. |
| 3. | Sri Abid Saheb | : | Assistant Prof. A.M.U. Archaeologist |
| 4. | Miss Banani | : | From Calcutta University Scholar. |
| 5. | Dr. Amol Rai | : | Asst. Director, Archaeology W.B. Govt. Calcutta. |
| 6. | Sri Utpandra Chtopadhyay | : | Senior Lecturer, Calcutta University. |
| 7. | Miss Nikhat Parveen | : | Scholar A.M.U. (from Bihar) |
| 8. | Mr. Dhakral | : | Rtd. Reader History Delhi |
| 9. | Mr. Nadeem Rizvi | : | A.M.U. |
| 10. | Mr. Jafri Saheb | : | Reader history, Jamiya, Delhi. |
| 11. | Mr. Utaullah | : | Scholar A.M.U. |
| 12. | Mr. Qaleem | : | Scholar A.M.U. |
| 13. | Mr. Aziz Faisal | : | Scholar A.M.U. |
| 14. | Mr. Asfaq Ali | : | Scholar A.M.U. |
| 15. | Mr. B. Mandal | : | Witness Examined by Plf. |
| 16 | Mr. Sita Ram | : | Witness Examined by Plf. |
| 17. | Mr. Suraj Bhan | : | Witness Examined by Plf. |
| 18. | Mrs. Shiri Ratnagar | : | Witness Examined by Plf. |
| 19. | Mr. Nayar | : | Scholar A.M.U. |
| 20. | Mr. Javed Akhtar | : | Scholar A.M.U. |
| 21. | Mr. Saleem Ahmad | : | Scholar A.M.U. |
| 22. | Mr. Vishnu Priya | : | Epigrapher Lec. Calcutta |
| 23. | Mr. Tushar Sarkar | : | Scholar Calcutta |
| 24. | Mr. Asok Dutt | : | Reader Calcutta University |
| 25. | Mr. Khaliq Khan | : | Artist drawing. |



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## ABBREVIATIONS USED IN THE FOLDER CONTAINING TRENCH PHOTOGRAPHS IN THE CD AND IN CONTACT PRINT

| | |
|---|---|
| **BRIK** | **Brick** |
| **BRK** | **Brick** |
| **BRKPAVE** | **Brick Pavement** |
| **DEBRI** | **Debris** |
| **DECO** | **Decorated** |
| **DSC** | **Duplicate Secondary Copies** |
| **EXC** | **Excavation** |
| **Ext** | **Extension** |
| **FL** | **Floor** |
| **GE** | **G2** |
| **INS** | **Inscription** |
| **LR** | **Layer** |
| **MOS** | **Mosque** |
| **NORT** | **North** |
| **NS** | **North-South** |
| **PB** | **Pillar Base** |
| **PLAT** | **Platform** |
| **RC** | **Ram Chabutra** |
| **SB** | **Sealed By** |
| **SE COR** | **Southeast Corner** |
| **SEC** | **Section** |
| **SOTH** | **South** |
| **SQ-CIR** | **Square-Circle** |
| **STR** | **Structure** |
| **TR** | **Trench** |
| **WAL** | **Wall** |

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH, LUCKNOW**

**C.M. APPLICATION NO. 144 (O) OF 2003**
**IN RE:**
**O.O.S. NO. 4 OF 1989**

Sunni Central Board of Waqfs & others ..... Plaintiff's
Vs.
Gopal Singh Visharad (Now dead) & others .....Defendants

**CONNECTED WITH**
O.O.S. No. 1 of 1989
O.O.S. No. 3 of 1989
O.O.S. No. 5 of 1989

OBJECTION OF THE PLAINTIFFS IN O.O.S. NO. 5 OF 1989 (Connected with the leading Suit O.O.S. No. 4 of 1989) AND OF RAMESH CHANDRA TRIPATHI, THE DEFENDANT NO. 17 IN THIS LEADING SUIT O.O.S. NO. 4 OF 1989, AGAINST THE REPORT OF THE ARCHAEOLOGICAL SURVEY OF INDIA, FILED IN THE SUIT ON 22.08.2003.

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The objectors above mentioned, most respectfully beg to submit their joint objections as under:-

1. That in this leading Suit connected with O.O.S. Nos 1 of 1989, 3 of 1989 and 5 of 1989, this Hon'ble Court, of its own, ordered the Archaeological Survey of India (for short A.S.I) to conduct Archaeological Excavation on the spot and submit its report, to facilitate the disposal of the issues of dispute between the parties to the suit, in compliance where of the A.S.I. has submitted it report on 22.08.2003.

2. That in its report (under objection) the A.S.I. has submitted the key plans (Fig. Nos. 3, 3A and 3B of Vol. 1 of its Report). However, the A.S.I. has failed to plot the property in dispute i.e. A, B, C, D, E, F in the aforementioned 3 figures of the KEY PLAN, which is very necessary for the effective and proper disposal of the issues of the dispute in the suits.

3. That the contour Map submitted by the A.S.I. in their Report,



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is not full and complete in as much as it does not cover the contour Map of the Palaeo Channel of river Saryu and of Kuber Tila. In this case, the contour Map of the Palaeo-channel of river Saryu, is very essential to co-relate the position of various structural remains in relation in the flow of the river.

4. That in the text of its Report, the A.S.I. has not mentioned the angel of deviation of various structures, particularly of structures 16 and 17 (Walls) and also of the stone blocks of the Pillar bases. Although, they have been plotted in aforementioned figures Nos. 3, 3A and 3B and its mention is also found in Figure No. 8. This angle of deviation is essential in the matter.

Wherefore, it is most respectfully prayed that this Hon'ble Court be pleased to direct the A.S.I. to submit its Additional Report in the light of the aforementioned facts/submissions.

O B J E C T O R S

1. BHAGWAN SRI RAMALALA AND OTHERS
Plaintiffs
In O.O.S. No. 5 of 1989

Through the Counsel
Sd/-
(A.K. Pandey)
Advocate

Lucknow

Dated:10.10.2003

2. RAMESH CHANDRA TRIPATHI
Defendant No. 17
In O.O.S. No. 4 of 1989

Through the Counsel
Sd/-
(VIRESHWAR DWIVEDI)
Advocate



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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, JLUCKNOW**

**O.O.S. NO. 5 OF 1989**

**(R.S. NO. 236 OF 1989)**

**Bhagwan Sri Ram Virajman at Ayodhya & others ...Plaintiffs**

**V e r s u s**

**Rajendra Singh & others ...Defendants**

**STATEMENT OF O.P.W. 17**
**DR. R. NAGASWAMY**

**(PART-I)**

**EXAMINATION IN CHIEF OF DR. R. NAGASWAMY ON AFFIDAVIT UNDER ORDER 18, RULE 4 CPC**

I, Dr. R. Nagaswamy aged about 76 years s/o Late Shri U.N. Ramchandran r/o 11, 22nd Cross street Besent Nagar, Chennai (Madras). The deponent do hereby take oath and state on oath as under:-

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**16.** That the deponent retired from the post of Director of Archaeology Tamilnadu on 31.08.1988.

4. That the deponent underwent training in excavation and conservation from Archaeological Survey of India.

5. That the deponent worked as Director of Archaeology government of Tamilnadu continuously for a term of 22 years from 1966-88.

6. That during his service the deponent has conducted so many excavations and explorations.

7. That the deponent was appointed Vice Chancellor of Kanchipuram University of Madras in the end of February 1995 and served as such up to 1996.

16. That the deponent has conducted mainly following excavations:-

**Pancalamkuruchi 1968** The palace remains of 18th cen chieftain a



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great freedom fighter.

**Korkai 1968-69** A two thousand year old Port of the Pandyas.

**Vasavasamudram 1969** A port that yielded Mediterranean amphora and Roman contact.

**Pallava medu 1970** 17th cent habitation settlement at Kanchipuram.

**Karur 1973-79** A two thousand year old capital of the Chera rulers of Tamilnad.

**Kodumanal 1979.** A megalithic site a great significance.

**Poluvampatti 1979-80** an early Settlement.

**Gangailondacholapuram 1980-82.** A medieval Chola palace and capital.

**Alagankulam 1986-87.** A two thousand year old Roman settlement which has now become a site of International importance.

6. That Archaeological Survey of India which is more than on hundred years old and has produced the most outstanding stalwards in the field of Archaeology is known through out the world for its excellence in all spheres of Archaeological work especially in the field of excavation its work has been extremely accurate and scientifically praiseworthy. Archaeology provides scientific factual data for reconstructing ancient history and culture, and is an important tool of human understanding and AS.I. Has been doing this exercise admirably.

7. That no excavator can create or manufacture a structure consisting a number of courses inside a trench. In some places long walls may cut through several trenches but these are easily seen through the layers, the baulk and retain them.

…..... Though it is an Islamic country, and though the excavator is by an Mussalman they do not deny the existence of a Hindu temple lying buried but on the other hand it is a Hindu temple. They being excellent Archaeologists have no hesitation in stating the truth. Photocopy of relevant pages prepared and annexed with this affidavit as Annexure No.3.



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32. That the Archaeological excavation at Ayodhya has shown indisputably that there existed a structure immediately beneath the disputed structure. It shows that the structure also had pillar bases. Pillar bases have been found in Mahasthan excavation in the Hindu temple area and that the Bangladesh Archaeologists have shown those pillar bases were meant to support a porch of a Hindu temple.

33. That from the perusal of the report it is clear that the layers are well stratified and the periodization has been done as per settled norms and the finds have also been recorded and interpreted properly.

35. That pillar bases are made up of some courses of brick bats and are either square or circular in formation; Calcreate stone blocks are kept on sand stone block- one decorated stone block was found here. The idea that they are not pillar bases but heaps of stone for holding floor level is not correct. The stones in the middle of the brick formation undoubtedly were intended for supporting pillars and this tradition seems to have been followed through the centuries in this areas where even indisputable pillar bases are found. Below this brick wall, was found another brick wall- decorated stone blocks were used on top of this wall. Beneath pillar bases, earlier pillar bases were found. Some more brick structures were found beneath these walls. Most of the pillar bases were found connected with 2nd floor.

36. That existence of circular shrine with pranal towards north proves existence of Hindu temple.

That the brick circular shrine is circular outside and square on the inner side, with a rectangular projection in the east with entrance, it has a water chute on the on the northern side which is obviously in level with the floor level of the inner sanctum clearly intended for the abhisheka to be drainied, As this seems to be secondary shrine dedicated to Siva in his linga form the shrine is built to smaller diamension. Smaller diamension of subsideray shrines with just



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minimum entrance space are seen in some of temples e.g. Mandasor, Rajsthan- Kumbharia Shantinath Temple relevant pages are photostat copies prepared from those books, are annexed with this affidavit as Annexure No. 4 and 5 (Temples of India by Krishna Deva, published by Aryan Books, New Delhi) The smaller diamension does not preclude the structure being a shrine. The absence of any significant artifacts belonging to other sister faiths like Buddhism or Jainism, precludes this structure being identified with any of those faith.

38. That in the opinion of the deponent the excavation report, its finds, proves beyond doubt the existence of a Hindu temple under the surface of the disputed structure.

39. That the presence of different bones in Hindu temple area is nothing unusual, nor does it minimize the sanctity of the temple premises. Bones in archaeological excavation are quite common.

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**Before Commissioner Sri H.S. Dubey, Additional District judge/Officer on Special Duty, High Court Lucknow**

O.O.S NO. 5 OF 1989
( R.S. No. 236 OF 1989)

**19.08.2006** **O.P.W.17 Dr. R. Nagaswami**

**Statement (Part-I)**

**Pages 60-61**

Q: The temple which was said to be built by you in 11th century originated from which floor?

A: It originated in all probability from the level from where 11th century inscribed slab was found immediately beneath the floor of wall 17. I can answer its floor number after going through ASI report.

My conclusion that this earlier temple structure was built in 11th century, is based on ASI report volume 1and 2. This conclusion is based on plate no. 137 of ASI report volume 2 and page 152 chapter six relating to Architectural fragments and part of the same chapter at page 153 detailing the decorated bricks and also chapter eight dealing with inscription seal, sealing and coins, of the ASI report volume 1. Having seen plate no. 137 of the ASI report volume 2, the witness stated that this inscribed stone block belonged to earlier temple structure it was part of the structure.

**Pages 61-62**

A: This inscribed slab should have undoubtedly formed part of the wall of the earlier temple structure. By seeing this plate the period of slab can be inferred and i.e. this slab carries an inscription in 'Nagari script' which is dated with the help of palaeography by the ASI and as an epigraphic I agree with that dating. The date of inscription is 11th century. I want to say that the temple structure was built in all probability in 11th century and this



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inscription was engraved on the wall of that structure at that time. ASI people has mentioned in its report as to in which layer and in what condition this stone block was found I accept their statement. I don't think that this stone block remained in its original position but structure seem to have under gone some renovation and rebuilding. In my opinion the inscribed stone remain in the same area and level. I have already said that the structure has gone some renovation and rebuilding and the wall have been redone it has been dislodged from its original position.

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**Before Commissioner Sri H.S. Dubey, Additional District judge/Officer on Special Duty, High Court Lucknow**

O.O.S NO. 5 OF 1989

( R.S. No. 236 OF 1989)

**21.08.2006** **O.P.W.17 Dr. R. Nagaswami**

**Page-71**

For coming to conclusion that inscription of plate no. 137 belongs to 11th century, besides consulting the book of Shri Dhani I have also consulted the book Shivrama murti's book namely 'Indian epigraphy and south Indian scripts rest is based on my experience. The book referred to by me does not confine to South Indian scripts.

**Pages71-72**

….....The structure which was built in the 11th century at disputed site was repaired and renovated to proir to 16th century but it was not demolished. Whether the structure which built on the disputed site between 11th century to 16th century was demolished or not, will depend on the meaning of word demolition as to in which sense this word is being used.

Q: What meaning or meanings could be assigned to the word 'demolition' according to you?

A: According to me the word 'demolition' stands for destruction but I have to check-up the dictionary meaning with various shades of meaning.

The building which was built at the disputed site in 11th century is not one building but number of structures which were added during the second third phase of wall 16 and we do not know what restoration or renovation were carried out between 11th and 16th century.

**Page 73**

A: There has been continuos building activity in 11th century



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when a big temple structure was erected which consisted of all the important parts of temple Architecture was found in North India like the base of a Temple with the 'Makar-Pranala' and Dwar-Shakha, Stone-Wall, Carved-Lintels and Shikhars with Aamalaka and so many other carved stone liked carved pillars with 'Ghat-Pallava' motif 'Kirti-Mukh' motif and 'Ganas' which indicate that a full fledge temple up to the 'Shikhar' was constructed and also enclosed by massive structure consisting of wall 17 and 16 in phases obviously to protect the main make temple structure which they also formed part and were built with in century i.e. 11th century.

**Page-74**

In addition in the debris adjacent to the disputed structure was found a black crisp schist stone pillar which shows that some part of Mandapa that was part of the earlier temple was pulled out and used in the disputed structure. All this suggest that the temple which included the enclosure wall was pulled down which will come under the definition of demolition. I have nothing to add in this regard. If any question is put to me I will answer it.

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A part of the temple which will consist of 'pillared mandapa' has been pulled down. The enclosure walls of this structure was to protect this temple. I don't think that all the four enclosure wall were present around the temple structure when demolition took place in 16th century because some portion of the walls is not excavated during excavation at disputed site due to restriction. The area which was covered by make shift structure has not been excavated besides some other area which have slopes and other in accessible conditions.

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**Before Commissioner Sri H.S. Dubey,Additional District judge /Officer on Special Duty, High Court Lucknow, Lucknow**

O.O.S NO. 5 OF 1989

( R.S. No. 236 OF 1989)

**22.08.2006** **O.P.W.17 Dr. R. Nagaswami**

**Pages 81-83**

Learned cross examiner drew the attention of the witness towards his statement recorded on 18-8-2006 at page 39. The witness stated that during excavation at disputed site the remains of primary and secondary shrines which formed part of the whole Hindu temple complex, were found. Remains of one primary and remains of two secondary temples were found during the excavation. The remains of primary temple were found from number of floors but mainly above fourth floor while some have been found below forth floor also. The remains of one secondary temple were found contemporary with layer five while the remains of other secondary temple were found in a the area called 'Ram Chabootra'. It was found in number of trenches and had several floors and continued to come up to contemporary modern floor level.

By primary temple, I mean the main 'Deity' to which the structure is dedicated to. The secondary temples are built in the complex dedicated to other 'Deities' but are related metaphysically to the 'Deity'. It is not necessarily that primary and secondary temples should be constructed at the same level and at the same time. Primary and secondary structure may precede to each other in time and level both. This is regarding temple and structure. At the disputed site primary and secondary temple structures are not in same level. Structurally some walls have been found even in 1st - 2nd century B.C. thus the primary temple structure was at a lower level



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where as the secondary temple structure was at upper level . The primary temple structure can be ascribed to 1st – 2nd century B.C. where as the first secondary temple structure can be ascribed to ( circular shrine ) and assigned to 10th century and the second secondary structure 'Ram-Chabootra' (which is the secondary temple structures) can be ascribed in all probability to the time of 'Akbar'. I would not say that 'Ram-Chabootra' is of most modern time but I would only say that this structure was raised in the time of 'Emperor -Akbar'. A great full scale articulated temple structure resembling other north Indian temples was erected in all probability in the 11th century A.D. By 'articulated temple structure' I mean the base, the wall, the ceiling, the 'Shikhars', and 'Amalaka' confirming to the norms described, with several mouldings, niches, carved entrance frames and so on.

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**Before:-Commissioner Sri H.S. Dubey, Additional District judge/Officer on Special Duty High Court Lucknow.**

**O.O.S NO. 5 OF 1989**

**( R.S. No. 236 OF 1989)**

**23.08.2006** **O.P.W.17 Dr. R. Nagaswami**

**Page-90**

Learned cross examiner drew the attention of the witness towards figure 3A of the ASI report volume 1. The witness stated that walls 26 ,27, 25, 24, 23, 22 are the structures or relics belonging to that period i.e. 1st to 5th century A.D.

**Page-92**

Most important structure found during the period from 6th to 10th century which is mentioned in the report is a circular shrine. Besides this structure some walls running around this circular shrine were are also found that belong to this period.

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Wall 19 a, 19b, 20, 21 probably 22 also relate to this period besides the circular structure. Circular structure has been marked as structure 5 in figure 3A of ASI report volume 1. The circular structure is assigned by the ASI to the 10th century. I accept this date.

**Page-94**

The first important find after the 10th century is the inscribed stone fragment found below wall 18A and 18B and above layer 5A. This inscription as given in plate no. 137 of the ASI report volume 2. Other structures which were found in the excavation pertaining to this period are wall 17 and wall 16 which are mentioned as massive structure. That suggest two successive destruction to a great temple of the north Indian variety that was built in the early part of the 11th century at that site. The fragments and carved door frames and lintel



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and other slabs built under wall 16 that are associated indisputably with a classical Hindu temple of considerable size, that existed at that excavated site which suffered damage in all probability around 1030 C.E once and construction of a protective wall i.e. wall no. 17 and another damage that was suffered around 1080 A.D that called for another protective wall i.e. wall 16 built around to protect what remained us a temple are the significant structure that have come up from 11$^{th}$ to 15$^{th}$ century C.E.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, JLUCKNOW**

**O.O.S. NO. 5 OF 1989**

**(R.S. NO. 236 OF 1989)**

**Bhagwan Sri Ram Virajman at Ayodhya & others ...Plaintiffs**

**V e r s u s**

**Rajendra Singh & others ...Defendants**

**STATEMENT OF O.P.W. 17**
**DR. R. NAGASWAMY**

**(PART-II)**

**Before:-Commissioner Sri H.S. Dubey,Additional District judge/Officer on Special Duty High Court Lucknow.**

**O.O.S NO. 5 OF 1989**

**( R.S. No. 236 OF 1989)**

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**25.08.2006** **O.P.W.17 Dr. R. Nagaswami**

With reference to page 122 of ASI report volume 1 the witness stated that archaeological members mentioned from serial no. 1 to 286 ( page 122 to 152) have a description of what ever have been found in totality during course of excavation at the disputed site. The description in the list contain all the essential data which is furthur supplemented in the introductory part and if necessary will be furthur supplemented by furthur examination of the object concerned and I have seen the figures attached with this report. These figures also contain the scale. I considered that scales given there is correct. Place and depth of a particular thing can be located with the aid of these figures. I can't say from my memory as to the shape and size of the structure which existed between 1st to 5th century on the disputed site. One structure of 10th century is circular in shape and its external diameter is about 5 meter but I have to check up the report for other



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details. There are some walls which obviously belong to the primary structure but the available walls do not give any shape. In that particular period there are many walls so I don't mean that this refers to only western wall. The number of walls which in existed 6th to 10th century on the disputed site was about six. I can give its accurate number only by going through the report. The temples of northern India between 6th and 10th century well vary from simple to very big size and it is not possible to give the size of northern temple. Their number may be in hundreds. In my assessment the temple which existed at the disputed site between 6th and 10th century was of small or medium size. As the full relics are not available, it is not possible to guess the approximate size of this temple. The small medium size temples of above period of were of about 10 to 20 meters in length if it relates to central temple but it could also include an enclosure which can not be assessed as they depend upon individual temple. The measurement of 10 to 20 meters as mentioned by me is length of the temple were as its width it depending upon the ground plan and the shape of Deity to which it is dedicated. In some temples the width may be larger than its depth. This could have been the size of the primary temple. 'Garbh-Grih' is included in the above measurement. We may have small front 'Mandapa' pillared or with out pillar and small niches called 'Dev-Koshtas' and a very low 'Shikhar' which could be either a flat roof or a pyramidal 'Shikhar' with 'Shikhar' on top and surrounded by small secondary shrine or dedicatory shrine within it. 'Mandapa' is a extension of 'Grabha-Griha'. 'Jagmohan' is a term used most prominently used in 'Kalinga' region but in this part of India we generally call the front as 'Mandapa'. 'Mandapa' or 'Jagmohan' is part of the total structure and is used for both the deity and devotees. It is not necessary that 'GrabhaGrih' should always contain a 'Shikhar' but some time 'Mandapa' also contain 'Shikhar'. Even 'Grabhagriha' in some circumstance can be roof or with out a roof or with the 'Shikhar' or integrating the 'Mandapa' also with the 'Grabhgrih'. 'Parikrma' was



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provided in some temples in the main temple itself around the ‘Grabhagriha’ providing an outer wall which is integrated with the super structure as one unit or the ‘Parikrama’ may be going around the shrine on the enclosure. With in the enclosure and also out side the

enclosure ‘Parikramas’ are provided. Temples can face, depending on the manifestation and nature of the prayer any cordinal direction. The secondary temple consist of a number of ‘Parivar’ devtas which may be integrated with the main wall of the sanctum or embedded with the enclosure wall or they may be located in the enclosure between the main wall and the enclosure wall. They face different direction depending upon the manifestation. The secondary temple would be located either in the prescribed direction or in any open space available depending upon the prayer of the pattron ; for example some temples may face south some west or even north depending upon what the pattern wants to achieved such as conquest or wealth or knowledge or health. Secondary temple may be raised in front of the primary temple depending upon the nature of the secondary deity for example the shrines of ‘Vahanas’ (mount such as ‘Garud’ or ‘Nandi’) are located exactly in front of the main temple. By word ‘koshtas’ I mean a ‘niche’ on the wall in which the secondary deity may be installed in made up of any material including paintings.

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**Before :-Commissioner Sri H.S. Dubey, Additional District judge/Officer on Special Duty High Court Lucknow.**

**5-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Page 146**

I do know about the 'Buddhist Stupas'. It is not possible that this circular structure will represent a 'Buddhist Stupa'. For the reason 'Buddhist Stupa' is a solid globular structure in which the relics of either Buddha or great Buddhist monks will be deposited inside and such Stupa will not have an entrance opining and no provision for draining the 'Abhisheka' water or liquid as found in the Hindu temple. There are hundreds of Hindu temple where a central deity is a ' Shiv-Linga' for which 'Abhiskhek' is performed daily a number of times which requires provision of 'Pranalas' in the northern direction as found in this circular shrine. There is no doubt what so ever that this circular shrine is a Hindu temple and not a 'Buddhist Stupa'. No 'Linga' is found here but as I have said in my earlier statement that this site has been attacked by iconoclasts in the 11th century once around 1030 C.E and again around 1080 C.E the idols have suffered and disappeared. No icon have been left in the site except a mutilated sculpture called Divine Couple.

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**Pages 147-148**

In any structure the 'Pranala' need not necessarily be in the sanctum santoram. But in the Shiva temple it is a must and what is important that it should be oriented towards north and in most cases in the central part of northern direction in the 'Adhisthan' part of the shrine. There is no doubt that the shrine originally was a circular shrine which has been disturbed due to latter constructions. Those structure were not raised over the above structure of circular shrine but cutting the edges of the circular shrines. The shape of circular



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shrine was disturbed in 1030 or in 1080. It is not possible to say except to say some disturbance and attack has taken place in the 11th century. In my opinion the icons including 'Shiv-Linga' might have been desecrated around 1030 A.D when it was attacked by Syed Sadr Massad and Sultan Ibrahim in 1080 C.E. Syed Sadr Massad attacked in 1030 C.E where as Sultan Ibrahim in 1080 C.E. The attacked has been on the disputed site, it is difficult to say which part precisely was attacked at the time. It was a general attacked at both the times where some temple structure had been destroyed. I think that after the first attack in 1030 a full scale, classical Hindu temple with all articulated parts with carvings Pillars Entrance, Jam, Shikar was erected which suffered at 1080 attacked by Sultan Ibrahim.

Q: Is it correct to say that your above statement "I think that after the first attack.....by Sultan Ibrahi". Is in reply to my question for indicating the name of any other temple purported to be desecrated by the above persons in 11th century at Ayodhya?

A: I would call it the main temple.

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**Before:-Commissioner Sri H.S. Dubey, Additional District judge /Officer on Special Duty High Court Lucknow.**

**6-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Pages 156-157**

Structure 4 consists of wall 16 and 17 and wall 18A, 18B and 18C with attached floors, floor 2 , floor 3, floor 3A and floor 4. Wall 16 is set to have been built in three phases the bottom one consisting of 10 courses of bricks and the upper one in 2 phases consisting of 6 courses of brick and floor 4 said to consist of red brick rammed floor. Wall 17 is set to be 1.86 meter in width. Wall 16 is of 1.7 meter width. Wall 16 runs to 50 meter and to east of these 2 walls are a number of pillar bases total number 50 all these constitute structure 4. Only these are the component of structure 4.

Q: Whether any thing more consisted structure 4 as per your own perception or as per ASI report?

A: As I have not visited the site and seen the structure my reply can not be based on my own perception but I can only say what is found in the report. I have nothing to add in the reply to the above question.

Whatever I have said about structure 4 constitute different part of the structures and the floors are attached to the walls and not found on the floor. Generally floors are laid after the walls are erected. In some instances structure can be even without floors. We lay steps to reach higher storey, the steps will be with out floor. The first step may be on a floor or even on a natural rocky surface or ordinary earth. I agree that any structure ultimately need a floor. The dimensions of the circular shrine is about 1.89 meter which is the diameter,( the diameter of the circle) with a rectangular projection 1.32 meter in length and 32.5 cm projected towards east. The inner square of the sanctum is about 60 cm. I am unable to say about the distance of circular shrine from southern part of wall 16. I am not



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even able to say about distance of circular shrine from any part of wall 16, because circular shrine is at a lower level and wall 16 at a higher level. It is correct to say that figure 3A (page 48A) is on scale. It is also correct to say that wall 16 and structure 5 have been shown in this figure. The circular structure is about 3 meter from wall 16. Structure 5 is in its eastern direction. The distance mentioned above is from southern end of wall 16. It is correct to say that structure 5 is below the floor of structure 4.

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**Before:-Commissioner Sri H.S. Dubey, Additional District judge /Officer on Special Duty High Court Lucknow.**

**7-9-2006** **O.P.W.17 Dr. R. Nagaswami**

The reuse of Hindu temple architectural members in other temple is also prohibited by the architectural treatises but with reference to the same temple there use is not mentioned. There are no rules with reference to using members of a temple in the same temple although there is prohibition of using the members of one temple in another temple but there is no rule of using member of one temple in the same temple.

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**Page 170-171**

With reference to last sentence of last statement on 6th September 2006 the witness stated that the fragmentary 'Nagari' inscription found in trench J-3 located at the depth of 5.75 meter (plate no. 137) is the artefacts which indicates about the attack on 1030 C.E The other artefacts which relates to the 2nd attack in 1080 A.D is the carved entrance jam found beneath the foundation of wall 16 ( plate no. 25 and 26) These 2 artefacts which are indicative of the 2 attacks I have mentioned. At this stage the witness requested to see ASI's report volume 2. On being permitted to see this report after going through it the witness stated that in my opinion a number of stone slabs used as foundation, other than the carved entrance jam under wall 16, also belong to the Hindu temple which indicates the attack in around 1080 A.D its plate no. is 25. There are 8 stone pieces seen in this photograph the one adjoining the carved stone jam is also the carved stone slab lying up side down built into the foundation, it can be seen in the above plate no.25. Plate no. 50 illustrates the carved stone lintel which is related with the attack of 1080 and plate 51 also depicts the attack of 1080 A.D. Plate no. 52



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is related with the same attack. These are the stone slabs which in my opinion are indicative of above mentioned two attacks in Ayodhya at the disputed site.

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**Before:-Commissioner Sri H.S. Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**11-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Pages 185-186**

Yesterday I have visited excavation site at Ayodhya but I have not visited the whole part of the excavation site I could see only what was visible on the upper part level. In some area 'Taurpolin' was removed and thus I could see that part also. There was no area which was not allowed to be seen by me but some of the trenches were too deep and dark so I could not see the depth of some of the trenches existing there. It is true that only two trenches J-3 and G-7 are very deep, rest of the trenches are not so deep. All of the trenches except J-3 and G-7 were seen by me yesterday. I have seen the trenches on all the 4 sides of make shift structure. Stones, carved stones and bricks used in walls 16 , 17 and 5 etc were also seen by me yesterday. I have seen circular shrine also. Now, I can easily reply about the location of the different trenches. I have also seen the floors visible in the different trenches. I have seen all the 4 floors of different trenches. After seeing the excavation site yesterday I hold the same view which I have expressed in my affidavit as well as in my earlier statement. I remained at the excavation site for 1 hour. All the persons who were there remained only for 1 hour because the site opened at 11 A.m. and was closed at 12 P.m. noon. In the present condition I should say that I am satisfied with this 1 hour visit. I was accompanied by Shri Ajay Pandey advocate, and also by Shri Madan Mohan Pandy Advocate. Mr. Triloki Nath Pandey was also present during this time with me. I saw some dignitaries and 1 Muslim gentleman and along with them was Mr. Verma Advocate.

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**Page 190**

In para 10 of my affidavit, I have mentioned about 26 books but none of them relate to the excavation of any north Indian site. If the term archaeology is to be confined to excavation only then none of these books deals with the principles of archaeology. In para 11 of my affidavit I have given the list of the books edited but none of these books relate to excavation of any north- Indian site. None of these books relates to the principles of excavations. None of the articles mentioned in para 12 of my affidavit relates to any north Indian site of excavation. None of the lectures delivered by me and mentioned in para 13 of my affidavit relate to any north Indian site of excavation. some of the lectures like 'Temples and festivals', 'Temples art and architectural and royal patrons and Shav-Pasupatas' in art and lectures do have reference of north Indian temples. The lecture I gave at 'Combodia' in 2005 and National Khmer research institute of Combodia also referred to north Indian temples and art. These references relates to north Indian temples of 'Gupta' period to $12^{th}$ – $13^{th}$ century A.D. There was no reference of any temple of Ayodhya in these lectures.

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**Pages 195-197**

Prof. H.D. Sankalia was my guide in Ph.D. but I value his book more ' Archaeology in India' for it deals with the summary of all the excavations and the research. He was a great excavator. He is said to be the Doyen of Indian Archaeology. He was working in the Deccan college Puna under the University of Puna as a Professor in Archaeology. I have not heard the name of Prof. R.C. Gaur. Lothal is a Harappan site excavated by S.R. Rao who submitted his report published by ASI. This excavation was conducted some times around 1955 and 1962 but exact date I don't remember at this stage. M.S. Naga Raj Rao was Director General of Archaeology. He has also published some reports. He was an archaeologist. I have heard the name of Dr. Z. D. Ansari of Deccan college of Puna. It is known



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that Nagraj Rao and Dr. Ansari conducted excavation at 'Sangankallu'. There is a famous excavation conducted at a 'Atranji-Khera'. Dr Z.D. Ansari and Dr. N.K. Dhawilikar had conducted excavation at 'Kayatha'. Jagatpati Joshi was an archaeologist and Director General of ASI. He has also given excavation report regarding excavation at 'Bhagwan- Pura'. Dr. S.P. Deo is also a famous archaeologist, he also belongs to Deccan college of Puna. I have no idea whether he has given excavation report about 'Apegaon' excavation. I don't have any idea about the excavation at ' Tulza-Pur Gadhri' in Maharastra. Similarly I don't have any idea about the excavation at 'Nageshwar' in ( Gujrat) in the gulf of 'Katch'. The M.S. University of Baroda also conducts excavations and they bring their Archaeological series and reports of excavations also. Excavation at 'Pauni' it is a well known site. In all these excavations referred to above there is a separate chapter dealing with animal bones.

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At this stage learned cross examiner Shri Z. Jilani Advocate, counsel for Sunni Waqf board U.P. filed Photostat copies of 11 extracts of different reports (paper no. 326 C1/A to 326 C1/ ). These papers were taken on record subject to the order of Hon'ble court.

All the papers mentioned herein above were shown to the witness who, after going through these papers, stated that extracts of all these 11 reports contain chapters dealing with animal bones or animal remains. If the bones are found from any excavation site then they are collected separately and studied and report on them is included in the full excavation report of the respective sites. With reference to page 270, last para, lines 5 and 4 from bottom, of ASI report volume 1, the witness stated that there is mention of recovery of animals bones from various levels of different period but there is no separate chapter dealing with these bones in this report.

Q: Don't you think that this a serious and major omission in the ASI report?



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A: In my opinion, this is an extraordinary case where an archaeological excavation is conducted under the orders of the Judiciary to solve a specific problem regarding the existence of structure/ temple beneath a disputed structure and carried out and report submitted with in a very short period. In all probability the ASI concerned itself with the main problem, including some details of animal bones. It would have been useful to provide some more details about the animal bones in the report. In my opinion though in normal course of a full excavation a chapter on animal bone is essential but in this particular extraordinary case I am not able to asses why the ASI has omitted this chapter.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**13-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Pages 219-220**

Plate no. 25 of the above report was shown to the witness who, after seeing this, stated that this plate does show foundation of wall 17. Meaning thereby that foundation of wall 16 is not visible in this plate. Carved stone visible in this plate forms part of foundation of the wall 17. Whether brick courses visible in this plate form part of wall 16 or 17 can be answered by me only after going through the ASI's report volume 1. I do not agree with the suggestion that the foundation wall as visible in plate 25 is part of 'Eid-Gah' wall. I am unable to say from the photograph whether any floor is visible in this plate.

Q: Whether you are in a position to tell that the upper level i.e. surface of floor 4 was above the decorated stone visible in plate no. 25?

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A: I would like to correct my statement on the wall number and being a technical report I may be allowed to see the ASI report, volume 1, before giving the answer to this question.

Learned cross examiner drew the attention of the witness towards the statement recorded on 22-8-2006 recorded on page 87 para 3 which reads "and intangible basis may be noticed..... in 'Hindustan' ". The witness after going through the above portion of statement stated that I have not studied 'Aine-Akbari' as such I am not in a position as to say where the said statement is mentioned in 'Aine-Akbari'. I have read about this statement in a gazetteer. I will give the reference of this gazetteer tomorrow. It is wrong to say that such statement is not there in 'Aine-Akbari'.

With reference to my statement recorded on page 147; " it was attack by Syed Salar Masuad and Sultan Ibrahim" I don't know



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whether Sultan Ibrahim and Sultan Ibrahim Lodi were the same person or they are two different persons. I don't know as to which dynasty, Sultan Ibrahim refereed to by me, belong as the gazetteer that mentions Sultan Ibrahim and his attack does not give furthur details about his dynasty. Which is that gazetteer I don't remember at this stage. I will give its reference tomorrow.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**14-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Page 221**

The statement of Aine-Akbari referred to by me yesterday is published in the gazetteer of the territories under the government of East-India company by Edmand Thornton published in 1858. The invasion by Syed Salar Masood is published in gazetteer of Audh published in 1878. It is in the same gazetteer that the invasion by Sultann Ibrahim on Ayodhya is also mentioned.

I have read the following books which are:-

1.

Archaeological Survey of India (four report ) made during the year

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1862-63-64 and 65) by Alexander Cunningham, C.S.I

2. India An Archaeological History by Dilip K. Chakrabarti

3. The Ancient And Medieval Architectural of India: A Study of Indo- Aryan Civilisation by E.B. Havell

4.Studies In Indian Iconography by P.K. Agarwal

5.Indian Architecturel ( Buddhist and Hindu) by Percy Brown

The following books which I have not read are:-

1.Brahmi Script volume I and II by Ram Sharma

2.Studies In Indian Archaeology and Ancient India by Prof R. C. Gaur

3.An Encyclopaedia Of Indian Archaeology by A. Gosh

4. Archaeology Theory An Introduction by Mathew



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5.Gleanings of Indian Archaeology History and Culture Edited by Prof K.D. Bajpai, Prof Rajesh Jamindar and Dr. P.K. Trivedi

6.Tradition And Archaeology by Himanshu Prabha Jain and Jean Francois Salles

7.Aspects of Indian Archaeology by M.D.N Sahi

8.The Roots of Indian Art by S.P. Gupta

9.The History Of Architecture In India Edited by Vibha Tripathi

10.Archaeology And Interactive Discipline by S. Setter and Ravi Korisettar

11.New Frontiers of Archaeology Edited by S.R. Rao

12.Indian Archaeology Since Independence Edited by K.M. Shrimali

13.Architecture In Medieval India Edited by Monica Tandan

14.Historical Archaeology of India by M.A. Dhavilikar

15.Memories of Baber Emperor of India by F.G. Talbot

16.U.P. District Gazetters Barabanki by Smt. E.B. Joshi

17Ayodhya History, Archaeology and Tradition Edited by Prof . L. Gopal.

Although I have not read the following books but I have heard the name of the following books which are authored by the persons whose name are given against their book names are:-

1.Ancient India Bulletin Of The Archaeology Survey Of India by V. Gordon Childe, N.P. Chakravarti, Staurt Piggott and A. Ghose.

2.Ancient India Bulletin Of The Archaeology Survey Of India by M.S. Vats, Staurt Piggott and A. Ghose

3.An Encyclopaedia Of Indian Archaeology By A. Ghose

4.Selected Art Pieces Of Aligharh Archaeology Meseum



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(1988) by R. C. Gaur

5.India An Archaeological History by Dilip K. Chakrabarti

6.Indian Architecture Islamic Period by Percy Brown

7.Indian Archaeology A Review ( 1985-860 by Jagat Pati Joshi

8.Indian Architecture ( Buddhist and Hindu) by Percy Brown

9.Memories of Baber Emperor Of India by F.G. Talbot.

I know the name of following author but I do not know the names of the book written by them and they are:-

1. M.C. Joshi
2. S. Setter and Ravi Korisettar
3. S. R. Rao
4. K. M. Shrimali
5. M. K. Dhavalikar
6. Prof L. Gopal

Learned cross examiner drew the attention of the witness toward photocopy of pages from page no. 739 to 740 of the gazetteer of the Territories under the government of East-India Company by Edvard Throntan 1858( paper no. 107C1/10 107C1/11) filed in O.O.S No. 5/89 on 30-5-1992 the witness after going through these paper stated that this is the gazetteer about which I had stated in my above statement today. I have read this statement from gazetteer itself. This statement is under the heading 'Oude'. I read this gazetteer about 20 day's back. I did not check this statement from the book 'Aine-Akbari' itself as there was no time. I had absolutely no time because I had to give evidence in this case.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**15-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Page- 236**

Q: The so called temple which you claim to have been erected on the disputed site in 11th century A. D. was a classical temple or any other kind of temple?

A: The temple at Ayodhya which I have mentioned, built in 11th century A.D. at the Janma-Asthan, was undoubtedly a classical temple. There are two temples 1. Classical temple 2. Non classical temple i.e. that sacred space or any self existing symbols, plat-form, trees, water sources and even ordinary huts would fall under non classical temples.

The description given under the heading 'Purification insemination and levelling' of the site are applicable to only classical temple. And this description does not apply to other types of temples which are not classical. It is not the material that is purified in this process as mentioned on page 14 to 17 but it refers to purification of site impregnation and levelling of the site, of new construction.

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**Pages 238-241**

Q: My question is confined to the alleged kind of temple which you claim to have been erected on the disputed site in 11th century A .D. Kindly therefore reply my question in this reference?

A: The pillared structure in the disputed site in my opinion was attached to the enclosure wall which formed the western end. But about the pillar sizes I am unable to say.

I have seen only two pillars at the disputed site these pillars formed part of the disputed structure which was demolished in December 1992. The portions of pillars I saw were square in shape



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at the bottom and octagonal with some carving usually found in temple. The dimension of pillar portion, I saw, was about 9X9 inches square. I have said in my statement that there were 14 pillars of this kind in the disputed structure.

Q: For a pillar of this dimension and height which were installed in the disputed structure. what should be the dimension of the pillar base?

A: It may be two and half feet square. If it is a stone a number of courses beneath it may be provided but if it is found on the stone platform, then no separate pillar base is required.

Having shown plate no. 31 of ASI report, volume II, the witness stated that I have not seen the spot which is visible in this plate. The other pillars which I have seen are similar to the one visible in the photograph of plate no. 31. The pillar bases which are visible in plate no. 37 of the above report are square in shape. I have seen these stone pillar bases on the spot. The dimension of these pillar bases is approximately 70 to 80 cm X 70-80 cm i.e. about two and a half feet. For installing a pillar on these pillar bases I don't think that any Iron dowel is required to hold it in position, it stands by its own weight and by the weight of it roofs. I do not think that the stone pillars were used in these type of pillar bases. The pillars that were used in these pillar bases might have been made of wood. Wooden pillars used on these pillar bases might have been of 9 X 9 inches. The height of the pillars depend up on the height of wall over which roof rests. Generally there are about 7 feet height pillars. The wooden pillar of 7 feet height may bear the load of tiled roof and not of a huge building super structure.

Q: Whether roof of the temple could be laid upon the pillars of 9 X 9 inches dimension and of about 7 feet height ?

A: It is possible it large number of pillars are used for the roof of a sloping style roof covered with tiles either metal or clay tiles, but in this case it was only part of the temple which had probably a tiles slope roof with not of much weight.



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Having seen plate no. 35 of the above report the witness stated that the pillar bases of bottom side are also of the same dimension as pillar base visible in plate no. 37.

Q: Whether dimension of pillar base as shown in plate no. 36 is also the same as that of the pillar bases shown in plate no. 37 and 38?

A: The dimension nearly is the same.

In plate no. 36 a small piece of stone is visible, attached with the pillar base. It is part of the pillar base. The length of both these stone will be about 60 to 70 cm ( about 2 feets).

Q: What would be the approximate length of bigger stone out of these two stones?

A: About 45 to 50 cm.

The structure which might have existed on the pillars supported by the pillar bases visible in plates 35, 36 and 37 might have been light slopping structure and not a big one. The height of this structure might have been about 8 to 9 feet.

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Q: Can you tell me whether any walls have also been found in the area in which pillar bases shown in plates 35, 36 and 37 existed?

A: In my opinion wall 16 could have been the wall at rear supporting the roof resting on the pillars existing on these pillar bases.

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**IN THE HON'BLE HIGH COURT, LUCKNOW BENCH LUCKNOW**

O.O.S NO.5 OF 1989

( R. S. No.236 OF 1989)

**18-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Pages 248-252**

The concept of pillar base is that on the alleged pillar base which is in the shape of platform, a pillar is to rest on. The base of the pillar whether to be erected on a platform that is floor or with solid foundation, will depend upon the load the erected pillar is likely to be or has to bear. Though it is difficult to mention about the length and breadth of the temple structure which was demolished in 1030 A.D., yet I can assess that it would have been of about 10ft. x10ft. dimension. As I said earlier it might have been of about 15ft. height. I don't think that the said earlier structure had any connection with either wall 16 or 17. The old temple structure was not on the pillars. The pillar bases referred to by the ASI in its report might be the pillar bases of mandapa's pillars but not that of sanctum tower. As I can say only four pillar bases found by the ASI could be underneath the said mandapa portion but not that of sanctum tower. Probably, the said 'mandapa' was located in the east of the sanctum tower. (The witness prays for and is hereby allowed to refer to the ASI's report, Volume 1 in order to answer the question about the size of the alleged mandapa of the earlier temple.) After going through the ASI report volume-1, the witness answered as follows :

Perhaps the size of the mandapa of the earlier temple was about 10ft.x10 ft. The roof of the said mandapa must be resting on the pillars. There would have been four pillars to bear that roof.

After going through the chart shown in figure 3-A of ASI



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report, volume 1, the witness said that pillar bases no.26 and 27 were probably the pillar bases of the pillars of the said old mandapa. It is difficult for me to identify the other two pillar bases of the mandapa. The distance between the two pillar bases no.26 and 27 must have been of 10ft. only. It is correct to say that there is no other alleged pillar base within 10ft. radius of pillar bases no.26 and 27. It is correct that the pillar bases no.26 and 27 were in north-east of the structure-3. After consulting the map and report of ASI, the witness said that the old sanctum-sanctorum tower which was demolished in 1030 AD would have been located in north-east of structure-3 as shown in figure 3A (Page 48A) of the report. Structure-3 indicated in figure 3A is a big area covered by disputed structure constructed in 1528 AD. Structure-3 must not be the part of the old temple which was demolished in 1030 AD. Structure 3 is not part of the old temple which was demolished in 1030 AD. I cannot give the name or dynasty of the king who constructed the old temple having been demolished in 1030 AD. However, I can disclose a fragmentary inscription found in trench J-3 and it is to the effect *"NG PAL'*. From this inscription, it is not decipherable as to what was the name of the king or dynasty of the constructor of the temple. In this case, it is not possible for me to refer the aforesaid inscription to the name of any dynasty or king. As a student of history, I cannot disclose as to who were the rulers in northern part of India of Ayodhya region connecting the aforesaid inscription because the word 'PAL' has been used for many northern Indian kings, dynasties and chieftains of all parts of India. The aforesaid inscription formed part of the wall of the earlier structure demolished partially in 1030 AD. The location from where the aforesaid inscription was recovered during excavation is not far away from the structure of the old temple. According to me, the place of trench J-3 from where the aforesaid inscription was recovered, certainly did not form part of the structure of the old temple. I say that the inscription was part of the old structure



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because at the time of the old temple being demolished, its parts must have been scattered around the area. The aforesaid inscription was neither reused nor was found in debris rather it was found lying as such. According to me, that inscription was found in the section of a regular layer. If I am correct, it was perhaps layer 7. According to me, charts, pages no.37A and 37B of ASI report Volume 1, are tentatively prepared but they are not absolutely correct. As I can say layer 7 of J-3 cannot be assigned to Kushan period as shown in charts, pages no.37A and 37B. According to me, these two charts are not absolutely correct and even the ASI has referred to them as tentatively prepared. Similarly, it is not absolutely correct that layer 6, in part, may be assigned to Gupta period as shown in chart 37A of the ASI report. To ascertain periodization, these two charts may not be treated to be as the basis but we have to look to other parts of the report to come to the correct conclusion.

Q. On what basis, you have said that the layer in which the aforesaid inscription was found related to the 11th century period ?

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A. According to page 204 chapter 8, the ASI report has stated that the aforesaid inscription can be assigned to 11th century AD. This opinion is based on palaeography and not on the layer.

The report on page 204 says that the stone slab was found embedded in a section of wall in trench J-3 and located at the depth of 5.75 metres.

Palaeography is the general guide to ascertain the periodization of history. It can, however, be plus or minus of about 30 to 50 years. The letters of 'NG PAL' may be of somewhere between 950 to 1050 AD. In this way, the variation may be upto 100 years. Layers are also generally considered to be a source of periodization. Now we have definite source of periodization such as Carbon-14 dating, thermo-luminescent dating and special scientific techniques are being evolved for periodization and even the scientific study would have minus plus of about 100 years variation.



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**IN THE HON'BLE HIGH COURT, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

( R. S. No.236 OF 1989)

**19-09-2006** **O.P.W.17 Dr. R. Nagaswami**

I have no information about the name who might have constructed the second temple structure said to have been demolished in 1080 A.D. There is no discussion or reference in the ASI report about the temple structure said to have been demolished in 1030 A.D. and again in 1080 A.D.

I have mentioned about the demolition of the first and second temple structure as disclosed above on the basis of fragmentary inscription assigned to 11th century by the A.S.I. and also accepted by me on palaeographical ground and the two levels of carbon 14 dating as mentioned earlier read with 'The Attack On Ayodhya' by Syed Salar Masood mentioned in the gazetteer. For 1030 A.D. demolition of first temple structure, the only archaeological evidence available according to me is the inscribed slab referred to above. Wall 16 is built over a good number of carved stones of a classical temple assigned by the ASI in the report on stylistic ground to 11th Century and I accept it and this is the solid evidence found in this excavation beneath the foundation of wall 16 and on the basis of stratigraphic situation of wall 16 and 17 I say that the second temple was demolished in 1080 A.D.

It is correct that the ASI in its report has given no.3 to the disputed structure. Circular shrine has been given no.5 by the ASI. According to me, wall 17 is earlier to wall 16. Wall 17 had no connection with the earlier structure which was said to have been demolished in 1030 AD. However, wall 16 and 17 both have connection with the second temple structure which was said to have



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been demolished in 1080 AD. Both walls 16 and 17 belong to 11th century period but as stated earlier, wall 17 is earlier to wall 16. The ASI has in its report assigned the wall 17 of 11th century and wall 16 had different phases to 12th century. As per my knowledge, the ASI has assigned wall 16 of 12th century. But I defer with the view taken by the ASI and as per my opinion, wall 16 belongs to 11th century but there may be difference of 10 to 30 years as I have said earlier. Wall 16 was built after the attack of 1080 AD. in a hurried manner to protect the second temple existing there. Wall 16 might have been constructed some time around 1090 AD to 1100 AD. In respect of these periods given by me, there may be a difference of 10 to 30 years with the opinion given by the ASI. We have no evidence that the structure existing which was partially demolished in 1080 AD was restored or not. The size of the second structure which was demolished partially in 1080 AD may be about 15 to 20 sq. metres at the ground level and height would have been around 12 to 15 metres i.e. about 45 feet. The second temple structure which was partially demolished in 1080A.D. was a fully articulated structure with all the required parts of classical temple of northern India. The roof of the said temple was not resting on any pillar and it was therefore, obviously, resting on articulated walls. By articulated wall, I mean to say that the base will have a number of carved mouldings; walls which will have many carved pilasters, niches and sculptures. The entrance will have carved frames called 'panchshakhas' with beautiful creepers and other geometric designs with sculptures like Ganga and Yamuna at the entrance. The ornamental entrance lintel above and the ceiling will have a curved cornice, with a niches which is called 'Kapotaas' and the 'shikhara' above the sanctum sanctorum with a number of corner 'amalaka' too and on top there will be a full circular 'amalaka'. In short the articulated wall means the wall consisting of carved mouldings. The said structure must be built of carved stones. This structure must have been built sometime between 1030 to 1050 AD.



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The said structure was a one floor structure meaning thereby there was no further floor above the ground floor. This structure consisted of 'garbh grah' and a short preceding mandapa. I cannot say as to whether the size of 'garbh grah' and mandapa was the same or different. The size disclosed by me of 15 to 20 metres was only in respect of 'garbh grah' and it does not include mandapa. The mandapa was situated in the eastern side of garbh grah. This mandapa could have been of about 3 to 4 in square metres projecting from garbh grah. Its height may be upto the level of lintel level and may be of 10 ft. height. This mandapa must have also been made of stones. The statement which I have made about the partial destruction of this structure mean that some part of the structure might have been demolished such as side projection or part of the shikhar etc. The rest of the part of the main structure remained intact and was standing upto shikhar level.

9 As you have said that this so called structure said to have been partially demolished in 1080 was not resting on pillars, can it be said that this so called structure of temple had no relationship with the so called pillar bases pointed out by the ASI in its report?

A. It is not correct to say that the pillar bases had no relationship with the temple structure which was partially demolished in 1080 AD. The pillar base found by the ASI in its report were part of the enclosure walls which supported the pillared arcade.

11. What do you mean by enclosure wall?

A. The enclosure wall means wall 16, which goes all around the temple standing partially demolished in 1080 AD. Wall 17 was also enclosure wall of that structure and it was also going all around the temple.

No foundation of these walls 16 and 17 were found on the northern, eastern and southern side of the disputed site because



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there has been tremendous disturbances on all these three sides and also on the western side. The southern and northern side of walls 17 and 16 were not found standing. Wall 16 and 17 (enclosures walls all around) were not standing on any pillar bases.

Q. What kind of relationship these enclosure walls had with the so called pillar bases?

A. Pillar bases were supporting either a slopping roof or a flat roof and the end beams were resting on the wall 16.

Wall 16 was having roof all around supported by pillars. That means those roof were standing on pillar bases. The distance between the main temple structure and the structure of enclosure walls that is wall 16, was about 10 to 15 ft. all around.

(iv) What would have been the size i.e. width and length of the roof which you claimed to have been laid upon wall 16 at the one side and upon the pillars on the other side?

6. Length of the enclosure walls was found around little more than 50 metres on one side and width of the roof was of about 17 metres in 5 rows. Yes by row I mean that 5 pillars were standing in 17 metres. The distance between one pillar to other pillar base was about 3.5 metres.

The walls around and the roof thereon were in straight direction like wall 16 on the western side. Probably the roof that existed on pillars was also on straight direction on all the four sides. Voluntarily said that along with my affidavit I have given an illustration on pages 28/48 and 28/49 of my affidavit which gives an idea of the lay-out. The layout of temple which was partially demolished, as per my statement, in the year 1080 A.D., was more or less of the type as shown in illustration on page 28/48 of my affidavit. It is possible that while in illustration at page 28/48, no roof is shown on one side, the temple on the disputed site which was partially demolished in 1080A.D. had roof probably on all sides. The roof which was 17 meters wide all along the enclosure wall was



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resting on five pillars in a row along with width, meaning thereby, the first pillar was at the distance of about 3.5 meters from the wall and the last pillar in the row was on the outer end of the roof. The distance of the main temple structure was about 10 to 15 feet from the last pillar of this roof. This roof structure was the enclosure around the main temple structure and was not part of main temple structure. In this way the distance from the main structure of the temple and wall 16 on western side was about 60 feet. Similarly on the northern side also the main structure of temple would have been 60 feet from the wall on that side.

I have an idea of the disputed structure on the basis of photographs of the structure that existed up to 1992. The western wall of the disputed structure which existed until 1992 was resting on wall no.16. I do not remember the width of the disputed structure east-west. However, I can tell after going though the report. According to the ASI report the said width of the disputed structure east-west was about 30 feets. Similarly outer enclosure of the structure on eastern side also was about 20-25 feets. In this way, the structure that existed earlier and which was partially demolished in 1080 A.D. started where the disputed structure and its outer enclosure came to an end. The structure which was partly demolished in 1080 A.D. continued to remain in existence thereafter. The same continued to remain till the construction of the disputed structure. The three domed construction which was made in 1528 A.D., had 14 pillars with carving and some decoration. The same formed part of some earlier temple structure.

Q. According to your statement, these carved 14 pillars found in the disputed structure could not have formed part of the so called temple which was partially demolished in 1080 A.D. and which had continued, according to you, upto 1528 A.D.

A. The 14 pillars that were found in the disputed structure could not have formed part of that central sanctum structure



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which existed upto 1528 A.D. but they could have formed part of other mandap in the enclosures.

The enclosure walls around the temple structure on all sides, which was partially demolished in 1080 A.D., were constructed after 1080 A.D. This construction was made sometimes between 1090 A.D. to 1100 A.D. The width between the pillars of the said enclosure roof on all sides as stated by me as 3.5 meters was along the length also. According to my estimation, there would have been 17 rows of the pillars on one side of the enclosure wall. It means on one side enclosure roof had 85 pillars. In this way the total number of pillars, around the main structure, in the enclosure walls would have been 340.

In archaeology isometric view may be either a drawing on scale or a tentative drawing. In ASI's report Vol-1 figure 23 shows the isometric view of the disputed structure which was demolished in 1992. The portion indicated as floor 4A in the said isometric view has also been shown as part of said disputed structure. So is the position in regard to the portions marked as floor 2 and floor 3. As is shown in the said isometric view, floor 2 and floor 3 on the northern side, were out side the northern gate of the disputed structure. Figure 23A of the said ASI report is isometric view of the plan and not of the building. Figure 23 B of the said report shows the isometric view of the conjectural view of the pillars which might have existed on the excavated site. This conjectural view refers to the structure which came up after 1080 A.D. demolition, meaning thereby, the structure which was constructed between 1090 A.D. and 1100 A.D. This does not give the view that I have stated above because it is only a partial drawing. This map shows the western side of the structure described by me. This does not cover the temple structure that I mentioned which was partially demolished in 1080 A.D.. This does not help my view as mentioned above. It is difficult to say which of the pillar bases found by ASI



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pertained to pillars about which I have stated above constructed between 1090A.D. to 1100 A.D. Although, I cannot give the exact number but the pillars found on the western side around wall 16 are related to the structure I mentioned earlier.

8. The ASI has not reported about any pillar base found towards west of wall 16?

A. Yes it is correct that ASI has not found any pillar base on the west of wall 16.

Most of the pillars bases to the east of the wall 16 belong to structure erected in 1090 A.D. The height of the roof resting on the enclosure walls was 8 to 9 feet including the bracket on the top of it. The said roof could be of tiles, as also of thin slabs of stone. Probably pillars were of woods and just possible that some of them might have been of stone. Wooden pillars can survive for about 500 years and we have example of wooden rafter which survive for about 2000 years. It is not possible to say whether all the wooden pillars which were installed in 1090A.D-1100 A.D. survived until 1528 A.D. or not. I can specify some of the pillars from the drawing given in Vol-1 which formed part of the structure of 1090 A.D. Pillar bases no. 2, 3, 4, 5, 6, 7,8, 9 10,11,12,13,14 15, 16, 17,25, 28, 29, 31, 32, 34, 35, 37, 38, 43, 44, 45, 47, 48 pertain to the roofed structure of the enclosure walls constructed in 1090A.D.-1100 A.D. I do not remember whether these pillar bases no. 1 to 8 and 13 and 14 were made of stone blocks or bricks. I cannot say what sort of pillar base was required in bases of wooden pillars. The distance between the pillars as given by me as 3.5 meters was only approximate and looking to the situation this distance between the pillars could vary also but it is not possible that distance could very up to 5 or 5.50 meters. I am not able to say upto what maximum extent the distance between the pillars could vary. In case the base is small, more accurate measurement shall be maintained but where the base is bigger, minor adjustment will be made at the time of



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erection of the pillar.

Q. Have you examined this aspect by keeping in view figure 3A that whether the pillars shown in this figure are in one alignment or not.

A. I have examined this aspect and have come to the conclusion that the alignment given does not pose any major problem. The pillars are in alignment within reasonable limits. Since figure 3A in ASI report is on scale, the distance between pillar bases can be accurately measured. However, I will not be able to measure this distance even if I am provided the scale because it is the specialisation of the surveyor and I am not a surveyor.

Q. My suggestion is that distance of so called pillar bases extends from 3 meters to 5.50 meters and even more and they cannot be said to be in one alignment?

A. The variation mentioned in the distance between pillar bases might be due to functional requirement as I have already mentioned earlier. Therefore, it is not correct to say that they are not in alignment.

Structure 5 (circular shrine) could not have formed part of roofed structure constructed in 1090-1100 A.D. Southern enclosure wall of the roofed structure constructed in 1090-1100 A.D. should have been further south of the circular shrine. It is not possible to say how far it was further south after the circular shrine.

**8.** According to your statement the so called temple structure partly demolished in 1080 A.D. might have started in the northern side around the place where the northern wall of the disputed structure existed upto 1992?

A. Yes.

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**Before :-Commissioner Sri H.S. Dubey, Additional District judge/Officer on Special Duty High Court Lucknow.**

**21-9-20006** **O.P.W. 17 Dr. R. Nagaswami**

**Pages 296-298**

In chapter VII in the ASI's report no conclusion has been given about the existence or non-existence of any temple of 11th or 12th century. In chapter seven of the above report. No reference to demolition of any temple is also given. It is true that conclusion of this chapter is given on page 174 itself. I agree with this conclusion given on page 174.

I don't know about any of the two persons mentioned as authors of chapter VIII (eight) on page 204. I have not even heard about them. I have gone through the entire chapter eight of above report. I agree with all the observations made in this chapter except the reading of the 'Nagri' inscription, the last letter. I would prefer to see the original. It is not available for me therefore I accept what ever is written about it in this chapter. The authors of chapter eight have not given opinion about the existence or non existence of any alleged temple of 11th or 12th century. They have not given any opinion even about the demolition of any alleged temple of 11th or 12th century.

I don't know any of the authors of chapter IX, which are mentioned at page 219. I have not even heard their names. Most of the items mentioned in this chapter are glan beads and precious stones. Some of them are glazed wares. The conclusion of this chapter is given only on page 219 but there is a note on page 228 about this. The authors of this chapter also had not given any opinion about the existence or non existence of any alleged temple of 11th or 12th century A.D. or even about demolition of any such temple.

Out of the four authors of chapter V (five) mentioned on page 73 of the above report I know two of them namely B. R. Mani



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and P. Venkatesan. B. R. Mani is well know in the field of archaeological excavation and P. Venkatesan, after serving as Superintending Archaeologist of temple survey in southern India, is working in Delhi as Director of Institute of Archaeology. P. Venkatesan according to me has worked on South Indian Temples and now he is in ASI's office in New-Delhi. I don't know whether P. Venkatesan has submitted any excavation report or not. I don't know whether P. Venkatesan has got specialisation in any branch of archaeology or not. I don't know about other two persons who are authors of this chapter. I have gone through this chapter in a very general way. In this chapter the authors have confined to dealing with the description of the potteries period wise. They have not given any opinion about existence or non existence of any alleged temple of 11th or 12th century A.D. They have not given any opinion about the demolition of any alleged Hindu temple of above period.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**22-9-2006** **O.P.W.17 Dr. R. Nagaswami**

**Page- 313**

I have not read about the said Sultan Ibrahim in any book of history but I have read about him only in one gazetteer. I think this gazetteer of 'Oudh' was written by Edward Thorinton. On page 171 of my statement ( last six lines ). I have referred about the establishment of his capital by Syed Salar Masood 10 miles away from Ayodhya. I have read about it in the gazetteer but I don't remember its reference in the gazetteer.

Q: From no historical text or source it appears that Syed Salar Masood had ever established any capital 10 or 20 miles away from Ayodhya or he had ever attacked on Ayodhya. What do you say about this?

A: I am confident that I did read about it, but I don't remember its reference at this stage.

Q: From no historical source or text it appears that any so called 'Sultan Ibrahim' had ever invaded Ayodhya much less around 1080 A.D. What do you have to say about this?

A: As the gazetteer has mentioned about the Sultan Ibrahim specifically and about his invasion of Ayodhya. I have taken it as a historical fact.



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**STATEMENT OF O.P.W. 18**

**SRI ARUN KUMAR SHARMA**

**(PART-III)**

**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**03-11-2006** **O. P.W. 18 Arun Kumar Sharma**

**Pages 153-154**

A. Ghosh was Director General of ASI. He edited the 'Encyclopaedia of Indian Archaeology' after his retirement, on behalf of Indian council of Historical research. Prof. B B. Lal had also contributed some chapter in this encyclopaedia. This Encyclopaedia does not give any detail about habitational deposits at Ayodhya. This encyclopaedia was edited by A. Ghosh, Prof. B. B. Lal had not excavated at Ayodhya by the time. This encyclopaedia was published in 1989. I don't remember as to who contributed on Ayodhya. Dr. A. Ghosh was a very thorough edition and he was one of the best editor, ASI had ever produced. Prof. Ram Saran Sharma was also associated with Indian Council Of Historical Research (I.C.H.R). He worked on many projects on behalf of I.C.H.R. I have filed the extract of some of the books authored by Prof. R. S. Sharma. One extract is annexure no. 26 filed along with my affidavit. Prof. Sharma is very well reputed Historian and International scholar. I don't know whether Prof. Sharma had submitted any report to Govt. of India along with three other historians. I don't know whether this report was published as 'Ram Janam Bhumi - Baburi Masjid A historians report to the nation'. I know Prof. Suraj Bhan since the time when he was employed in ASI. I do not know Prof. D. N. Jha of Delhi University. I don't know Prof. Athar Ali of Aligarh University. I have heard the name of Shereen Ratnagar and meet her at the disputed site. I have heard the name of Prof. D. Mandal but I have never meat him. I have



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heard about Prof. D. Mandal's book entitled as 'Ayodhya Archaeology after Demolition' but had not chance to go through the same.

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**Page 158-159**

The glazed wares found during the excavation by ASI at the disputed site at Ayodhya has also not been seen by me. I have seen only four photographs of glazed wares found by ASI which are given in the ASI report volume 2. I might have seen other photographs also while going through the ASI report, but I don't recollect.

**Before:-Commissioner Sri H. S. Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

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**06-11-2006** **O.P.W. 18 Arun Kumar Sharma**

**Pages 175-176**

I have not examined any site not book. I agree that on page 270 the ASI has confined glazed wares sherd's from the last phase of period VII whereas on page 108 no such phase of period VII has been given for the occurrence of glazed wares. I don't find any discrepancy in the above two observations of ASI as given in page 270 and page 108. I accept both of these observation to be correct as it is not the glazed ware alone that determine the periodization. I don't think that glazed wares are of any vital importance in determining the periods as they have to be taken in considerations along with other finds and Carbon-14 dating. As already stated earlier it is the technique of manufacture, colour etc. which will show as to what date they belong.



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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**07-11-2006** **O. P.W. 18 Arun Kumar Sharma**

**Page 191**

The references given in the lime-surkhi mortar in para 2 and 3 at page 50 of the ASI report volume 1 relate to the earliest level i.e. first phase of structural construction which means post Gupta level. Both these reference relate to the portion where Ram Chabootra's constructional phases have been found. The earliest phase of Ram Chabootra belongs to 9th 10th century A. D.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

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**08-11-2006** **O. P.W. 18 Arun Kumar Sharma**

**Pages 202-205**

Lothal report published by ASI in 1985 is the same report the cover page of which has been filed as paper no. 326C1/9. The site mentioned by me in para 8 (III) in my affidavit is the same site regarding which this report was published by ASI in 1985 and the copy of title page of which has been field as paper 326C1/9 and paper no. 326C1/11 to 326C1/25 is the copy of the report on animal remains published in the said excavation report of Lothal. I have read this part of the report. The procedure adopted by these authors is also a correct procedure for giving such reports on animal bones. The name of the persons which are mentioned on title page of Lothal report, paper no. 326C1/9, along with the names of Sri S. R. Rao, are the contributors of different specialised chapters in the aforesaid Lothal excavation report. Dr. B. B. Lal whose name is mentioned a contributor in the said Lothal report is not Prof. B. B. Lal who was Director General of ASI but this Dr. B. B. Lal was the



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chief archaeological chemist of the ASI. I have no association with Atranjikhera excavation but I had taken part in Kalibangan excavation. The report on Kalibangan excavation so far as pre Harrapan levels are concerned has been recently published by ASI whereas the Harrapan part as per my knowledge is under preparation because I have been asked to submit my field report on human skeleton remains at Kalibangan which I have complied with. I participated in Kalibangan excavation from 1961 to 1969. The title page of which has been filed as paper no. 327-C1/1 is the same report which I have referred above as having been published. This relates to the period of excavation from 1960 to 1969. The chapter on animal remains in this report, copy of which has been filed as paper no. 327C1/2 to 327C1/17 was written by the experts from Zoological Survey Of India and authors names of that chapter have been mentioned on the title page of the report paper no. 327C1/1. In this chapter on animal remains they have described the identification of the bones. There is no other chapter on animal bones in this report of Kalibangan excavation. The name B.B. LaL which finds place on title page of 327C1/1 along with the names of Jagat Pati Joshi, B. K. Thapar and Madhubala, is the same B. B. Lal who was Director General Of ASI.

Out of the five excavation reports mentioned in paper no. 327C1 my contribution is only in the report of Surkotada excavation. Similarly out of the eleven excavation reports mentioned in paper 326C1/A and 326C1/B, my contribution is only in the report of Bhagwanpura excavations. In excavation report of Surkotada, copy of titled page of which has been filed as paper no. 327C1/34 my name finds place along with the names of Arun Kumar etc as contributors of the report. The portion of the report entitled as ‘ Animal bone remains’ filed as paper no. 327C1/37 to 327C1/57 has been contributed by me. This is my full report which was submitted to ASI regarding animal bones. This report was prepared by me on the basis of study of bones on excavation site as



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well as in the laboratory.

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**Page 206**

Q: Is it correct to say that if there was no expert on bones in the ASI team of excavation at Ayodhya it was the duty of leader of the said team to get the bones recovered at Ayodhya examined by some experts and to include the report of such expert in the final report of excavation submitted to the Court ?

A: I fully agree that the bones should have been got examined by some expert on the subject who could have submitted his report if possible at the time of the filing of the final report or later when the examination is completed.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

(R. S. No. 236 / 1989)

**13-11- 2006** **O. P.W 18 Arun Kumar Sharma**

**Page 239-240**

My statement that niche in wall no. 16 cannot be the niche of Idgarh because of the reason that the same is not in the centre of the wall, is only one ground for saying that wall 16 is not the wall of Idgarh. However, I have not mentioned any other ground in my affidavit supporting my contention that wall no. 16 is not the wall of Idgarh. Since I have not seen the disputed structure when it existed, I cannot say whether there were arches in the walls or not. In figure 1 of plate no. 3 on page 8/1 of paper No.120-C-1/69 (Indian Architecture – Islamic Period), there are arches in the gate shown in the said picture but in the said gate, no niches are visible. Similar is the position in figure 1 of plate no.6 on page 8/4 of the said paper. However, in figure of plate no.8 on page 8/6, in addition to the arches, a niche is also clearly visible in the bottom of the left side of the grave. It is wrong to suggest that there is no niche in plate 8 on page 8/6.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

(R. S. No. 236 / 1989)

**14-11- 2006** **O. P.W 18 Arun Kumar Sharma**

**Pages 245-247**

'Parnala' is a term used for flow of water. Parnala is not used in all sorts of buildings for the exit of water from top of the roof. Parnala is used from inside the room of a temple generally from the garbhagrah i.e. Sanctum santorum. 'Parnala' is not used in all temple but used only in Shiva's temple. 'Parnala' is Sanskrit word. I do not agree with the suggestion that 'Parnala' is used for exit of water from the roof top of all sorts of building. The circular shrine of Mansar as referred to in para 31 of my affidavit and depicted at page 27/167 of my affidavit, is similar to the circular shrine excavated at the site in question. Voluntarily said the variation between the two is that in case of Ayodhya excavation, the circular shrine is circular externally and square internally whereas that at Mansar, it has a circular shape internally and both are called circular shrine. The dimensions of the circular shrine of Mansar( page no.27/167), is internally 1.5 metres east-west and 1.5 metres north-south on the point of the circle. I have neither given these dimensions in my affidavit, nor they are mentioned in Annexure No.20 of my affidavit. It is incorrect to say that the dimension of shrine depicted at page 27/167 is much larger that 1.5 metres as stated above, by me. Scale lying in the shrine is clearly visible. That scale is 50 centimetres long. The entrance gate in the Mansar shrine is located on the top side of the photograph. The entrance is 50 centimetres in width. The extent height of Mansar shrine is 10 courses of bricks i.e. 80 centimetres. The estimated height of the roof of the said shrine is 2.50 metres. The square

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structure in the centre of the circle on page 27/167 is Yoni-peeth. It is 55 X 55 centimetres in diameter. To the back side of the wall of the circular structure, there is space and the square structure is detached from all the side of the circular structure. The height of the square structure is 35 centimetres. The height of the square structure is 35 centimetres from base and the roof over the structure must be 2.15 centimetres. It is incorrect to say that in this photograph(page 27/167), Parnala on the square structure is not visible for taking water of the structure outside the circular shrine.

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**Pages 252-253**

The ASI has not used the word 'demolished' anywhere in the report either in respect of a 'temple' or in respect of a 'wall'. I have mentioned the word 'demolition/demolished' in the first and last line of page 20 of my affidavit on the basis of evidences, I have seen at the excavation site during my visit. The said evidences are, that in the foundation of the wall of the disputed structure, architectural fragments, as for example, 'Makar Pranal' and bricks of the earlier structure, were used. 'Makar Pranal' shown in plate 23 of ASI's report Vol. II is the same 'Makar Pranal' which I have referred to in the second para on page 20 of my affidavit. The said 'Makar Pranal' is in the foundation wall of wall no. 15. Said again that the said 'Makar Pranal' is actually in wall no.5. This 'Makar Pranal' was not found above wall no.16. This 'Makar Pranal' in wall no. 5 was abutting wall no.16. Wall no. 5 was abutting wall no.16. Wall no.5 was not directly resting on wall no.16. My statement to the effect on page 20 that wall no. 5 was directly resting over wall no. 16 is not correct in respect of one trench but it is correct in respect of the entire remaining length of the wall where I have stated that it was resting over wall no.16. I have not stated in my affidavit as to from where the 'Makar Pranal' of plate no. 23 came originally.

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**Page 254**

This is true that the Central Advisory Board of Archaeology of which I am a member is the highest Advisory Body for Archaeology. The last meeting of the said Board was held on 2nd August, 2006. I have received a notice for the meeting. Along with a notice I have received the minutes of the earlier meeting. It is wrong to say that a copy of the minutes of the Standing Committee held on 20/21.10.2005 was also enclosed alongwith the notice received by me. I had received minutes of the earlier meeting of Central Advisory Board of Archaeology only.

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**Pages 255-259**

I am not a member of the said Standing Committee. The names of the members of the said Standing Committee are given in the Minutes dated 20/21.10.2005 at page 18. In the chart annexed to the said minutes of the Standing Committee as Annexure No.1, the details of the projects recommended/not recommended for the seasons 2005-2006 are given in the form of chart. It is correct to say that my project which was recommended by ASI is mentioned at Sl.No.35. At Sl. No.92 and 93 of this chart, there are proposals submitted by Dr. S. P. Gupta which were not recommended. Dr. S. P. Gupta is the same person who has written a book on Ayodhya and is the President of Indian Archaeology Society. The proposal at Sl. No. 94 was submitted by the same Indian Archaeological Society through Dr. S. P. Gupta. Alongwith me, Prof. Shiree Moosvi, Prof. Suraj Bhan, Prof. D. Mandal and Sri Sitaram Rai are also the members of the Central Advisory Board. All these four persons have appeared in this case as witnesses. Director General, ASI is the final licensing authority for the purpose of granting licence for excavation anywhere in India and he has a power to grant the licence, even if it is not recommended by the Standing Committee of the Central Advisory Board of Archaeology. The Central Advisory Board consists of eminent archaeologists, historians and scientists, apart from other

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important persons including Members of Parliament.

By 'photographs' used in last line of paragraph 14 of my affidavit, I mean photographs contained in volume II of the ASI's report and not any other photographs said to have been submitted by the ASI in this Court. The 'other connected records' mentioned in para 14 refers to Video which was displayed in this Court and no other record. I have not seen the 'antiquity register' or any other register or the drawings prepared during or after excavation except the two volumes of the report. The critical examination of the excavated structures, layers and deposits as referred in para 13 of my affidavit refers to my examination on the site on 6th and 7th August, 2003 before the report was submitted. I cannot give the number/s of the structures which were examined during those two days. I cannot say, as I do not remember, the total number of structures found by ASI in the excavation. I can only say that more than 15 structures were examined by me at the site. Ram Chabutara, circular shrine, wall nos. 5, 16, 17, 18, 19-A and 19-B are among those structures which I had examined during the aforesaid visit. I had examined these structures from the surface of the excavation site as I was not allowed to enter into the trenches. I examined them with my naked eyes without use of any instrument. Apart from structures, I had examined the deposits in the layers, etc., By 'deposits', I mean pits and dumps. I have not seen any glazed wares, polished wares, bones or any antiquity recovered from the excavation and therefore they do not come in the word 'deposits' used by me in para 13 of my affidavit.

My statement in para 15 of my affidavit is based entirely on the two volumes of the ASI report and not based on any other documents, including site note books and antiquity register. This is wrong to say that it is not evident from the report that the excavation was carried out following the scientific norms and also that the antiquity register and the day site note books were maintained properly and in accordance with the settled archaeological norms. This is correct to

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say that the site note books during excavation have to be prepared every day for the work done on that day. The antiquities found during excavation are sent to the antiquity section where they are recorded in the antiquity register. I cannot say whether there was any antiquity section during excavation at Ayodhya. I do not know that the antiquity register was prepared during excavation at the site.

Q. If you do not know, as to how the antiquity register was prepared and in what manner the site note books were prepared and maintained, then on what basis you can say that the excavation was carried out and report was given in conformity with the archaeological principles and norms and the report is a most scientific report.

A. I have made this statement on the basis of the end results of the excavation which have come out in the form of two volumes of the report by ASI.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

(R. S. No. 236 / 1989)

**15-11-2006** **O. P.W. 18 Arun Kumar Sharma**

**Pages 261-262**

Q. When you have not checked and examined either the antiquity register or the site note books, then on what basis you have said in your affidavit that the finds were recorded and interpreted strictly in accordance with the settled archaeological norms and on what basis you say that site note books have been duly recorded ?

A. In archaeology, like any other scientific profession, there is a professional ethics and the first lesson is strict honesty and aloofness from any distortion or conjecture. The findings have to be stated as they are found. So the question of having any doubt on the excavator does not arise so far as antiquity registers, site note books etc. are concerned. The entire report is always written on the basis of these primary records. Since I was satisfied with the statements given in the ASI's report, Volume 1 and drawings and photographs in Volume 2, I did not find it necessary to go through the voluminous antiquity records, site note books etc. Moreover, in the site note books, the recordings are made by each individual site supervisors and at the time of writing the report, all have to sit together for their respective chapters and come to a final conclusion in spite of the fact that recording in one site note book may slightly vary with the other site notebooks.

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**Page 262**

Q. Whether these so called pillar bases were meant for stone pillars or wooden pillars?

A. As far as I can surmise, these were meant for stone pillars.

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**Pages 264-266**

I have not measured the distance between the pillar bases at the site in question but I measured the distances by scale in the drawings of the ASI's report. I measured it in the drawing of the figure no.3A (Volume 1 of the ASI's report), so far as I remember. Again said, I think, it is figure no.3 and not 3A.

On seeing the figure no.3 of the Volume 1 of the ASI's report, I can say that the number of the pillar bases are not mentioned in it but the trenches are certainly there. I have not measured their distances with reference to their number but I measured them with reference to their location in the trenches. In this figure, the distance between any set of two pillar bases is not approximately 5 metres. I don't agree with the suggestion that the distance between pillar bases no.48 and 49 is 5 metres as per ASI's report in figure no.3A( page 48A).

Q. Is it not correct to say that the distance of the pillar bases could be measured from this figure 3A on the basis of pillar base numbers?

A. Yes, they can be measured.

The distance between pillar no. 48 and 49 is approximately 4 metres. The distance between 47 and 48 is approximately 2 metres. The distance of pillar bases no.29 and 30 is about 4 and a half metres obliquely. The pillar base no.32 and 35 are in straight alignment of pillar base no.29. The distance between pillar base no.29 to 32 is slightly more than 2 metres. The distance between pillar bases no.32 and 35 is approximately the same as above. The distance between pillar bases no.22 and 25 is approximately 3 metres. It is wrong to suggest that the distance between pillar base no.22 and 25 is about 4 metres. The distance between pillar base no.15 and 22 is slightly more than 4 metres.

The pillar bases nos.2, 10, 15, 22 and 25 are in oblique alignment. The pillar bases no.11, 12, 13 and 14 are in alignment with pillar base no.10 on western side. The distance between pillar base no.11 and 12 is slightly more than one metre. The distance between

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pillar bases no.12 and 13 is the same i.e. one metre. The distance between pillar bases no.10 and 11 is little less than two metres. The pillar bases nos.15 and 16 are in straight alignment from west to east. The pillar bases nos.18 and 19 are in alignment from west to east. There is no pillar base towards the east of pillar base no.25. This is correct that there is no pillar base in between pillar bases no. 25 and 26. The distance between pillar bases no.25 to 26 is approximately 6.5 metres.

15. Kindly point out 17 pillar bases in north south orientation and 5 pillar bases in east west orientation in alignment with each other in figure 3A and in figure 3 of the ASI's report as you have mentioned in para 26 of your affidavit.

A. The pillar bases in 17 rows north to south starts from pillar base no.2,7, 10, 15, 22, 25, 28, 31, 34,40, 44, 47 and the remaining five in the un-excavated area. From the figure 3A, one can notice 12 pillar bases from western side in first row. The remaining five must be in the unexcavated area.

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16. Kindly point out 17 pillar bases in north south orientation and 5 pillar bases in east west orientation in alignment with each other in figure 3A and in figure 3 of the ASI's report as you have mentioned in para 26 of your affidavit.

A. The pillar bases in 17 rows north to south starts from pillar base no.2,7, 10, 15, 22, 25, 28, 31, 34,40, 44, 47 and the remaining five in the un-excavated area. From the figure 3A, one can notice 12 pillar bases from western side in first row. The remaining five must be in the un-excavated area.

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**Pages 269-270**

**7.** On what basis you have said in your para 17 of your affidavit that the Director of Ayodhya Excavation has made an analytical, comparative and critical assessment and has reached to the final conclusion in consultation with team members,

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when no such mention is there in the ASI report?

A. The very fact that different chapters in the ASI report have been contributed by the team mates of the excavation-team clearly shows that there was consultation, analytical study, etc. amongst themselves after which the Director of the Team reached some conclusion which is recorded in chapter X of the A.S.I. report Volume I. Yes. The Director, who is also a contributor of some of the chapters, alongwith his team mates must have analytically, comparatively and critically made assessment of the different chapters and results thereupon alongwith his team-mates.

Q. The Director of the team at the time of submission of ASI report was Mr. Hari Manji and he has not contributed any chapter in the report alongwith any team member?

A. By Director of the team, I mean, the person, i.e. Dr. B. R. Mani who was for the longest period as Director of the team.

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Q. Do you mean to suggest that the last chapter, i.e. Chapter X about conclusion was written by Dr. B.R. Mani as Director?

A. The conclusion part is sum-total of the results of the different chapters and it is not to be written by one individual. It is drafted jointly by all the contributors. Since Sri Hari Manji was the Director of the Team at the time of writing the report, therefore, he must have made consultation with the members of the team and thereafter on analytical, comparative and critical assessment, he must have reached to the conclusion.

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**STATEMENT OF O.P.W. 19 (SHRI RAKESH DATTA TRIVEDI)**

**Before:- Commissioner Sri H.S. Dubey, Additional District judge /Officer on Special Duty, High Court, Lucknow**

O.O.S NO. 5 OF 1989

( R.S. No. 236 OF 1989)

Bhagwan Sri Ram Virajman at Shri Ram Janam Bhumi & Others----------Plaintiffs

Versus

Rajendra Singh and Others ----------Defendants

( Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5 /89 ( R.S. No.236/1989) Bhagwan Sri Ram Virajman at Shri Ram Janam Bhumi & Others Versus Rajendra Singh and Others

**03.10.2006** **O.P.W 19 R. D. TRIVEDI**

**Page Nos. 9-10**

I had not visited excavation site at Ayodhya during the course of excavation. Recently on 24th of September 2006 I have visited the disputed site for a brief while. At this time most of the trenches were covered / filled with sand bags. I never visited Ayodhya prior to 24th September 2006. My parents and ancestors belong to Barabanki District U. P. My ancestors were resident of village Mardapur. Tahsil Haidergarh District Barabanki. I have been at several places during my tenure of service but presently I am settled in Delhi. I have never been posted in U.P. during my service. I joined my service National Museum in 1962 and retired in the year 1993 from ASI. My service

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in National Museum Delhi was not governed by ASI at present both are separate organisation. When I was selected in ASI, I was relieved from National Museum. Initially I joined in ASI as Deputy Superintendent Archaeologist. From 1958 to 1962 I worked as custodian in educational museum Etawa and state Museum Lucknow. By means of my affidavit of examination-in –chief, in nut shell I want to convey that as per the excavation report submitted by ASI there were structures under the disputed structure and several fragmentary sculptural and architectural remains have been encountered underneath. The structures which were found below disputed structure during excavation were Hindu structure. The remains of the sculptural and architectural fragments which were found below disputed structure were indicative to temple association.

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**Page 11-12**

Q: Whether the title of the book as given by you indicates that there has been a Pratihara period in Indian history and that pertain to central India ?

A: 'Pratihara' period indicates the time bracket of the imperial 'Pratiharas' dateable form 8th to 10th centuries A.D. and central India means the location of the temples of that region belonging to that time bracket. 'Pratiharas' were a ruling dynasty. Whole of India was not under their rule. It was only limited mostly in northern India. Uttar Pradesh as known today was under the rules of 'Pratiharas'. During their heydays Pratiharas ruled from parts of Himanchal Pradesh to Narmada in the south and from parts of Gujrat to parts of Bihar in the east. 'Pratihara' is a dynasties name of kings. They ruled from 8th to 10th century A.D. meaning there by they rule for about 300 years. They took over from some smaller King ruling from Ujjan and Kanauj in northern India. Pratihar surrendered rule from Chandelas, Paramaras, Kchchhapaghat etc. Prior to Prtihara's Kanauj was being ruled by 'Ayudha' dynasty. To be sure in this respect I have to refer to

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my book. I don't remember the who was ruling Ujjan prior to Pratihara.

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**Pages 13-14**

I can mention the names of some Pratihara rulers such as Vatsaraj, Nagbhat, Bhoj, Mahendra Pal etc. I don't know whether people belonging to Pratihara dynasty are living these days in India or not. I don't know that whether the successors of Pratihara dynasty are living in Uttar Pradesh or not. So far study of Ancient Indian History was concerned in my course it pertains from the earliest period to 12th century A. D. By earliest period I mean from Palaeolithic period onwards. Palaeolithic period includes stone age. Rule of Pratihara dynasty does fall with in the course of Ancient History studied by me. I have also read Archaeology. Study of this subject was part of my M. A. degree. I have got practical knowledge of archaeology during my service period. I have not done any excavation. I have not written any excavation report. I have not scrutinised and reviewed any excavation report. I know Sri B .B. Lal and I have not worked under him. I don't think Sri B. B. Lal was holding any post in ASI in 1974, when I joined the service in ASI. Temples of Pratihara period have got significance. It is a transition period in architecture from Post-Gupta (7th century) to late Medieval (11th –12th century) temple architecture. Temples raised during Partihara period in northern India are know as Pratihara temples. Temples in India have been noticed in 4th –5th and 6th century A.D. Generally the temples of this period are known as Gupta temples. Temples in 1st 2nd and 3rd century have also been noticed in India but at very few places. No dynastic name is assigned for the temples of 1st to 3rd century A .D. Pratihara temples have got some distinguishing characteristic of their own. Temples have been noticed in other part of India also during period of 7th to 12th century A .D. They were known by the names of dynasty / regions in which they were constructed.

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**Before:- Commissioner Sri H.S. Dubey, Additional District judge /Officer on Special Duty, High Court, Lucknow**

( Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5 / 89 ( R. S. No. 236/ 1989) Bhagwan Sri Ram Virajman at Shri Ram Janam Bhumi & Others Versus Rajendra Singh and Others.

**04.10.2006** **O.P.W 19 R. D. TRIVEDI**

**Pages 22-23**

My specialisation in History is regarding Pratihara period but I don't remember the whole details and date of the rulers of this dynasty.

Pratihara temple style is part of Nagar style.

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Q: Do you mean to say that as regards the style of temples, Nagar style of temple is a generic term and Pratihara style is a species of the same confine to central India ?

A: The term Nagar style includes the temples styles which developed in northern part of India right from Gujrat in the west to Bengal in the east including even certain parts of Deccan and south. The Pratihara style belongs to the region which was ruled by Pratihara kings in northern and central part of India during 8th to 10th century A. D.

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**Pages 26-27**

The Grabhagriha is the sanctum sanctorum where deity is installed whereas the Mandapa portion was meant for the assembly of worshipers and religious activits. The main Shikhar is over the Grabhagriha but Mandapa also has a top at a lower level in various forms. The top of Mandapa has also a Shikhara. The Shikhara at the

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top of Grabhgriha is at a higher level than the Shikhara of a Mandapa. Said voluntarily flat roofed temples were also constructed in early period. For instance in 5th , 6th century A. D. i.e. temples without Shikhars were also constructed. Shikharas can not be called domes. I am conversant with the word 'Gumbad' of Urdu language. There is no similarity in Gumbad and Shikaras as regards its architectural formations. One is pointed and pyramidal where as other is round and bulbous. In very late medieval period some Shikharas were of round shape. I don't remember even a single Shikara of round shape. I might have read somewhere about these types of Shikaras but I don't remember the reference at this time.

No temple of Pratihara style has a dome as super structure meaning there by in Pratihara temples no Gumbad type Shikhar is found.

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**Before:-Commissioner Sri H.S. Dubey,Additional District judge/Officer on Special Duty, High Court, Lucknow**

(Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5/89 ( R. S. No. 236/1989) Bhagwan Sri Ram Virajman at Sri Ram Janam Bhumi & Others Versus Rajendra Singh and Others.

**05.10.2006** **O.P.W 19 R. D. TRIVEDI**

**Page 35**

Lata Vallari or Lata-Valli or Kalpa-Valli or Patra-Lata are the terms to denote the foliage pattern with an undulating stem. These terms come under Indian Art and are found in Shilpa text connected with decoration of temples. 'Shilpa' means engraving on stone and in broader sense includes all activity connected with sculpturing and construction work. Patra lata or Lata vallari has got significance with relation to Hindu temples and denote the idea of prosperity. They have been followed in Hindu temples as well as in palaces and later on in other buildings also. I have seen the Mosques. Such decorations are found in Mosques but the pattern and style are different. The pattern of these decoration in Hindu temples and palaces is the same and it differs when used in the Mosque if not taken from the remains of a Hindu temple. In Mosques if it is not taken from a Hindu temple it is more stylised and loose the pristine (earlier) nature. The stylisation does not mean that the decoration becomes more attractive but it looses the naturalistic treatment found in the earlier period. I can't say how other persons having no expertise in this field would notice the difference between these decorations found in Mosques and used in other places.

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**Page 36-37**

The other details such as Amalaka pattern and Mala designs are also visible to some of the pillars. By the term Purna ghata Pallava or Ghata Pallava is meant a pitcher over flowing with foliage motif containing water. Pitcher is also generally used to keep water. Pitcher are made up of earth or metals. Importance of water is common to every bodies. Foliage motif means the leaf and floral patterns coming out of Ghata and that makes the term Ghata Pallava. Foliage motif are the words of English language where as the word Pallava is of Sanskrit language which means leaves with stem. Pallava means leaves with stem. Foliage motif are two words. By the word foliage I mean Pallav and motif means pattern or design. I don't think there is any other nearest word in English for the word foliage. Floral means pertaining to flower, motif means pattern. Flower and Pallav are general terms applicable to any flower and leaf. The defaced statue indicated by me in the left side of pillar (paper no. 7/3) is not decipherable as it is not clear. By the term diamond pattern is meant a rectangular decoration found generally in the temples. Amalaka pattern is the constricted Amalaka found on the pillars. Mala design is garland motif. Diamond pattern, Amalaka, Mala design floral motif and Ghata Pallava are symbolic religious motifs found in the temples. These things are decorative objects or not depends on their placement. These things can be found in other buildings also.

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**Before:-Commissioner Sri H.S. Dubey ,Additional District judge/Officer on Special Duty, High Court, Lucknow**

(Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5/89 ( R. S. No. 236/1989) Bhagwan Sri Ram Virajman at Sri Ram Janam Bhumi & Others Versus Rajendra Singh and Others.

**06.10.2006** **O.P.W 19 R. D. TRIVEDI**

**Pages 39-41**

The words door jambs is an English word and in Sanskrit it is called as Dwara-Shakha. Door-jambs are the supporting columns of lintel of the door way. Door jambs are in both sides and stand in vertical position and lintel is resting on them in horizontal position above them. Thus the door- jambs, lintel (uttarang) and door sill ( Udumbar). Door jambs, lintel and door sill comprise the door frame. Kapotpali, Kapot or Kapotika are the terms used for cornice slightly projected out in the scheme of the temple construction. Shaft means part of a pillar. Octagonal is the shape on the ground plan of a column or any other construction. In Sanskrit it is called 'Ashtashra' meaning eight-sided. These are the common component of a building but they attain sanctity when used in context with a temple. I don't know whether above components is used in Gurudwaras and Churches are given any sanctity by their followers. Above architectural members can be found in other buildings as well but the technical terms given in Shilpa text as Dwarashaka, Uttrang and Udumbar are not applicable to them. The other buildings will include religious buildings also. Madhyalata is the central shoot rising upwards in the middle of the Shikhara of the temple. Karna Amalaka is the constricted Amalaka placed on the corner portion (Karna) of the Shikhara to denote the storey of the Shikhara. Griva portion is the

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neck portion of the Shikhara below the top Amalaka of the Shikhar. Griva is a Sanskrit word. Indian Arts include the art which developed in India but it is commonly used in connection with the arts which originated in India. The architecture, sculpture, icons/ images , bronzes and paintings are studied in Indian Arts. This has no concern with any particular religion. It is true that statues may be found in the palaces. Besides Indian Arts I have expertise in Iconography also. Iconography is the study of images and their development through the ages. This is generally artistic study. Iconography is not related to any religion. There are large number of Gods and Goddesses which are worshiped by the followers of the Hindu religion. The one broad division is that the Gods are male deities and the Goddesses are the female deities. Some times there are composite forms also as in the case of 'Ardha-Narishvara'. I have never counted the number of Goddess ( devis ). I can distinguish one Goddess from the other if their images are placed before me. I have never tried to count the number of Goddesses. I am not aware whether roughly there are ten thousand Goddesses. I have never considered the problem of counting of different Goddess which I can distinguish.

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**Before:-Commissioner Sri H.S. Dubey ,Additional District judge/Officer on Special Duty, High Court, Lucknow**

(Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5/89 ( R. S. No. 236/1989) Bhagwan Sri Ram Virajman at Sri Ram Janam Bhumi & Others Versus Rajendra Singh and Others.

**09.10.2006** **O.P.W 19 R. D. TRIVEDI**

**Page 55**

Q. Whether you notice any contradiction in this para and para 2 of ASI report at page 271. Is here at page 37 the ASI has disagreed the result of $C^{14}$ test and at page 271 has relied upon the same. What do you say in this regard?

Ans. As I have emphasised repeatedly that I have not done any excavation or written a report on that and I am not an expert of $C^{14}$ dating so I am not in a position to reply this question, better the same may be asked with excavation experts. My field is limited to architecture and iconography as given in my affidavit.

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**Before:-Commissioner Sri H.S. Dubey ,Additional District judge/Officer on Special Duty, High Court, Lucknow**

(Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5/89 ( R. S. No. 236/1989) Bhagwan Sri Ram Virajman at Sri Ram Janam Bhumi & Others Versus Rajendra Singh and Others.

**10.10.2006 O.P.W. 19 R. D. TRIVEDI**

**Pages 60-61**

Q: If you notice a pillared base structure in your saying of Mandapa shaped without any Garbhgriha there how will you determine it to be either a Mandapa pertaining to temple or a baithaka, varanda, cow-shade, pathshala or a madrasa ?

A: A Mandapa is associated with the Garbhgriha of a temple and if the Garbhgriha is not visible it may not be associated with a particular temple. If the construction of a Mandapa as a scheme of pillars which is indicative of a religious structure it may be associated with a temple.

The scheme is meant here to show the arrangement of pillars. I don't remember whether there is any prescribed scheme in Shilpa-text for a pillared Mandapa. As far as I know the usage of such scheme is not prohibited for other purpose.

Q: Are you of the view that in India all the Mosque or majority of Mosques has been raised by demolishing the Hindu temples ?

A: Some of the Mosques have been raised by demolishing Hindu temples. I can't say about all.

I am not aware of any other Mosque in Ayodhya except the disputed structure which was built after demolishing a temple. The disputed structure was raised in 1528 A. D. The disputed structure, which was raised in 1528 A. D, was a Mosque.

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Learned cross examiner drew the attention of the witness towards para 12 of his affidavit. The circular shrine mentioned in this para was constructed on the floor dateable to 9 –10th century A. D. I don't remember the floor number at which this circular shrine was noticed during excavation. I don't remember whether ASI people have mentioned any floor on which this circular shrine was situated.

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**Pages 62-63**

Q: Whether your perception that disputed structure was raised after demolishing a temple is based on ASI report only or it is based on some other material ?

A: My perception is mainly based on the report of excavation conducted by the ASI.

Q: Kindly indicate the page and para where the ASI in its report has said that disputed structure was raised after demolishing a temple. ?

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A: On being permitted by the commissioner the witness after going through the report (vol-I ) stated that on page 272 of this report suggests the remains of pillared Mandapa, architectural and sculptural fragments of a Hindu temple just below the wall of the disputed structure suggests the existence of a temple below the disputed structure. Which implies that the earlier remains of a temple were reused after their demolition.

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**Pages 64-65**

Q: Kindly indicate the sentence or the phrase as indicated by you at page 272 of the ASI report which say about the demolition of the structure ?

A: The content of last sentence on page 272 indicates that all architectural fragments and other remains used below the disputed

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structure were reused under it. They can be reutilized after demolition of the earlier structure. This part reads as "now viewing in totality ..... in the temples of north India".

Q: Can you indicate the particular phraseology by which you infer the demolition of earlier structure is stated?

A: The architectural members and their fragments utilised can be obtained only after demolishing the temple. Though the word demolition is not specifically given here.

Q: Do you find any difference in demolishing a structure by human agencies and raising another structure over the same and disappearance /demolition of structure by other causes ?

A: When a structure is demolished by human agencies its members are mostly fragmentary in nature and their utilisation is not in there proper places. So in the present case the suggestion is towards the demolition of earlier structures just below the disputed structure. If the destruction is by the natural forces the object remain scattered mostly in their original forms. I feel that in the present case the demolition was effected by human agencies to raise the disputed structure. The earlier structure was demolished prior to 1528 A. D. to raise the disputed structure.

It is not possible to give the exact time gap between the demolition of earlier structure and construction of the disputed structure in 1528 A. D. This time gap may be soon before the construction of the disputed structure or a few years before raising the disputed structure.

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**Pages 66-67**

I don't find any phraseology at page 272 where it is mentioned that the earlier structure was demolished by human agencies.
According to me circular shrine can be dated in $9^{th}$ –$10^{th}$ century A. D. I have dated this structure on the basis of analogy given in the ASI

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report and also on my information that I have gathered by seeing circular temples of that period. The plan and formation of the circular shrine is comparable to other contemporary temples. I remember one temple known as Gargaja-Mahadev temple at Indor Guna District ( Madhya Pradesh ) which seem to me earlier than the circular temple in question. I don't remember any other temple of this kind existing prior to 9th century A. D. in India. I don't remember instantly whether circular shrines were raised in India after 9th –10th century A. D. I did not remember two days earlier also in this regard. I don't remember whether I knew this fact 2 years back or not.

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**Page 69**

Q: May I know what is the basis of the dating of said temples by you ?

A: The temple has been dated in comparison with the other temples of central India and their architectural similarities and same can be seen in my book already referred to.

The temples whose help has been taken in dating Gargaja-Mahdeva temple are architecturally dated in my book. The temples with whom I have compared Gargaja Mahadev temple are 1. Teli ka mandir in Gwalior fort 2. Mahadev temple at Amrol. The names of other temples I don't remember at this point of time. This can be seen in my book.

Q: Were these two temples indicated by you above circular in shape comparable to Gargaja Mahdev temple ?

A: The architectural motifs are the basis of dating the Gargaja Mahadev temple and not their circular shape.

These two temples, according to me, can be dated to about 800 A. D. The basis of dating of these two temples is architectural motif and in one case the palaeography of inscription found therein.

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**Before:-Commissioner Sri H.S. Dubey ,Additional District judge/Officer on Special Duty, High Court, Lucknow**

(Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5/89 ( R. S. No. 236/1989) Bhagwan Sri Ram Virajman at Sri Ram Janam Bhumi & Others Versus Rajendra Singh and Others.)

**11.10.2006** **O.P.W 19 - R. D. TRIVEDI**

**Page 72-74**

The later two temples have also the Garbhagriha and Antarala preserved. 'Antarala' may be translated as Ante-chamber in front of the Garbhgriha. This Antarala is the integral part of Hindu temple often situated within the door way of the temple and very closely associated with the Garbhgriha. First thing is Grabhagriha infront of which is there after Antarala then other parts such as Mandapa etc. in a temple in north India. Antarala closely joins Grabhgriha and often is not demarcated separately.

Q: If one says that Mandapa should adjoin Grabhgriha as per set norms of Hindu temple, would it be incorrect ?

A: Between Grabhagriha and Mandapa there is generally a narrow Antarala.

There are a prescribed norms for the plan of a Hindu temple which is generally followed but sometimes the deviations are also made / found. The prescribed norms are generally followed in the construction of north Indian temples Existence of an Antarala is between Grabhgriha and Mandapa. I don't remember the size of above three temples. I don't remember the size and dimension of Gargaja Mahadev temple. I don't remember the size of circular shrine found during excavation. This circular shrine as far as I remember is found on the right side below the massive pillared structure. In Teli

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ka Mandir there is a small inscription engraved on the wall itself which also helps in dating this temple. The language of this inscription is Sanskrit and it is in the praise of the Goddess Durga. It's script is Brahmi. I have taken the help of epigraphists in the ASI in dating this inscription. I know little bit of palaeography but I am not an expert of that. I have already said that I have taken the help of epigraphists in dating the inscription. These epigraphists have helped me in reading and dating the same on palaeographic ground.

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**Page-74**

**.....**I don't claim my self to be a palaeographist. Palaeography is a part of epigraphy.

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**Pages 75-76**

Q: If photographs of certain inscription or writings are placed before you, you will date the same on the palaeographic basis ?

A: As I have already repeatedly stated that I am not an epigraphist so I may not be able to read or date the inscription with certainty without the help of any other epigraphists.

I don't remember the names and number of the epigraphists of ASI department whose assistance had been taken by me in dating the inscription of Teli ka Mandir.

Q: Have you taken into account historical aspect also in dating such inscription?

A: I have taken into account the history of architectural development also in dating the temple.

This dating is not only based on the epigraphical evidence but the architectural development and motif of the region have also been taken into account in dating the temple of Teli ka Mandir.

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**Before:- Commissioner Sri H. S. Dubey, Additional District judge/Officer on Special Duty, High Court, Lucknow**

(Commissioner appointed vide order dated 20.09.2006 of Hon'ble Special Full Bench of Allahabad High Court Lucknow Bench Lucknow passed in O.O.S. No. 5/89 ( R. S. No. 236/1989) Bhagwan Sri Ram Virajman at Sri Ram Janam Bhumi & Others Versus Rajendra Singh and Others.)

**13.10.2006** **O.P.W 19 - R. D. TRIVEDI**

**Pages 91-93**

Q: What is meant by Kirti Mukh ?

A: 'Kirti-Mukh' is representation of a stylised facial form.

It is not confined to any particular person. Apart from human beings and animals it does not represent any other object as far as I know.

Q: Do you notice three arched shaped design on the wall of this court no. 19 ?

( Sri Ajay Kumar Pandey raised the objection to the above question and stated that the witness has come to state on a particular subject. In a cross examination only those question can be asked which are related to the objects and photographs relating to disputed site. Similarly questions can be asked showing photographs of other temples and it remains. If no photographs is available on record with regard to the question put to the witness therefore such question should not be permitted to be asked.)

( Learned cross examiner submitted that my learned friend presupposes the existence of a temple below the disputed structure. However to my mind the question to be probed is whether the structure found below the disputed structure pertains to Temple, Eid-

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gah, Kanati-Masjid or any other building of common use and as such this question is most relevant )

A: Yes, I noticed semicircular arch shaped design over the wooden decoration. These are mere decoration here.

In the semicircular arches there is not a pilaster but on the sides there are wooden pilaster. I don't see any lintel in this decorative pattern. These pilaster are not supporting any lintel of a door way so they can not be called door jambs. In common parlance the common people make such decorations in there houses.

Yesterday I had stated about plate no. 23. Pranala is an outlet of water.

Q: Whether pranala is essential architectural member of the building ?

A: Yes.

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Q: Is it correct to say that the people to their thinking and capacity fix pranalas in their building, even plain and decorated in different manners ?

A: Yes.

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**Page 97**

Q: Is there any such reference which excludes the possibility of such objects being used in other building also, apart from Hindu temples?

A: I am not aware of any reference to that effect.

Q: Whether you have come across with any such literary reference which exclude the possibility of using the object visible in plate no. 82 and 83 in the buildings other than the Hindu temples ?

A: I have not come across with any reference of these motifs being prohibited for being used in the building other than temple.

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**Page 99**

Q: Can you indicate regarding the objects mentioned in page 153 to 163 (from serial no. 1 to 175) regarding their association with the structure of Hindu temple ?

A: I am not an expert of bricks so I am not in a position to give any opinion on them except on the bricks which have some carved motifs on them and are illustrated in the photographs of the report of ASI for which I have stated earlier.

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**Page 100**

Q: On the basis of description of these objects finding place on these pages can you indicate whether any of these had got any association with Hindu temple?

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A: I am not an expert of glazed tiles so I am not in a position to give an opinion on these glazed tile fragments authentically.

At page 173 of the above report 9 stucco objects are listed. On all these objects I am not in a position to give my opinion. Only on the basis of description given against these objects. Some of these objects have been given in the photographic illustration of ASI report volume II on which I have already given my opinion. In absences of photographs of other objects I am not in a position give to my opinion authentically as to whether these objects are associated with any Hindu temple structure or not.

On page 174 to page 203 serial no. 1 to 131 terracotta figurines are listed I have given my opinion regarding some of these objects illustrated in the report, the photographs of which are given in ASI report volume II. So far as other objects are concerned they can also be identified on the basis of description but in general I am not in a position to give my opinion as to whether these other objects are

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related to any religious temple structure or not.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

( R. S. No. 236 / 1989)

**16.10.2006** **O.P.W 19 - R. D. TRIVEDI**

**Pages 103-104**

The building material of a collapsed temple can be reused in construction of an another temple. With the demolition of a temple, the religious sanctity of a fragment gets displaced but with its reuse in construction of another temple, the religious significance is again sanctified. It is immaterial whether such fragment is reused in foundation or at any other place of a temple, as far as I know. I have not seen any Buddhist temples. Of course, I have read about Buddhist temples. I don't think that any fragment recovered at the site in dispute during excavation belongs to a Buddhist temple. As far as I know there is no difference between the architectural features of a Buddhist and a Hindu temple and fragment members of a Buddhist and Hindu temple. As a matter of fact, it is the subject i.e. the idol etc. which distinguishes a Buddhist temple from a Hindu temple. On the basis of the other features like a circular shrine having been discovered at the site in dispute, I can say that the fragmented architectural members found at the site in dispute were associated with Hindu temple. Circular shrine is not the only specific feature indicating about a Hindu temple but there are other fragments of 11th and 12th Century which indicate about the existence of the temple. The presence of inscriptional evidence found at the site also indicates that a temple of Vishnu Hari was constructed there in the 12th Century A.D. All the 450 fragmentary architectural pieces cannot be associated with any particular temple. They may belong to

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time bracket of 11-12th Century A.D.

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**Pages 104-105**

.....Since I am not an excavator, I cannot say as to what was the level/floor of the pillared Mandapa. I have already said that the pillared Mandapa was below the floor of the disputed structure. I am not aware of the details of the floors and levels or the stratigraphy, therefore, I cannot answer with authority that the depression of the Garudadwaja was more or less at the same floor at which the surface of the disputed structure was found.

The pillared mandapa is datable to 11-12th Century A.D and since I am not an expert of stratigraphy, I cannot answer with accuracy about the date of construction of Garudadwaja's depression. On the basis of the ASI's report and its findings, as also the existence of the evidence of Vishnu Hari temple inscription, I have dated the said construction of a Hindu temple to be of 11-12th Century A.D. It is not amazing to date a structure at the same floor while plead ignorance about another structure of the same floor. In fact, I would repeat again that I am not an expert of stratagraphy. It is incorrect to say that I am deliberately giving an imaginary reply. I don't remember that as to whether ASI team has in its report dated this depression of Garudadhwaja or not.

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**Pages 106-107**

I have not thoroughly studied the report of the ASI, though I have cursorily gone through it. Since my expertise are in iconography and temple architecture, I have specifically studied sculptures connected with Hindu temple and also noticed the report from the same point of view. Chapter VI of the report(Volume I) deals with the architectural fragments. Although other chapters do not deal with the field of my specialisation, yet I have cursorily gone

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through it. Alongwith the report, I have seen cursorily some of the designs/figures sketched by the ASI team.

**Pages 108-113**

The disputed structure was constructed in 1528 during the regime of Babar. I don't think that ASI has specifically said in its report that the disputed structure was constructed after the demolition of any Hindu temple. But some of the remains found in the foundation of the disputed structure suggest that the disputed structure was constructed after pulling down some Hindu structures. Except the ASI's report, I don't have any independent information about a Hindu structure having been pulled down before the construction of the disputed structure. Although, in the ASI's report, there is no specific indication about the demolition of a Hindu structure/temple, yet there are several remains of architectural members which suggests the pulling down of a Hindu temple before the construction of the disputed structure. In the ASI's report, there are specific findings in the summary which suggests that a Hindu structure/temple pre existed and was demolished before the construction of the said mosque.

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According to me the last sentence of summary of ASI's report in Vol 1, at page 272 is suggestive of the fact that there existed temple prior to the construction of the disputed structure.

Q. Is it correct to say that in the aforesaid last sentence at page 272 starting from the word "now view in totality", there is nothing which may suggest or indicate that any temple or Hindu structure existed there at the site in dispute in or around 1528 A.D. before the construction of Babri Masjid.

A. "The mutilated sculpture of divine couple and carved architectural members including foliage patterns, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having pranala (waterchute)

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in the north 50 pillars base in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India"

This portion of the summary in the end of the ASI's report at page 272 indicates that there was a temple below the disputed structure as has been concluded by ASI.

21. Is it correct to say that the last lines of the aforesaid sentence of the ASI's report providing that the material referred therein was " indicative of remains which are distinctive features found associated with the temple of north India", do not suggest either existence of any such temple in or around 1528 A.D. or so called demolition of any such temple during that period.

A. Some of the pieces like pranala (waterchute) has been found laid in the foundation of the disputed structure. Similarly other pieces have been also found below the disputed structure at various places and these things suggest that the earlier structure might have been pulled down earlier to the construction of the disputed structure though there is no specific time mentioned in the report.

This is true that in this portion of the ASI's report there is nothing which is indicative of the fact that there existed temple in or around 1528 A.D. or the same was demolished also around that period before the construction of the disputed structure. Instantly I am not aware of any other portion of ASI's report in which there could be any indication regarding the existence or demolition of any temple prior to the construction of the disputed structure. My statement in paras 10 and 11 of my affidavit is not solely based on what is mentioned in the ASI's report at page 272 as referred to above but on other portions of the said report too, such as chapter 4 which deals about the structure.

The word pillared mandapa like structure" mentioned in para

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10 of my affidavit has been derived from the discussions in the ASI's report under the heading 'the massive structure below the disputed structure' from page 54 to page 56 of ASI's report Vol-1. Although I have not read chapter 4 of ASI's report in detail but I have gone through the said chapter cursorily.

(v) Have you studied in detail about the said "50 exposed pillar bases" as mentioned in para 2 of the ASI's report at page 54 under the heading "the massive structure below the disputed structure".

**8.** I have studied that 50 pillar bases were exposed of various shapes and sizes. 12 of them fully exposed, 35 partially exposed and 3 found in the Section of excavation. Thus, I have studied about the pillar bases cursorily.

14. Have you based your findings and inferences given in paragrphs 10 and 11 of your affidavit only on such cursory study of the so called pillar bases as given on pages 54 to 56 of the ASI's report Vol-1.

17. Yes. My finding in para 10 and 11 of my affidavit is based on cursory study of the aforesaid portion of ASI's report.

The words used in para 10 of my affidavit, namely, "pillared mandapa-like structure" have been conceived by me from the facts mentioned in the ASI's report at page 55, last para, regarding existence of the pillar bases and their alignment. My this opinion is based only on the basis of 50 exposed pillar bases and not on the basis of 17 rows of 5 pillars as mentioned on page 55. Although I am not an engineer but I have seen pillar bases of about 1 square meter or 1.5 meter square roughly to support the pillars to bear the load of huge structure. This is true that the ASI has used the word massive structure for a structure of the dimension of 50 meters x 30 meters. The structure of this size can be called a huge structure also. I cannot

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say what height would have been of the structure which might have existed prior to the construction of disputed structure at the disputed site. On the basis of the information available in the ASI report I can say that it was 'Nagar' type of temple which is generally found in the northern India on the disputed site before the construction of the disputed structure.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

( R. S. No. 236 / 1989)

**17.10.2006** **O.P.W 19 - R. D. TRIVEDI**

**Pages 114-115**

The pillared Mandapa which might have existed at the site in dispute would have been an elaborate Mandapa, that is developed one, having a large number of pillars. There would have been 50 or more number of pillars in that Mandapa. In the temples of Pratihara periods, I have not found a Mandapa with such a large number of pillars as found at the disputed site. Mandapa is always associated with the Garbhagrah of a temple and such garbhagrah is the main part of the temple where the main deity is installed. The garbhagrah of the temple at the site in dispute would have been at the centre place of such temple.

The Mandapa of the temple was in east, north and south of the said Garbhagrah.

**Pages 115-122**

.....By now I have not formed any opinion about the estimated size of the garbhagrah of the temple which might have existed at the disputed site prior to 1528 A.D. Said again, "the said garbhagrah would have been 15 x 15 metres in area, although I am not sure about it." Whatever inferences I have drawn, are based on ASI report. Since the details of pillar bases are furnished in the ASI's report including drawings, I have been able to disclose about the size of the Mandapa but such details being lacking about garbhagrah I am not able to disclose the size of the said garbhagrah. In my estimation in figure 3A the existence of pillar bases no.PB-2, PB-7, PB-10, PB-15, PB- 22, PB-25, PB-28, PB-31, PB-37, PB-43 and PB-47 being in one

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line and alignment reflect the length of the Mandapa which might have existed at the site in dispute. The garbhagrah would have located towards west of the aforesaid alignment starting from pillar base 2 coming down at pillar base 47. There is a possibility of said garbhagrah extending to some extent towards the east of the said alignment. It is correct that the said garbhagrah would not have extended beyond pillar base no.26 in the east. I am not sure about the exact location of the garbhagrah viz-a-viz the Mandapa. Whatever I have disclosed above, is all based on my inferences. There would have been no possibility of the garbhagrah of the earlier temple having located beyond the western wall no.16. I have not come across about the existence of wall or pillar base of the garbhagrah in the ASI report. With reference to the Aamalak recovered from the site in question, I cannot disclose either the height or the size of the temple. Even with reference to the number of architectural fragments and sculptures referred in the ASI report, I am not in a position to form any idea and disclose about the size of the garbhagrah or the temple. I was able to assess the size of Mandapa with the help of the number of pillar bases and the remains of some pillars. It is wrong to say that the remains of the pillars which I have noticed from the report of the ASI form part of the structure constructed in the year 1528 i.e. the mosque. The existence of the remains of such pillars on the surface of the disputed site might indicate that the pillars were reused in construction of the mosque although they seem to have belonged to an earlier Hindu temple. The pillars visible in plates nos.82 and 83 of ASI report, Volume –II, are the same pillars which were recovered at the site in dispute. The pillars visible in plate no.31 was also a pillar found at the surface of the floor of the disputed structure from the site in question. I have not stated about the existence of ‘garbhagrah’ on the basis of the above referred pillars but I have inferred about the existence of Mandapa on the basis of these pillars. In para 10 of my affidavit, I have mentioned about the existence of remains of a massive structure underneath—which I

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mean a pillared Mandapa. By massive structure, I mean Mandapa and not a temple which has not been found. Mandapas are associated with a temple though garbhagrah has not been excavated. Mandapa cannot exist without a temple and it is a part of temple. Since Mandapa is a part of temple, by massive structure I mean a part of temple. I have inferred, as said in my affidavit that a part of temple existed in the shape of massive structure at the site in dispute. Massive structure, as referred in para 10 of my affidavit, comprised of pillar bases and wall nos.16 and 17. All the 50 exposed pillar bases formed part of this massive structure.

The description of massive structure below the disputed structure has been given in para 2 on page 54 by the A.S.I. in its report, Volume 1 and in para 10 of my affidavit, I have referred to the same massive structure. The said massive structure comprised of 50 meter long wall (wall 16) in the west and 50 exposed pillar bases to its east. It is correct that A.S.I. has nowhere stated in its report that wall 17 formed part of the massive structure. Since wall 16 rested on wall 17, I inferred that wall 17 too was the part of the massive structure. It is my feeling that wall 17 served as foundation of wall 16. I understand that wall 17 was about hundred years older to wall 16. So the two walls are not contemporary. The construction of wall 16 is datable to about twelfth century. I agree with the opinion of the A.S.I. mentioned in para 2 at page 41 of its report Volume 1 that massive wall no.16 might have been constructed in sub-period (A), which starts from the end of the 12th century A.D. It is possible that the entire massive structure which existed earlier was constructed towards the end of the twelfth century A.D.

Q. Whether it is possible that the sub-period (A) might have extended upto beginning of 13th Century A.D.?

A. The extent of sub-period (a) can go upto the beginning of 13th century. I would add further that the possibility maybe on both sides and this period can go upto 1150 A.D. also.

I do not exactly remember who was the ruler of Ayodhya

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towards the end of 12th century but certainly he belonged to the Gahadhwal dynasty. Now I recall he may be Jai Chandra. Jai Chandra was defeated by Mohd. Ghouri sometime around 1191. I cannot certify that the rule of Gahadhwal dynasty came to an end with the defeat of Jai Chandra. Also, I do not remember that Jai Chandra was the last ruler of Gahadhwal dynasty. I do not know as to who was the ruler of Ayodhya region after Jai Chandra's fall. Govind Chandra was the ruler, who got the massive structure beneath the disputed structure, constructed. Although I cannot give exact period of the rule of Govind Chandra, yet I can endeavour to say that he ruled from 1115 A.D. or so to 1160 A.D. or so. There is likelihood of the Vishu Hari Temple being the same massive structure found beneath the disputed structure referred in the ASI's report.

Generally speaking all the pillar bases will be on the same floor. The 50 pillar bases found during excavation of the disputed site should also be on the same floor. I have not examined from this point of view whether all the 50 pillar bases are on the same floor or not? I am not able to recollect whether ASI in its report has any where given the floors of 50 pillar bases referred to in the report and found during excavation. I know there are some appendix in the reports. Since I have not gone through the said appendix filed by the ASI in its report, therefore, I cannot say that all the details are there regarding pillar bases in the said appendix. Voluntarily said that since I am an expert of temple architecture and Iconography, therefore, I studied report thoroughly only from that point of view and I have not studied the report in regard to other fields connected with the excavation and therefore, I cannot answer regarding excavation, stratigraphy and placement of the flooring etc.

Q: You have specifically mentioned and stated about pillar bases said to have been found during excavation, so kindly let us know whether pillar bases do not concern with the excavation?

A: Since pillar bases referred to in the ASI's report formed part of temple architecture and therefore, I had studied about them in

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general.

Q. When you had based your findings on the said pillar bases whether you were not supposed to examine the details about the same as given in the ASI report ?

A. I think, I am not supposed to examine in details of the whole process of excavation how these pillar bases were found.

I have not read the details given on pages from 56 to 67 in regard to pillar bases referred to in the report of the ASI Volume 1. This is true that pillar base no 13 on page 59 is shown to be resting on floor 4 but I have not examined its correctness, therefore, I cannot certify that said pillar base was actually resting on floor 4 or not. I have not examined pillar bases referred to in the ASI report from that point of view as on which floor they were resting.

Q. Is it correct to say that you have not carefully gone through the report regarding the details of pillar bases as given in Chapter 4?

A. I have earlier said that I have gone through the report cursorily but I have assured myself that there were 50 pillar bases in number.

I have not examined the details of pillar bases but only on narration of the ASI report, I found that there were 50 pillar bases.

Q. Will it be correct to say that your statement on page 51 that you had carefully gone through both the volumes of the ASI report appear to be contradicted by your statement given today.

A. It is not contradictory at all because I have gone through the report cursorily and not thoroughly in all respects. I have used the word carefully and cursorily in the same sense.

Q. Do you subscribe to the view that pillar bases resting on floor 2 cannot form part of the structure in which pillar bases are resting on floor 4 and both these kinds of pillar bases could not be said to have been constructed at one and the same period?

A. I am not in a position to answer this question as I am not an expert of excavation process and their analysis as given by the excavators.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

(R. S. No. 236 / 1989)

**18.10.2006** **O. P.W 19 - R. D. TRIVEDI**

**Pages 124-125**

I have not studied any book pertaining to the rule of Gahadwala dynasty. I know about Rama Shanker Tripathi who has written history of Kannauj. I have not heard about Roma Niyogi who has authored a book 'The history of Gahadwala dynasty'. I don't know that Thakur Prasad Verma who is an historian is one of the plaintiffs of this suit in which I am appearing as witness. However, I know Mr. S. P. Gupta, who is an archaeologist. I can read and write Hindi easily. I have not read the book 'Ayodhya ka Itihas Evam Puratatva' (Ext. No. OOS 5-3, shown to the witness) authored by Thakur Prasad Verma and Swaraj Prakash Gupta. I have not even heard about this book. I have heard about the book of Hans Bakker on Ayodhya (Paper No.120 C-1/2) but I have not read it. I have perused one article written by Prof. K.V. Ramesh in which there is a reference to Vishnu Hari temple of Ayodhya.

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**Pages 126-132**

It is correct to say that Vishnu Hari temple was not got constructed by Govind Chandra himself. However, his name occurs in the inscription as overlord of the region. My earlier statement at page 119 where I have stated that the temple was got constructed by Govind Chandra is still correct because the credit of the construction goes to overlord as acknowledged in the inscription. I don't agree with Hans Bakker's given view at pages no.256 to 260 with (Book Paper No.120 C-1/2) of his Book regarding Vishnu Hari temple being

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located at the Ghat of ChakkraTirth at Ayodhya. I agree that the duration of Govind Chandra's rule has been rightly given between 1114 to 1154 in this book at paper no.289 C-1/198 (Exhibit OOS 5-3). I have not heard that Salaar Masood had ever made any strike or assault at Ayodhya. The earlier structure, of which wall no.17 formed part, was constructed about 100 years prior to the massive structure of the temple.

I do not remember that wall no.17 had any association with any other structure found by the A.S.I. at the disputed site. I have no idea about the nature of the structure which might have existed alongwith the wall no.17. Perhaps, a smaller temple existed prior to the construction of wall no. 16 which was associated with wall no.17. I do not know whether the temple associated with wall no. 17 was demolished or it collapsed on its own. I have no idea about the size of the said temple of wall 17. Also I have no idea about the deity which might have been installed in the temple of wall 17. I think four pillar bases were associated with the temple of wall 17. I cannot point out with exactitude the serial numbers with their location of the said four pillar bases, I simply read it somewhere in A.S.I. report. It is my own inference that the structure associated with wall 17 was a temple, although it is not so mentioned anywhere in the A.S.I.'s report. The said four pillars associated with the structure of wall 17 might form part of the Mandapa.

Q. When you are not aware of the location of those four alleged pillar bases said to be associated with wall 17, how could you say that they might have been part of some Mandapa?

A. Generally the pillars are made to support a Mandapa.

I have not seen any Mosque having pillars to support roof of the Mosque. With reference to figure 2, plate XX of the book titled as 'Indian Architecture' (Islamic Period) by Percy Brown (Paper No.120 C-1/69), I can say that the pillars visible in it are not the original pillars of the structure of Mosque, rather these pillars are of a temple and they have been reused to support the roof of the Mosque. This

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Mosque in figure 2 might have been constructed in 1205 A.D. This "Adhai Deen ka Jhopara Mosque" is still in existence. Said voluntarily that this Mosque was built hurriedly during the time of Qutubuddin Aibak. The estimated height of these pillars is about 30 feet. In this figure of Adhai Deen ka Jhopara the left most pillar is visible with its pillar base. Maybe that the length and width of the said pillar base would have been 2 feet x 2 feet. They are stone pillars. The pillar base is also made of the stone. Each pillar has three different pillars, that is one upon another. The lintels visible in the roof of the mosque shown in figure 2, supported by the pillar capital, do have carvings and decoration. I cannot give a nomenclature of the said lintels' carving because it is not very clear.

In plate No. XXIV, figure 2, of the same book very heavy and small pillars are visible to support the high arches below the roof of the Mosque.

Q. Whether the roof of the Adhina Mosque situated in Panduva, referred to above, is or is not resting on the pillars?

A. The roof of the Mosque is resting on high arches which in turn are resting on heavy and short pillars.

All the pillars of each row appear to be of one and the same dimensions of Adhina Mosque . The pillar base of the pillars on right side may be 3 feet x 3 feet in dimension and the pillar base of the left row would have been 2 feet x 2 feet.

All the pillars shown in figure 2 of plate XX on page 24/4 as also all the pillars of plate XXIV on page 24/8 are on same floor. In figure 2 of Plate VI on page 8/4 of this book, all the pillars are in straight line as also the roof, with carving _and decoration, are in the same line and on the same floor. On the basis of motif decoration in the pillars and the ceilings carved in lotus pattern show that these pillars and the ceilings were of Hindu temple which were re-utilised in the Mosque. I cannot say for re-use of the pillars and the ceiling they were brought from somewhere else or they were re-used after demolition of the temple at the same site. I am sure that there existed

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a temple at the site over the base of which a Mosque was constructed which is known as “Adhai Din ka Jhopara”. The gate shown in figure 1 of plate VI on page 8/4 is an addition and it was constructed for the mosque. The carvings shown in the said figure 1 of plate VI on page 8/4 are not similar to those of the pillars and ceiling of figure 2 of the said pillars. Although it is not very clear to me but it appears that in figure 1 something is written in Arabic calligraphy over the arch as well as the rectangular decoration surrounding it. In figure 2 of plate VI on page 8/5, there are two panels having a stylised foliage decoration and below the same in two panels, there is Arabic calligraphy. The upper two panels showing stylised foliage decoration seem to be of temple design of about 1200 A.D. or of period slightly later. I cannot say definitely whether the said two panels bearing temple carving were got prepared soon before the construction of the said Qutub Mosque or they were reused after being brought from somewhere else. I cannot assign any particular dynastic nomenclature to the said foliage patterns. The design of Arabic calligraphy in the lower two panels in the figure belong to the period around 1200 A.D. I may have seen the Qutub Mosque but I cannot actually recollect the area in which the said panels are located in the said Mosque. In figure 2 of plate XXV on page 28/1 there are lintels having carvings and decorations over the double arches. On the top there is a monogram like decoration but the same has no resemblance with any temple design or carving. In this photograph, the other designs or carvings also do not have any resemblance with carvings in Hindu temples. Figure 1 of plate XXXIV and of plate XXXV on pages 40/2 and 40/3 show the building of the same mosque and their roofs are resting on pillars. The height of the pillars in both the figures could be around 20 feet. The pillars in both the photographs are on the same floor. The pillar bases of the pillars of the two figures could be of maximum sizes in 3 feet by 3 feet.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

(R. S. No. 236 / 1989)

**19.10.2006** **O. P.W 19 - R. D. TRIVEDI**

**Pages 133-134**

In Sultanate period, in the beginning, kings and rulers utilised the pillars from Hindu temples to be used in the Mosques. Later on, they may have started making their own pillars, of which I am not aware. In Mughal period they started making/building their own pillars. Generally the Mughal rulers have not used any temple or religious buildings pillars and if any pillars have been sparingly used by the Mughal ruler, I am not aware about the same. I think that the base and capital of the pillars visible in Plate XXXIV figure 1 and Plate XXXV figure 1 of the book (paper no. 120/C-1/69) are indicative of the fact that these pillars were of some Hindu temples and reused in this Mosque.

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**Page 140**

Witness having seen the photograph of Jami Masjid Mandu of plate 42 on page 44/2, figure no.1, and 2 answered that the roof of this building is not resting on pillars but it is resting on the arches which are resting on lower side on heavy pillars. There is no difference in formation of arches and pillars in figure no.1 and 2 of plate no.42. I am not in a position to say from the photograph whether the pillars of the said building are original or have been reused.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH LUCKNOW**

O.O.S NO. 5 OF 1989

(R. S. No. 236 / 1989)

**15.11.2006** **O. P.W 19 - R. D. TRIVEDI**

**Pages 144-146**

I know the locus and level from where some of the architectural and sculptural remains, as referred to in para 13 of my affidavit, were found during excavation. The 'Makar Pranala' has been found at the top of wall no. 16 which served as the foundation of the disputed structure. As far as I remember, pieces carved with Patra-Lata or Kalpa-valli Motif were also found in wall no. 16. Only one stone piece carved with Patra-Lata or Kalpa-valli Motif has been seen by me in photograph. Pillar bases encased by orthostats and bhadraka-type have been found at floor No.3. I do not remember the trench number of such pillar base wherein it was found. Lower part of an octagonal pillar carved with foliage pattern has also been found from floor no.3. Piece carved with alternating padma and ratna (lotus and diamond) motifs was found reused in wall no. 16. These articles belonged to the temple structure of 11th century constructed on the site in dispute. I cannot say as to who got the said temple constructed in 11th century. The said temple might have remained for about a century or so. I cannot say whether the said temple was demolished by anyone or it fell down on its own. My impression regarding the construction of temple in 11th century and its existence for about a century at the disputed site is based on the ASI report and not any other evidences. At the moment, I cannot answer by looking the report cursorily about the existence of temple on the disputed site in 11th century where finds place in the report. However, if I go through it carefully, I can answer this.

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**9.** Whether you have examined about the locus and level, etc. of the architectural and sculptural remains mentioned in para 13 of your affidavit from the ASI report or not?

18. Whatever I have seen and understood by going through the ASI Report, I have stated in my affidavit and above statement.

As far as I remember, the wall which served as a foundation wall of the disputed structure was numbered as wall no. 16 by ASI in its report, however, I do not remember what number was given by the ASI to the wall above wall no.16. Wall No. 16 served as the foundation wall of the disputed structure which was demolished in 1992.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

O.O.S NO. 5 OF 1989
( R. S. No. 236 /1989 )

**16.11.2006** **O. P.W. 19 - R. D. TRIVEDI**

**Pages 147-148**

The wall no.16 on the top of which Makar Pranala was found, was constructed in the 12th Century. The Makar Pranala visible in plate no.23 of ASI's report Volume 2 is the same Pranala which was found in wall no.16. In plate 25, a part of the foundation of wall no.16 is visible. As far as I remember, the stone portion, three courses of stone slabs, are of wall no.17 which also serves as foundation of wall no.16. Upon those slabs, the brick part, which has 16 or 17 courses, is wall no.16. In plate no.25, Makar Pranala is not visible. The other portion of wall no.16 at the top of which Makar Pranala was found is not visible in this plate. The plate no.25 is of different trench. Since I visited the site of excavation only for few hours and found most of the trenches filled up with bags, I cannot tell the location of individual trench. On the day of my visit, I did not find the label of trenches affixed at the top of that. However, I tried to locate the trenches from the figures given in the ASI's report. The trench E-8 and D-7 are adjacent to each other. Makar Pranala was found in trench D-7 and this wall 16 as depicted in plate 25 was found in trench E-8. The wall no.16 as visible in plate 25, must have been found on the western side of trench E-8. The Makar Pranala was found on the eastern side of wall no.16. The stone slab bearing Patralata or Kalpavalli motif is visible in plate no.25 in the second course of the stone blocks from the bottom. I have stated about this very Patralata or Kalpavalli motif in para 1 of my statement at page no.144. In plate 26 also, the close up of this very Patralata is visible.

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**Page 149**

It is correct to say that such Patralata or kalpavalli motif is never used in the foundation of the temple. The Patralata or Kalpavalli motif visible in plates nos.25 and 26 both is not at its original place rather it was reused in this position of the plate.

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**Page 151**

There is no size prescribed for the stone of a Patralata motif to be used in door jamb, lintels or Adhisthan of a temple. The size of such a stone having motif will depend upon the availability of the size of stone and the space where to be used and also as per the requirement of the constructor.

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**Page 152**

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My aforesaid statement is correct. The object belongs to 11th Century but it was reused in the foundation of 12th Century temple. This stone bearing motif could have been used in door jamb or in the lintel in 11th century temple. I think the stone bearing motif which is visible in plate no.51 is fixed in the same foundation wall in which patralata motif stone is visible in plate no.25. The three stone courses visible in plate no.25 are not visible in plate no.51. It is incorrect to say that the wall visible in plate no.51 being found in trench D-7 and the wall which can be sighted in plate no.25 and found in E-8 cannot be the same wall. I can add that the same wall goes across both the trenches.

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**Pages 153-154**

The brickbat structure visible in plate no.51, on which the scale is lying, according to me, is part of the wall no.17 but I am not sure as I have not seen the site. I cannot differentiate between the structure of wall no.16 and 17 from my study of the ASI report. I have given my statement before this court in respect of wall no.16

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and 17 and about the carved stones, on the basis of my study of the ASI report and general impression gathered out of the ASI report.Statement in para 10 of my affidavit is based on my studying the ASI report and the impression drawn from the facts recorded therein. I have gone through both the volumes of ASI report cursorily but I have gone thoroughly through the report in respect of architectural fragments and other temple remains and finds in regard to the temple recovered during excavation. I have gone through Chapter 6 thoroughly only in respect of Architectural fragments found in the excavation and not in respect of stratification part of the excavation. I have gone thoroughly through chapter 6 of ASI report Volume 1.

My statement recorded in page 51that I have gone through both the volumes of Reports carefully is to this extent contrary that I have gone through the report thoroughly only in respect of chapter 6 regarding architectural fragments and other temple materials and that the other part of the report gone through by me cursorily.

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**Page 155**

This is correct to say that I have not verified and examined authenticity of this part of the ASI report which is from page 54 to 56 on the basis of other portions of ASI Report but relying on this part of the report I have recorded my statement in para 10 of the affidavit. Voluntarily said that no doubt I had gone through the second Volume of the ASI report also which contains photographic plates of the excavated site and finds in regard to my statements. My statement in para 10 is based on the study of ASI report in chapter IV from page 48 to 72 and Chapter VI from page 121 to 173 and the plates in volume II of the ASI report. I do not know whether ASI has specifically stated in its report about existence of the extensive pillared mandap like structure as has been stated by me in last part of para 10 of my affidavit or not but the said impression has been drawn by me on study of chapters IV and VI of the ASI Report Volume I

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and the plates in Volume II. The temples of Northern India as referred to by me in last line of my statement in para 10 refers to the temples of Northern India from 9th to 12th century.

Q. Whether your statement in para 10 of the affidavit is based on the comparison of the architectural remains found at Ayodhya with the architectural remains of any other temple of 9th or 10th century of Northern India.

A. Yes. I have compared with the Gargaja Mahadeo temple, Indor, District Guna in Madhya Pradesh and Teli ka Mandir in Gwalior Fort of 9th century A. D.

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**Page 157**

Only circular shrine found during excavation was compared by me with the temples of 9th century referred to above. I have read about the circular shrine in the ASI report but I cannot say whether there is any reference of the same in chapter VI of the report. The comparison of circular shrine was comparison of only structure and not of architectural fragments or of Architectural remains.

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**Before:-Commissioner Sri H.S. Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**18-11-2006** **O. P.W. 19 R. D. TRIVEDI**

**Pages 166-167**

The pillar bases which are mentioned in para 10 and 11 in my affidavit are 50 in numbers. I have not seen the photographs of all these 50 pillar bases. I don't remember the number of the photographs of the pillar bases which I have seen in the ASI report volume II. Apart from these photographs given in volume II of the ASI report I have not seen any other photographs of these pillar bases.

The number of photographs of pillar bases which I have seen are 15 in number. They are plate nos. 9, 10, 35 to 39 and 41 to 48 which are given in ASI's report volume II. Apart from these plates I have not seen any other photograph in respect of pillar bases. My observation about pillar bases made in para 10 and 11of my affidavit are based on the study of these plates only. I can not tell the pillar base numbers on the basis of the photographs of these pillar bases shown in plate no. 9, 10, 35 to 39 and 41 to 48.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**20-11-2006** **O. P.W. 19 R. D. TRIVEDI**

**Page 174**

Q: In making your observations on the basis of alleged existence of 50 pillar bases, which description of so called pillar base no. 32 i.e. given in figure no. 3A or on page no. 63 of the report, has been relied upon you ?

A: I have not ascertained the position of the pillar bases from the chart of the pillar bases given in the report.

Q: With out ascertaining the locus of the alleged 50 pillar bases how you have arrived at the conclusion, given in paras 10 and 11 of your affidavit, that these alleged pillar bases indicated the existence of an alleged extensive Mandapa like structure ?

A: It is given in the report that 50 pillar bases have been found in the excavation and I have relied on that information to give in my affidavit's para 11.

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**Page 179**

Plate no. 38 shows 'orthostats' on all the four sides of the pillar base stone. These 'orthostats' are also stone blocks. The meaning of 'orthostats' is 'side support'. This side support may consist of one piece or number of pieces of solid stone materials like stone pieces. This pillar base is square in shape and is of one stone block which is also square in shape.

I have stated on 18-11-2006, on page 167-168 that "In plate no. 37 ..... the scale is lying". My this statement is correct.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**21-11-2006** **O. P.W. 19 R. D. TRIVEDI**

**Page 188**

Q: Will it be correct to say that most of the pillar bases numbers 1, 2, 3, 4, 5, 6, 7, 8, 13 and 14 are visible in the said plate no. 9 and 10 ?

A: Some of them may be visible but I can't say whether all the pillar bases mentioned in the question are visible in plate no. 9 and 10 or not as the trench numbers are not given in the plate and I am not familiar with the excavated site.

Q: Whether the pillar bases visible in plate no. 9 and 10 appear to be contemporary with the floor of Mughal or post Mughal period or the same were attached to the so called floor of 12th century ?

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A: The pillar bases referred to in question are associated with the floor of 12th century as far as I understand.

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**Page 189**

Q: Whether all the pillar bases visible in plate no. 10 are located/found on the same floor and whether the said floor/floors on which the said pillar bases were found is floor 1 or floor 2 ?

A: I can not say specifically in this regard.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**22-11-2006** **O. P.W. 19 R. D. TRIVEDI**

**Page 198**

Q: Claiming yourself to be an archaeologist and appearing as an expert witness in this case, are you not supposed to be well acquainted with the basic norms and procedures of excavation ?

A: I am not supposed to be aware of all the procedures of excavation as I have appeared as witness in this case as an expert of temple architecture and iconography.

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**Page 204**

At this stage Sri Z. Jilani Advocate, learned counsel for Sunni Central Waqfs Board filed copy of the Title page, foreward and of pages from 89 to 100, 177 to 181, 196, 215 to 217, 220, 232, 233, 235 to 237, 239 to 243, 252, 257, 259, 268, 269, 275, 276, 278, 285 to 287, 305 to 307, 311, 314, 316, and 334 of the Book Entitled as "Temples of the Pratihara Period In Central India" by R. D. Trivedi ( paper no. 334C1/1 to 334C1/52).

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**23-11-2006** **O. P.W. 19 R. D. TRIVEDI**

**Page 211**

Having been shown figure 10 (page 60-A) of the ASI report volume-I. The witness stated that as I have not consulted this Figure no. 10 (page 60-A) I am unable to state any thing about it. Having been shown figures 8, 9, 11, 12 ,13 ,14 ,15, 16 (page nos. 58A, 59A, 62A, 66A, 66B, 68A, 68B, 69A) the witness stated that since I have not consulted these Figures therefore I am unable to state any thing about them.

Q: Are you aware of the fact that there are several discrepancies about the details of the so called pillar bases given on pages 56 to 67 of the ASI report as well as in the details given/shown in figures 8 to 14 and 16 referred to above ?

A: I don't know about the discrepancies as I have not consulted the above Figures.

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**Page 218**

The labels of floor 2, 3 and 4 are visible to me in plate no. 19. Other labels of floors or layers are not legible in this plate.

In plate no. 20 the labels of floor, structures and pit are legible. I don't remember whether, I have seen any figure or drawing in ASI's report regarding Ram Chabootra.

Q: Have you studied and examined figures 4(page 51B), 5(page52A), 6(page52B) and 7(page53A) of the ASI's report volume-I ?

A: I have not studied and examined the above figures.

Q: Do you remember as to whether you have studied and examined the details given in figures 19, 20 and 22 given on pages 39A, 39B and 38A of the ASI report ?

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A: Having seen figures 19, 20 and 22 ( pages 39A, 39B and 38A ) the witness stated that I have not studied and examined these figures.

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**Page 219**

Q: Are you aware of the locus, levels and layers from where the objects/items mentioned in para 14 of your affidavit were allegedly recovered ?

A: Yes, I am aware of the locus and level of most of the objects given in para 14 of my affidavit but I am not aware of the actual locus of the objects found in the debris.

Q: Which of these objects referred in para 14 of your affidavit were found in the debris ?

A: I think they are the pieces of broken Amalaka, Stone slab, carved with Srivatsa Mark and Brick carved with Ardhratna design and rope design as given in para 14 of my affidavit. But the association of most of these objects is related to the structures prior to the disputed structure as they were found from the debris of disputed structure.

Q: Whether this debris of the disputed structure was found above the surface/floor of Babri Mosque demolished on 06-12-1992 ?

A: Yes, these above objects were found from the debris of the disputed structure, which had fallen down on 06-12-1992.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**24-11-2006** **O. P.W. 19 R. D. TRIVEDI**

**Pages 224-226**

On paper no. 335C1/20, (page 300) in plate no. 153, reference of a niche is given. This niche is situated on the left side of the door-way of the temple. On paper no. 334C1/22, (page 216) in plate no. 32, a niche has been depicted in a Shiva temple at Dang, (Bhind) Madhya Pradesh. This temple belongs to about 800 A. D. This niche is at the height of about 1.5m above the ground. On two sides of this niche are pilasters. The height of this niche is about 1m. 'Kapili' niche is a niche which is located in the Kapili part of the temple. 'Kapili' is Sanskrit word used in architectural terms. On paper no. 334C1/16, (page 178) I have given the meaning of 'Kapili' as wall portion of the 'Antaral' on both the sides of a temple which is correct. On paper no. 334C1/23, (page 217) in plate no. 33, Karna-nicheh as been shown which mean the niche located on the 'Karna-portion' of a temple. Karna-portion of the temple is a corner portion. The height of this niche from the ground floor is about 1.5m. On paper no. 334C1/24, (page no. 220) in plate no. 37, Bhadra-niche has been shown, which mean the niche located on the Bhadra-portion of a temple. Bhadra-portion is the central portion of a temple. On page 334C1/ 15 (page no.177) the meaning of Bhadra is given as Central projection of a wall, which is correct. In paper no. 334C1/24, (page no. 220) the tentative height of the niche from ground floor is about 1m. In paper no. 334C1/25, (page no.232 ) in plate no. 54, the Karna-niche of a different temple is visible. It is about 1.5m from the ground floor. On paper no. 334C1/28 (page no. 236) in plate no. 60, there are several niches of smaller size in the lower part, whereas there is a big niche in the upper part. The niche in the upper part would be about 3.5meters from ground level. In paper no. 334C1/38 (page no. 268) in

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plate 110, Adhishthan-niche is visible. It may be at the height of about 50cm from the ground level. On paper no. 334C1/39 (page no. 269) in plate no. 112, is a Bhadra-niche at a height of about 2m from the ground level. In all the aforesaid above paper nos. 334C1/22, 23, 24, 25, 28, 29, 30, 38 and 39 all the niches have idols installed therein except the upper niche of paper no. 334C1/28, plate no. 60.

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**Page 229-230**

Q: Is there any difference between 'Mandapa' and 'Mukha-Mandapa' ?

A: Where there are two Mandapas in a temple the front one is called Mukha-Mandapa which gives entry of Mandapa.

Q: Whether 'Mukh-Mandapa' and 'Mandapa' are generally based on four pillars each ?

A: It depends on the size of 'Mandapa'.

Q: What may be the biggest size of Mandapa and what may be the smallest size of Mandapa ?

A: I am not able to answer this question as I have no measurement of the Mandapas available with me.

Q: In para 11 of your affidavit you have used the terms 'Mandapa' and 'Big Mandapa'. Did you have no idea about their estimated size while using these terms in your affidavit?

A: The earlier question was about the size of the biggest Mandapa and the smallest Mandapa for which I have no statistics with me. But in connection with my affidavit, para 11, I have to state that a Mandapa having indication of 50 pillars and extending in an area of about 50 to 60meters by 30meters can be said to be a big Mandapa.

Q: You have replied in respect of Big Mandapa kindly reply in respect of that Mandapa also which is not called big Mandapa or which may call a small Mandapa ?

A: The small Mandapa may be resting on four pillars only.

Q: What will be the tentative size / dimension of an entire

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temple, the Mandaps of which comprises of 50 pillars or more, in an area of about 50-60meter ?

A: I am not able to guess.

Q: You have already stated that apart from Mandapa the temple has Garbhgriha and other parts also. Kindly, therefore, let us know the estimated size of the Garbhgriha of a temple, the Mandapa of which comprises of about 50 pillars?

A: The situation of a Garbhgriha in relation to the pillared Mandapa at the disputed site has already been discussed in my earlier statements in detail and it is stated again that the situation of the Garbhgriha was below the central part of the disputed structure which has not been excavated. Furthur the size of a Garbhgriha depends on the type of temple because in Shilpa texts various types of temples have been discussed.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

O.O.S NO. 5 OF 1989
( R. S. No. 236 /1989)

**04-12-2006** **O.P.W. 19 R. D. TRIVEDI**

**Pages 233-235**

The three photographs, as referred in para 17 of the affidavit and contained on pages 7/9, 7/12 and 7/13 of Annexures 3 and 4 of the affidavit, are the photographs of Uma Maheshwar but the photographs are of different sculptures and not of one and therefore, they may have some slight variation in them. Uma Maheswar means Parvati and Shiva. In such sculptures of Uma Maheswar, the special feature is that they are seated in Alingan Mudra and their respective vehicles, namely, the lion and bull respectively are shown below their seat. In sculptures of Uma Maheswar, the special feature, so far as the face is concerned, in the image of Shiva, Jatabhar is shown over his head while the head of Uma is shown with a coiffure. In such types of sculptures, one hand of Shiva is around the bosam of Uma and the other hands may have either weapon such as trishul or trident and touching the chin of Uma. In the Uma Maheswhar sculptures, the legs of Uma and Maheswar both may be dangling down and resting on their mounts. So far as waist part is concerned, Shiva may be wearing Yagnopavita and girdle and Uma also may wear girdle. In para 17, 'which' refers to the three photographs in Annexures 3 and 4 referred to above.

Q. What similarities are there in the photographs as shown in plate 235 of ASI Report, Volume II and on pages 7/9, 7/12 and 7/13 of your affidavit?

A. The photograph shown in plate no.235 of Volume II of ASI Report captioned as 'divine couple' is badly damaged. Its upper part is not preserved, but the waist portion of both the figures seems to be in 'Alingan Mudra'. The Yagnopavita and girdle portion of the figure

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has Yagnopavita and the remnant of girdle, which is generally called as Mekhla in the left figure. The leg of female figure on the right side is dangling below and seems to be resting on the mount. The remains of tail of mount, lion, is also visible on the right side which indicate it to be the mount of Uma. Rest of the features as given in the photograph are not visible in the sculpture as it is badly damaged.

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**In The High Court of Judicature at Allahabad (Lucknow Bench) Lucknow.**

**O.O.S. No. 4 of 1989**

Sunni Central Board of Waqfs and others ….. Plaintiffs

Vs.

Gopal Singh Visharad (now dead) and others ….. Defendants

**Statement of D.W. 20/5**
**Jayanti Prasad Srivastava**
**(Part-one)**

**Affidavit of Jayanti Prasad Srivastav under order 18 Rule 4 CPC**

I, Jayanti Prasad Srivastav, aged about 74 yrs, s/o Late Yadunath Singh, r/o B-117 F3 Bharat Apartment Shalimar Garden Ex-2 Sahibabad, District Ghaziabad, do hereby solemnly affirm and state on oath as under:-

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1. That the deponent has retired as Superintending Archaeologist, Archaeological Survey of India, Government of India, excavation Branch II, Purana Quila New Delhi on 31.7.1991.

6. That the deponent also explored mounds and brick temples of Gharwal Period in village Nasirabad, Tehsil Misrikh, District Sitapur U.P.

22.A. That the excavation at disputed site was carried out by the Archaeological Survey of India from 12th March 2003 to 7th August 2003.

23 A. That the deponent spent five months i.e. March 2003 to August 2003 at the excavation site at Ayodhya and observed the entire excavation.

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25. That during excavation, the Archaeological Survey of India adopted the latest techniques of layout of trenches where limited space was available.

26. That the excavation work was planned in phased manner in particular areas as per significant signals pointed out by the Ground Penetrating Radar Survey.

27. That the Archaeological documentation including drawing and photography of the structural remains, pottery and antiquities were done in very organized manner as per the norms of Archaeology.

28. That in order to maintain transparency all the excavated materials including antiquities, object of interest, glazed pottery tiles and bones which were recovered from the trenches, were sealed in the presence of Advocates, Parties or their nominees and dept on the same day of their recovery in the Strong Room provided by the authorized persons.

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29. That a large number of pillar bases had been found during excavations which indicates the existence of an extensive pillered mandap like structure.

30. That the evidence of pillar bases, circular or squarish are available in 50 places in different trenches from North to South and East to West in particular portion of the area, forming a sort of big rectangle, it is undoubtedly a very great evidence of Archaeological activity thus it can not be brushed aside lightly and casually. An evidence coming from the womb of the earth has got its own worth and relevance in Archaeological digging. The pillar bases found were neither created nor manufactured by the A.S.I. Creation or manufacture of walls, pillars and pillar bases is impossible. The pillar bases were found in presence of parties, their counsel, their nominees and observers appointed by this Hon'ble Court and never

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any oral objection was raised by any of them in respect of creation of pillar bases.

31. That a big stone 'Pranal' of crocodile shape with carving was found in the South West corner beyond the disputed structure during digging along with other carved stone Panels in the upper layers which definitely belong to some temple structure. A stone sculpture noted as divine couple in the antiquity seems to be the representation of Lord Shiva and Goddes Parvati.

32. That the presence of bones in the debris of the demolished temple can not be a reason for absence of the temple.

33. That Archaeological evidence of a massive structure just below the disputed structure is in itself an evidence of the continuity in structural phases from the 10th century onwards up to the construction of the disputed structure along with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members, including foliage paterns, amalaka, kapothpali, door jams with semi circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine, having a pranal in the North, fifty pillar basis in association of huge structure are indicative of the remains of a temple.

34. That there was a Temple Structure beneath the disputed Structure.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW, BENCH LUCKNOW**

O.O.S.NO. 4 OF 1989
(R.S.NO. 12 OF 1961)

The Sunni Central Board of waqfs, U.P. & others----------Plaintiffs

V E R S U S

Gopal Singh Visharad and other ----------Defendants

**Dated 15.01.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 15-16**

In no part of India human activities can be found older than that i.e. two lacs years. I cannot say exactly about the other parts of the world, in Europe and Africa there are some places where human activity goes around two lacs years.

My contribution in the excavation at Adamgarh was to the extent of digging of 14 trenches and preparation of day to day field note book. This is known as site note books also. The site note book and the field note book are one and the same. Day to day register is different. I had prepared the field note book of the concerned trenches excavated by me and not day to day register. Day to day register was prepared but it was not done by me. It was prepared by my other colleagues on the basis of all the field note books prepared by the Trench Supervisor present on the site. The field note book is prepared simultaneously at the time of excavation. If there are more than one trenches being excavated at the same time, the separate field note books in respect of the work are prepared after the day's work is over. The day to day register is prepared on the basis of the findings recorded in the note books.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW, BENCH LUCKNOW**

O.O.S.NO. 4 OF 1989
(R.S.NO. 12 OF 1961)

The Sunni Central Board of waqfs, U.P. & others .....Plaintiffs

V E R S U S

Gopal Singh Visharad and other ----------Defendants

**Dated 16.01.2007**

**D.W. 20/5 Jayanti Prasad Srivastava**

**Page 25-26**

The temple of Gahardwal period in Village Nasirabad was existing at that time. It is still existing. This was an archaeological work in the sense of exploration on the ground survey. The exploration which was done by me was brought to the notice of the Director, Archaeology and Museum, Lucknow. Thereafter, the Director of the State Archaeology got it protected. Archaeology includes the living structures to be brought to the notice of the Government and the scholars working on them. The temples in Nasirabad, Tehsil Mishrik, District Sitapur were made of carved bricks in North Indian Shikhar style of temples. In North India the Shikhar style temples are the only patterns of temples.

**Page 29**

However, I have noticed flowered designs in such Islamic buildings. I know what is Lata Vallari. I do not remember whether I saw Lata Vallari in Islamic buildings.

**Page 31**

Prior to 1992, I had not gone to Ayodhya. I had not seen the disputed structure. I visited Ayodhya for the first time in 2002. But at that time also, I neither visited the disputed complex or the Ram Janam Bhumi. The disputed structure was a three domed structure. It was known as Babri Masjid.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

O.O.S.NO. 4 OF 1989
(R.S.NO. 12 OF 1961)

The Sunni Central Board of waqfs, U.P. & others

.....Plaintiffs

V E R S US

Gopal Singh Visharad and other ----------Defendants

**Dated 17.01.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 36-37**

Besides these temples, I had visited one or two more temples there. There is a Gurudwara also in Ayodhya. I had not visited the said Gurudwara. During that period, I had visited Ranopali temple where the inscription of 2nd Century B.C. is found. Certain Ghats on river Saryu were also visited by me. In Ayodhya during that period, I did not visit any important religious place of Muslims. Ayodhya is an important place of Hindus, Muslims, Jains. I have heard that Ayodhya is called Khurd Makka also. Khurd Makka means mini Makka. Important Jain Mandir is also in Ayodhya. I have read that Ayodhya is an important place for Buddhist also. I cannot say that besides the disputed mosque, how many mosques are there in Ayodhya. I could not notice any other mosque in Ayodhya.

**Page-39**

Conclusion in an excavation report is arrived from the finds, as reported in various chapters contributed by the team members. Before arriving at the conclusion, all the members of the team sit together and discuss about various items included in the report and then a conclusion is drawn. This is normal practice in almost all excavations adopted in the matter of all excavations.

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**Page-41**

Stratification means determination of layers and it is done by studying finds found in different layers. In case any find has been wrongly identified then period determined on the basis of the said find will be wrong. For identification of the find one has to be expert in history and culture and the different types of finds. It is possible that a particular type of pottery was prevalent in different periods of four centuries.

**Page-42**

Layers are determined on the basis of colour of the soil, composition of the soil and contents of the soil. When an excavation is started on the above mentioned basis, layers are marked. Afterwards, if the finds are considered to be of the same nature, they are decided to be of the same period and those layers are bracketed and if there is a change, the period also changes afterwards but if the layers are not marked, it is very difficult to separate items afterwards.

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**Page-43**

Every activity including the above i.e. filtering of soil and mixing of the water is recorded in field note-book by the trench supervisor. I did not notice mixing of the soil with water during excavation at Ayodhya but I had seen the soil being sieved in pottery yard.

Stupas do not have any particular size. They may be small, medium and big in size. The Stupas are circular and solid structures in hemispheric form in elevation. Sanchi Stupa according to me is the biggest I have seen. I do not exactly remember size of said Stupa. It may be roughly 100 Ft. in diameter on the base and 25 to 30 feets in height. The smallest Stupa, according to me, could be of 10 feet diameter. Pauni Stupas are also big Stupas. I do not remember at

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present whether I had found any relic in a Stupa at Pauni.

**Page-45**

My statement in Paragraph 30 of my affidavit regarding existence of pillar bases is based on ASI report. It is based also on my personal noticing. All the 50 pillar bases were on floor three. The purpose of pillar bases was to have a mandapa like structure based on pillars over the said pillar bases. Pillars were also found during excavation over which roof of the mandapa could be placed surmounted by bracket and beam to make a roof during excavation in the central part at Ayodhya while removing debris during my presence, I have seen a pillar.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**18.01.2007**
**D.W. 20/5 Jayanti Prasad Srivastava**

**Page 47-48**

I am not very much conversant with Epigarphy and Palaeography. Epigarphy and Palaeography are same thing. In Palaeography on the basis of the forms of letters, its period is determined. Palaeography means writings on stone and Epigraphy means study of inscriptions. Caligraphy is in the same category dealing with writings from right to left pertaining to Arabic and Parsian languages in different styles. Age of a document can be determined broadly on the basis of Palaeography.

I have heard about chart of Concordance in relation to Stratigraphy to co-relate the finds with one each other in different trenches. According to me the object of chart of concordance is only to co-relate the findings in different trenches of the site. In the excavation conducted by me charts of concordance were prepared. It has got very much relevance on the finds of different layers.

**Page-50-51**

It is not possible to decipher as to who has contributed this chapter. Since the name of persons contributing in different chapters are given in list of contents and here no name is mentioned against chapter X it could be the contribution of the Director of excavation of the site themselves. The Directors of this excavation were Sri Hari Manjhi and Sri B. R. Mani.

According to me chapter 10 could be authored by them jointly being the Co-Directors. It is my feeling. How could I know as to who authored this chapter when it is not mentioned in the report itself. After all this was within the purview of the directors and I was not supposed to know about it unless the report come out.

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Colour, contents and composition of the soil are three distinctive features of a layer. By colour, I mean the colour of the soil of the layer. By content, I mean whatever is there in the soil of the layer and composition of the soil comes next to colour to mark a layer. For instance if the soil is loose it will be different from the compact soil and contents will come on the next stage. Loose, solid and compact are the three main components of a layer. For instance, generally, layer 1 may consists of humus if and is not very deep then the other layer 2 starts on the basis of loose or compact nature of the soil and so on so-forth, up to the natural soil at the bottom of a trench.

**Page-55**

In my opinion it should have been mentioned as to who authored chapter X of the ASI's report volume-I but if other names of contributors have been given and in this particular chapter names are not given then naturally it goes to the concerned Directors whose name are given in the beginning of the report, they are the leaders of the excavation team.

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**Page-59**

Garuda is never installed at the ground floor, it is installed in the front of Vishnu temple in of the lintel centre. If the temple is dedicated to Vishnu at the entrance gate in the centre of entrance over door jambs lintel Garuda will be depicted as the 'Vahan' of Vishnu.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**19-01-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Pages 61-64**

On the basis of pillar bases I have mentioned about the existence of an extensive pillared Mandapa like structure in para 29 of my affidavit. On the basis of large number of pillar bases I have inferred about an extensive pillared Mandapa. All number of pillar bases in their existence north-south and east-west covering a vast area measuring about 160 feet X 90 feet or so. As per plan coming out from the excavation it was a rectangular structure. Its length was from north-south 160 feet and its width was approximately 90 feet in east-west direction. In my estimation this pillared structure could have been a very big hall consisting of about 84 or 88 pillars, traditionally known in Ayodhya. By 'Traditionally known' I mean to say that as known in the local tradition about this temple having 84 or odd pillars. Out of which 50 have been exposed on plan during this excavation. Regarding height of the pillared hall, I have not heard any thing but the height of temple is traditionally known of 5 storied building. I have heard in Ayodhya people saying so. I have heard in Ayodhya about both the above things i.e. existence of pillared hall and 5 storeyed temple. Main temple is said to be of i.e. 5 storeys. It was beyond the pillared hall. This 5 storeyed temple would have been facing towards the east direction. This temple might have been in the western side of the pillared hall. The size of this 5 storeyed temple would have been enormous. By seeing the size of the height of these pillars I infer that the temple would have been of about 45 feet in height approximately in the 'Punch-tala-Prasada form' of the temple architecture in the north Indian Shikhar style. My opinion about the temple being of 5 storeys is based on the local sayings, where as north Indian Shikhar style of this temple is based on the available

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temples of that period at different places. I did not hear any thing from the people of Ayodhya about the height of the aforesaid temple except their saying that this temple was of 5 story and was of very good height. I have not heard any thing about the 5 storied height behind the pillared structure as stated above. In my estimation the size of the 5 storied temple would have been of 10feet X 10feet surrounded by a wall of 5feet width with an entrance in the east. This assessment is based on the distance between the different pillar bases to be approximately of 10feet. I heard about above facts during my stay at Ayodhya when excavation at disputed site was going on. I did not think as an archaeologist that this pillared hall could be any thing else except the big hall of the temple. Sayings can also be relied upon as one of the other two factors by an archaeologist records, remains and traditions (local sayings). Said voluntarily that there is an old saying of a famous writer Goetse, historian duty is to separate truth from the false certain from uncertain and to deduce doubtful from that which can not be believed. Thus while studying history, traditions may also be utilised as a source of information to a particular position in any part of the area where work is to be done. Traditions should be comparatively studied and on getting their conformation on the basis of some tangible evidence if any, they can be believed as a source other wise they can be rejected. Tradition need not have any time limit. Even a quite recent tradition can be relied upon if comparatively it is found to be correct. Traditions may be compared on the basis of available facts of a particular period at a particular place.

Q: As regards the tradition which you heard at Ayodhya in the year 2003 that at the disputed site there existed a 5 storied grand temple. You will compare this aspect by which thing and in what manner. Kindly indicate ?

A: There are published references of big temples having 3 to 5 to 7 storeys as the case may be called ‘Dwi-tal-prasada’, ‘Tri-tal-

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prasada', 'Punch-tal-prasads' and Sapta-tal-prasada' etc.

By such sayings and finding their reference in various books I inferred that there could be a 5 storied grand temple at the disputed site.

**Page-66-67**

Local saying that there existed a grand temple at the disputed site was verified by me on the basis of tangible evidence i.e. the pillar bases exposed during the excavation from north to south and east to west at regular distance in alignment and in a symmetrical order. I do not consider the exposed pillar bases as the "so called exposed pillar bases" they are real pillar bases in-situ, which have been brought out on plan during the excavation. This is an evidence to conjure up a picture of the temple which could have existed there having a multicolumned big hall and entrance chamber as seen in the published works of temple architecture of that period at different places.

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Q: Whether you compared the tradition/local saying about the existence of a grand temple at the disputed site by any other tangible evidence apart from the so called pillar bases ?

A: Such instances are available in the Indian history. Wherein temple Mandapa has been used after demolition for the construction of the mosques at Delhi, Ajmer and Dhar etc. I think I have replied the above question.

By the word conjure, I mean conjectural picture which could be based on the available evidence and it is very much in the practice in archaeological diggings. I have derived my inference regarding existence of temple at disputed site on the basis of the temples of $11^{th}$ – $12^{th}$ century A. D. Meaning thereby a temple was built in disputed site in $11^{th}$ – $12^{th}$ century which was demolished and a mosque was erected over it for which epigraphical and literary evidence is also

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available as already explained above. During excavation, different floors have been noticed at disputed site. The temple mentioned by me above existed at floor 3. This temple was built by a Gahadwal ruler of Kannauj some where around 1130 A. D.

**Page-68**

The inscription of Mir Baqi installed in the disputed structure as epigraphical evidence and reference of Goswami Tulsi Das's book as literary evidence since the record, remains and traditions were there to prove the fact. Besides the above two evidences about the demolition of temple by Mir Baqi, I have not gone through any other evidence.

**Page-70**

I may be incorrect in saying that there is mention of demolition of temple by Mir Baqi in the above inscription. It is wrong to suggest that there is no mention of the demolition of temple and construction of mosque over it in the literature of Goswami Tulsi Das.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty High Court Lucknow.**

**31-01-2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page-74**

In para 29 of the affidavit I have stated on the basis of large number of pillar bases that there could be an extensive pillared Mandapa like structure.

Q: Is it correct to say that now you have made an improvement and you state these alleged pillar bases to be a temple base ?

A: "I have always mentioned that the pillared halls were found in front of the Shrine" so there is no question of improvement in my statement. Volunteered and stated that I have already explained the position of the Vishnu temple at the site giving its probable dimensions to the west of the pillared hall.

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**Page-75**

As per my assessment there could be one very big pillared hall from north to south which could be divided into three parts.

Besides this big pillared hall there was no other hall but that big pillared hall could be divided into three parts viz. the central hall and the side two halls, Parahva mandapas in the north and south.

**Page-76**

In figure 3-A ( page 48-A) of the ASI report volume-I all the 50 pillar bases are visible. In the northern portion there are 24 pillar bases which have been numbered as pillar base no. 1 to 24 in figure 3-A these were in the northern hall. Three pillar bases numbered as 25, 26 and 27 have been shown as exposed in the above figure might have been in the central hall. In the southern portion from pillar base no. 28 to 50 a shown in figure no. 3-A might have been these two pillar bases which have been stated to be in antarala could be in trench D-4. Other two pillar bases stated at entrance gate of 'Mukh-Mandapa' could be in trench no. H-4 somewhere.

**Page-78**

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A: The pillar bases, makar-pranala and figure of Shiva and Parvati riding on the mount of Nandi (bull), the evidence of Pushkarni (small pond) are some of these things which are indicative of a Shrine like edifice in that area.....

A: This Makar-pranala was itself an indication of some Shiva temple at the site.

**Page-79**

A: I have explained the position that such pranalas are associated with the Shiviate shrines and that some such shrine must have been existed there near about, which is know demolished furthur in the earlier phase in that very area a circular small Sheviate shrine was excavated. Thus my position stands vindicated that in this part of whole complex some Shivaite shrines must have been there which is now demolished.

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**Page-80-81**

Q: What is your assessment whether by word 'near-by' you mean that some Shivite shrine was in the vicinity of the Makar-pranala where it has been noticed during the excavation or it was indicated by you associated with an alleged earlier circular shrine?

A: Since it was a part of demolished complex the evidence in hand is an indicative of some Shivite shrine which must have existed there near the place where Makar-pranala is found as some sort of subsidiary shrine of the Vishnu temple complex. I don't feel that this Makar-pranala was associated with the circular shrine found during course of excavation at the lower level.

The term 'Pushkarni' used in my above statement denotes a small pond. Pond is associated with the Shivate temple in the vicinity somewhere near about. These small ponds are not necessarily part of the Shiva shrine but are found near Shiva temple as one of the so many associated portions.

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Q: Could a ‘Pushkarni’ be conceived without a Shiva temple ?

A: Yes, there could also be a ‘Pushkarni’ or water reservoir even without that.

There should be a small water reservoir or Kund to collect water near a Shiva temple which comes out of the outlet. Meaning thereby this water reserved oil is used for storing water coming out from Shiva shrine after being offered by the devotees by Jal-Abhishek. The water to be offered is to be taken from the Puskarni or the well situated near about and the offered water falls in some small ‘Kund’. The water which comes from outlet after being offered by the devotees is stored in a small ‘Kund’ (storage enclosure).

Q: You mean to say that there are required two reservoir wires near by Shiva temple, one to take water to be offered at the Lingum and the other for storage of the same offered water ?

A: Yes, they are quite separate items.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**01-02-2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page-82**

Subsidiary shrine is a part of the temple complex dedicated to a particular deity. This subsidiary shrine is expected to be on the same floor where the main shrine is there. I have been a student of History.

**Page-86**

This period ranges from 600 A. D. to about 650 A. D. Rajput period is from 800 A. D to 1200 A. D. roughly. Sultanate period from 1205 to 1525 A. D. and Mughal period (with Sher Shah's interluding period) from 1525 to 1707 A. D. within this period the period of Sher Shah's period is included which is of about 15 years. Late Mughal/ British period starts from 1707 A.D to 1947 A. D. and Modern period broadly speaking from 1947 to present day.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**02-02-2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 98**

Learned cross examiner drew the attention of the witness towards the chart given at page 37-A of the ASI report volume-I, the witness stated that on the basis of the chart the duration of N.B.P.W is about 400 years ranging from 7-6th century B. C. to 2nd century B. C. The duration of 'Medieval period' was about 650 years ranging from 1200 A. D to 1857 A. D. As per this chart the duration of 'Early Medieval Sultanate' period was of about 400 years ranging from 800 A. D to 1200 A. D approximately. The duration of 'Post-Gupta-Rajput' period can not be stated simply on the basis of the chart given at page 37-A, unless descriptive part of the report is seen. The duration of 'Gupata', 'Kushan' and 'Shunga' period also can not be given on the basis of this chart unless descriptive portion of the report is seen for this purpose.

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**Page 105**

Day to day register was shown to the witness who after going through first part of this register stated that at page no. 84, there is mention of taking of a Charcoal sample taken from trench no. E-8 (layer no. 6) at the depth of 1.98 meters in the presence of the parties and their nominees. I think this was one of the samples taken by the ASI at the time of excavation and sent to Director, B.S.I.P. Lucknow. It is not ascertainable whether this sample is mentioned at page no. 273 of the ASI's report volume-I or not. The sample which is mentioned in page no. 84, of the day to day register (part-I) is not mentioned at page no. 273, of the above report (appendix-I). In page no. 114 of the day to day register (part-I) Factum of floor samples A and B were collected from trench no. E-8. (Floor no. 3) at a depth of 1.15 meters sample B was to be sent for analysis whereas sample A was just sealed. Is recorded this sample also finds no mention in

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appendix- 1 of the ASI report volume-I at page 273 but there must be some record of the same with ASI.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**05-02-2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 107**

At page 273 of the ASI's report (appendix-1) results of 7 samples have been given. These are samples no. 2, 3, 4-B, 5-B, 1-B, 1-A and 6-B . Report regarding samples no.1, 4, 5, 6 and 6-A is not given in this appendix. I am not in a position to say any thing about it as only A.S.I people can say its reason for not mentioning the results of the aforesaid samples. Carbon dating is done on the basis of charcoal samples found during excavation.

**Page-108-109**

This omission could be either because of the non receipt of the result from the respective laboratories up to the time of writing of this report, or not being sent by the A.S.I to the laboratories because of their some short coming as per requirements of the laboratories. ….....

For the reason this is a temple complex and temple architectural members have been found in this excavation so this could be a pillared hall in front of religious shrines only.

Q: Is it correct to say that religious shrine includes the place of worship of all religious sects ?

A: Religious sect could be Vaishnav, Shaiva or Shakt in front of which this pillared grand hall had been there. Here religious shrines mean temples of the above mentioned sects and not of Budhist or Jain or any other sects.

**Page-114**

I know the 'Mosque', and 'Jama-Masjid' and 'Eidgah'. I do not know about 'Qanati-Masjid' but it could be a temporary Mosque prepared out of 'Qanat' which means a long cloth folding curtain with small Bamboo poles stitched therein at some regular intervals

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for the camp purposes where tents are pitched and tent Colonies are erected temporary. I have heard about a Mosque having no roof but I have not come across the same. I have seen 'Eidgah' from a distance. Usually there is no roof in the 'Eidgah' building. 'Eidgah' are generally built out-side the inhabited area having a long north-south wall in the west. In 'Eidgah' only two prayers (Namaz) are held in a year namely 'Edul-fitr' and 'Edul-Zuha'. Due to large space required for such a Mass prayer 'Eidgah' is away from the thickly populated area of the village or town. If the population of an area increases in such a situation 'Eidgah' is shifted to an isolated area, which is not thickly populated. I don't know about any existing 'Eidgah' in Ayodhya. I don't remember whether I have seen 'Saket Degree-College' during my stay at Ayodhay (Faizabad). As such I am unable to state whether there is any 'Eidgah' near 'Saket Degree-College'. I don't recollect whether in any digging prior to this excavation at Ayodhya, 'Gold' was found or not however it is said that 'Gold' comes out of the dust of river bed in Ayodhya. I have heard that the site in dispute has been throne to floods from west and south and that Ayodhya had undergone some great flood in the past. Commonly it could be called as 'Khanda-pralaya' and not 'Maha-pralaya' because they are two different terms having definite meanings in the Ancient Indian tradition. I have used word 'Great-flood' for 'Maha-pralaya', for 'Khand-pralaya' it could be 'small flood'. It is said that Ayodhya came under a huge flood when the whole of the city was drowned under its waters but it could not be the part of 'Maha-pralya' or 'Khand-pralaya'. In huge flood the whole city came under water and must not have been totally vanished but must have been mostly destroyed.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**06-02-2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 122**

Thus the total number of temples were three. 'Vishnu' temple being the central temple and main temple, whereas the other two temples 'Shiva' temple in south and 'Durga' temple in north were subsidiary temples having a common big pillared hall and a common entrance in the east with the 'Garuda-stambh' in the east as stated earlier. All the aforesaid three temples were raised at the same period. These temples were existing over floor three. These three temples existed till their destruction i.e. up to 1528 A. D. These three temple were built in the early part of the 12th century A. D. i.e. somewhere near about 1130 A. D. during the time of 'Govind Dev' a 'Gahadwal' ruler of a Kanauj.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**07-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 130**

I feel when the main temple of 'Sri Ram Lala' was existing in the centre, there had been two other sub-shrines of 'Lord Shiva' in the south and 'Durga devi' in the north. Although there is no mention of above mentioned two subsidiary shrines in the ASI report but on the basis of finds I have drawn my own conclusions in this regard about these two shrines also. Regarding the shrine of 'Shiva', the stone decorated crocodile mouthed pranala (chute) was found during the excavation and the sculpture of 'Shiva-Parvati' was also found although it was in a very damaged position. Regarding 'Devi' temple the terracotta figurine of mother Goddess was found.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**08-02-2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 136**

A.S.I has numbered the floors also found during excavation. The pillared structure was at floor no. 3 and the three temples indicated by me were also on this very floor. The A.S.I. has indicated about all the floors, some being made of 'cement', some of 'mud' and some of 'lime-surkhi'.

**Page 137**

At serial no. 46, in column no. 4, at number 2, floors 1 and 2 are mentioned and their common depth from surface is given as 140 c. m. Separate depth of these two floors has not been given. Similarly of what material these floors were made of is not mentioned. From this entry it is apparent that floor 1 and 2 were within the depth of 140 c. m. from the surface. The expectation is that floor no. 1must have been at upper level whereas floor 2, at the lower level and the maximum depth of floor 2, must be 140 c. m. and not beyond that.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**09-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 154-156**

During excavation I had seen three pillars out of which two pillar were in fore court where as the third one was brought out from the debris of the central part. These pillars could be from among the pillars used at the site as some of them had been used in the disputed structure. The height of the pillar found from the central portion in debris was 165 cm. It was square in the base. The base of this pillar could be about 30 to 35 cm. The pillars of same shape and size or even of more height could be there in the disputed structure itself as also reported and mentioned by R. Nath in his book, more over the district gazetteer of Faizabad mention a pillar being of 7 feet height along with a photograph although the place of its existence is not mentioned therein. I do feel that these pillars could have been used in the pillared hall which I have indicated in my earlier statement to be raised at floor 3. These pillars could be used as load bearing pillars also.

Q: Whether a pillared hall alleged to have been raised in 1130 A. D. is their any certainty that it must have existed for 400 years unless demolished ?

A: During the course of 400 years it could also fall down due to natural reasons and some additions and alteration could also be there covering that period about more than 16 generations.

Q: You have already stated that the area of disputed site has been flood prone and the area also being situated by the side of the river. Whether the pillared hall indicated by you could also be collapsed in course of time by the water of Siryu river flooded over the area ?

( Sri Ved Prkash Advocate, raised the objection that the question is presumptive and such a case has neither been pleaded nor any word

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has been put in the objections filed against the ASI's report, as such the question should not be permitted to be asked)

( Km. Ranjana Agnihotri Advocate, raised the objection to the above question that the in addition to the above objection I have to add that question is full of imagination and fantasy and totally is irrelevant such question should not be permitted to be asked )

A: Yes, this could be so before the construction of that massive wall which was there for the protection of the flood against this complex from the western side due to river but after that the possibility of the flood in the pillared hall area got reduced. This massive wall has been numbered as wall 16, by the A.S.I.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**12-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 159**

This note is not with me here in Lucknow. At page 55 of A.S.I. report volume-I, it is mentioned that 17 rows of pillar bases were constructed along the north-south running wall ( wall 16). They were quite in line with wall 16, which was in the west. The distance of the pillar base in each row from the said wall ranges from 3.60 to 3.86 meter. 17 rows of pillar bases have been mentioned as they have emerged from the excavation on plan. This on local tradition fact has not been mentioned here in page 55, by the A.S.I. people on the basis of information gathered from local citizens of Ayodhya. 'By plan I mean plan of the excavated trenches'. This plan is attached with the A.S.I. report as figure 3A ( page 48-A). I have referred here in above about this very plan. In my opinion grand pillared hall existed over these pillars. The roof of this hall must have been grand but also in consonance with the architecture of the central shrine in the north Indian 'Shikhar style' against the 'Mehrab style'. This could be having a north Indian pattern, Shikhar like, single storied hall, having pillars, brackets and beams. The Shikhar surmounted by 'finials'(kalghi) and four openings in the Shikhar. 'Finials' or 'kalgihi' is used at the top of the shrines. 'Finials' are used at the top of Mosques also.

**Page-160-63**

'Pillar bases' is the structure on which the pillars were standing. It is true that walls stand on their foundation. It is not true that pillars also stand on their foundation but they stand on pillar bases. Pillars have got no foundation they stand on pillar bases which had foundation of 3, 4 or 5 courses as the case may be, over which the pillars stood. Pillar stood with the half of 'mortise holes',

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‘tenons’, ‘clamps’ and ‘grooves’, dowels etc. At the bottom there should be masonry pillar base. There should be a floor. Within the floor the foundation of the different pillar bases would be there, over which the pillars are made to stand. For pillar purposes foundation and pillar bases is the same thing. There is no distinction in saying ‘ foundation of a pillar’ or ‘pillar base’ both are the same. Pillar bases are of masonry work sometimes with calcrete stones also over them. Calcrete stones mean pieces of stones fitted in the centre of the pillar bases to give strength to the base, over which the stone pillars are made to stand. Same system will be applicable to masonry pillars, also as against stone pillars as mentioned herein above. Sometimes ‘wooden’ or ‘iron’ pillars are used, they also require base in the same manner for the support as stated above. In some cases stone blocks could be required for pillar bases but they should be in proportion to the masonry pillar base. There could be plaster over the pillar bases. As regards essentials of a pillar base nothing more is required for the same. I am conversant with the term ‘ orthostate’, it is one of the component. It is one of the special component of the pillar base. An ‘orthostate’ should always be there in a pillar base for giving strength to the pillar. A pillar base could be with out an ‘orthostate’ also with the help of plaster. A pillar base for a stone pillar could be of ‘mud-mortar’ also. I have come across the ‘mortise hole’. Said voluntarily they are collected and store in a tin-shade near disputed site. During excavation they were collected by the A.S.I. people and stored in two ‘tin-shades’ which lie out-side the excavated area in the south and west part of the mound. I don’t recollect the size of ‘mortise-holes’. I can not tell by memory their exact number, but the specimens of mortise-holes are there.

On being permitted by the commissioner, the witness perused the report and thereafter stated that there are about 80 mortise-holes, grooves in the collection of architectural members stored in the tin-shade at the excavated site as given from 131 to 152. These holes are reported at serial no. 1, 3,7 at page 131, at serial no. 9, 13, 15, 17, 18,

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23 and 24 on page no. 132, at serial no. 29, 34 and 36 on page 133. All the holes given at page no. 131and 132 are from the surface whereas those reported on page 133, the member given at serial no. 36 is from a depth of 25-30 cm. All other architectural members given on this page are from surface. Similarly on page 134, at serial no. 42 and 43 from a depth of 35 cm. On page 135, at serial no. 44 at a depth of 35 cm. serial no. 50 from the surface, serial no 54. at a depth of 35 cm. On page 136, serial no. 62, is from surface, Serial no. 64 is from the depth of 30 cm. Serial no. 67, depth at 40 cm. and serial no. 69 is again from surface. On page 137, at serial no. 71, it is from surface. 72 is the from depth of 30cm. Item 77 is also from surface and serial no. 84, is from the surface. On page 138, at serial no. 87, from the depth of 65 cm, 93 from surface, 94 also from surface 95 the depth is 145 cm, and 104 is from surface, on page 139 at serial numbers 110 from surface, serial no. 111 also from surface, serial 113 from surface and 119 from debris above floor 1. On page 140, serial number 121 is from debris above floor 1, 122 also from debris above floor 1, and 124 from debris above floor1.

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Q: Whether the architectural members mentioned by you as above ranging from pages 131 to 140 do been any special significance specially belonging to Temple or Mosque ?

A: Since the details pertain to the pillared hall in front of the holy shrine they could have belonged to a Hindu shrine. They can not pertain to a Mosque which is out of context at this place.

**Page 167**

On page no. 24, at serial no. 29, in trench no. E-9, a pillar base was found at a depth of .60 meter. At serial no. 30 to 32, on page 24 and serial no. 33, 34 there is no mention of any pillar base having been found in trenches no. ZF-1, F-2, F-3, F-4 and F-5.....

….....On pager 26, at serial no. 37 in trench no. F-9 a pillar base is found at a depth of .50 meter. At serial no. 38 it is mentioned that in trench no. ZG-1 a pillar base at the depth of .50 meter was found. At serial no. 39, it is mentioned that in trench G-2, two pillar bases were

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found at a depth of 2.20 meter.

….....On page no. 28, at serial no. 46, in trench no. G-9, a pillar base at the depth of .20 meter was found. At serial no. 47, in trench no. ZH-1, a pillar base at the depth of .55 meter was found. At serial no. 48, two pillar bases were found respectively at the depth of 1.50 and 0.70 meter. On page no. 29, there is no mention of any pillar base at serial no. 49 to 51. At serial no. 52, in trench no. H-5, a pillar base is found at a depth of .82 meter. On pages 30 to 36, at serial numbers 53 to 82, there is no mention of any pillar base having been noticed in the trenches mentioned against these serial numbers.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**13-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 175**

In Muslim buildings also inverted lotus is seen on the top of the dome. Depiction of lotus is also common for other occasions in other buildings also. Same thing is applicable for flower designs also. 'Vase and foliage design' is not common in all buildings. Vase means 'Ghat'. 'Pallava' mean foliage pattern it is a common theme. It is considered to be auspicious and is generally found on the religious structures. In nut shell 'Ghata' means 'pitcher' or 'vessel' to store water and leaves coming out of it or 'pallava'. 'Ghata' does not include 'Surahi' but other earthen pots such as 'Gagar', 'Matka', 'Matki', 'Jhajhar' are included within the definition of 'Ghat'. 'Gamala' does not come under the category of a 'Ghata'. Importance of water is equally same for all the human beings rather living beings and this is why it is taken to be auspicious. 'Ghat' is desired to be full of water ( Purna-kalash). Design of 'Ghata' is seen in all types of buildings in various forms and even in stylised forms.

Sculptured motifs means any item or figure pertaining to human or animal or floral designs depicted or engraved on the stone.

'Gana' means attendant of Lord Shiva. 'Ganas' are invariably males whereas female attendance of 'Parvati' are called 'Yoginis'.

**Page 177**

Wall 5 of disputed structure existed over wall 16. Wall 5 was the western wall of the disputed structure. Wall 16 was below wall 5 and was built prior to wall 5. Wall 5 partially rested on wall 16 and partially on its own foundation built over the wall 16 after demolition of the structures associated with the wall 16. Wall 16 was built around 1130 A. D. when pillared hall was erected in front of the shrines. There is another wall just below wall 16, which has been

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numbered as wall 17 in the A.S.I. report running north-south rather obliquely parallel and one above the other. Wall 16 was built just over wall 17 in the obliquely parallel form being one above the other. Wall 17 was built sometimes in 10 – 11$^{th}$ century A. D. After construction of wall 17, the structures standing below floor 3, towards east of wall 17, got protected from the flood and to further strengthen it, wall 16 was constructed.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**14-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 186**

The distinguishing feature of the Ram-chabutra complex as noticed during excavation where peculiar type of floor levels was made out of the material dug from the area which was in the north side of the Ram-chabutra which in this excavation has been marked as trenches J-3, J-4, J-5 and J-6. I have read this fact somewhere in the report submitted by the A.S.I. regarding bringing of earth from the area which existed in the north of Ram-chabutra in order to maintain the different levels of Ram-chabutra. This act of bringing earth from adjoining area of Ram-chabutra might have been done during Mughal or late Mughal period, meaning thereby sometimes in 1602 to 1605 A. D during the last phase of Akbar's rule when Ram-Siya coin was introduced. Prior to that this area of Ram-chabutra might have been two or three meters lower than the present level situated in the area beyond the disputed structure in that direction.

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**Page 189**

Q: Whether 'Amalaka' is the design of the fruit 'Amala' halfed horizontally ?

A: The design of 'Amalaka' is having crevices in the circular form of an 'Amala' fruit. The top 'Amalaka' called 'Shirsh-Amalaka' is having a full 'Amalaka' and the Karna-'Amalaka' found on the 'Shikhar' part of the temple at the corner is in-part and not in-full denoting sculptured crevices. 'Amala' is considered an auspicious fruit of 'Durga devi'. There is no prohibition of use of fruit 'Amala' by the believers of other faith.

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**In The High Court of Judicature at Allahabad (Lucknow Bench) Lucknow.**

**O.O.S. No. 4 of 1989**

The Sunni Central Board of Waqfs and others …....Plaintiffs

Vs.

Gopal Singh Visharad (now dead) and others …... Defendants

**Statement of D.W. 20/5**
**Jayanti Prasad Srivastava**
**(Part-Two)**

**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**15-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Pages 191-192**

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I have stated that glazed ware, glazed tiles and glazed potteries indicate Muslim civilization. Said voluntarily, however glazed tradition is a very old tradition as glazed wares started from 'China' and went up to 'Egypt' via 'Middle-east' and again it came to 'India' after the arrival of Mohd. Ghori. In between, glazed ware has been met with in 'Kushan' period also in the Indian sites. Sporadically it was also used in Kushan period. There is a difference of technique of glazing or making glazed wares from Ancient times to Medieval times. During excavation at disputed site glazed wares, glazed tiles and glazed potteries were found in different trenches and in different layers. There may be difference with regard to technique and manufacturing of glazed tiles, glazed wares and glazed potteries. I have not gone through the report submitted by the ASI with reference to their aspect of glazed wares/glazed pottery/glazed tiles.

If during excavation animal bones with cut marks are found from a particular site, then it can be inferred that persons consuming animal meat were residing in that area. It may also give a

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presumption that the people who were residing in that area were sacrificing animals for ritualistic purposes even though they may have different religions. The persons who sacrifice the animals may eat meat or they may not eat meat of these animals.

**Page 193**

These are some of the Indigenous patterns which were there as against Lahore fort glazed ware which were having Persian themes. The glazed wares which were brought in 'Chines tradition' belonged to 'Kushan' period. I don't exactly remember the exact sites from where glazed wares of 'Chines tradition' were found during excavation.

**Page 194**

I have referred in my statement about the inscription of Mir Baqi, it was fixed in disputed structure raised in 1528 A.D. paper no. 189C2/8, filed at the time of cross examination of P.W 15, was shown to the witness who, after seeing this paper, stated that this is the inscription which was fixed there. I have read its translation in English from which the date of construction of the disputed structure is inferred. My statement in this report is at page 68 ( in last para fourth line from the bottom), recorded on 19-01-2007 proclaim to this report.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

O.O.S.NO. 4 OF 1989
(R.S.NO. 12 OF 1961)

The Sunni Central Board of Waqfs, U.P. & others .....Plaintiffs

V E R S U S

Gopal Singh Visharad and others ----------Defendants

**Dated 19.02.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Pages 203-205**

This is true that in excavation matter the depth of various levels is very important in archaeological digging. During digging the finds recovered from various levels help in determining the period. Period to which whatever those finds belong. The finds help in determining the culture period and civilisation of that period. If there is a mistake in fixing the level and depth, it is likely to result in wrong result of the excavation regarding civilisation and periodisation. Voluntarily said that it is a hypothetical question in case of any variation regarding periodisation, the team leader having discussed with others finally determines the period with the help of co-ordination and result of all the trenches. In such situations, the chart of concordance is prepared or some other chart of explanation is furnished in the report. I have not examined the report from the point of view whether there is any concordance or explanation regarding any variation in depths mentioned or not. Variations are there in the report, but they have been properly explained. I have not checked from this point of view whether there is any explanation regarding variation in depths of raised platform area and other area. *Srivatsa* symbol is a religious motif found in sculpture as an art motif. It is the shape of engraving, if on stone, and may be found in the shape of

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painting also on paper or wall, as the case may be. *Srivatsa* is a star shaped design normally either carved or painted on the chest of the idol. Star/*Srivatsa* may be of any shape. The Star can be seen on different types of building also in form of carving as well as painting. The same would be of a religious significance when it is found on the chest of the idol. Engrave design in plate 88 is not a Star shaped design, but it has been described to be as *Srivatsa* motif by ASI in its II Volume. This is true that the design in the said plate 88 of ASI's report of Volume II, but I consider it to be Srivatsa because ASI has mentioned it as Srivatsa motif. Voluntarily said that the shape in this plate may also one of the types of Srivatsa, which I may not be aware of. The Srivatsa motif shown in plate 88 is not on the chest of idol or icon, but is on stone slab.

**Pages 209-210**

My statement in paras 29 and 30 of my affidavit is based on summary part of ASI report, Vol.1 which is in chapter 10 of the report. My said statements are based on last para on page 269 of the said summary. It is true that in ASI report the word 'Mandapa' like structure is not mentioned, but it is there in the ASI report that a structure having a huge pillared hall (or 2) is there, which is different from residential structure. I have drawn inference from the said report of the ASI, which has been described as pillared halls that it was a 'Mandapa' like structure. By pillared hall I mean that rectangular room type of structure, not of verandah type of structure. In my opinion, the hall type of structure in this case could have been about 15 feet in height. For a hall of 15 feet height, the height of pillars should be approximately 7 feet.

Q. How can be a room of 15 feet hall rest on 7 feet only ?

A: Seven feet pillar is quite sufficient to maintain Shikhar like roof of the hall having a height of 15 feet over the bracket and beams. Meaning thereby over the four pillars there could be a bracket and thereafter beam over that Shikhar type of roof, unlike arch roof or flat roof. In this way, the hall having 80 pillars had 24 Shikhar like roofs

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on the northern part and 24 on the southern part and 12 in central part i.e in total 60 Shikhar like roofs would have been there in these halls.

**Page 211**

Q. If you say that one Shikhar was based on 4 pillars then the number of such Shikhar type structure being given by you as 60, the same should have been based upon 240 pillars ?

A: The number of pillars will remain the same i.e. 80 and the upper structure could also be managed on the same pillars. 15 Shikhar roofs type structure would be resting on 16 pillars north south and 5 Pillars east west.

**Pages 212-214**

Q. What was the type of roof of the alleged central shrine?

A: It could be 5 storyed type super structure as seen from the east. Roof could be of a flat type from inside having an opening on the east side.

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Q. What do you mean by 5 storyed structure?

A: Five storied structure means the ground floor thereafter the first, second , third and fourth. Such type of temples are called 'Panchatala Prasada'. The total height of aforesaid 5 storyed would be about 45 feet. The height of ground floor from floor to roof might be of 10 feet. The height of main shrine may be lesser than the height of pillared hall in front of the shrines. The two subsidiary shrines, which were in the north and south to the main shrine were having three storyed structures i.e. ground floor, first floor and second floor. The height of ground floor of both the subsidiary shrines could also be only of 10 feet . The height of these two subsidiary shrines would be about 27 feet in total. These shrines were resting on walls, not on pillars. Central shrine approximately could have been of 10x10 feet in size and the same size also holds for the two subsidiary shrines. All the three shrines were closed from three sides and there was only one entrance from the eastern side. These shrines were facing towards east. The size of 'Antaral' between these three shrines and pillared hall could be of 10 feet approximately.

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Q. Do you find any reference in the ASI report about these three alleged shrines as stated by you ?

A: Yes. The ASI referred the central shrine as Sanctum santorum. Regarding the two subsidiary shrines towards the south, the ASI report mentions about its location towards south in the form of a subsidiary shrines south to central shrines as a circular temple. The circular above referred to, were subsidiary shrines as referred in the earlier period. The circular shrine referred at page 70 is different. It pertains to earlier period and not to the present subsidiary shrine, which I have stated above. As stated by me today is not mentioned in the ASI report. However, I have drawn inference from that part of the report where ASI has referred to circular shrines of earlier period as a subsidiary shrine, which indicated about the central shrine in the north to the subsidiary shrine. The ASI has not said anything in its report about the central shrines or the subsidiary shrines, during the period pillared structure was there. However ASI has referred in its report about the Sanctum Sanctorum, which according to me could be central shrine.

Q. Is it correct to say that ASI has no where referred in its report, as you have stated today in the Court that they have referred the Sanctum Sanctorum for such central shrine ?

A: Yes, it is correct that ASI has not referred in its report about the central shrine. The Sanctum Sanctorum is referrable to such central shrine of the report. However, the Sanctum Sanctorum finds place in its report.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

O.O.S.NO. 4 OF 1989
(R.S.NO. 12 OF 1961)

The Sunni Central Board of Waqfs, U.P. & others .....Plaintiffs
V E R S U S
Gopal Singh Visharad and others ----------Defendants

**Dated 20.02.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Pages 217-220**

In trench ZL-I no pillar base has been shown in figure 3-A. In trench L-I also no pillar base is shown. Similarly, in trenches L-2, L-3 and L-7 no pillar base is marked in this figure. In Appendix–4 on page 208 (internal page 17) in trench L-I parts of two pillar bases are mentioned in the chart. Similarly, in L-2 and L-3 trenches also parts of two pillar bases, one in each, are mentioned. Similarly, in trench L-7 two pillar bases are shown. In this way, according to the appendix-4, 8 pillar bases were noticed in trenches L-1, L-2, L-3 and L-7. No trench of M-series was undertaken for excavation. The 50 pillar bases, which according to me were exposed, were excavated by the ASI, were duly numbered also in figure 3-A by the ASI, do not include the pillar bases indicated in appendix-4 in L-series of trenches, i.e., L-1, L-2, L-3 and L-7.

Q: After seeing the description of 8 pillar bases on page 08 of the ASI report, Vol.I, would you like to say that there were 58 alleged exposed pillar bases about which you have earlier stated that the number was only 50.

Sri Ved Prakash, learned counsel appearing for the plaintiff in O.O.S. No.5 of 1989 raised an objection to this question on the ground that this appendix-4 is not part of the ASI report, as the same has been prepared separately under the direction of this Court.

We do not find any merit in the objection, as the entire

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excavation was made under the orders of this Court and appendix-4 is prepared by the ASI, which finds place in Vol.I from pages 291 to 309. Thus, the objection is over ruled.

A: The 50 pillar bases have been numbered by the ASI in figure 3-A and they are in the western part of the excavated mound. The 8 pillar bases in trenches L-1, L-2, L-3 and L-7 are towards east of the excavated mound. These pillar bases are not included in the 50 pillar bases marked in the western area. Including the pillar bases of trenches of L-series, as indicated above, the total number of the so called exposed pillar bases would come to 58.

According to me, the excavation of trenches of H-series is on the western part of the mound and beyond the same towards the east, i.e., from trenches of J-series, the excavation is on the eastern part of the mount. Trenches of J-series will be called trenches of the eastern part of the mound. The pillar base no.6 falls near the baulk of trenches ZH-2 and ZJ-2. Pillar base 6 falls just on the brink of the western part of the mound. The pillar bases, which I presume could have been there up to H-series on the western part of the mound and not on the eastern part. The said pillar bases would not be in the trenches of J, K and L series. These exposed and unexposed pillar bases according to me, are of 12$^{th}$ Century. These pillar bases relate to the structure raised in 1130 A.D.

The distances between the pillars in north-south and east- west was approximately ten feet, the distance being little more in north-south as compared to east-west, but the difference is nominal, i.e., about 10 cms. The map is prepared on the scale of 5 mm. equal to 1 metre.

I can try to measure the distance of two pillars on the basis of scale given in figure 3 A. The northern end of wall 16 in figure 3A is 6 metres from pillar base no.2 i.e. PB 2. The horizontal distance between wall 16 and pillar base 15 is 5.6 metres. Similarly, horizontal distance between wall 16 and pillar base 20 is about 10 metres. As I understand my statement on page 159 before this Court

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regarding distance of pillar bases from wall no.16 which I have stated to be ranging from 3.60 to 3.86 metres is probably based on report of the ASI. In view of the actual measurement done by me on the basis of the scale in figure 3A the said statement regarding distances appears to be incorrect.

**Page 221**

Distance between pillar base no.25 and pillar base no. 28 is about 12 metres. I do not remember whether trenches F-4 and F-5 were actually excavated or not. The same can be verified from the report. Part of pillar base as shown in trench F-3 in appendix 4 at page 297 is the same as shown in pillar base no.25 in figure 3A. Part of pillar base is shown to be in trench F-4 in appendix 4 at page 297, but said pillar base is not shown in trench F-4 in figure 3A. Since part of pillar base is shown in trench F-4 in appendix-4 at page 297, the same is to be taken as exposed pillar base although not shown in figure 3A. From appendix 4 , I can say that trench F-4 was also excavated. From entry in regard to trench F-5 on page 298 of the appendix-4 it is evident that trench F-5 was also excavated.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**21-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Pages 225-226**

The distance between pillar base no. 49 and 50 is about 2.50 meters. Pillar base no. 49 is not in alignment with pillar base no. 45 in southern side and pillar base no. 47 and 48 are not in full alignment. There is no pillar base in between pillar base no. 27 and 50. The distance of pillar base no. 40 from wall 16 is about 4meters. There is no pillar base between wall no. 16 and pillar base no. 40. Pillar base no. 40 and 37 are not in full alignment. The distance between pillar base no. 41 and 44 is about 5meters and these pillar bases are not in alignment. The distance between pillar base no. 41 and 42 is about 2.50meters, they are also not in alignment. The distance between pillar base no. 38 and 39 is about 2.50 meters. The distance between pillar base no. 37 and 38 is about 3.50meters. The distance between these two pillar bases is about 2meters if the distance is taken from the corners. The distance between pillar base no. 38 and wall 16 is about 6meters. There is no other pillar base in between wall 16 and pillar base no. 38. Pillar base no. 37 and 38 are not in alignment. The distance between pillar base no. 34 and 38 is about 3meters. The distance between pillar base no. 34 and wall no. 16 is about 3meters. In between pillar base no. 34 and wall 16, there is structure 4. I can't say what is structure 4 on the basis of my memory. The distance between pillar base 34 and 35 is about 2meters. The distance between pillar base no. 35 and 36 is about 2meters. The distance between pillar base no. 36 and 39 is about 2.50meters. There is pillar base no. 30 in between pillar base no. 26 and 36. The distance between pillar base no. 26 and 30 is about 6 meters. The distance between pillar base no. 30 and 36 is about

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5meters. There is no pillar base in between pillar base no. 26 and wall 16. Similarly there is no pillar base between pillar base no. 30 and wall 16. The distance between pillar base no. 29 and 30 is about 2meters and they are not in alignment. The distance between pillar base no. 30 and 32 is about 4meters and they are also not in alignment. I can not say by memory the nature of structure 3. Similarly I can not say about the nature of structure 9, which is near pillar base no. 29.

**Page 227**

The distance between pillar base no. 18 and 19 is about 2meters. The distance between pillar base no. 17 and 18 is also about 2meters. Similarly the distance between pillar base no. 16 and 17 is about 2meter. The distance between pillar base no. 17 and 21 is about 3meters. The distance between pillar base no. 18 and 21 is about 3meters. Pillar base no. 18 and 17 are not in full alignment. Similarly pillar base no. 17 and 16 are not in full alignment. Same position is with pillar base no. 16 and 15. The distance between pillar base no. 20 and 21 is about 2meters. These pillar bases are not in full alignment but are partly in alignment. Pillar base no. 21 is in trench G-2.

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**Page 229**

The entry given on page 59, regarding pillar base no. 12, seems to be incorrect. According to me there are only two pillar bases in trench no. ZG-1 i.e. pillar base no. 8 and pillar base no. 11. Pillar base no. 12 falls on the baulk of trench ZG-1 and G-1. In trench G-1, I find two pillar bases i.e. pillar base no. 16 and 17. Pillar base no. 12 is partly on the baulk of trench G-1 and ZG-1. On page 59, pillar base no. 12 has been shown in trench ZG-1. Pillar base no. 12 falls in the baulk of trench ZG-1 and G-1. Thus the entry regarding pillar base no. 12 on page 59, is only partly correct.

Q: If pillar base no. 12 does not exist in trench no. ZG-1, as stated by you then the entry regarding the same made on page 59, is fully incorrect and how it is being said by you partly to be incorrect ?

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A: Because pillar base no. 12, is on the baulk between trench ZG-1 and G-1.

**Page 230**

They are pillar base no. 8, 9 and 13. In figure 9 (page 59-A), pillar base no. 8 and 9 have not been shown. Thus figure 9 is not in consonance with figure 3-A.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**22-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

The distance between pillar base no. 5 and 6 is about 3meters. The distance between pillar base no. 4 and 5 is about 3meters. The distance between pillar base no. 4 and 3 is about 3meters.The distance between pillar base no. 3 and 2 is about 3meters. The distance between pillar base no. 1 and 5 is about 3 meters. Pillar base no. 2 to 6 are in a symmetrical order and are also in one line. The distance between pillar base no. 5 and 9 is about 3meters. The distance between pillar base no. 8 and 4 is about 3meters. The distance between pillar base no. 7 and 2 is about 3 meters. pillar base no. 7 and 2 and 8 and 4 are in the same line. These pillar bases no. 2, 3, 4, 5, 6 and 2 and 7, 1and 5, 8 and 4 are in full alignment. The distance between pillar base no. 13 and 14 is about 3 meters. The distance between pillar base no. 18 and 19 is about 3meters. The distance between pillar base no. 17 and 12 is about 2meters. The distance between pillar base no. 23 and 24 is about 2 meters. The distance between pillar base no. 32 and 33 is about 2meters.

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**Page 234**

The distance between pillar base no. 4 and 5 from centre to centre is 2.50 meters. The distance between pillar base no. 4 and 3 from centre to centre is 2.50 meters. The distance between pillar base no. 3 and 2 from centre to centre is 2.50 meters. similarly the distance between pillar base no. 1 and 5 from centre to centre is 2.50 meters. The distance between pillar base no. 5 and 9 from centre to centre is 2.50 meters. The distance between pillar base no. 8 and 3 from centre to centre is 2.50 meters. The distance between pillar base no. 7 and 2 from centre to centre is 2.50meters. The distance between pillar base no. 13 and 14 from centre to centre is 2.50meters. The distance between pillar base no. 18 and 19 from centre to centre is 2.50meters. The distance between pillar base no. 17 and 12 from centre to centre

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is 2meters. The distance between pillar base no. 23 and 24 from centre to centre is 2meters. The distance between pillar base no. 32 and 33 from centre to centre is 2meters.

**Page 236**

Similarly the distance from the centre to centre between pillar base no. 45 to 46 is the same as stated yesterday. The distance from the centre to centre between pillar base no. 48 to 49 is 5.50meters. The distance from the centre to centre between pillar base no. 49 to 50 is the same as stated by me yesterday. The distance from the centre of pillar base no. 40 to eastern side of wall 16 is 3.50meters. The distance from the centre to centre between pillar base no. 41 and 44 is the same as stated by me yesterday.

**Page 237**

The distance from the centre to centre between pillar base no. 26 to 30 is 5.50meters. The distance from the centre to centre between pillar base no. 30 and 36 is the same as stated by me yesterday. The distance from the centre to centre between pillar base no. 29 and 30 is 2.50meters. The distance from the centre to centre between pillar base no. 30 and 32 is 3meters. The distance from the centre to centre between pillar base no. 18 and 19 is 2.50meters. The distance from the centre to centre between pillar base no. 17 and 18 is 2.50meters. The distance from the centre to centre between pillar base no. 16 and 17 is 2.5meters. The distance from the centre to centre between pillar base no. 17 and 21 is the same as stated by me yesterday. The distance from the centre to centre between pillar base no. 18 and 21 is 3.50meters. The distance from the centre to centre between pillar base no. 20 and 21 is 2.50meters.

**Pages 239-241**

Figure 10 ( page 60-A) relates to trench G-1. Pillar base no. 16 and 17 have been shown in the plan of trench no. G-1. The sectional elevation shown in figure 10 also relates to trench G-1. On page 59, at the bottom, pillar base no. 16 has been shown in the baulk of trench F-1 and G-1. There is inconsistency between figure 10 and

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description given on page 59, about pillar base no. 16. With reference to figure 11 (page 62-A), the witness stated that the plan of this figure relates to trench H-4 and H-5. The section given at the top on this page also relates to trench H-4 and H-5 which also goes up to trench H-6. In this plan only one pillar base no. 27 has been shown in trench H-5. In figure 3-A, also only one pillar base no. 27 has been shown in trench H-5. On page 302 (appendix-IV), at serial no. 92, two pillar bases have been shown in trench H-5. Thus figure 3-A and figure 11 are inconsistent with the description given on page 302. Plan of figure 12 ( page 66-A), relates to trench F-9, whereas sectional elevation shown in this figure relates to trench F-9. In figure 12, two pillar bases no. 43 and 44 have been shown in trench F-9. Pillar base no. 43 is circular in shape whereas pillar base no. 44 is squarish cum circular. On page 65, at the bottom pillar base no. 42 has been shown in the baulk of E-9 – F-9. There would be inconsistency between figure 12 and description of pillar base no. 43, on page 65, in the sense that trench no. E-9, is not given on figure 12 but the extension is there. In figure 3-A, pillar base no. 43 has been shown in trench F-9. Thus there is inconsistency between figure 3-A and description of pillar base no. 43 given on page 65. On page 299 ( appendix-IV), in trench F-9, two squarish pillar bases and a circular pillar base has been shown. Whereas in figure 3-A and figure 12, only two pillar bases have been shown in trench F-9, thus there is inconsistency among them. In the chart given on pages 56 to 67 in trench F-9, only one pillar base no. 44 has been shown thus there is inconsistency between this chart and description given on page 299 ( appendix-IV). Figure 13, on page 66, deals with plan and relates to trench no. G-9. The sectional elevation given in figure 13, relates to trench G-9 but it is between the pegs of G-10 and H-10. In figure 3-A ( page 48-A), in trench G-9, two pillar bases 42 and 45 have been shown. Pillar base no. 46 is in the baulk of G-9 and H-9. In figure 13, in trench G-9, only pillar base no. 45 has been shown. Pillar base no. 42 has not been shown in figure 13. Thus there is inconsistency between figure

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13 and figure 3-A.

In the chart given on page 65, pillar base no. 42 has been shown in the baulk of trench G-8 and G-9.

**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**23-02-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 244**

Similarly in the plan also the trenches covered are ZE-1, ZF-1, ZG-1 and ZH-1. No pillar base has been marked in any of the trenches of the plan although the diagram is there in trench no. ZF-1 and ZG-1. The diagram is of one pillar base each in these two trenches. In trench ZF-1, the diagram of pillar base has been shown above floor 1, in the north-west corner, rather it is in the centre of the trench. Similarly in trench ZG-1, the diagram of the pillar base has been shown towards north-eastern part in the east of floor one and above the pit. Two diagram of the pillar bases have been shown with trench no. ZH-1, one towards south-western side and the other towards the south-eastern side. There seems to be an omission in not marking the pillar bases in the plan of figure 14, in respective trenches. In this plan pillar base has been shown in trench ZF-1. Since this pillar base has been shown in the plan of the drawing made by ASI, therefore it should be taken as correct. As this pillar base has been found on floor 1, therefore this must have been constructed in Post-Mughal era because floor-1 is the floor of the modern period. In the chart given from pages 56 to 67, pillar base no. 7, has been shown in trench ZF-1, projected over the surface of floor-2. The pillar base shown in the plan of figure 14, is this very pillar base no. 7. According to me depiction of this pillar base no. 7, in figure 14 is correct and the description of the same on page 57 of the above chart gives also the correct position.

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**Page 245**

In figure 3-A ( page 48-A), two pillar bases i.e. pillar base no. 7 and 10 have been shown in trench ZF-1 but in the plan of figure-14, only one pillar base has been shown and the other one was not shown. Thus there is discrepancy between figure-14, and the description given in the figure 3-A, and the chart of page 57. On page 297 (internal page 6), of appendix-IV, in trench ZF-1, three pillar bases have been shown. Thus there is discrepancy between the description given on above page 297, figure-14, figure 3-A and the description given in the chart on page 57, of the ASI report volume-I.

**Page 246**

Thus there is clear discrepancy between figure-14, and in the description given in the chart on pages 58 and 59. Since only two pillar bases have been shown in figure 3-A, therefore there is discrepancy between this figure and description given on pages 58 and 59.

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On page 299 ( appendix-IV), at serial no. 73, in trench ZG-1, one squarish pillar base and one disturbed pillar base has been shown. The pillar base shown in the plan of figure-14, in trench ZG-1, is squarish in shape, the disturbed condition of the pillar base has been shown in the south-west corner of trench ZG-1, but it has not been marked as pillar base or numbered. According to me as per the plan in trench ZG-1, two pillar bases have been shown but these pillar bases have not been shown in the section of trench ZH-1, as the pillar bases fall towards the southern part of the trench which is away from that section.

**Page 247**

In figure 3-A (page 48-A), pillar base no. 9 has been shown in the northern side and pillar base no. 13 has been shown in south-western side. Thus there is discrepancy in between figure 3-A and figure-14, regarding location of pillar base no. 9 and 13.

**Pages 248-249**

Out of them one pillar base was resting on floor-1, and the

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other on floor-2, but the position of third pillar base which is towards north, is not clear regarding the floor position in figure-7. First pillar base which is resting on floor-1, was constructed in Post-Mughal period, the other pillar base which was resting on floor-2, was constructed in late-Mughal period. Out of these pillar bases in trench G-2, the first pillar base which is resting on floor-1, is circular in shape where as the second pillar base which is resting on floor-2, is squraish in shape, the third pillar base the position of which is not clear regarding floor, is rectangular in shape. The circular pillar base can be considered as oval pillar base also. In the chart on page 60, pillar base no. 21, which has been shown in trench G-2, is the same pillar base which has been shown in the western side of the trench in figure-7. On page 61, pillar base no. 24, shown in trench G-2, is the same pillar base which is resting on floor-1, in figure-7. In the chart given on pages 56 to 67, the third pillar base, the floor position which is not clear, has not been shown. Thus there is discrepancy between the description given in the above chart on pages 56 to 67 and figure-7. In figure 3-A, in trench G-2, four pillar bases have been shown viz pillar base no. 20, 21, 23 and 24. In the chart given on pages 60 and 61, pillar bases no. 20 and 23, have been shown in the baulk of trench F-2 – G-2. My statement that there are four pillar bases G-2 is incorrect because two of these four pillar bases were in the baulk as has been described in the chart given from pages 56 to 67. There is inconsistency between figure 3-A and figure-7, in the sense that in figure-7, three pillar bases have been shown in trench G-2, whereas in figure 3-A, only two pillar bases have been shown in trench G-2, and remaining two pillar bases have been shown in the baulk. Figure 6 ( page 52-B), relates to trenches F-6 and F-7 in the plan whereas sectional elevation of this figure relates to trench F-8 and F-7 and partly F-6 also although trench F-6 is not mentioned.

**Page 252**

Q: From a bare perusal of figure 3-A it appears that the so called pillar base no. 31 and 32 have been shown to exist in trench F-

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7 and as such there is clear discrepancy about their description given in the chart of so called pillar bases at page 63 and the said figure 3-A. What do you have to say on this ?

A: Yes, there seems to be a discrepancy between the two positions.

On page 298 ( internal page no.7 of appendix-IV), at serial no. 66, in trench F-7 partly extant pillar base has been shown in column-4. Whereas in figure 3-A and figure 6 two pillar bases have been shown in trench F-7. Thus there is discrepancy between description of trench F-7 given on page 298, and the depiction of pillar bases in F-7 as given in figure 3-A and figure 6. In the plan of figure-6, no pillar base has been marked or numbered in trench F-6 and F-7 but the diagram shows the existence of two pillar bases in F-6 and four pillar bases in trench F-7 out of which one pillar base in F-7 extent to trench no. F-6 also. Out of these four pillar bases central pillar base which is also extending to trench F-6 is circular. The second pillar base which is octagonal in shape also seems to be extending towards the baulk of F-6 and F-7. Third pillar base is circular and fourth one is semicircular as is evident from figure-6.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

O.O.S.NO. 4 OF 1989
(R.S.NO. 12 OF 1961)

The Sunni Central Board of Waqfs, U.P. & other ----- Plaintiff

V E R S U S

Gopal Singh Visharad and others ----------Defendants

**Dated 12.03.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Pages 257-258**

Two "brick walls" mentioned in between trenches E-6 and E-7 in figure 5 are part of wall 16. "Niche" shown towards the south of the above two brick walls is in upper part of wall 16. "Niche" shown below the words E-8 in figure 5 is below. This Niche is also in wall 16. The slopy position shown in between the trenches of E-6 and E-7 in figure 5 was on the spot also slopy, from north to south. No wall is shown in between the trenches E-6 and F-5. It is true that trenches E-4 and E-5 were not excavated, that is why they are not shown in this figure whereas trench E-3 was partly excavated, that is why it is shown in the figure 5.

**Page 259**

In trench ZE1 stones having been shown in the upper portion and also in the lower portion, form part of wall 16. The niche shown in trench ZE2 is part of wall 16 and in this trench only floor 1 has been shown and the niche is below floor in ZE2.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

**Dated 13.03.2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 266**

In figure-4 there is no mention of floor-1, in trench D-6 as indicated at serial no.37 on page 294 in the said report of the ASI. In this way, there is an omission in figure-4 in regard to floor no.1 and trench-D-6. According to entry at serial no. 51 on page 295 in regard to trench E-6, Floors 1 to 4 were found in the said trench E-6. I cannot say whether the top floor mentioned in Figure-4 depicts floor 1 or not. Similarly I am not sure whether the words A,B,C, and B as indicated in plan, figure-4, depicts floor 1-A, 1-B, 1-C and 1-D or not.

**Page 267**

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According to the plan, figure-4, there are three east west walls and the entry at Serial no.51 on page 295 in regard to only two east west running walls is incorrect. There appears to be as is evident in serial no.51 on page 295, in regard to north south walls in trench E-6, the plan also shows two north-south walls.

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**IN THE HON'BLE HIGH COURT OF JUDICATUREAT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

**Dated 14.03.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 276**

In Plate 35 of Vol.I of ASI report, 9 pillar bases are visible as stated by me yesterday and they are PB 1 to 6 and thereafter PB 7 to 9 as described in figure 3-A of Vol.I of ASI report.

The witness having gone through the chart at page 56, 57 and 58 of Vol.I of ASI report, stated that it is correct that in respect of pillar bases No.1,2 ,3,5,6,7 and 8, the ASI has found that these pillar bases are projected over surface of floor 2. It is correct that ASI has not mentioned on which floor pillar base No.4 was found. It is also correct that ASI at page 58 in its report Vol.I has found that pillar base No.9 was available at the depth of 42 cm. from floor 2, cutting through floor 3. As per finding of the ASI in respect of pillar base no.9 it can be said that it was below floor 2, but it cannot be said that it was sealed by floor 2. However, it was cutting through floor 3. Pillar base No.9, in view of the opinion of the ASI, it could be assigned to the period of floor No.2.

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**Pages 277-278**

The witness having gone through page 37-A of Vol.I of the report stated that in the chart of periodization, no reference of Z series of trenches is given. In the aforesaid chart at page 37-A of the report, Vol.I, floor 2 of trenches J-5 and K is assigned to Mughal period, while floor 2 of J-3 is assigned to late and post Mughal period. As it appears from the aforesaid chart prepared by ASI at page 37-A, the periodization has been mentioned on both the ends of the chart without indicating the method to read this chart, which could have been in the form of index and this is lacking in the chart. As per this periodization in the chart (page 37-A of the report, Vol.I) floor 3 is admittedly of Medieval period as seen from both the sides of periodization chart. Floor 4 of G-7 has been shown in the

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aforesaid chart to be of early Medieval Sultanate period; whereas floor 4 of some of the trenches of E,F,G,H and J series has been shown to be of Medieval period. Trench G-7 of floor 3 in the aforesaid chart is shown to be of Medieval period. In the aforesaid chart floor 5 has been shown only in trench No.J-5 and in no other trench reference of floor 5 has come. Floor 5 has also been shown in the chart to be of early Medieval Sultanate period.

**Page 279**

The ASI in its report in Vol.I has divided the Mughal period into two parts i.e. Mughal period, Period VIII and late and post Mughal Period, Period IX. Period VIII covers the period of Babar to Aurangnzeb i.e. 1525-1707 AD belonging to greater Mughals and late Mughals period starts after Aurangnzeb belonging to later Mughals i.e. 1708 to 1857 AD. The period of late Mughals is also called post-Mughal. Again he said that post-Mughal period in fact will be the period after 1857. It is also known as British or Modern period.

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**<u>Pages 282-283</u>**

I just recollect that ASI has divided period VII in three sub-periods A,B and C. Construction of wall 16 has been attributed by ASI to sub-period-A of period VII. According to ASI sub-period A of period VII starts from the end of 12th Century. The period prior to 1194 A.D. cannot be said to be period covered by the term "end of 12th Century".

Q. In view of the above statement is it correct to say that the so called massive wall (wall No.16) cannot be said to have been constructed prior to 1194 A.D. as per ASI report.?

A. (I will have to think over it and the reply will be given in the post-lunch-session).

(In post-lunch- session the witness gave reply to the above question in following words:)

According to me, the wall 16 could have been constructed

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sometimes between 1194 to 1199 A.D.

It is correct to say that the ASI in its report at page 41 has used the words 'end of 12th Century' in second Para because rule of Gahadwal dynasty had come to an end in the last decade of 12th Century. Jai Chand was the last ruler of Gahadwal dynasty who was defeated in 1194 by Mohammad Ghauri. With the defeat of Jai Chand the rule of Gahadwal dynasty came to an end. The rule of Mohammad Ghauri was started in 1194 but in fact it was established in 1205-06 A.D. as in the intervening period the position of Sultanate rule remained unstable because of the stiff local resistance.

**Page 286-287**

So far I remember the said inscription was recovered in the year 1992 by some person but I do not know name of that person. I do not think that the said inscription was recovered by some archaeologist during excavation. It was an accidental find within the complex of the disputed structure. I do not recollect whether the accidental find was found by any Archaeologist or some officer of the Government. I did not very much bother to find out who was the actual person who found this inscription. However, the said inscription is said to have been found inside the central temple covered by the plaster and only after removal of the plaster, the inscription came out which was existing there.

**Page 288**

Q. Is it correct to say that the said inscription is alleged to have been recovered from the debris of the disputed structure after its demolition on 6th December, 1992.

A: It is not correct to say that it was recovered from the debris but it was recovered from the wall of the disputed structure and at least that portion of the wall containing the inscription was intact and was in standing position and only when the plaster was removed, the inscription was noticed and taken out.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

**Dated 15.03.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page 300**

The temple referred by me in para 29 of my affidavit refers to the same temple whose description is there in the note (tippani) below translation of line no.21 of inscription on paper no.289 C-1/198 of the book of T.P.Verma and Dr. S.P.Gupta. I cannot say, as mentioned in the above note, whether the temple was reconstructed in place of some earlier construction during the period of Govind Chanda for the reason, I have not examined the inscription referred by me above from this point of view. According to me, the construction of temple that I have referred in my affidavit and statement was a fresh construction made in 1130 A.D.

**Page 301**

Since the inscription does not give the date, I have concluded it to be of about 1130 A.D. and also to be the new temple as also pointed out by Dr. K.V.Ramesh in his book.....

….....This is correct to say that while giving affidavit as well as making statement in cross examination, before this Court, I have relied upon article of Dr. K.V.Ramesh only and have not taken into account the translation of the inscription as given in paper no.289 C-1/ 197 to 199, including the above note on 289 C-1/198.

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**IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

**Dated 16.03.2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Pages 303-305**

This is correct that as disclosed in the article of Dr. K.V.Ramesh also the rule of Govind Chandra of Gahadwal dynasty was from 1114 to 1155 A.D. Sri K.V.Ramesh has not given in his article that the inscription was written and the temple was constructed in 1130 A.D., but in my own assessment as I have stated that the temple was constructed in 1130 A.D. and have also given the same period for the inscription.

In plate no.36 of the ASI report, Vol.II, two floors are also visible besides the pillar base no. 13. The said pillar base is in between the two floors. The floors are numbered from top to bottom. The floors which are visible in plate no. 36, are floors no.1 and 2. The top floor which was visible at the time of excavation will be called floor no.1 and the top floor i.e. floor no.1 was of Post- Mughal period over the entire disputed area. Second floor found in different trenches belong to different period. Second floor in trench no.ZH-1 visible in plate no. 36 is of Post-Mughal period. To me there appears to be a third floor also in plate no.36 in the central part as is seen from the plan of the trenches. The photograph in plate no.36 partly shows position of sections and partly plan of trenches. In plate no. 36 the section of ZH-1 facing north on the northern side is fully visible. Sections of east and west of the said trench are partly visible in plate no.36.

The ASI in its report on page no.28, at serial no.47, has mentioned that trench ZH-1 was excavated upto the depth of 80 cm. and one floor and the pillar base were found at a depth of 70 cm. and 55 cm. Voluntarily said that from the plan, other two floors are also to be seen within the excavated area of 80 cm., which are visible. The depth of the trench could be more than 80 cm. The depth given at serial no.47 as 80 cm. is in respect of anomaly only.

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Q. In view of your above statement can it be said that ASI has wrongly mentioned on page 28 that the trench was excavated upto the depth of 80 cm.?

A. As seen from the trench position it seems to be so.

Looking to the plan position as visible in plate no.36 the statement of ASI on page 28 at serial no.47 regarding trench ZH-1 that further excavation beyond 80 cm. was not conducted upto the required depth where anomalies were shown, it is lacking.

Q. What do you mean by the term 'lacking' with reference to ASI report at page no.28 serial no.47.?

A. By using the term 'lacking' in my statement, I mean to say that the ASI has not disclosed the total depth of excavation in the trench.

Q. Do you mean to say that the ASI has not given total depth of the trenches excavated by them in their statement contained on page 28 at serial no.47.?

A. Yes, they have not given the total depth.

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The statement of ASI regarding the pillar base being found at the depth of 55 cm. in trench ZH-1 is correct.

**Page 307**

Site note-books prepared during excavation are primary piece of evidence regarding conducting of the excavation. As for as information part is concerned, the site note-book is the first source, but if the excavators do not feel necessary to include any part of the site note-book in the main report, it is his prerogative in view of the requirement of the situation and the information in the site note-book could be given somewhere in the remarks column only.

**Page 308**

Q. What was the other material or document before the team leader other than the site note-book about the day to day progress of the excavation of a particular trench?

A. As far as information is concerned, the site note-book is the only source of information regarding details of excavation of a particular trench.

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This is correct to say that since the site note-book is the only source of information, the report is given on the basis of information contained in the said site note-book.

**Page 309**

In all the excavation other than the excavation of the disputed site at Ayodhya site note-book alone is prepared on day to day basis and no day to day register is prepared as was prepared in this case under the orders of this Court.

**Page 309-310**

The witness having seen the entry at page no.26 of the site note-book no.41and the entry made at serial no.47 at page 28 of Vol.1 of the report, said that there is a discrepancy between the two regarding the depth of floor and the pillar base. The entry made in the site note-book is to prevail over the entry made at page no.28 of the ASI report of Vol.I. As is evident from the entry on page no.27 of the site note-book no.41, the thickness of floor no.1 found on 15.4.2003 and removed on 16.4.2003, was 2 cm.

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**Page 311**

I cannot say regarding the number of the floor which was encountered at the depth of 105 cm. during excavation on 20.4.2003 of trench no.ZH-1 as mentioned in page no.31 of the site note book 41. The excavator should have numbered the different floors found by him during excavation. This is an omission in the site note-book. It was the last digging of the said trench no. ZH-1 which took place on 20.4.2003 as shown on page no.31 which deals with digging of 20.4.2003 and therefore, there is no entry in the site note-book in regard to trench no. ZH-1.

**Page 312**

In this way the mention that the trench no. ZH-1 was excavated upto the depth of .80 metre as mentioned at serial no. 47 at page 28 of ASI report volume-I, is wrong. As the excavation has gone beyond one metre where the first anomaly was first noticed in GPR statement at serial no. 47 to the effect that further excavation

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was not conducted upto the required depth where anomaly was shown, is wrong. The entry in the last column of page no. 59 against pillar base no.13 of trench ZH-1 to the effect that the foundation was resting on floor no.4 and cutting through floor no.3 is faulty. The position of pillar base no. 13 in figure 9, deals with the description as per the site note book no. 41.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**19-03-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page 313**

Plate no. 36 of the ASI's report volume-II, was shown to the witness by learned cross examnier. The witness after viewing this plate stated that one orthostat is visible over the pillar base in this plate. As per the photograph no ''mortise hole'' or ''groove'' is visible in this plate. Having been shown plate no. 10, the witness stated that orthostats are visible in four pillar bases. Voluntarily said the photograph of this plate is dim. From viewing this plate no. 10, it is not possible to state about the total number of pillar bases visible in this plate.

**Page 314**

As seen from the photograph of plate no. 10, no 'mortise hole' or 'groove' is visible in any of the pillar bases, shown in this plate. In plate no. 9 of the above report there are three orthostat in three pillar bases visible in this plate.....

…....No 'mortise hole' or 'groove' is visible in the pillar base of this plate no. 11. In plate no. 13 of the above report no pillar base is visible. In plate no. 14, 15, 16 and 17, no pillar base is visible.

**Page 315**

No 'groove' or 'mortise hole' is visible in these two pillar bases. The depth from the surface of the trench could be about two metres. These two pillar bases are resting over the depth of 2 metres approximately as stated above.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**20-03-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page- 326**

Learned cross examiner drew the attention of the witness towards plate no. 37 of the ASI's report volume-II, the witness after viewing this plate stated that two finished pillar bases are visible in this plate. Orthostats are visible in these two pillar bases. No 'mortise hole' or 'groove' is visible in this plate.

**Page-327**

The stone block of upper portion has been shown as pillar base no. 1 on page 56 of the ASI's report volume-I, whereas the lower stone block has been shown as pillar base no. 5 on page 57 of the same report. The size of this stone block marked as pillar base no.1as given on page 56 of the above report is not tallying with the size given on page 43 of the site note book number-41. The measurement of this sand stone block given on page 56, should be taken as correct because this measurement would have been given by the draftsmen of the excavation team.

**Page-328**

This floor should be taken as floor-1. The stone block on the trench ZH-2 could be on the surface of floor-1. This squarish sand stone block has been mentioned as pillar base no. 5 on page 57 of the ASI's report volume-I. The measurement on page 57 of this sand stone block is different from the measurement of the same given on pages 42 and 43 of the site book no. 41. The measurement given on page 57 of the above report should be taken as correct because it is based on actual measurement made by draftsmen of the site.

**Page- 330**

Site note book no. 15 was shown to the witness. The attention of the witness was drawn to page 27 of this note book, the witness

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stated that this page deals with the baulk of trench F-6 – F-7. The description of the architectural fragment which was square at the base and octagonal at the top and was measuring 38 X 19cm refers to the description of the pillar base no. 32 as given on page 63 of the ASI report volume-I. This was placed on floor-2. On page 23 of the site note book no. 15 in the entry at serial no. 10 in the right side column there is mention of an architectural fragment of sand stone measuring 32.5 X 19cm.

**Page- 332**

In plate no. 38 of the ASI report volume-II orthostat is visible. Two 'mortise holes' are also visible but there is no 'groove' visible in plate no. 38. In plate no. 39 and 42 there is no orthostat. Similarly there is no 'mortise hole' or 'groove' in these two plates. In site note book no. 8, which is regarding the trench F-2, on pages 5 to 7 no pillar base is mentioned.

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**Page-333**

On page 24 of the ASI report volume-I, at serial no. 31, it is mentioned that G.P.R. survey indicated the anomalies in the form of alignments at the depths of 2.3 – 2.5metre and excavation was conducted only up to the depth of 1.50metre and furthur excavation was not conducted upto the required depth where the anomalies were shown in view of the importance of the exposed structure, whereas on page 13 of the site note book no. 7, it is mentioned that digging in trench F-2 closed at the depth of 2.53metre. Thus there is difference between these two descriptions. This description on page 24 of the above report was given by the persons in which Sri C. B. Patil was one of the co-authors. Both these description should be taken in their own way as faithful recording of the digging.

**Page 335-336**

No 'mortise hole' or 'groove' is also visible in these two pillar bases no. 23 and 24. There seems to be three floors in plate no. 43. Stone blocks are visible in the pillar base of the left side and not in

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that of the right side. Both of these two pillar bases are in trench G-2. According to the chart of periodization given on page 37-A of the ASI report volume-I, floor-3 and floor-2 of trench G-2 have been shown to be of medieval period, seen from the left side of the chart. In plate no. 44 of the ASI report volume-II, pillar base no. 27 is visible in the eastern lower central side. This pillar base is resting on this floor. Floor number is given there which is very dim, perhaps it is floor-3. Orthostat is not visible in this plate. No 'mortise hole' and 'groove' is also visible in this plate.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**21-03-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

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**Page- 338**

No orthostat, 'mortise hole' or 'groove' is visible in this pillar base in plate no. 45. On page 25 at serial no. 35 of the ASI report, volume-I, three pillar bases are mentioned, first at the depth of . 70metre, second at the depth of .55 metre and third pillar base was found at the depth of 1.60metre.

**Page-339**

No orthostat, 'mortise hole' or 'groove' is visible in plate no. 46. There seem to be three stone blocks in pillar base no. 31, as seen in plate no. 46.

**Page-340-341**

No orthostat, 'mortise hole' or 'groove' is visible in any of these two pillar bases. Stone blocks are visible in both the pillar bases. These stone blocks seem to be rectangular in shape in both the pillar bases. In plate no. 47, one pillar base is in upper level whereas the other pillar base is at the lower level. A scale is lying besides the pillar base at lower level, I can not say as to which pillar base is number 44 in the absence of any indication. Both pillar bases as

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visible in plate no. 47 are not resting on one and the same floor but are at different floors. The pillar base which is in the right upper side is resting on floor-2 thus the other pillar base being in the lower side would naturally rest on floor-3. Both the pillar bases visible in plate no. 47 are rectangular in shape.

**Page-343**

Both these pillar bases are on different floors whereas there is mention of floor-2 only and the other floor although is indicated in writing its number is not given. Pillar base no. 43 has been shown to be resting on floor-2 in this figure 12. In this figure 12, trench F-9 is shown towards the north side whereas reference peg of trench F-10 falls towards south.

**Page-345- 346**

There is no orthostat, 'mortise hole' or 'groove' in this pillar base. Only floor-1 and floor-2 are visible in this plate but floor-3 and floor-4 are not visible. There is no digging below floor-2.....

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….....Floor-5 which is visible in plate no. 52 is dated to 10-11$^{th}$ century. I think this has been dated by the ASI. This plate 52 pertains to trench E-8. Floor-5 is found in one or two other trenches also but I don't recollect their numbers at this stage.

Q: Is it correct to say that the so called floor-5 of trench E-8 has not been dated by the ASI in the charts given at pages 37-A and 37-B or at any other place in the ASI report volume-I ?

A: The periodization of floor-5 of trench E-8 has not been given in the charts given on pages 37-A and 37-B.

**Page-347**

I have seen the graves as visible in plate no. 58 at the disputed site during excavation in the northern area. The face of the skeleton found in these graves was facing towards the west. If I remember correctly, no portion of the circular shrine as visible in plate 59 was found in the baulk of trench E-8 and F-8 but a portion of it could be near the baulk.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**22-03-2007** **D.W. 20/5 Jayanti Prasad Srivastava**

**Page-354**

I had not excavated myself the trenches at Sanghol during excavation but got the excavation done by the Technical assistants serving under me. I remained at Sanghol during the concerned seasons mentioned in para 23 of my affidavit. I don't remember as to whether some pillar bases were recovered or not during excavation at Sanghol. Said voluntarily, the areas of operation to be covered by the ASI as against the area covered by the Punjab State Archaeology Department were separate. I had not visited Sanghol after the close of excavation of that site.

**Page-355**

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Q: Whether this site of Sanghol is being preserved and maintained by the ASI even at present ?

A: Some of the monuments at Sanghol sites are preserved and maintained by the ASI, which teh museum is maintained by the Punjab State Archaeology Dept. Chandigarh.

The report of Sanghol excavation has not been published but its results have been published in the "Indian Archaeology- A Review" volumes on year to year basis. I had not mentioned about the volumes of I.A.R. in which Sanghol excavation has been reported.

**Page- 356**

Learned cross examiner drew the attention of the witness toward annexure 2 and 3 of the additional objection filed on 03-02-204 ( C. M. application no. 17 (O)/ 2004). The witness after viewing these two photographs stated that these two photograph appear to be the photograph of the pillar bases.

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**Page-357**

Q: Do you mean to say that some type of pillar bases were recovered at the Sanghol site ?

A: There could have been some type of pillar bases at Sanghol.

**Page-362**

Q: Is it not correct to say that your statement contained in para 30 of your affidavit that so called pillar bases "were neither created nor manufactured by the ASI" has been made without examining the site note-books, concerned drawings and photographs and relevant observations made in this respect by the ASI at different places in the report ?

A: I was not supposed to go through the site note-books which are a part of the ground work of the ASI team, rather preliminarily ground work. I have gone through the ASI report only after its publication and I feel that the fact mentioned therein are faithful barring some draw backs found somewhere here and there in the report, which should be overlooked in view of this very important and major work completed during the very record period and duly published for perusal of the Hon'ble Court and World.

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**Before:-Commissioner Sri H.S.Dubey, Additional District Judge /Officer on Special Duty, High Court Lucknow.**

**23-03-2007 D.W. 20/5 Jayanti Prasad Srivastava**

**Page-367**

The Photostat copies of I.A.R. 1988-89 filed as paper no. 304C-1/1 to 304C-1/7 relate to the same excavation which has been mentioned at serial no. 18 in para 23 of my affidavit. On page 71 ( paper no. 304C-1/ 5) in para 4, in word fourth line " Many circular post-holes" mentioned refer to the circular holes in which 'Bamboo-poles' or 'wooden-poles' were fixed to sustain some super structure above them.

**Pages-371-372**

Q: Can you point out the floor or level from where the Arabic inscriptions visible in plates 91 and 92 of ASI report volume-II were found ?

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A: These two architectural members were found from debris of the central part of demolished structure.

The architectural members found from the debris can not be dated on the basis of stratigraphy however they can be dated on the basis of epigraphical characters. I don't have expert knowledge in epigraphy. However, I can understand a little but I can not date the architectural members on the basis of epigraphical characters. I can not date the architectural member of plate no. 91 and 92 on the basis of epigraphy. I have not studied the Arabic character of 13th century or of any other period.

I am aware that animal bones bearing cut marks were found in all parts and at all levels in the disputed site.

Q: Can bones of Sheep/Goat and other such animals be found at a temple site ?

A: Yes, bones of Sheep/Goat or such animals can be found in the area where some 'Shakti' and 'Shiva' temples are there where in

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animal sacrifices are practised.

**Pages-373-374**

I have not examined 'antiquity register' prepared by the ASI before filing of my affidavit in this Hon'ble Court. Said voluntarily, as it was not expected to be sheen by me. I had seen the antiquity register only during the course of excavation when it was put before everybody during excavation in the afternoon including my self.

Q: The register which was shown to the parties and their nominees etc. at the site is called 'day to day' register and not 'antiquity register' because antiquity register was never shown to any party, their nominee and their counsel at the site. What do you have to say in this regard ?

A: I had seen the 'day to day' register and not the antiquity register.

I have not seen the antiquity register prepared by ASI earlier to this day. In other excavations antiquity register is also prepared simultaneously on day to day basis. Antiquity register is prepared by an Antiquity Assistant or A Technical Assistant dealing with antiquities along with Pottery Assistant.

….....I do not know as to who has prepared the antiquity register filed in this Hon'ble Court by the ASI. At the time of writing of different chapters of the final report of the excavation the persons who contribute these chapters are required to study and examine this antiquity register.

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# I N D E X

# ANNEXURE-IV


| S. No. | Particulars | Page no. |
|---|---|---|
| 1 | Babar Nama (Memoirs of Babar) Zahiru'd-din Muhammad Babar Padshah Ghazi Two Vols. Bound in One Translated by Annette Susannanah Beveridge | 01 to 07 |
| 2 | Memoirs of Zehir-Ed-Din Muhammed Babur Emperor of Hindustan written by himself in the Chaghatai Turki and translated by John Leyden and William Erskine. | 08 to 11 |
| 3 | A-IN-I AKBARI | 12 |
| 4 | EARLY TRAVELS IN INDIA (1583-1619) | 13 |
| 5 | Ayodhya by Hans Bakker | 14 to 33 |
| 6 | The History Antiquities, Topography and Statistics of Eastern India by Montogomery Martine (1838) | 34 to 37 |
| 7 | The Gazetteer of the Territories under the Government of East India Company and of the native States on the Continent of India by Edward Thornton, ESQ (1858) | 38 to 42 |
| 8 | Archaeological Survey of India Four Reports made during the year 1862-63-64-65 by Alexander Cunningham CSI (1879) | 43 to 65 |
| 9 | A Historical Sketch of Faizabad with including Pargana Heweli-Oudh and | 66 to 78 |


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|---|---|---|
| | Paschhimrath with old Capitals Ajudhia and Fyzabad by P. Carnegy (1871) | |
| 10 | Gazetteer of Province of Oudh (1877-78) | 79 to 83 |
| 11 | Report of Settlement of Land Revenue Faizabad District by A.F. Millett (1880) | 84 to 89 |
| 12 | Imperial Gazetteer of India Provincial series United Provinces of Agra and Oudh (1908) | 90 to 92 |
| 13 | Faizabad Gazetteer by H.R. Nevill I.C.S. (1905) | 93 to 100 |
| 14 | Faizabad Gazetteer by H.R. Nevill I.C.S. (1928) | 101 to 109 |
| 15 | Uttar Pradesh District Gazetteer Faizabad by Smt. E.B. Joshi (1960) | 110 to 118 |
| 16 | The Encyclopedia of India of Eastern and southern Asia by Surgeon General Edward Balfour (1885) | 119 |
| 17 | The Monumental Antiquities and inscriptions in the north western provinces and Oudh described and arranged by A. Fuhror, Phd. of the Archaeological Survey N.W.P. And Oudh (1891) | 120 to 128 |
| 18 | Historical and Geographical Description of India by Father Joseph Tieffenthaler | 129 to 162 |


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**BABUR-NAMA**
**(MEMOIRS OF BABUR)**
**Zahiru'd-din Muhammad Babur Padshah Ghazi**
**Two Vols. Bound in One**
**Translated by**
**ANNETTE SUSANNAH BEVERIDGE**

**Page-587**
**934 A.H.-SEP. 27Th 1927 TO SEP. 15th 1528 A.D.**

(a. Visit to Kul (Aligarh) and Sambal.)

(*Sep. 27th)* On Saturday the Ist of Muharram we dismounted in Kul (Koel). Humayun had left Darwish (- i - ali) and Yusuf- i -ali in Sambal; they crossed one river, fought Qutb *Sirwani* and a party of rajas, beat them well and killed a mass of men. They sent a few heads and an elephant into Kul while we were there. After we had gone about Kul for two days, we dismounted at Shaikh Guran's house by his invitation, where he entertained us hospitably and laid an offering before us.

(*Sep. 30th-Muh. 4Th* ) Riding on from that place, we dismounted at Autruli (Atrauli).

(*Oct. Ist- Muh. 4Th )* On Wednesday we crossed the river Gang (Ganges) and spent the night in villages of Sambal.

(*Oct. 2nd – Muh. 6Th* ) On Thursday we dismounted in Sambal.

After going about in it for two days, we left on Saturday.

(*Oct. 5th – Muh. 9Th* ) On Sunday we dismounted in Sikandara at the house of Rao Sirwani who set food before us and served us. When we rode out at dawn. I made some pretext to leave the rest, and galloped on alone to within a Kuroh of Agra where they overtook me. At the Mid-day Prayer we dismounted in Agra.

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**Page 602 & 603**

***(March 28th)*** On Saturday the 7th of Rajab we dismounted *2 or 3 Kurohs* from Aud above the junction of the Gagar (Gogra) and Sird (a). Till today Shaikh Bayazid will have been on the other side of the sird (a) opposite Aud, sending letters to the Sultan and discussing with him, but the Sultan getting to know his deceitfulness, sent word to Qaracha at the Mid-day Prayer and made ready to cross the river. On Qaracha's joining him, they crossed at once to where were some 50 horsemen with 3 or 4 elephants. These men could make no stand; they fled; a few having been dismounted, the heads cut off were sent in.

Following the Sultan there crossed over Bi-khub (var. Ni-Khub) SI. And Tardi Beg (the brother) of Quj Beg, and Baba Chuhra (the Brave), and Baqi *shaghawal.* Those who had crossed first and gone on, pursued Shaikh Bayazid till the Evening Prayer, but he flung himself into the jungle and escaped. Chin-timur dismounted late on the bank of standing-water, rode on at midnight after therebel, went as much as 40 *kurohs* (80 m.), and came to where Shaikh Bayazid's family and relations (*nisba?)* had been : they however must have fled. He sent gallopers off in all directions from that place : Baqi *shaghawal* and a few braves drove the enemy like sheep before them, overtook the family and brought in some Afghan prisoners.

We stayed a few days on that ground (near Aud) in order to settle the affairs of Aud. People praised the land lying along the Sird (a) 7 or 8 *kurohs* (14-16 M.) above Aud, saying it was hunting-ground. Mir Muhammad the raftsman was sent out and returned after looking at the crossings over the Gagar-water (Gogra) and the Sird (a)-water (Chauka?).

*(April 2nd)* On Thursday the 12th of the month I rode out intending to hunt.

Here in all known texts of the *Babur-nama* there is a break of the narrative between April 2nd and Sep. 18th 1528 A.D.- Jumada II.



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12Th 934 AH. And Muharram 3rd 935 AH., which whether intentional or accidental, is unexplained by Babur's personal circumstances. It is likely to be due to a loss of pages from Babur's autograph manuscript, happening at some time preceding the making of either of the Persian translations of his writings and of the elphinstone and Haidarabad transcripts. Though such a loss might have occurred easily during the storm chronicled on f.376b, it seems likely that Babur would then have become aware of it and have made it good. A more probable explanation of the loss is the danger run by Humayun's library during his exile from rule in Hindustan, at which same time may well have occurred the seeming loss of the record of 936 and 937 AH.

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**Page-617**

*(Oct. 22nd)* By this time the treasure of Iskandar and Ibrahim in Dihli and Agra was at an end. Royal orders were given therefore, on Thursday the 8th of Safar, that each stipendiary *(wajhadar)* should drop into the Diwan, 30 in every 100 of his allowance, to be used for war-material and appliances, for equipment, for powder, and for the pay of gunners and matchlockmen.

*(Oct. 24th)* On Saturday the 10th of the month, Pay-master St. Muhammad's foot-man Shah Qasim who once before had sent to Heri with other letters to the purport that, through God's grace, our hearts were at ease in Hindustan about the rebels and pagans of east and west; and that, God bringing it aright, we should use every means and assuredly in the coming spring should touch the goal of our desire. On the margin of a royal letter sent to Ahmad *Afshar (Turk)* a summons to Faridun the *qabuz*-player was written with my own hand.

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**Page 680**

*(kkk. A surmised survival of the record of 934 A.H.)*

After spending several days pleasantly in that place where there are gardens, running-waters, well-designed buildings, trees, particularly mango-trees, and various birds of coloured plumage, I ordered the march to be towards Ghazipur.

Ismail Khan *Jalwani* and *Alaul Khan* Nuhant had it represented to me that they would come to Agra after seeing their native land *(want.)* On this the command was, "I will give an order in a months."

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## U.- THE INSCRIPTIONS ON BABUR'S MOSQUE IN AJODHYA (OUDH).

Thanks to the kind response made by the Deputy-Commissioner of Fyzabad to my husband's enquiry about two inscriptions mentioned by several Gazetteers as still existing on "Babur's Mosque" in Ouch, I am able to quote copies of both.

a. The inscription inside the Mosque is as follows:-

1. *Ba farmuda-i-Shah Babur ki adilash*
   *Banaist ta kakh-i-gardun mulaqi,*
2. *Bana kard in muhbit-i-qudsiyan*
   *Amir-i-saadat-nishan Mir Baqi*
3. *Bavad khair baqi! Chu sal-i-banaish*
   *Iyan shud ki guftam,- Bubad khair baqi.*

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The translation and explanation of the above, manifestly made by a Musalman and as such having special value, are as follows:-

1. By the command of the Emperor Babur whose justice is an edifice reaching up to the very height of the heavens,

2. The good-hearted Mir Baqi built this alighting-place of angels;

3. *Bavad khair baqi !* (May this goodness last for ever!).

The year of building it was made clear likewise when I said, *Buvad Khair baqi* (=935).

The explanation of this is :-

Ist Couplet:- The poet begins by praising the Emperor Babur under whose orders the mosque was erected. As justice is the (chief) virtue of kings, he naturally compares his (Babur's) justice to a palace reaching up to the very heavens, signifying thereby that the



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fame of that justice had not only spread in the wide world but had gone up to the heavens.

2nd couplet:- In the second couplet, the poet tells who was entrusted with the work of construction. Mir Baqi was evidently some nobleman of distinction at Babur's Court.- The noble height, the pure religious atmosphere, and the scrupulous cleanliness and neatness of the mosque are beautifully suggested by saying that it was to be the abode of angels.

3rd Couplet :- The third couplet begins and ends with the expression *Buvad khair baqi.* The letters forming it by their numerical values represent the number 935, thus:-

| | |
|---|---|
| B= 2, v=6, d=4 | total 12 |
| Kh=600, ai=10, r = 200 | " 810 |
| B = 2, a= 1, q = 100, i=10 | " 113 |
| | total 935 |

The poet indirectly refers to a religious commandment *(dictum)* of the Qoran that a man's good deeds live after his death, and signifies that this noble mosque is verily such a one.

*b.* The inscription outside the Mosque is as follows:-

1. *Ba nam-i-anki dana hast akbar*
   *Ki khaliq-i-jamla alam la-makani*
2. *Durud Mustafa bad az sitayish*
   *Ki sarwar-i-ambiya du jahani*
3. *Fasana dar jahan Babur qalandar*
   *Ki shud dar daur giti kamrani.*

The explanation of the above is as follows:-

In the first couplet the poet praises God, in the second Muhammad, in the third Babur.- There is a peculiar literary beauty in the use of the word *la-makani* in the Ist couplet. The author hints that the mosque is meant to be the abode of God, although He has no fixed abiding place.- In the first hemistich of the 3rd couplet the poet gives Babur the appellation of *qalandar,* which means a perfect devotee, indifferent to all worldly pleasures. In the second



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hemistich he gives as the reason for his being so, that Babur became and was known all the world over as a *qalandar,* because having become Emperor of India and having thus reached the summit of worldly success, the had nothing to wish for on this earth.

The inscription is incomplete and the above is the plain interpretation which can be given to the couplets that are to hand. Attempts may be made to read further meaning into them but the language would not warrant it.

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**MEMOIRS OF ZEHIR-ED-DIN MUHAMMED BABUR**

**EMPEROR OF HINDUSTAN**

**WRITTEN BY HIMSELF, IN THE CHAGHATAI TURKI**

**AND TRANSLATED BY**

**JOHN LEYDEN, Esq., M.D**

**and**

**WILLIAM ERSKINE, Esq.**

**ANNOTATED AND REVISED BY**

**SIR LUCAS KING, C.S.I., LL.D., F.S.A.**

**PROFESSOR OF ARABIC AND PERSIAN, AND LECTURER IN INDIAN HISTORY**

**IN THE UNIVERSITY OF DUBLIN ; LATE OF THE INDIAN CIVIL SERVICE**

**IN TWO VOLUMES**

**VOLUME II**

**Page 332-333**

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We were still a march or two from Oudh, when a messenger arrived from Chin Taimur Sultan, with intelligence that the enemy were encamped on the other side of the Saru, and that he would require to be reinforced. I dispatched to his assistance a thousand of the best men from the centre, under the command of Kazak. On Saturday, the 7th of Rajeb (March 28), I encamped two or three kos above Oudh, at the junction of the Gogra and Saru. Till that day, Sheikh Bayezid had kept his station, not far from Oudh, on the other side of the Saru. He had sent a letter to Sultan, for the purpose of overreaching him. Sultan having discovered his insincerity, about noon-day prayers sent a person to call for passing the river. When Karacheh had joined Sultan, they passed the river without delay. There were about fifty horse, with three or four elephants, on the other side, who being unable to stand their ground, took to flight. Our people brought down some of them, and cut off their heads which they sent me. Bikhub Sultan, Terdi Beg, Kuch Beg, Baba Chihreh, and Baki Shaghawel, passed the river after Sultan. Those



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who had passed over first continued till evening prayers in pursuit of Sheikh Bayezid, who threw himself into a jungle, and escaped. Chin Taimur Sultan having halted at night by a pool, mounted again about midnight (March 29), and renewed his pursuit of the enemy. After marching forty kos, he came to a place where their families and baggage had been, but they were already in full flight. The light force now divided itself into different bodies ; Baki Shaghawel with one division, following close upon the enemy, overtook their baggage and families, and brought in a few of the Afghans as prisoners.

I halted some days in this station, for the purpose of settling the affairs of Oudh and the neighbouring country, and for making the necessary arrangements. Seven or eight kos above Oudh, on the banks of the river Saru, is the well-known tract called the Hunting-ground. I sent Mir Muhammed Jalehban to examine the fords of the rivers Gogra and Saru, which he did. On Thursday, the 12th (April 2), I mounted, to set off on a hunting party.

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[The remaining transactions of this year are not to be found in any of the copies which I have met with : nor do the historians of Hindustan throw any light on them.- Editor.]

Note:- [The Hijri year 935 begins on September 15, A.D. 1528.]

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**VOLUME I**

**Pages 203 & 204**

When I arrived at Kabadian, Baki Cheghaniani, the younger brother of Khosrou Shah, who held Cheghanian, with the towns of Safa and Termez, sent the Khatib of Karshi, to express to me his wishes for my prosperity, and his desire to be permitted to join and accompany me as his prince; and, as I crossed the Amu, at the ferry of Ubaj, he himself came and paid his respects to me. At the desire of Baki Cheghaniani, I moved down towards Termez, when he brought his whole family and effects across the river and joined me, after which we proceeded towards Kahmerd and Bamian (places at this time held by the son of Ahmed Kasim, the sister's son of Khosrou Shah), intending to place our families in the fortress of Ajer, one of the towns of Kahmerd, and, after having put it in a posture of defence, to follow whatever plan seemed best to promise success. When we reached Aibek, Yar Ali Belal, who had formerly been in my service, and had conducted himself with bravery, but who had been separated from me during the commotions, and was now in the employment of Khosrou Shah, deserted wi6th several young cavaliers, and came and joined me, bringing assurances from



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the Moghuls in Khosrou Shah's service that they were all attached to my interests. On reaching the valley of Zindan, Kamber Ali Beg, surnamed Salakh (or the skinner), fled and came to me. In three or four marches we reached Kahmerd, having left our wives and families in the fortress of Ajer.

While we remained in the fort of Ajer, the marriage of Jehangir Mirza with the daughter of Sultan Mahmud Mirza by Khanzadeh Begum was consummated. They had been engaged during the lifetime of the Mirzas, their fathers.

At this same period, Baki Beg repeatedly, and with much earnestness, urged his sentiments, that to have two sovereigns in one country, and two generals in one army, was an unfailing source of confusion and ruin, and inevitably productive of rebellion, mutiny, and finally of dissolution ; as the poet says,

*(Persian)-* Ten dervishes may repose on the cloak,
But two sovereigns cannot be contained in the same climate.
The man of God, when he eats half a loaf,
Divides the other half among the poor and needy.
If a king subdues a whole kingdom, nay a climate, Still, as before, he covets yet another.

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**THE A-IN-I AKBARI**
**VOL. II-III**

**Page-182-83**

Awadh (Ajodhya) is one of the largest cities of India. It is situated in longitude 118º, 6', and latitude 27º, 22. It ancient times its populous site covered an extent of 148 kos in length and 36 in breadth, and it is esteemed one of the holiest places of antiquity. Around the envirous of the city, they sift the earth and gold is obtained. It was the residence of Ramachandra who in the Treta age combined in his own person both the spiritual supremacy and the kingly office.

At the distance of one kos from the city, the Gogra, after its junction with the Sai, (Saraju) flows below the seven yards in length respectively. The vulgar believe them to be the resting-places of Seth and the prophet Job, and extraordinary tales are related of them. Some say that at Ratanpur is the tomb of Kabir, the assertor of the unity of God. The portals of spiritual discernment were partly opened to him and he discarded the effete doctrines of his own time. Numerous verses in the Hindi language are still extant of him containing important theological truths. Bahraich is a large town on the banks of the river Sarju. Its envirous are delightful with numerous gardens. Salar Masud and Rajab Salar are both buried here. The common people of the Muhammadan faith greatly reverence this spot and pilgrims visit it from distant parts, forming themselves in bands and bearing gilded banners. The first mentioned was connected by blood with Mahmud Ghaznavi, and sold his life bravely in battle and left an imperishable name. The second was the father of Sultan Firoz king of Delhi and won renown by the recitude of his life.

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To Oude (Ayodhya) from thence are 50c. ; a citic of ancient note, and seate of a Potan king, now much ruined ; the castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand(s) castle and houses, which the Indians acknowled(ge) for the great God, saying that he tooke flesh upon him to see the tamasha of the world. In these ruins remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby ; which custome, they say, hath continued foure lackes of yeeres (which is three hundred ninetie foure thousand and five hundred yeeres before the worlds creation). Some two miles on the further side of the river is a cave of his with a narrow entrance, but so spacious and full of turnings within that a man may well loose himself there, if he take not better heed ; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance certaine graines of rice as blacke as gun-powder, which they say have beene reserved ever since. Out of the ruines of this castle is yet much gold tried. Here is great trade, and such abundance of Indian asse-horne that they make hereof bucklers and divers sorts of drinking cups. Thee are of these hornes, all the Indians affirme, some rare of great price, no jewell comparable, some esteeming them the right unicornes horne.



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**AYODHYA BY HANS BAKKER**
**Part-I**
**Pages 52, 53 and 54**

About 250 m to the south-east of the *Svargadvara* mosque is ruin of another *masjid* very similar to the former. The two mosques stand symmetrically on both sides of the main bathing *ghats*, which are collectively called Svargadvara. The eastern mosque, built at the same time as the other one, replaces an old Visnu temple built by the last Gahadavala king Jayacandra in AD 1184. An inscription found in the ruins of the mosque testifies to the construction of this Vaisnava temple: "Inscription No. XLIV is written in twenty incomplete lines on a while sand-stone, broken off at either end, and split in two parts in the middle. It is dated *samvat* 1241, or AD 1184, in the time of Jayachchhandra of Kanauj, whose praises it records for erecting a Vaisnava temple, from whence this stone was originally brought and appropriated by Aurangzib in building his masjid knows as Treta-ki (sic:) Thakur. The original slab was discovered in the ruins of this Masjid, and is now in the Faizabad local museum." To my knowledge this inscription has never been published. The site is known as 'Treta ke Thakur' (Skt. Tretanatha), 'Lord of the Tretayuga' (i.e. Ramachandra), but the Sanskrit name is not attested in any written source.

The AM does not mention another Visnu temple at this place (on top of the Svargadvara *ghats*), unless formerly a Dharmahari temple (at present there is a temple of that name c. 500 to the sought-east of the ruins of the mosque) stood on this site. The Mahatmya states that Dharmahari lies to the sough-east of Candrahari, and is, like Candrahari, to be visited after a bath in Svargadvara: *svargadvare narah snatva drstva dharmaharim vibhum/.*

The legend accounting for the origin of Charmahari is a replica of that of Candrahari. The only significant difference is that the visiting person is Dharma. This Dharma, after propitiating



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Visnu, installed an idol of Hari with his own name prefixed. The uniformity of the legends of origin along with the perfect symmetry of the two mosques build by Aurangzeb, which in their turn replaced two Visnu temples both established by Gahadavala kings, strongly suggests that the temple erected by Jayacandra was known to the Mahatmya under the name of Dharmahari. Just as the two mosques on both ends of the Svargadvara *ghats* seem to have been a reflection of each other, so both Gahadavala Visnu temples might originally have been counterparts. It seems possible that a king who was to become the last Hindu ruler of this part of India to defend his realm against the *mlecchas* styled himself as an incarnation of Dharma."

There are two more ancient (Vaisnava) 'Hari-temples' mentioned in the AM. One of these, the Harismrti temple with the image of Guptahari, has already been noted above. The other one is Visnuhari. The legend of this idol relates that in former days a Brahmin named Visnusarman came to Ayodhya. Once there, he wished that Visnu would also reside in the town: *ayodhyam agato visnur visnuh saksad vased iti/cintayan manasa viras tapah kartum samudyath//.* Having thus propitiated Visnu the latter allowed on idol of himself to be installed by Visnusarman with the latter's forename prefixed to his own: ..... This legend might have been the archetype of the legends of Candrahari and Dharmahari. According to the S recension of the AM Visnuhari is the first Visnu idol installed in Ayodhya. The Mahatmya locates the temple on the bank of the Sarayu adjacent to the bathing place called Cakratirtha. Today no trace of this temple is to be found. Local tradition has it that it was completely destroyed by a flood of the Sarayu river. A house c. 350m from the site that is today recognized as Cakratirtha, contains a four-armed Visnu idol that dated from the eleventh or twelfth century.

In conclusion we may say that there is evidence for the existence of five Visnu temples in Ayodhya in the twelfth century:



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1) Harismrti (Guptahari) at the Gopratara *ghat,* 2) Visnuhari at the Cakratirtha, 3) Candrahari on the west side of the Svargadvara *ghats,* 4) Dharmahari on the east side of the Svargadvara *ghats,* 5) a Visnu temple on the Janmabhumi. Three of these temples have been replaced by mosques and one was swept away by the Sarayu. The fate of the fifth is unknown but the site is occupied today by a new Guptahari/Cakrahari temple.

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As has been noted above the deification of Rama runs parallel with a reification of the city of Ayodhya. In the first half of the fifth century the identity of Saketa and Ayodhya was an established fact: Kalidasa uses both names synonymously and regards Rama as an *avatara* of Visnu.

The same period provides us with archaeological data that bear testimony to the existence of some form of veneration of the Rama incarnation of Visnu. A charter of the Vakataka queen Prabhavatigupta was issued "from the feet of the Lord of Ramagiri". In another inscription this queen proclaimed the bestowal of some villages to a Vaisnava teacher Canalasvamin, after these had first been offered (ritually) to the "feet of the Lord". Both inscriptions endorse the view that a sanctuary dedicated to Rama was situated on top of the Ramagiri hill, possibly enshrining the footprints (*pada)* of the Lord (*bhagavat),* spevifically those of his Rama incarnation. These footprints of the scion of the Raghu Race (*raghupatipada)* are referred to by Kalidasa. The same author also mentions a pond or tank in the neighbourhood of the hermitage of the Ramagiri that was dedicated to Sita. The allegiance of the poet to the court of Prabhavati-gupta's brother and nephew (Kumaragupta I and Skandagupta) makes an identification of the Ramagiri of the *Meghaduta* with the Ramagiri near the Vakataka capital Nandivardhana (modern Nandardhan about 30Km NE of Nagpur), from where these charters were issued, all the more likely. This hill



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is known today as Ramtek and contains several old Vaisnava sanctuaries besides a temple didicated to Ramacandra.

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A second stage in the rise of the cult seems to have been reached when Rama became depicted in his own right as a full form of Visnu. The oldest specimens testifying to this development may date from the tenth century. The Jaina temple of Parsvanatha in Khajuraho (c.AD 950-970) shows two images of Rama on the outer wall. The first one represents Rama holding the bow and arrow and the other shows him with four arms, holding the arrow for quiver ?) in his upper right and lower left hand, with his lower right hand blessing Hanumat and his upper left hand embracing Sita. From the eleventh century dates a temple at Osian (near Jodhpur) that represents Rama and Sita as Laksmi-Narayana."

Literary directions for the making of Rama images are not exactly congruous with the archaeological evidence. These prescription are found in several works dealing with iconography from the sixth century onwards. The *Brhatsamhita* and *Visvaksenasamhita* (both quoted in Smith 1969), and the *Visnudharmottarapurana,* which may all date from before AD 1000, give various iconographic descriptions of Rama and his attendants. According to the *Vaikhanasagama* and *Visvaksenasamhita* Rama should be depicted with only two arms, but the *Padmasamhita* allows the alternative of a four-armed image. This text declares that when an idol (*bimba)* of Rama is installed by itself (*svatantra) in the sanctum (*garbhagrha) it should have four arms. A group-image of Rama, Sita, and Laksmana is placed near it to be used in (special) ritual proceedings.

In view of the fact that only very few idols for the worship (*arca, bimba)* of Rama from before the 12th century have come to light it may be suggested that these inconographical descriptions, if not relating to ornamental sculptures on temple walls, were included



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in these texts chiefly for theoretical reasons and for the sake of completeness. These descriptions usually form part of passages in which all the incarnations of Visnu are systematically treated, and at the time they were conceived might not necessarily have reflected actual practice.

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We conclude this survey of archaeological evidence (*ante* AD 1200) by mentioning the oldest idol of Rama known to us. It is an early Chola bronze image (c.AD 950) belonging to the Sri Kalyana Varadaraja Perumal temple in Paruthiyur (Thanjavur district) which was on display in the exhibition of 'Masterpieces of early South Indian Bronzes' (National Museum, New Delhi, spring 1983).

It is again the twelfth century that witnessed an invigorating renewal of orthodox religious activity. The existence of three temples exclusively dedicated to Rama is documented, and there might have been considerably more of which all traces have been lost due to ravages committed by later rulers." One puzzle remains: neither from the twelfth century, nor from the following centuries, are there more than a few rare pieces of evidence that bear testimony to the installation of Rama idols in Ramaite temples. Consequently the conclusion has been drawn that a Hinduistic temple cult of Rama did not appear before the 16th or 17th century. This theory is untenable in view of the evidence for the existence of Ramaite temples from the 12th century onwards, and secondly in view of the origin of a calas of Sanskrit texts that are exclusively devoted to the (temple) cult of Rama, who is considered to be the highest dimension of Visnu. The earliest texts which belong to this class, dating from the eleventh and twelfth centuries (and perhaps even earlier), will be dealt with below. The existence of detailed manuals of Ramaite ritual and festive ceremonies presupposes a cult in which they could be applied. The solution of the puzzle may be found in the description of one of the oldest know temples dedicated to Rama, the Rajivalocana temple.



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**Pages 133 and 134**

Muhammad Tughlaq's successor, Firuz Tughlaq founded the present city of Jaunpur in AD 1359. After the invasion of Timur-i-lang, when confusion prevailed throughout the Sultanate, the Wazir Khwaja-i-Jahan, who was endowed with the title Malik-ush-Sharq, was sent by the Sultan Nasir-ud-din Mahmud to recover the eastern dominions in AD 1394. He took his residence in Jaunpur, and soon proclaimed independence. Avadh became part of the Sharqu territory until it was eventually recovered by Bahlol Lodi, the Sultan of Delhi, who appointed his nephew Mian Kala Pahar Farmuli governor of Avadh in the last years of his reign (+AD 1489). Ayodhya came under the control of the Lodis. About the aforementioned Lodi governor, Abbas Khan Sarwani remarks: "..... his *jagirs* were never disturbed and during all this time he gave his attention to nothing else except the accumulation of wealth. I have heard from persons of veracity that he had assured three hundred *mans* of red hard gold, and he did not purchase any other but golden jewelry." " Ayodhya might have been the right place for this hoarder since gold was found in its environs (see below).

Little is known as to the specific historical situation in Ayodhya under the rule of the Sharqis and Lodis. In the political domain the town had to concede much ground to the city of Jaunpur. Along with the weakness of central authority Hindu chiefs gradually strengthened their hold on the situation. With regard to this period Joshi remarks: "Under the Jaunpur kings Avadh was administered in a better way than under the Sultans of Delhi. The local zamindars and rajas also appear to have strengthened their position and the Saharq rulers (surrounded as they were by petty though independent principalities) had to placate them to maintain peace and order in their kingdom."

Scarcity of sources inevitably obscures the progress of the town during the fifteenth century. Subsequent history proves that the foundations were laid for a period of blossoming. An idea of the



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prosperity and religious prestige which was attained on the eve of the age of the Great Moguls may be gleaned from the evidence left behind by the founder of the Mogul Empire.

The conqueror Zahir-ud-din Muhammad Babur visited Ayodhya in Hijri 934 (AD 1527). The new emperor writes in his diary that he was on the march to the Oudh and reached the town for the first time about March 29: "We stayed a few days on that ground (near Aud) in order to settle the affairs of Aud. People praised the land lying along the Sird (a) 7 or 8 *kurohs* (14-16 miles) above Aud, saying it was hunting ground." Unfortunately the diary breaks off after April 2 AD 1527, only to resume in September 18 AD 1528. In this interval a mosque was raised by order of Babur on the site of the Janmabhumi temple. Babur might therefore have stayed in Ayodhya somewhat longer or have returned later in the same year. Beveridge gives the translation of a fragment which probably deals with Ayodhya and which has obviously been displaced in the codex on which the translation of Leyden and Erskine was partly based. The passage contained in this section seems to be survival of the lost record of 934 AH (F. 339)... It may be a persian translation of an authentic Turki fragment, found, perhaps with other such fragments in the Royal Library. The translation of it runs: "After spending several days pleasantly in that place, where there are gardens, running-waters, well-designed buildings, tress, particularly mango trees, and various birds of coloured plumage, I ordered the march to be towards Ghazipur.

The columns of the Janmabhumi temple that were used in the construction of the mosque have been described above. The mosque itself contains two inscriptions, the translation of the one inside reading:

"By the command of the emperor Babur, whose justice is an edifice reaching up to the very height of the heavens, the good-hearted Mir Baqi built this alighting-place of angels. *Bavad khair baqi: (*May this goodness last forever). The year of building it was



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made clear likewise when I said *buvad khair baqi"* (=935 AH, i.e. AD 1528.)"

Another incomplete inscription is found above the entrance which provides no additional information. Mir Baqi Tashqandi was apparently appointed first Mogul governor of Avadh.

By the time of Babur Ayodhya, particularly the temple of the Birthplace had evidently gained such prestige that it aroused the envy of the new emperor, possibly incited by local Mussulmans for whom the flourishing of this Hindu centre of pilgrimage had for long been a thorn in the flesh. Local tradition has it that it was especially the *pir* Fazl Abbes Musa Ashikhan (whose grave is still marked today by two temple columns), who instigated Babur to demolish this denounced centre of idolatry.

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Attestation regarding the existence of the idea of a Ramadurga are found from the second half o the 16th century onwards. The Ramakota seems to be alluded to by Tulsi Das in the RCM:

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"Every day Narada and Sanaka and toher high sages all came to Ayodhya to see the king of Kosala, and when they saw the city, they forgot they were ascetics. There were balconies inlaid with gold and jewels, with tesselated pavements of great beauty. All round the city were reared walls (*kota)* of wondrous charm, crowned with turrets of diverse hues, as though the nine planets had mustered an army to beleaguer Amaravati."

How this fort actually looked in the Kali age is reported by the English traveller William Finch (AD 1608-11):

"Heere are also the ruines of Ranichand [s] castle and houses, which the Indians acknowled(g)e for the great God, saying that he tooke flesh upon him to see the tamasha of the world. In these



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ruins remains certain Brahmenes, who record the names of all such Indians as wash themselves in the river running thereby."

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According to Carnegy the oldest foundations of temples in Ayodhya date from the 17th century. Although the antiquity given by this author (obviously based on information provided by mahants) proves to be unreliable and is some times demonstrably wrong, we may infer from the survey presented by him that the Kanakabhavana is among the oldest foundations of this period. Carnegy mentions Lalajidasa as the founder 200 years ago (i.e. AD 1670). This Lalajidasa might indeed have been the first person to reclaim the holy site of Sita's palace. Smha 1957 mentions.

The Hanumat temple was founded by Abhayarama after he had got permission from the second Nawab of Avadh Safdar Jang (AD 1739-1754). The temple does not seem to have been completed before the middle of the 8th decade of the 18th century (see ad DA 17.2c).

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Cp. DA 17.28cd-29 and DA 18.1-5.

There is some evidence for the existence of a shrine of a local tutelary deity on the Hanumantila which was, before it fell into the hands of the Vaisnavas, claimed as a site of worship by Saiva *samnyasis (*see ad DA 17.2c). The cult of Hanumat within Rama *bhakti* is a late phenomenon. Before it made its appearance within Vaisnavism it was already well-established in Saiva communions. Presumably, the basis of devotion to Hanumat by Rama *bhaktas* was provided by the *rasa* theory (which was generally acknowledged in the 17th century) which made him an example of the perfect Rama *bhakta.* However, the actual introduction of the cult of Hanumat might have come with the establishment of fighting sections within the Vaisnava communities in the early 18th century. The formation of *akharas* was modelled upon Saiva organizations in which Hanumat was worshipped (cp. Tripathi 1966, 7: the Gosains who



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occupied the Hanumantila 'worshipped Hanumat as if he were Bhairva'.). The Vaisnava *vairagis* took over this god as their tutelary deity. Ramanandi *sadhus* still show other customs which originally may have been peculiar to their Saiva examples (see Burghart in EHDL pp. 17-33).

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After the death of Akbar (AD 1605) his policy was continued by Jahangir (1605-1628). From his reign dates the first description of Ayodhya by a European visitor, viz. William Finch (AD 1608/11), whose report has been referred to above. From the same period dates the compiled description of Ayodhya that was made by Mitra Misra by order of Virasimha, the king of Orccha (AD 1605-1627), and which was based on the S recension and a chapter from the *Nrsimhapurana.* Although this description would have been somewhat out of date by the time Mitra Misra wrote his *Tirthaprakasa,* it is significant that this author does not reply on the DA recension, which was either still to be composed, or was too recent to be widely acknowledged as authoritative.

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Apart from the revised recension of the *Ayodhyamahatmya* other works on Rama *bhakti* began to appear in Sanskrit and Hindi in great numbers. Besides the *Hanumatsamhita,* the *Brhatkosala-khanda,* and the *Avadhavilasa* of Laladasa (composed in Ayodhya), B.P. Simha mentions eight more works pertaining to the Rasika school of Rama *bhakti,* to which we may subjoin the *Anandaramayana.*

Bulke adds two more works in Hindi and nine in Sanskrit belonging to the class of the building of which was commissioned by the queen of Tikamgarh, Vrsabhanu Kuvari, in AD 1887.



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**AYODHYA BY HANS BAKKER**

**Part-II**

**Pages 143-145**

**CHAPTER 21.** THE JANMASTHANA.

**Introduction**

**Notes to the textual evidence.**

The most conspicuous fact with respect to the textual evidence relating to the *tirtha* Rama-janmasthana (Janmabhumi) is that on the one hand a description of this principle holy place is found in all MSS of the AM used for this edition, and on the other hand that the *tirtha* is not mentioned in other classical sources (e.g. Puranas, Laksmidhara's TVK, *Nrsimhapurana* MS, Jinaprabhasuri's TK, Bhusram., and Mitra Misra's TP). Such a silence is all the more surprising in view of the fact that archaeological evidence indicates the existence of a temple at this *tirtha* in the eleventh century. A reason for the omission of this holy place in the Bhusram and TP might be that at the time these texts were written the site was occupied by a mosque (built by Babur in AD 1528).

The DA recension, which presumably also dates from after the destruction of the original Janmabhumi temple, has merely taken over the description of the place as found in s and B, without adding more details and praise, yet it has connected the Janmasthana with an elaborate description of Ramanavami (OA 22, OA 23).

This chapter is interesting for text-criticism in that it illustrates the relationship between OA, B,and S. The analysis of this relationship in II, xxixf.leads to the conclusion that, since OA is not directly based on B and S but goes back to an a-type-of-text which comprised the textual materials of B and S, both agreement between B and S against OA (AM 21. 2d), as well as agreement between OA and B against S (AM 21, 1cd/4cd,2b,7b,9/15), are likely to occur. Since B rests on a later version of the 1-type-of-text than S, a version that stands nearer to the OA recension, a greater



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affinity of B with OA than with S can be expected, especially in regard to the sequence and the occurrence of verses (see 21.1cd/4cd and 21.9/15 (sequence of OAB vs. S), and 21.3-4, 8-11 (occurring in OAB missing in S) vs. 21.13ab (occurring in BS missing in OA)).

The fact that B represents the most direct or crudest version of the a-type-of-text, which was edited in S and in OA, while the latter has not extended the description of the birthplace (possibly for reasons advanced above), accounts for the given evidence that MS B actually contains the most complete version of this section of the Mahatmya. The incongruity of S with the a-type-of-text may have prompted the author of B(P), at variance with his normal procedure, to include the entire description of the Janmasthana, thus rewriting a passage of S that was felt to be insufficient. The omission in S of DAB 21.8-11 may have been caused by homoeoteleuton (OABS 21.7cd=OAB 21.11cd).

MS P, which omits several *slokas* ocurring in B (B 21.2-4) and replaces B 21.8 by another *sloka,* contains a hiatus after B 21.9 which is indicated by a sign …. *truti. Slokas* 11 and 12 are corrupt and rendered incompletely in Mss O1 and O2, and BS 21.12abcd seems to be an anacoluthon. Obviously this passage had become corrupt in an early stage of its transmission and the clumsiness of the Sanskrit that remained my have led the editor of A to delete it altogether.

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The Janmabhumi may be conceived of as a compound which has comprised and still comprises several holy sites. The description is restricted to the Janmasthana temple itself in the S recension (OABS 21), but B has added two apparently subsidiary shrines-the palaces of Sumitra and Kaikeyi (OAB 25). The OA recension bears witness to a still further developed compound which comprised also two shrines of Sita, viz. Her kitchen and her well (Sitapakasthana (OA 24) and Sitakupa (OA 26). The abovementioned *tirthas* are today within a distance of 200m from



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the mosque of Babur. According to local tradition the shrines of Sumitra and Kaikeyi were destroyed along with the temple of the Janmasthana. An interpolation occurring only in edition A connects the three palaces (Kausalya, Kaikey, and Sumitra) with three *ghats (tirthas)* at the Sarayu (III, App.1 No.4). Due to a shift in the bed of the river these *ghats* are nowadays much in decay. Thus the glorification of the sacred complex of Rama's birthplace spreds over AM 21-AM 26.

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In December 1949 new riots broke out between Hindus and Muslims. During the night of "The agitation continued for more than three years. It had serious repercussions on the law and order situation in this town and resulted in some assaults and murders. During these years the relations between the Hindus and the Muslims remained strained and the services of the police were constantly on call. The site of the dispute (i.e. the mosque of Janmasthana) is in police custody pending the decision of the civil court. The police maintains an armed guard on the spot for the protection of the building and the prevention of any breach of peace, and a temporary out-post has been established near the site of the dispute." (Faiz.Gaz. 249). This situation continues up to the present day.

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Modern situation.

Today the mosque and the railing set up by the British are still there. The lawsuit is still pending in the Court of the Civil Judge Faizabad. A sentry stands outside the fence and more soldiers are permanently quartered inside the mosque. No Muslims are allowed to enter the precincts and the Hindus may come only as far as the fence in front of the entrance gate where they have erected a small altar. On a platform near the altar groups of Hindus are continuously engaged in *Kirtana.* A pamphlet circulated among the many pilgrims who visit the place for darshan reads: "Shri Ram Janma Bhumi of Ayodhya is a very sacred place. Anticipating Hindu-



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Muslim friction the Govt. has declared it a disputed place and has taken possession over it. Regular case is being conducted in the civil and criminal court. Since December 27, 1949 day and night Akhand Kirtan is being performed with a determination that it will continue so long as "Ram Janma Bhumi" is not freed"... "It is the sacred duty of the entire Hindu Community to finance this holy cause donations (sic:) and thus earn immense "PUNYA". "A glimpse of the idols within the mosque can be seen. Offerings of food (sweets) can be given through the bars of the fence. At present only eleven Hindus are allowed to enter the mosque on special occasions to perform the *puja* of the idols (Sita and Rama).

On the northern side of the mosque is a new Janmasthana temple. The place was founded by a *sadhu* called Ramadasa, pupil of Devamurari (Prayaga), in the 18th century (Tripathi 1969, 75ff.). Gradually the hut built by Ramadasa evolved into the large temple that nowadays occupies the site. The temple is built around an inner court on the west side of which are two cellas. In one of these the images of Rama and his *parivara* deities are installed, the other one contains the idols of Dasaratha and his entourage. Against the wall of the court stands a piece of a door-jamb said to come from the old Janmasthana temple. It has been described in I, 44f. The temple is visited by many pilgrims.

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OA 23.91d. t*amasam.* The river Tamasa is considered to constitute the southern border of the holy *ksetra* (see OAS 5.7). Yama, whose realm is located in the south, naturally enters the holy field from the south.

OA 23.92cd 93ab. The salutation *mantra* runs: *om vimalayai namah.*

OA 23.94a. *Gopratarам siras tasyas.* The *ksetra* of Ayodhya is conceived of as a fish. The head of this fish was said to lie near G opratara (see OAS 5.9ab).

OA 23.94b. *Tatah purvam tu kanthakam.* Yama's holy site (Yamasthala, see ad OA 23, 107c) lies on the bank of the Saraya



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(*tate sarayvas)* c.1, 25Om to the east (*purvam)* of Gopratara (tatah). It is conceived of as the 'neck' (*kanthaka)* of the fish.

OA 23.95cd-102cd. *Stotra, Ayodhyastaka.*

OA 23.99. = OABS 5.2cd-3ab.

OA 23.107c. *yamasthaleti.* The holy place on the bank of the Sarayu dedicated to Yama is called Yamasthala. The place is unknown to BP and S.

Its location is said to be east of Gopratara (see OA 23.94b and CK: OA 23, 107cd-108cd v.1.).

Today the sanctuary of Yama lies c.1, 250m east of Gopratara on the bank of the Sarayu at the foot of the ruins of Fort Calcutta.

This *tirtha* is especially visited on Yamadvitiya (Karttika, su., 2), the second day after Divali. On this day a *mela* held on the sandbank (*pulina,* see OA 23.112b) in the Sarayu in front of the sanctuary (see OA 23.108). Thousands of votaries come to take a bath in the river and many of the women in particular visit the shrine of Yama to perform *puja.* The all-India festival of Yamadvitiya is described in Kane V, 207ff.; von stietencron 1972, 72f.; Meyer 1937 II, 208ff.

Yamasthala is included in the *pradaksina* of 14 *kos* that is held on Karttika, su. ,9 {VII(A)}.

The site for Yama worship bears more resemblance to a simple shrine of a folk cult than to a sophisticated sanctuary. Today no priests perform the worship, but the offerings are placed before the icon by the devotees themselves. As in the case of most folk cults it is impossible to give an estimate of the antiquity of this holy site. The omission of Yamasthala in BP and S points to a relatively recent origin, yet the place might have been the site of tree worship that was ignored by the earlier Sanskrit tradition (BP and S). As has been noted above (ad OA 23.56b), the pipal tree plays an important part in the legend and was obviously thought to be situated in the vicinity of the site where Yama was said to have built his sanctuary (OA 23.112). A malevolent *yaksa* that resided in this tree that was



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associated with the spirits of the deceased might easily have become connected with the personified sins, and by linking this numinous place with Yama the site became affiliated with the Sanskrit tradition while still preserving its original ominous character (note OA 23.105d *akantaka).* *Yaksas* associated with pipal trees are for instance noted in KSS 3.20.32-38 and KSS 12.94.68-72 describes a malevolent (*raksasa* living in an *asvattha* tree (cp. Crooke 1926 II, 99f.; Agrawala 1970, 117).

Today the main object of *puja* besides the shrine of Yama is a big pipal tree standing in the middle of the compound. This compound consists of several small shrines next to each other. They are situated on the bank of the river and are provided with *ghats* on both sides (east and west). The compound comprises (from east to west ) an altar with Visvanatha (containing a *linga).* At the foot of the tree lie several stones and *trisula* which are objects of *puja.* Lamps are lit and placed in front of the tree together with flowers and other offerings. The shrine of Yama, standing behind the pipal (west side), is a small square construction facing the river. A bas-relief painted black, representing a two-armed Yama riding on his buffalo, stands against the back-wall of the shrine. His right hand holds a sword (*khadaga), his left a shield (*khetaka).

The icon can be classified as folk-art and seems to be no older than the 19th century.

On Yamadvitiya, when I visited the sanctuary, many votaries (90% of whom were women) thronged before the shrine, casting flowers at the icon and lighting lamps in front of it (cp. Kane V, 207f.). According to some texts like the *Vrataraja* (see Kane V, 208) women worship the image of Yama on the occasion of Yamadvitiya in order that longevity may be bestowed upon their brothers (*bhratur ayusyavrdhyartham)* (cp. Meyer 1937 II, 208ff.).



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## CHAPTER 24. SITA'S KITCHEN.

**Introduction:**

Textual evidence.

AM MSS : O1 10.26ab-33cd; O2 10.25ab-32cd; A 10.26ab-33cd; C 5.25cd-28cd; K 5.25cd-28cd; om. BPS.

Mod. Lit.: Sitaram 1933, 36f.; Sarma 1973, 64; Tieffenthaler I, 181.

**Note to the textual evidence.**

A interpolates a *sloka* after OA 24.8cd in which a *ghat* named Kausalyatirtha is mentioned. This *ghat* is said to lie west of Janmasthana on the Sarayu and is especially related ot the Janmasthana as the palace of Kausalya. Like wise A interpolates Kaikeyitirtha and Sumitratirtha after the respective descriptions of the palaces of both queens (see OA 24.8cd v.1., OA 25.2cd v. 1., OA 25.4cd v.1.; III, App. 1 No.4).

**Location.**

OA and CK agree that the kitchen (Sitapakasthana) is situated in the north-western corner (*vayukone)* of the Janmasthana.

Today a simple shrine is erected within the enclosure of the mosque of Babur in its NW corner. Before its destruction the Sitapakasthana was presumably a subsidiary shrine in the NW corner of the Nanmasthana precincts.

The new Janmasthana temple north of the mosque also contains a shrine of Sita's kitchen in the north-western part of the building. Tieffenthaler's report suggests that before the temple this site contained the shrine of Sitha Rassoi “der berruhmteste Ort” of Ayodhya (op. cit. 181).

**Special feature.**

The daily darshan of the thisholy place is said to procure an abundance of food in one's own kitchen.

**Festival.**

Not specified.



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CHAPTER 28. SVARNAKHANI.

**Introduction**

Textual evidence.

AM MSS; 10.44abcd, 11.1-61: O2 10.43abcd, 11.1-60ab: A 10.46abcd, 11.1-61; C 5.37ab-40ab; K 5.37ab-40ab; S 4.30-71, 5.1-18ab; om.BP.

Class.Lit.: *Raghuvamsa* 4.26-88, 5.1-35: Mbh. 5.104.8-26 (cp. Mbh. 5.112-117); SMC p.50

Mod.Lit.: Sitaram 1932, 53; Sitaram 1933, 72f.; Carnegy 1870 App. A,p.IX (*kuti* of Raghunathadasa); Ghurye 1953, 191 (Bari Chavani of Raghunathadasa); simha 1957, 415 (*kuti* of Ramaprasada), ibid. p.463 (Bari Chavani of Raghunathadasa).

**Note to the textual evidence.**

Although the *mahatmya* of this holy place is a conflation of two classical legends (*Raghuvamsa* 4-5, and Mbh. 5.104), the text does not follow either source verbatim.

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**Location.**

| **OA** | **S** | **At present** |
|---|---|---|
| Hanumatkunda | Dharmahari | Dharmahari Hanumatkunda |
| Ksirodaka | | Ksirodaka |
| Yajnavedi Yajnavadi | Tilodak I-Sarayu-Samgama | Tilodaki-Sarayu-Samgama |



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The tank lies on the northern side of the Bari Chavani, about 300m to the SE of Nanumatkunda (and the Rsabhadeva mandir).

**Special feature.**

A visit to this tank bestows wealth (*laksmi)*.

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## CHAPTER 47. VISNUHARI AT CAKRATIRTHA.

**Introduction**

The last two *slokas* of this Agni/Cakratirtha *mahatmya* of P also occur in B (containing only the came Cakratirtha) but are missing in S and OA. They seem to contain an indication of the anteriority of P with respect to B. P 11.25ab (see below) naturally follows 24cd as it says that after a bath in Cakratirtha and the performance of a *sradha* sacrifice one attains *bhukti* and *mukti* and one's ancestors are satisfied. However, in MS B hemistich : 11.25ab concludes the description of Ramatirtha in which there is no mention of *sradha* sacrifice at all, hence the reference to the satisfaction of the ancestors is disconnected. The *sloka* that concludes the description of Ramatirtha in P (P 14.46ab.46ab, see B 77.25cd), on the other hand, is very similar to P 11.25 but rightly substitutes *pitrtrptis ca jayate* by *jayate natra samsayah.*

The close relation between Cakratirtha and Agnitirtha in P seems to be endorsed by the *Nrsimhapurana* MS there is thus an association of the Cakratirtha with Agnitirths, the same *tirtha* is associated with Visnuhari, a temple founded by Visnusarman, in S, OA, and Bhusram., although the latter does not mention Cakratirtha by name but deals with Visnuhari in the context of the 'Seven Haris'.

We shall give the (ofter corrupt) BP version of Agnitirtha/Cakratirtha separately below, followed by that of the Nrpur. MS and concluding with the description of Visnuhari in Bhusram. In the presentation of the AM's description of the Cakratirtha/Visnuhari complex (OA and S recensions) the BP version is not given.



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**The History, Antiquities, Topography and Statistics of Eastern India;**
**By**
**MONTGOMERY MARTIN,**
**AUTHOR OF THE "History of the British Colonies," &c.**
**Volume II**
**BHAGALPUR, GORAKHPUR**

**Page 333-34**

The people of Ayodhya imagine, that after the death of Vrihadbala, their city was deserted, and continued so until the time of Vikrama of Ujjain, who came in search of the holy city, erected a fort called Ramgar, cut down the forests by which the ruins were covered, and erected 360 temples on the places sanctified by the extraordinary actions of Rama, of his wife Sita, of his brother Lakshman, and of his general Mahavira. The only foundation probably for such a tradition is, that Vikrama may have erected some temples, and that in the Mahabharat the genealogy of the family is continued no lower than the time of Vrihadbala, as being foreign to the subject of the book; but in the sri Bhagwat Vrihadbala is succeeded by 29 princes, and in the Bangsalata by 24. These, taken according to the scales of Rama's predecessors in Valmiki and the Sri Ghagwat, would give 18 princes, and this will give us 279, or 558 years, according as we call these successions reigns or generations, bringing the existence of the family down to the time nearly of Alexander; but none of the latter princes rose to considerable power, and they were vassals of the kings of Magadha. Their existence, however, throws a great doubt on the whole story concerning Vikrama.

This Vikrama is usually supposed to have been the personage from whom the era called Sambat is derived, and according to the reckoning used in Kosala, this ere commences 57 years before the birth of Christ, so that the city had been then deserted about 280 years. How the places remarkable for the actions of the God could be traced after such a long interval, and amidst the forest, seems



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rather doubtful; and the doubt will be increased, if we suppose that the latter Vikrama, the son-in-law of the Emperor Bhoj, was the person who constructed the temples at Ayodhya. This I am inclined to think was probably the case, for although Rama was probably worshipped before the time of the elder Vikrama, yet his worship, as that peculiarly distinguishing a sect of Bigots, seems to have been first established by Ramanuja about the time of the latter Vikrama, who may from thence be supposed peculiarly eager to discover the traces of the deity of his own sect. Unfortunately, if these temples ever existed, not the smallest trace of them remains to enable us to judge of the period when they were built; and the destruction is very generally attributed by the Hindus to the furious zeal of Aurungzebe, to whom also is imputed the overthrow of the temples in Benares and Mathura.

**(pages 335 & 336)**

The bigot by whom the temples were destroyed, is said to have erected mosques on the situations of the most remarkable temples; but the mosque at Ayodhya, which is by far the most entire, and which has every appearance of being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur, five generations before Aurungzebe. This renders the whole story of Vikrama exceedingly doubtful, especially as what are said to be the ruins of his fort, do not in any essential degree differ from those said to have belonged to the ancient city, that is, consist entirely of irregular heaps of broken bricks, covered with sol, and remarkably productive of tobacco; and, from its name, Ramgar, I am inclined to suppose that it was a part of the building actually erected by Rama.

Although, I did not fail to visit the place, and whatever the Hindus reckon remarkable, I did not choose to take any measurements, so as to draw with any accuracy a plan of the space which the ruins occupy, as the doing so might have given offence to



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the government of the Nawab Vazir, in whose territory, separated from this district only by the river Sarayu, they are situated.

I may in a general manner observe, that the heaps of bricks, although much seems to have been carried away by the river, extend a great way, that is, more than a mile in length, and more than half a mile in width: and that although vast quantities of materials have been removed to build the Muhammedan Ayodhya or Fyzabad, yet the ruins in many parts retain a very considerable elevation; nor is there any reason to doubt, that the structure to which they belonged, has been very great; when we consider, that it has been ruined for above 2000 years. None of the Hindu buildings at present existing are in the least remarkable either for size for architecture, and they are all not only evidently, but avowedly, quite, modern, that is, they have been all erected since the reign of Aurungzebe, or most of them even within the memory of man. Although they are built on what I have no doubt are the ruins of the palace that was occupied by the princes of the family of the sun, their being built on the spots, where the events which they are intended to celebrate, actually happened, would have been extremely doubtful, even had the elder Vikrama built temples on the various places which had been destroyed by Aurungzebe, so that the spots selected by Vikrama might be known by tradition; but the whole of that story being liable to strong suspicion, we may consider the present appropriation of names of different places as no better founded than the miracles, which several of them are said to commemorate.

It is said that in digging for bricks many images have been discovered, but the few which I was able to trace were too much broken to ascertain what they were meant to represent, except one at the convent (Aakhara) of Guptar, where Lakshman is supposed to have disappeared. This represents a man and woman carved on one stone. The latter carries somewhat on her head, and neither has any resemblance to what I have before seen. The only thing except



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these two figures and the bricks, that could with probability be traced to the ancient city, are some pillars in the mosque built by Babur. These are of black stone, and of an order which I have seen nowhere else, and which will be understood from the accompanying drawing. That they have been taken from a Hindu building, is evident, from the traces of images being observable on some of their bases; although the images have been cut off to satisfy the conscience of the bigot. It is possible that these pillars have belonged to a temple built by Vikrama; but I think the existence of such temples doubtful; and if they did not exist, it is probable that the pillars were taken from the ruins of the palace. They are only 6 feet high.

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**A GAZETTEER OF THE TERRITORIES UNDER THE GOVERNMENT OF THE EAST INDIA COMPANY, AND OF THE NATIVE STATES ON THE CONTINENT OF INDIA. COMPILED BY THE AUTHORITY OF THE HON. COURT OF DIRECTORS, AND CHIEFLY FROM DOCUMENTS IN THEIR POSSESSION. BY EDWARD THORNTON, ESQ. AUTHOR OF THE "HISTORY OF THE BRITISH EMPIRE IN INDIA."**

## PREFACE & (PAGE 739-40)

The desire repeatedly expressed in the General Courts of the East-India Company that an authentic Gazetteer of India should be offered to the British public in a cheap and convenient form, has led to the publication of the present edition. The work has been compiled by the authority of the Court of Directors, and though comprised within a single volume, it will be found to contain the great mass of information comprehended in the four volumes of the "Gazetteer of India." published by the same author in 1854.

This result has been obtained by retrenching some few redundancies, and by adopting an enlarge page and distributing the matter into two separate columns. By these means space has been also acquired for the insertion of much new matter, rendered necessary by the political and territorial changes which have been more recently taken place within our Eastern possessions. On the character of the work a few remarks will be sufficient. Its chief objects are,- Ist, To fix the relative position of the various cities, towns, and villages, with as much precision as possible, and to exhibit within the great practicable brevity all that is known respecting them; and, 2ndly, To note the various countries, provinces, or territorial divisions, and to describe the physical characteristics of each, together with their statistical, social, and political circumstances. To these have been added minute



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descriptions of the principal rivers and chains of mountains; thus presenting to the reader, within a brief compass, a mass of information which could not otherwise be obtained, except from a multiplicity of volumes and manuscript records.

The volume, in short, may be regarded as an epitome of all that has yet been written and published respecting the territories under the government, or political superintendence, of the British power in India. Its merits have been frequently discussed in the General Courts of the East-India Company, where successive Chairmen have borne ample testimony to the utility of the publication, and where it has been characterized by the best-informed among the Proprietors as "*a complete history of India, untainted in any degree by political bias.*"

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A town in the kingdom of the same name. It is situate on the right bank of the river Ghogra, which Buchanan considers hare to be "fully larger that the Ganges at Chunar," and which is navigable downwards to its mouth, upwards to Mundiya Ghaut, in the district of Bareilly. It extends about mile in a south-east direction, from the adjoining recent city of Fyzabad; the breadth of the town is some thing less from north east to south-west, or from the river landwards. The greater part of the site is on gently swelling eminences; but to the north-west, or towards Fyzabad, is low. Most of the houses are of mud, and thatched, though a few are tiled. Here, in a large building a mile from the river, is an extensive establishment, called Hanumangurh, or Fort of Hanuman, in honour of the fabled money-god the auxiliary of Rams. It has an annual revenue of 50,000 rupees, settled on it by Shuja-ud-daulah, formerly Nawaub Vizier. It is managed by a malik or abbot, the spiritual superior; and the revenues are dispensed to about 500 bairagis or religious ascetics, and other Hindoo mendicants of various descriptions; no Mussulman being allowed with the walls. Other



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establishments of similar character are Sugrimkilla, Ram-Prashad-ka-Kana, and Bidiya-Kund; maintaining respectively 100,250 and 200 bairagis. Close to the town on the east, and on the right bank of the Ghogra, are extensive ruins, said to be those of the fort of Rama, king of Oude, hero of the Ramayana, and otherwise highly celebrated in the mythological and romantic legends of India. Buchanan observes, "that the heaps of bricks, although much seems to have been carried away by the river, extend a great way: that is more than a mile in length, and more than half a mile in width; and that, although vast quantities of materials have been removed to build the Mahomedan Ayodha or Fyzabad, yet the ruins in many parts retain a very considerable elevation nor is there any reason to doubt that the structure to which they belonged has been very great, when we consider that it has been ruined for above 2,000 years." The ruins still bear the name of Ramgurh, or "Fort of Rama;" the most remarkable spot in which is that from which, according to the legend, Rama took his flight to heaven, carrying with him the people of his city; in consequence of which it remained desolate until half a century before the Christian era, and by him embellished with 360 temples. Not the smallest traces of these temples, however, now remain; and according to native tradition, they were demolished by Aurungzebe, who built a mosque on part of the site. The falsehood of the tradition is, however, proved by an inscription on the wall of the mosque, attributing the work to the conqueror Baber, from whom Aurungzebe was fifth in descent. The mosque is embellished with fourteen columns of only five or six feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey-general Hanuman, who had brought them from Lanka or Ceylon. Altogether, however, the remains of antiquity in the vicinity of this renowned capital must give a very low idea of the state of arts and civilization of the Hindoos at a remote period. A quadrangular coffer of stone, whitewashed, five



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ells long, four broad, and protruding five or six inches above ground, is pointed out as the cradle in which Rama was…….as the seventh avtar of Vishnu; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos. Ayodhya or Oude is considered by the best authorities to be the most ancient city in Hindostan; and Princep mentions that some of its coins in the cabinet of the Asiatic Society of Bengal are of such extreme antiquity that the characters in which their legends are graven are totally unknown. According to Elphinstone, "from thence the princes of all other Indian countries are sprung." Buchanan conjectures that it was founded by Brahmins, whom he considers as an immigrant race, more advanced in civilization than the indigenous Indians. "These personages came from western Asia, introducing with them the Sanskrit language, generally admitted to be radically the same with Persian dialect; while the languages spoken among all the rude tribes that inhabit the fastnesses of India, and which are, probably, remains of its ancient tongue, have no sort of analogy to the languages of the West." This author supposes the city to have been founded by Vaiwaswata, one of this race, about 1,366 years before the Christian era. He considers that its renowned ruler Rama perished A.C. 775, involved in the destruction of his city by the hostile confederacy of his sons; that being rebuilt, it suffered a similar fate under the reign of Vridhabala, A.C. 512; and having lain for centuries desolate, was rebuilt A.C. 57, by Vikramaditya, the celebrated king of Oojein. Tod, however, and Wilford, fond of large numbers, place the foundation of Ayodha in an era more than 2,000 years B.C. The former writer states, without comment, a tradition that Lucknow, distant eighty miles from the present city of Oude is of comparatively recent date, as it is described in the Ayeen Akbery as one of the largest cities of Hindostan; and it is farther stated, "In ancient times this city is said to have measured 148 cose (perhaps 200 miles) in length, and thirty six cose in breadth. It is esteemed one of the most sacred places of antiquity." With the *havili* or



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municipal district attached, the city is assessed in the Ayeen Akbery at 50,209 rupees, a sum so moderate as to throw discredit on the previous statement of its being one of the greatest cities of India. The present population, according to Butter is 8,000 including 500 Mussulmans. Distant E. from Lucknow 75 miles, N. from Allahabad 95. Lat. 26° 47', long. 82° 11'.

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**ARCHAEOLOGICAL SURVEY OF INIDA**

**FOUR REPORTS**

**MADE DURING THE YEARS**

**1862-63-64-65,**

**By**

**A.Cunningham, C.S.I.**

Volume I

**PREFACE**

**(i)**

The matter contained in these two volumes is the result of the archaeological survey which I conducted during four consecutive years from 1862 to 1865. The object of this survey cannot be better stated than in the memorandum which I laid before Lord Canningn in November 1861, and which led to my immediate appointment as Archaeological Surveyor to the government of India, as notified in the following minute:

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Minute by the Right Hon'ble the GOVERNOR GENERAL OF INDIA in Council on the antiquities of Upper India, - dated 22nd January 1862.

"In November last, when at Allahabad, I had some communications with Colonel A. Cunningham, then the Chief Engineer of the North-Western Provinces, regarding an investigation of the archaeological remains of Upper India.

"It is impossible to pass through that part,- or indeed, so far as my experience goes any part- of the British territories in India without being struck by the neglect with which the greater portion of the architectural remains, and of jthe traces of by-gone civilization have been treated, though many of these, and some which have had least notice, are full of beauty and interest.

"By 'neglect' I do not mean only the omission to restore them, or even to arrest their decay: for this would be a task which, in many cases, would require an expenditure of labour and money far



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greater than any Government of India could reasonably bestow upon it.

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"During the one hundred years of British dominion in India, the Government has done little or nothing towards the preservation of its ancient monuments, which, in the almost total absence of any written history, form the only reliable sources of information as to the early condition of the country. Some of these monuments have already endured for ages, and are likely to last for ages still to come; but there are many others which must son disappear altogether, unless preserved by the accurate drawings and faithful descriptions of the archaeologist.

**Page 5**

He describes minutely all the temples and statues which surrounded the celebrated Pipal trree, known throughout the Budhist world as the *Bodhi-drum.* Several of the objects enumerated by the Chinese pilgrim I have been able to identify from their exact correspondence with his description.

The celebrated Bodhi tree still exists, but is very much decayed; one large stem, with three branches to the westward, is still green, but the other branches are barkless and rotten. The green branch perhaps belongs to some younger tree, as there are numerous stems of apparently different trees clustered together. The tree must have been renewed frequently, as the present Pipal is standing on a terrace at least 30 feet above the level of the surrounding country. It was in full vigour in 1811, when seen by Dr. Buchanan (Hamilton), who describes it as in all probability not exceeding 100 years of age. Hwen Thsang also describes an early renewal by King *Purna Varmma* after its destruction by King *Sasangka,* who dug up the ground on which it had stood, an moistened the earth with sugar-cane juice to prevent its renewal.



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Immediately to the east of the Pipal tree there is a massive brick temple, nearly 50 feet square at bas and 160 feet in height from the granite floor of the lower story to the top of its broken pinnacle. This is beyond all doubt the *Vihar,* from 160 to 170 feet in height, described by Hwen Thsang as standing to the east of the Bodhi tree. Its base was about 20 paces square. It was built of bluish bricks plastered with lime; it was ornamented with niches in stages, each niche holding a golden statue of Buddha, and was crowned with an *amalaka* fruit in gilt copper. The existing temple, both in size and appearance, corresponds so exactly with this description, that I feel quite satisfied it must be the identical temple that was seen by Hwen Thsang. The ruined temple, as it now stands, is 160 feet in height, with a base of rather less than 50 feet square. It is built entirely of dark red brick of a bluish tinge, and has formerly been plastered all over.

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By A.Cunningham, C.S.I. **Volume I**, Page 293 to 296

That this mound was the site of one or more Brahmanical temples seems almost certain from my discovery of a figure of *Shasti,* the goddess of fecundity, and of a pedestal bearing the date of *Samvat* 1193, or A.D. 1136, which is posterior to the extinction of Buddhism in Kanoj. I think it probable that excavations in this mound would be attended with success, as the two temples are said to have been built of stone, which no doubt furnished the whole of the materials for the Masjid and tomb of *Makhdum Jahaniya.*

## XI. A-YU-TO, OR AYODHYA

From Kanoj the two Chinese pilgrims followed different routes, Fa Hian having proceeded direct to *Sha-chi* (the modern Ajudhya, near Fyzabad on the Ghaghra), while Hwen Thsang followed the course of the Ganges to Prayag, or Allahabad. The first stage of both pilgrims would, however, appear to be the same. Fa Hian states that he crossed the ganges and proceeded 3 *yojans,* or 21 miles, to the forest of *Holi,* where there were several *Stupas* erected on sots where Buddha had "passed, or walked, or sat." Hwen Thsang records that he marched 100 *li,* nearly 17 miles, to the town of *Nava-deva-kula,* which was on the eastern bank of the Ganges, and that at 5 *li,* or nearly 1 mile, to the sough-east of the town there was a *Stupa* of Asoka, which was still 100 feet in height, besides some other monuments dedicated to the four previous Buddhas. I thinkit probable that the two places are the same, and that the site was somewhere near Nobatganj, just above the junction of the *Isan River* and opposite *Nanamow Ghat.* But as there are no existing remains anywhere in that neighbourhood, the place has been most likely swept away by the river. This is rendered almost certain by an examination of the Ganges below the junction of the



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*Isan.* Formerly the river continued its course almost due south from Nanamow for many miles, but some centuries ago it changed its course first to the south-east for 4 or 5 miles, and then to the south-west for about the same distance, where it rejoined its old bed, leaving an island, some 6 miles in length by 4 in breadth, between the two channels. As Hwen Thsang's account places *Nava-deva-kula* on the very site of this island, I conclude that the town as well as the Buddhist monuments must all have been swept away by the change in the river's course.

On leaving *nava-deva-kula,* Hwen Thsang proceeded 600 *li or 100* miles, to the south-east, and re-crossing the Ganges he reached the capital city of *A-yu-to,* which was 20 *li,* or upwards of 3 miles, in circuit. Both M. Julien and M. St. Martin have identified this place with *Ayodhya,* the once celebrated capital of Rama. But though I agree with them as to the probable identification of the name as that of the country, I differ with them altogether in looking for the capital along the line of the *Ghaghra River,* which is due cast from Kanoj, whereas Hwen Thsang states that his route was to the south cast. It is, of course, quite possible that the pilgrim may occasionally use the generic name of Ganges as the appellation of any large river, such, for instance, as the *Ghaghra;* but in the present case, where the recorded bearing of south-cast agrees with the course of the Ganges, I think it is almost certain that the Ganges itself was the river intended by the pilgrim. But by adopting the line of the Ganges we encounter a difficulty of a different kind in the great excess of the distance between two such well known places as Kanoj and Prayag. According to Hwen Thsang's route, he first made 100 *li* to *Nava-deva-kula,* then 600 *li* to *Ayutho,* then *300 li* by water to Hayamukha, and lastly 700 *li* to *Prayaga.* All these distances added together make a total of 1,700 *li,* or 283 miles, which is just 100 miles, or 600 *li,* in excess of the true distance. But as a part of the journey, *viz.,* 300 *li,* or 50 miles, was performed by



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water, the actual excess may, perhaps, not be more than 85 or 90 miles; although it is doubtful whether the distance of 300 *li* may not have been the road measurement and not the river distance. It is sufficient for our purpose to know that Hwen thsang's recorded measurement is somewhere about 100 miles in excess of the truth. The only explanation of this error that suggests itself to me is, that there may have been an accidental alteration of one set of figures, such as 600 *li* for 60 *li,* or 700 *li* for 70 *li.* supposing that the former was the case, the distance would be shortened by 540 *li,* or 90 miles, and if the latter, by 630 *li,* or 105 miles. This mode of correction brings the pilgrims's account into fair accordance with the actual distance of 180 miles between Kanoj and Prayag.

By adopting the first supposition, Hwen Thsang's distance from *Nava-deva-kula* to the capital of *Ayutho* will be only 60 *lie,* or 10 miles, to the south-east, which would bring him to the site of an ancient city named *Kakupur,* just 1 miles to the north of Scorajpoor, and 20 miles to the north-west of Cawnpoor. If we adopt the latter correction, the pilgrim's distance to *Ayutho* of 600 *li,* or 100 miles, will remain unchanged, and this would bring him *via Manikpur,* which is also an ancient place. By the first supposition the subsequent route would have been from *Kakupur* to *Daundiakhera* by boat, a distance of exactly 50 miles, or 300 *li,* and from thence to *prayag,* a distance of more than 100 miles, which agrees with the 700 li, or 116 miles, of the pilgrim. By the second supposition the subsequent route would have been from *Khara* to *Papamow* by water, about 50 miles, and thence to Prayag, about 8 miles of land, which agrees with the 70 *li* of the proposed correction. In favour of this last supposition is the fact that the bearing from *Khara to* Papamow of cast by south is more in accordance withHwen Thsang's recorded cast direction than the south-cast bearing of Daundiakhera from Kakupur. I confess, however, that I am more inclined to adopt the former correction, which places the chief city



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of *Ayutho* at Kakupur, and the town of *Hayamukha* at *Daundiakher,* as we know that the last was the capital of the *Bais Rajputs* for a considerable period. I am partly inclined to this opinion by a suspicion that the name of *Kakupur* may be connnected with that *Bagud,* or *Vagud,* of the Tibetan books. According to this authority a *Sakya,* named *shampaka,* on being banished from Kapila retired to *Bagud,* carrying with him some of Buddha's hairs and nail-parings, over which he built a *chaitya.* He was made king of *Bagud,* and the monument was named after himself (*? Shampaka Stupa).* No clue is given as to the position of *Bagud;* but as I know of no other name that resembles it, I am induced to think that it is probably the same place as the *Ayutho* of Hwen Thsang, which was also possessed of a *Stupa* containing some hairs and nail-parings of Buddha. Kakupur is well-known to the people of Kanoj, who affirm that it was once a large city with a Raja of its own. The existing remains of *Kakupur* consist of numerous foundations formed of large bricks, and more particularly of a connected set of walls of some large building which the people call "the palace." I have not yet visited this place, which lay out of my line of route, but I hope to have an opportunity of examining it hereafter.

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## XII. HAYAMUKHA OR AYOMUKHA

From *Ayutho* the Chinese pilgrim proceeded a distance of 300 *li,* or 50 miles, down the Ganges by boat to O-*ye-mu-khi,* which was situated on the north bank of the river, M.Julien reads this name as *Hayamukha,* equivalent to "Horse face," or "Iron face," which was the name of one of the D*anavas or* Titans. Neither of these names, however, gives any clue to the site of the old city; but if I am right in my indentifiction of Ayutho with Kakupur, it is almost certain tha Ayomukh must be the same as Daundiakhera. Hwen Thsang makes the circuit of the town 20 *li,*up-wards of 3 miles, but *Daundikhera* presents no appearance of having ever been so large. There still



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exist the ruins of an old fort or citadel, 385 feet square, with the walls of two buildings which are called the Raja's and Rani's palaces. The foundation of this citadel is attributed to Raja Raghunath Sinha, but he was apparently some comparatively modern *Thakur,* or petty Chief, as Daundiakhera is universally allowed to have been the capital of the *Bais* Rajputs, who claim descent from the famous Salivahan. As there are no remains of any buildings which can be identified with the momuments described by Hwen Thsang,the actual site of Ayomukha must still remain doubtful.

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By A.Cunningham, C.S.I. Volume I, Pages 317,318,319, 320,321,322,324,325

**XVII. SAKETA, OR AJUDHYA.**

**PAGES 317-322**

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Much difficulty has been felt regarding the position of Fa-Hian's "great kingdom of *Sha-Chi,* and of Hwen Thsang's *Visakha,* with its enormous number of heretics," or Brahmanists; but I hope toshow in the most satisfactory manner that these two places are identical, and that they are also the same as the *Saketa* and *Ajudhya* of the Hindus. The difficulty has arisen chiefly from an erroneous bearing recorded by Fa Hian, who places *Shewei,* or *Sravasti,* to the south of *Sha-chi,* while Hwen Thsang locates it to the north-east, and partly from his erroneous distance of 7+3+10 = 20 *yojans, instead* of 30, from the well-known city of Sankisa. The bearing is shown to be erroneous by the route of a Hindupilgrim from the banks of the Godavery to *Sewet, or Sravasti,* as recorded in Ceylonese Buddhist works. This pilgrim, after passing through Mahissati and Ujani, or Maheshmati and Ujain, reaches Kosambi, and from thence passes through *Saketa to Sewet,* that is, along the very route followed by Hwen Thsang. We have, therefore, two



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authorities in favour of *Sewet* being to the north of Saket. With regard to the distance, I refer again to the Buddhist books of Ceylon, in which it is recorded that from *Sakespura (or Sangkasyapura, now Sankisa) to Sewet* was a journey of 30 *yojans.* Now, Fa Hian makes the distance from Sankisa to Kanoj 7 yojans, thence to the forest of *Holi,* on the Ganges, 3 *yojans,* and thence to *shachi* 10 *yojans,* or altogether only 20 *yojans,* or 10 less than the Ceylones books. That Fa Hian's statement is erroneous is quite clear from the fact that his distance would place Shachi in the neighbourhood of Lucknow; whereas the other distance would place it close to Ajudhya, or Faizabad, or in the very position indicated by Hwen Thsang's itinerary. Here, again, we have two authorities in favour of the longer distance. I have no hesitation, therefore, in declaring that Fa Hian's recorded bearing of *She-wei* from *Sha-chi* is wrong, and that "north" should be read instead of "south."

I have now to show that Fa Hian's *Sha-chi* is the same as Hwen Thsang's *Visakha,* and that both are identical with *Saketa* or *Ajudhya.* With respect of *Sha-chi,* Fa Hinan relates that, on "leaving the town by the *southern gate,* you find to the *cast* of the road the place where Buddha bit off a piece of his tooth brush, and planted it in the ground, where it grew to the height of seven feet, and never increased or diminished in size." Now this is precisely the same legend that is related of *Visakha* by Hwen Thsang, who says that "to the *south* of the capital, and to the left of the road (that is, to the east as stated by Fa Hian), there was, amongst other holy objects, an extraordinary tree 6 or 7 feet high, which always remained the same, neither growing nor decreasing. This is the celebrated tooth-brush tree of Buddha, to which I shall have occasion to refer presently. Here I need only notice the very precise agreement in the two descriptions of this famous tree, as to its origin, its height, and its position. The perfect correspondence of these details appears to me to leave no doubt of the identity of Fa Hian's *Shachi* with the



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Visakha of Hwen Thsang.

With respect to the identification of Visakha with the Saketa of the Hindus, I rest my proofs chiefly on the following points: 1st, that *Visakha,* the most celebrated of all females in Buddhist history, was a resident of Saketa before her marriage with *Purnna Varddhana,* son of *Mrigara,* the rich merchant of *Sravasti;* and 2nd, that Buddha is recorded by Hwen Thsang to have spent six years at *Visakha,* while by the Pali annals of Turnour he is stated to have lived 16 years at *Saketa.*

The story of the noble maiden Visakha is related at great lengthin the Ceylonese books. According to Hardy, she erected a *Purvvdrama* at *Sravasti,* which is also mentioned by Hwen Thsang. Now there was also a *Purvvarama* at Saketa, and it can hardly be doubted that this monastery was likewise built by her. She was the daughter of *Dhananja,* a rich merchant, who had emigrated from *Rajagriha* to *Saketa.* Now, amongst the oldest inscribed coins which have been discovered onlyat Ajudhya, we find some bearing thenames of *Dhana Deva* and *visakha-Datta.* I mention this because it seems to me to show the probability that the family of *Dhananja* and *Visakha* was ofgreat eminence in Saketa or Ayodhya; and Iinfer from the recurrence of their names, as well as from the great celebrity of the lady, that the city may possibly have been called *Visakha* after her name.

The identity of *Saketa* and *Ayodhya* has, I believe, always been admitted; but I am not aware that any proof has yet been offered to establish the fact. Csoma-de-koros, in speaking of the place, merely says "*Saketana* or Ayodhya," and H.H.wilson, in his Sanskrit Dictionary, calls *Saketa* "the city Ayodhya." But the question would appear to be set at rest by several passages of the Ramayana and Raghuvansa, in which *Saketnagara* is distinctly called the capital of Raja *Dasaratha* and his sons. But the following verse of the Ramayana, which was pointed out to me by a Brahman



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of Lucknow, will be sufficient to establish the identity. *Aswajita,* father of *Kaikeyi,* offers to give his daughter to *Dasaratha, Rajah of* Saketanagara:-

*Saketam nagaram Raja namna Dasaratho bali,*

*Tasmai deya maya kanyd Kaikeyi nama to jand.*

The ancient city of Ayodhya or Saketa is described in the Ramayana as situated on the bank of the *Sarayu* or *Sarju* River. It is said to have been 12 *yojans,* or nearly 100 miles in circumference, for which we should probably read 12 *kos,* or 24 miles- an extent which the old city, with all its gardens, might once possibly have covered. The distance from the *Guptar* Ghat on the west, to the Ram Ghat on the case, is just 6 miles in a direct line; and if we suppose that the city with its subrubs and gardens formerly occupied the whole intervening space to a depth of two miles, its circuit would have agreed exactly with the smaller measurment of 12 *kos.* At the present day the people point to Ram ghat and Guptar Ghat as the eastern and western boudaries of the old city, and the southern boundary they extend to *Bharat-Kund* near *Bhadarsa,* a distance of 6 *kos.* But as these limits inclue all the places of pilgrimage, it would seem that the popel conside them to have been formerly insdie the city, which was certainly not the case. In the Ain Akbari, the old city is said to have measured 148 *kos in length by 36* kos in breadth, or in other words it covered the whole of the Province of Oudh to the south of the Ghaghra River. The origin of the larger number is ovious. The 12 *yojans* of the Ramayana, which are equal to 48 *kos,* being considered too small for the great city of Rama, the Brahmans simply added 100 kos to make the size tally with their own extravagant notions. The present city of Ajudhya, which is confined to the north-east corner of the old site, is just two miles in length by about three-quarters of a mile in breadth; but not one-half of this extent is occupied by buildings, and the whole place wears a look of decay. There are no high mounds of ruins, covered with broken



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statues and sculptured pillars, such as mark the sites of other ancient cities, but only a low irregular mass of rubbish heaps, from which all the bricks have been excavated for the houses of the neighbouring city of Faizabad. This Muhammadan city, which is two miles and a half in length, by one mile in breadth, is built chiefly of materials extracted from the ruins of Ajudhya. The two cities together occupy an area of nearly six square miles, or just about one-half of the probable size of the ancient Capital of Rama. In Faizabad the only building of any consequence is the stuccoed brick tomb of the old Bhao Begam, whose story was dragged before the public during the famous trial of Warren Hastings. Faizabad was the capital of the first Nawabs of Oudh, but it was deserted by Asaf-ud-daolah in A.D. 1775.

According to the Ramayana, the city of Ayodhya was founded by Manu, the progenitor of all mankind. In the time of Dasaratha, the father of Rama, it was fortified with towers and gates, and surrounded by a deep ditch. No traces of these works now remain, nor is it likely, indeed, that any portion of the old city should still exist, as the *Ayodhya* of Rama is said to have been destroyed after the death of *Vrihadbala* in the great war about B.C. 1426, after which it lay deserted until the time of Vikramaditya. According to popular tradition this Vikramaditya was the famous Sakari Prince of Ujain, but as the Hindus of the present day attribute the acts of all Vikramas to this one only, their opinion on the subject is utterly worthless. W learn, however, from Hwen Thsang that a powerful Prince of this name was reigning in the neighbouring city of Sravasti, just one hundred years after Kanishka, or close to 78 A.D., which was the initial year of the *Sake era* of *Salivahana.* As this Vikramaditya is represented as hostile to the Buddhists, he must have been a zealous Brahmanist, and to him therefore I would ascribe the re-building of Ayodhya and the restoration of all the holy places referring to the history of Rama, Tradition says that when



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Vikramaditya came to Ayodhya, he found it utterly desolate and overgrown with *Jangal,* but he was able to discover all the famous spots of Rama's history by measurements made from Lakshman Ghat on the *Sarju,* according to the statements of ancient records. He is said to have erected 360 temples, on as many dirrerent spots, sacred to *Rama,* and *Sita* his wife, to his brothers *Lakshmana, Bharata,* and *Satrughana,* and to the monkey god *Hanumana.* The number of 360 is also connected with *Salivahana,* as his clansman the *Bais Rajputs* assert that he has 360 wives.

There are several very holy Brahmanical temples about Ajudhya, but they are all of modern date, and without any architectural pretensions whatever. But there can be no doubt that most of them occupy the sites of more ancient temples that were destroyed by the Musulmans. Thus *Ramkot, or Hanuman Garhi,* on the east side of the city, is a small walled fort surrounding a modern temple on the top of an ancient mound. The name Ramkot is certainly old, as it is connected with the traditions of the *Mani Parbat,* which will be hereafter mentioned; but the temple of Hanuman is not older than the time of Aurangzib. Ram Ghat, at the north-east corner of the city, is said to be the spot where Rama bathed, and *Sargdwari or Swargadwari,* the "Gate of Paradise." On the north-west is believed to be the place where his body was burned. Within a few years ago there was still standing a very holy-Banyan tree called *Asok Bat,* or the "Griefless Banyan, " a name which was probably connected with that of *Swargadwari,* in the belief that people who died or were burned at this spot were at once relieved from the necessity of future births. Close by is the *Lakshman Ghat,* where his brother Lakshman bathed, and about one-quarter of a mile distant, in the very heart of the city, stands the *Janam Asthan,* or "Birth-place temple" of Rama. Almost due west, and upwards of five miles distant, is the *Guptar* Ghat, with its group of modern white-washed temples. This is the place where



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Lakshman is said to have disappeared, and hence its name of *Guptar* from *Gupta,* which means “hidden or concealed.” Some say that it was Rama who disappeared at this place, but this is at variance with the story of his cremation at *Swargadwari.*

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.....The mounds are surrounded by Musulman tombs and as it is the Muhammadan practice to bury the dead along the sides of the high roads close to their cities, I infer that the road which now runs close to the westward of the mounds, is one of the ancient high ways of the district. This is confirmed by the existence of an old masonry bridge of three arches over the *Tilahi nala,* to the north-west of the Mani-Parbat, as well as by the direction of the road itself, which leads from the south-end of the city straight to the Bharat-kund, and onwards to Sultanpur or *Kusapura,* and Allahabad or *Prayaga.* I notice this road thus minutely, because the identification which I am about to propose are based partly on its position and direction, as well as on the general agreement of the existing remains with the holy places described by the Chinese pilgrims.

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.....Besides the monastery there was *Stupa* Asoka, 200 feet in height, built on the spot where buddha preached the law during his six years' residence at Saketa. This monument



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**ARCHAEOLOGICAL SURVEY OF INDIA**
**FOUR REPORTS MADE DURING THE YEARS 1862-63-64-65,**
**BY**
**ALEXANDER CUNNINGHAM, C.S.I.,**
**VOLUME II.**

**(PAGES 320-27)**

The principal entrance to the fort lies in the hollow forming the duck's throat. The first part of the ascent, as far as the *Alam-girii-darwaza,* or lowest gate, is an easy rise up the gentle slope at the foot of the hill; but from the outer-gate to the top, the ascent is by a steep flight of steps said to be 360 in number. At about one-fourth of the distance, the road passes through the *Sayidon-ka-darwaza,* or "Sayid's gate," and about half way up through the *Piron Paur, or "Pir's gate."* Beyond this the ascent becomes very steep as it approaches the upper entrance, called *Gaomukhi-darwaza, or "cow's mouth gate,"* or *Alaj-giri-darwaza, was not built during the reign of Alamgir, as its name would seem to imply, but only repaired, or renamed, for the whole of the four gates are mentioned by Wm. Finch in A.D. 1610, or nearly 50 years before the accession of Alamgir.* The *Sayidon-ka-darwaza* bears a short inscription dated in S. 1602, or A.D. 1545, which was probably the year of its repair by the Sayid governor of the fort. Its original Hindu name is unknown, as well as that of the third gate or *Piron Paur.* The upper gate, or Gaomukhi-darwaza, bears an inscription of S. 1857, or A.D. 1800, which was the date of its reconstruction by Ambajee, the Mahratta Governor under Doalat Rao Sindhia. Its previous name was *hawa Paur,* but it is said that *Gaomukhi Paur* was the original ancient name which was only restored by the Mahrattas.

The existing remains of the Hindu period of Narwar history are almost entirely confined to the few inscriptions which have already been noticed. But the numerous fragments of sculpture and architectural ornament, which are still to be seen in most of the



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Muhammadan buildings, are sufficient to show that, in the flourishing days of Hindu sovereignty. It was probably only second to Gwalior in the number and magnificence of its temples and other edifices. The almost entire disappearance of Hindu remains is due to the wholesale destruction of the temples by Sikandar Ludi in A.H. 913, or A.D. 1508, when the fort fell into his hands by the capitulation of the Hindu garrison. The historian ferishta relates that this bigoted iconoclast remained there for six months "breaking down temples, and building mosques." Niamatullah, the historian of the Afghans, states that Sikandar, thinking the fort" so strong that it would be impossible to retake it, should it fall into the hands of the infidels, erected another fort around it to keep off the enemies." Ferishta merely records that "the king marched from Narwar, but after proceeding some distance along the Sindh River he resolved to surround Narwar with another wall, which was ordered to be immediately commenced." It is not clear from either of these accounts what was the exact nature of the works that were added by Sikandar Ludi. The simple meaning would seem to be that he added an outer line of walls, but as there are no outer walls now existin, and no traces of any former walls, I conclude that both historians must have mistaken the nature of Sikandar Ludi's additions. I think it very probable that his works must have been the two lofty inner walls which convert the central portion of the fort called the *Bala-Hisar* into a strong citadel that commands the other two portions, named *Madar-hata* and *Dulha-kot.*

The only work now existing in the fort hat can be atributed with any probability to the Hindus is a large tank in the citadel, called *Magardhaj,* or *Makara-dhwaja.* The name is a Hindu one, and is said to be that of the Raja at whose expense the tank was excavated. The work must have been rather costly, as the tank is 300 feet square at top, and from 35 to 36 feet deep, the whole being dug out of the solid rock. It was originally intended to hold 20 feet



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of water, but the thick coating of stucco, which once lined the interior, has long ago disappeared, and the tank is now quite dry except after heavy rain when it has a few feet of water, which, however, it retains only for a short time. When I last visited the fort, the bed of the tank was laid out as a garden containing a number of plantains and marigolds.

Of a later date, the only objects of interest are the iron gun of Sawai Jay Singh of Amber, and the Roman Catholic chapel and burial ground. The gun is of the most rude and primitive construction, being built up of nine parallel iron bars, which are held together by an outer casing of bronze. The lengh of the piece is 10 feet, and the diameter of the bore 3 ½ inches. it bears a Hindi insciption stating that the gun, named *Phate-Jang,* orthe "victorious in war" was made during here reign of Maharaja Jay Singh on the 10th day of the Waning Moon of *Sravana,* in the Samvat year 1753, or A.D. 1696.

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The Roman Catholic cemetery is a walled enclosure, 115 feet in length by 83 feet in breadth, containing an entrance room, a small chapel, and 50 tombs. The chapel is a small apartment, 21 ½ feet long by 10 ½ feet broad, with a chancel at he end, 12 by 9 ¾ feet. Over he altar there are the letters I. H.S. surmounted by a cross. Of the tombs, two only bear inscriptions, of which one is in Portuguese and Persian, and the other in Persian only. The copy of the latter has been mislaid, but I remember that it simply recorded the death of a young girl eight years of age, named *Margarita,* who was the daughter of a *hakim,* or doctor. The other records the death of German, named Cornelius Oliver, in A.D. 1747. The Portuguese inscription in eight lines beneath a cross is as follows, the three lower lines being in smaller characters:

AQUI JAZ
CORNELIO
TURAL DE



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ALLEMAN
NACIDOEM AQUI GR
ANO FALLECEO
AOS 7 DE NOV 1747

This is accompanied by a Persian inscription in two lines, one on each side of the slab, and perpendicular to the other inscription. It merely records the name and country of the individual in the following words:

*Karnel Auliver Khom Faringi Aliman,*

that is, "Cornelius Oliver, by race a German Faringi."

The existence of a Christian chapel and cemetery inside one of the strongest forts in Northern India, is fact as curious as it is interesting. From the position of Cornelius Oliver's tomb, in the very corner of the enclosure to the right hand of the chapel, I infer that it was most probably one of the first, if not the very earliest, of all the tombs, and, consequently, that the chapel must have been constructed somewhere about the same time. It is scarcely possible that any Christian establishment would have been permitted in such a position during the reign of the bigotted Aurangzib, whose governor everywhere displayed their religious zeal by the most rabid intolerance. I presume, therefore, that this Christian community was most probably not settled at Narwar until some time after the death of Aurangzib, when the rapid decay of the Muhammadan empire of Delhi led to the general employment of European artillerymen. A small company of 30 or 40 gunners, with their Native families, would have been quite sufficient to furnish 50 graves in the course of a few years.

The city of Narwar is no longer the prosperous place so graphically described by the poet Bhavabhuti, but a small town of not more than 4,000 inhabited houses, enclosed by a low wall of little strength. It has three gates, two of which, the Gwalior gate and the Jhansi gate, lead towards those cities, and the third, called the



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Dobai gate, leads towards a tank of the same name. On all sides it is surrounded by crumbling houses and mounds of ruins. On one of these mounds, near the Jhansi gate, and in the old *mahallah,* or "ward," of *kachipura,* there is a large inscribed slab, 4 feet 9 inches long and 4 feet4 inches broad. The opening words, *Om, Namah Siddhaya,* are alone legible, as the slab has been purposely mutilated. At the end I thought that I could trace the word Samvat with the date of 1192, or A.D. 1135, but this reading is very doubtful. From the commanding position of the mound I judge that it must once have been the site of a large and important temple.

Outside the city, on the road towards Gwalior, there is a rought sandtone pillar, 23 feet 4 ½ inches in height, called the *Jait-Kambh,* or "column of victory." At 8 feet above the ground there is a sunken tablet, with an inscription of 33 lines, recording the genealogy of the Tomara dynasty of Gwalior, The list of names opens with *Vira Sinha Deva,* who established his independence immediately after the invasion of Timur, and ends with *Sangrama,* who succeeded to the nominal sovereignty about A.D. 1615, an died about 1630. The erection of the pillar must, therefore, have taken place during the early part of the reign of Shah Jahan, when the Kachhwahas were in disgrace for having sided with their relative, Prince Khusru, as already related in my account of the later Kachhwaha dynasty. We know that Sangrama's younger brother, Vira Mitra Sena, was in high favour with the Mogal emperor, by whom he was appointed governor of the fort of Rohitas, on the Son River, as recorded in the Rohitas inscription, which is dated in S. 1688, or A.D. 1631, after the death of Sangrama. It seems highly probable, therefore, that the tomara Prince, Sangrama, must have been the governor of Nawar at the time when the *Jait- Kambh, or "*conqueror's pillar" was erected.

On the side of the Gwalior road also there is a very fine large *baori,* or reservoir of water, 27 feet in diameter, with a flight of



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steps down to the water's edge, flanked on each side by shady cloister, supported on ten stone pillars. This baori belongs to the same period as the *Jait- Kambh,* as it bears an inscription dated in S. 1687, or A.D. 1630, and was therefore, most probably constructed during the temporary rule of the Tomara Princes in Narwar.

In the same direction there is a curious Sati monument erected to the memory of the two wives of *Suundar Das,* who was the *upadya,* or "spiritual guide," of the Kachhwaha Raja, Gaj Sinh, of Narwar. he accompanied the Raja to the Dakhan war, where he is said to have been killed about A.D. 1700, or perhaps, a few years later. The Raja sent his *dopatta,* or "plaid," to Narwar, which his two wives accepted, and burned themselves with it. They were named *Ladham Devi and Surup Deve,* or the "beloved wife," and "the beautiful wife," and their effigies are rudely sculptured under the inscription which records their names and those of their descendants. The present monument was erected in S. 1880, or A.D. 1823, by Josi Yadunath, the fifth in descent from Sundar Das, as the original Sati pillar, which was set up by the son, had become broken and defaced. There are several descendants of Sundar Das still living in Narwar, sipri, and Kulbaras, all of whom speak with pride of the noble act of their ancestor's wives.

The only produce of Narwar is crude iron, which is smelted in large quantities in all the neighbouring villages. The chief markets for this manufacture are in the Jhansi and Chanderi districts to the east and south, and in the Gangetic Doab to the north, where it competes successfully with English iron. The best ore is found in the vicinity of Gwalior, but, from the total want of fuel, the ore is carried to Karahi and Magraoni, near Narwar, where charcoal is comparatively cheap. But the great forests of Narwar, where Akbar used to hunt the wild elephant, are now gradually disappearing, and the consequent rise in the price of charcoal is daily adding to the cost of manufacture, so that the time is probably not far distant



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when the soft malleable iron of Gwalior and Narwar will be driven from all the markets of the Doab by the cheaper and more brittle English iron.

Connected with Narwar are the two great bridges over the Sindh River,- one to the south, towards Sipri and Kulharas, and the other to the north, towards Gwalior, There is no inscription to determine the date of these bridges; but, from the great similarity of their designs with that of the smaller bridge at Nurabad, which was built in A.H. 1072 or A.D. 1661, during the reign of Aurangzib, there is every reason for believing the tradition of the people that these bridges also belong to the same period. This conclusion is corroborated by the journal of William Finch, who makes no mention of either of the bridges at the period of his visit in A.D.1610.

The south bride is situated in the midst of the hills at a place called Patti Ghati, near the smalt village of Dhongri, 10 miles to the south-west of Narwar. At this point the bed of the river is rocky throughout, and offers every advantae for the construction of a permanent bridge. But the fatal mistake of making the thickness of the piers equal to the span of the arches, which is common to all the Muhammadan bridges of this period, has filled half the channel with solid masses of masonry which “the indignant stream” has resented by working its way round each end of the bridge. From the position of two square turrets on one of the mid-channel piers, as well as from the general direction of both banks, I infer that the original bridge consisted of 22 arches, each of 19 feet 7 inches span, resting on solid piers 20 feet in thickness. The roadway was 20 feet in breadth and horizontal. As the bridge at present stands it consists of 26 of these arches, and of five smaller arches of 13 feet 9 inches span, resting on piers 16 feet 2 inches in thickness. The latter are at the northern end of the bridge, and, as they are still unbroken, I conclude, with some probability, that the Sindh River must have



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carried away the abutment at this end soon after it was built. But as these small arches afforded an additional waterway of only 68 feet 9 inches, the amount of relief was too small to be of any real use. The bridge was accordingly cut away at the southern end, where the bank now forms a deep bay, which extends no less than 180 feet beyond the 22nd and last arch of the original bridge. This increased channel was then bridged by four new arches of the same span as those of the first design, but they have again been swept away by the stream, and only the foundations of the piers are now traceable. The height of the piers to the spring of the arches is 15 ½ feet, and the height of the arches is 10 ¼ feet, and their thickness 3 feet. Up to the spring of the arches the piers have curved ends projecting 7 feet both up and down the stream. The upper part of each pier is pierced by a small arch of 4 feet span, or on-fifth of its thickness. As it at present stands the whole bridge is 1,204 feet in length, with 31 arches, of which 26 are large and 5 are small. Altogether the waterway amounts to only 577 feet 11 inches, while that of the solid mass of piers is no less than 592 feet 5 inches, or somewhat more than one-half of the actual breadth of the channel. The bridge is substantially and honestly built with large stones and excellent mortar, and the long stones of the parapet are carefully dovetailed together. But the original defect of blocking up one-half of the channel with a row of massive piers was fatal to the permanent stability of the bridge, which has been turned by the stream at least three times in 200 years, and which is now standing quite useless in the rainy season, and only accessible in the dry season by a ladder at one end.

The northern bridge is situated three miles to the north-east of the fort, where the bed of the Sindh River is partly firm rock and partly loose boulders. From the remains of a large pier or abutment near the north end I infer that the original bridge must have consisted of 22 arches like that the *patti-Chati,* each having a span



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of 19 feet 5 inches, with piers of the same thickness. The central pier was ornamented with two square open cupolas. The whole length of the original bridge, including two massive abutments, of which one is still standing, was 1,000 feet. After some time the three arches at the north end having been swept away by the stream, a new bridge of 10 small arches, each 11 feet 4 inches span, with piers of 13 feet 4 inches, was made at the same end, which has since shared the fate of its predecessor. The main piers and arches of this northern bridge are similar to those of the southern bridge at Patti-Ghati, and need not, therefore, be described. The piers have the same curved projections up and down stream, and the same small arches above. The masonry of the cental portion of the arches, however, must have been very inferior, as many of the arches have fallen down, although the roadway above istill intact, owing to which it is formed. The road-way is 32 feet 7 inches wide, which is increased to 110 feet at the ends by the splay of the abutments. When complete with its two additions and abutments, this northern bridge was1,098 feet in length.

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**A HISTORICAL SKETHCH OF FAIZABAD WITH INCLUDING PARGANAS HAVELI-OUDH AND PACHHIMRATH WITH THE OLD CAPITALS AJUDHIA AND fYZABAD**

**BY P. CARNEGY.**

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## AJUDHIA.

Ajudhia- Ajudhia, which is to the Hindu what Macca is to the Mahomedan, Jerusalem to the Jews, has in the traditions of the orthodox, a highly mythical origin, being founded for additional security not on the earth for that is transitory, but on the chariot wheel of the Great Creator himself which will endure for over.

In appearance Ajudhia has been fancifully likened to a fish, having Guptar as its head, the old town for its body, and the eastern parganas for its tail.

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Derivation- The name Ajudhia is explained by well-known local Pandits to be derived from the Sanskrit words, *Ajud*, unvanquished, also *Aj,* a name of Barmha, the unconquerable city of the Creator, But Ajudhia is also called *Oudh,* which in Sanskrit means a promise, in allusion it is said, to the promise made by Ram Chandr when he went in exile, to return at the end of 14 years. These are the local derivation; I am not prepared to say to what extent they may be accepted as correct. Doctor Wilson of Bombay thinks the word is taken from *yudh* to fight, the city of the fighting Chhatris.

Area.- The ancient city of Ajudhia is said to have covered an area of 12 *jogan* or 48 kos, and to have been the capital of Utar-Kausala or Kosala, (the Northern Treasure) the country of the Surajbans race of Kings, of whom Ram Chundar was 57$^{th}$ in descent from Raja Manu, and of which line Raja Sumintra was the 113$^{th}$ and last. They are said to have reigned through the Suth, Tireta, and



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Dwapar Jugs, and 2,000 years of the Kul or present Jug or Era.

The description of the Ajudhia of Rama and the Ramayan has been beautifully rendered into verse by the distinguished Principal of the Benares College, Mr. Griffiths.

---

Her ample streets were nobly planned,
And streams of water flowed,
To keep the fragrant blossoms fresh,
That strewed her royal road.

There many a princely palace stood,
In line, on level ground,
Here temple, and triumphal are,
And rampart banner crowned.

There gilded turrets rose on high,
Above the waving green,
Of mango-groves and blooming trees,
And flowery knots between.

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On battlement and gilded spire,
The pennon streamed in state;
And warders, with the ready bow,
Kept watch at every gate,

She shone a very mine of gems,
The throne of Fortune's Queen;
So many-hued her gay parterres,
So bright her fountains sheen.

Her dames were peerless for the charm,
Of figure, voice, and face;
For lovely modesty and truth,
And woman's gentle grace.

Their husbands, loyal, wise and kind,
Were heroes in the field,



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And sternly battling with the foe,
Could die, but never yield.

Each kept his high observances,
And loved one faithful spouse;
And troops of happy children crowned,
With fruit their holy vows.
(Scenes from the Ramayan.)

———

With the fall of the last of Rama's line, Ajudhia became a wilderness, and the royal race became dispersed even as the Jews. From different members of this dispersed people, the Rajas of Jaipur, Joudhpur, Udeypur, Jambu, &c., of modern times, on the authority of the "Tirhut Kuth-ha," claim to descend. Even in the days of its desertion Ajudhia is said still to have remained a comparative Paradise, for the jungle by which it was over-run, was the sweet-smelling *keorah,* a plant which to this day flourishes with unusual luxuriance in the neighbourhood.

*Ban-Oudha.*- In less ancient times when waste began to yield to cultivation, it took the name of Ban-Oudha or the Jangle of Oudh. With this period the name of Vikramajit is traditionally and intimately associated, when Budhism again began to give place to Brahminism.

*The restoration by Vikramajit.*- To him the restoration of the neglected and forest-concealed Ajudhia is universally attributed. His main clue in tracing the ancient city was of course the holy river Sarju, and his next was the shrine still known as Nageshar-nath, which is dedicated to Mahadeo, and which presumably excaped the devastations of the Budhist and atheist periods. With these clues, and aided by descriptions ehich he found recorded in ancient manuscripts , the different identified, and vikramajit is said to have indicated the different shrines to which pilgrims from afar still in



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ghousands half-yearly flock.

*Ramkot.-* The most remarkable of those was of course Ramkot the strong-hold of Ramchandar. This fort covered a large extent of ground and according to ancient manuscripts, it was surrounded by 20* bastions, each of which was commanded by one of Rama's famous generals, after whom they took the names by which they are still known. Within the fort were eight royal mansions-!- where dwelt the Patriarch Dasrath, his wives, and Rama his deified son, of whom it has been plaintively sung-

"Lord of all virtues, by no stain defiled,
The king's chief glory was his eldest child,
For he was gallant, beautiful, and strong,
Void of all envy, and the thought of wrong.
With gentle grace to man and child he spoke,
Nor could the churl his harsh reply provoke,
He paid due honor to the gook and sage,
Renowned for virtue and revered for age.
And when at eve his warlike task was o'er,
He sat and listened to their peaceful lore,
Just pure and prudent, full of tender ruth,
The foe of falsehood and the friend of truth;
Kind, slow to anger, prompt at miseries call,
He loved the people, and was loved of all,
Proud of the duties of his warrior race,
His soul was worthy of his princely place.
Resolved to win, by many a glorious deed,
Throned with the gods in heaven, a priceless meed
What thought Brihaspati might hardly vie,
With him in eloquence and quick reply,
Nano heard the music of his sweet lips flow
In idle wrangling or for empty show.



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He shunned no toils that student's life befit,
But learned the Vedas and all holy writ;
And even eclipsed his father's archer fame,
So swift his arrow and so sure his aim.

| | | | |
|---|---|---|---|
| * 1. | Hanuman Garhi. | 11. | Kuteswar. |
| 2. | Sugreon. | 12. | Labidh Bawan. |
| 3. | Ungad. | 13. | Mayand. |
| 4. | Dibadh. | 14. | Rakhach. |
| 5. | Nal. | 15. | Surumbha. |
| 6. | Nil. | 16. | Bibhi Khan. |
| 7. | Sukhen. | 17. | Pindark. |
| 8. | Kuber. | 18. | Mat Gajyindr. |
| 9. | Gwachh. | 19. | Jamwant. |
| 10. | Dadh Biktr. | 20. | Kesri. |

-!-1. Rattan Singasin (the throne room).
2. Kosilla Mandr (the palace of Kosilla, Raja Dasrath's 1st wife)
3. Sumantra Mandr, (ditto, ditto, 2nd wife.)
4. Kekai Bhawan, (ditto, ditto, 3rd do.)
5. Subha Mandr, (the court house.)
6. Janam Asthan, (Rama's birth place.)
7. Nowratan, (assembly room of the queens.)
8. Kunak Bhawan, (the golden palace of Ramchandar.)

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To this praise for virtue his ancient father apparently had no pretension; for we are told that besides the three wives above marginally indicated, who caused him so much anxiety, there were 360 others of whom history says little.* A prodigality of connubial happiness which in modern days found its parallel also in Oudh, in the Kesar Bagh Harem of Wajid Ali Shah.

*Note:-* The same story and number of wives is also ascribed to Salivahara and Tilokchand.

*Samundra Pal Dynasty.-* According to tradition Raja Vikramaditta ruled over Ajudhia for 80 years, and at the end of that time he was outwitted by the Jogi Samundra Pal, who having by magic made away with the spirit of the Raja, himself entered into the abandoned body, and he sand his dynasty succeeding to the



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kingdom they ruled over it for 17 generations or 643 years, which gives an unusual number of years for each reign.

*Note:-* Ancient Hindu History is sadly mystified by the irrepressible appearance of Vikramditta. Wilford speaks of eight rulers of the name, extending over as many centuries. Something of the same kind may be said of Tilokchand in these parts, for the Bais, Bachgote and Siribastam families all had most prominent rulers of that name.

**Page 9 & 10**

*The Ajudhia Mahatum.-* No account of Ajudhia would be complete with did not throw some light on the Ramayan and the Ajudhia Mahatum. Of the former of these works, I need not speak, for through the writings of Wheeler, Cust, Monier Williams &c. most readers are familiar therewith. I will therefore confine my remarks to the Ajudhia Mahatum, which is comparatively unknown.

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This work was prepared to the glorification of Ajudhia according to some, by Ikshawaku of the solar race, while others with more probability aver that it is a transcript from the Askundh and Padam Purans, and is not the production of any Raja. Be that as it may it is well that the essence of the work should be made available to the public, and in this view Mr. Woodburn c.s. Has been good enough to make a connected abstract for me, from a literal translation which I had made some years ago. This abstract is given as Appendix B.

*Limits of Ouch.-* It is not always easy to comprehend what is meant by the Oudh or Ajudhia of ancient times, for that territory has been subjected to many changes. So far as these are known to me, I give them below-

*The Oudh of Rama.-* Such intelligent natives as Maharaja Man Singh have informed me that at this period Oudh was divided into five portions, thus:- (1) *Kosal or Utar Kosala,* which included the present Trans-Gogra districts of Gorakhpur, Busti, Gondah and



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Baraich. (2) *Pachhamrath,* which included the country between the rivers Gogra dnd Gomti, extending westwards from ajudhia to Nimkhar in Sitapur, (3) *Purabrath,* or the territory between the same rivers, extending eastwards towards Jaunpur, the limit not being traceable. (4) *Arbar* being the country around Pertabgurh, lying between the rivers Gomti and Son, probably the same that is still known as Aror or Arwar: and (5) *Silliana,* which incoluded some portion of the Nepal hills running along the then Oudh frontier.

*The Oudh of Akbar.*- Mention is made of the title of Subadar of Oudh as early as A.D. 1280, and it was one of the 15 subas or Governorships into which Akbar subdivided the empire in 1590 A.D. The Mahamadan attempt to change the name from Oudh to Akhtarnagar, never seems to have succeeded fully.

The boundaries of the old Suba differed materially from those of the present day, and a large part of what is now the eastern portion of the Province, including tanda, Aldemau, Manikpur, &c., was not in those days included in Suba Oudh, but in Allahabad. According to the Ain-i-Akbari the Suba then extended from and inclusive of Sirkar Gorakhpur, to Kanouj, and from the Himalayas to Suba Allahabad, 135 kos by 115 kos.

Suba Oudh contained five Sirkars, viz., (1) Oudh ; (2) Lucknow : (3) Baraich ; (4) Khyrabad ; and (5) Gorakhpur. The details of these are given below, but they are only approximately correct, and in regard to some places my information is incomplete.

**Page 19 to 21**

With reference tot he remarks of Professor Wilson above referred to it may be observed that the Chinese traveller Hwen Thsang found no less than 20 Budhist monasteries with 3000 monks, at Ajudhia in the 7th century, and also a large Brahminical population with about 20 of their temples; so that after the revival of Brahminism the idea of monasteries was probably borrowed from the Budhists; or may it not have been that whole monasteries went from the one faith to the other, as they stood? If a Gour Brahmin in



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these days can legitimately supervise a Jain temple it seems just possible that the sectarian feelings of the Brahminists and Budhists and Jains of former times, were less bitter than we are liable to suppose.

*The monastic orders*.- There are seven Akharas or cloisters of the monastic orders, or Bairagis, disciples of Vishnu, in Ajudhia, each of which is presided over by a Mahant or Abbot; these are:-

1. N*irbani,* or silent sect, who have their dwelling in Hanuman Garhi.
2. *The Nirmohi,* or void of affection sect, who have establishments at ramghat, and Guptarghat.
3. *Digambari,* or naked sect of ascetics.
4. The *Khaki* or *ash-besmeared* devotees,
5. The *Maha-nirbani,* or literally dumb branch,
6. The *Santokhi,* or patient family.
7. The *Nir-alambhi,* or *provisionless* sect.

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The expenses of these different establishments of which the first is by far the most important, are met from the Revenues of lands which have been assigned to them; from the offerings of pilgrims and visitors; and from the alms collected by the disciples in their wanderings all over India.

*The Nirbani sect,*- I believe the Mahant of the *Nirbani Akhara* or Hanumangarhi, has 600 disciples, of whom as many as 3 or 400 are generally in attendance, and to whom rations are served out at noon daily. The present incumbent has divided his followers into four Thoks or parties, to whom the names of four disciples as marginally noted, have been given.

1. Kishon Dasi.
2. Tulshi Dasi.
3. Muni Rami.
4. Jankisaran Dasi.

There appear to be as I have already pointed out in my “Notes on Races, &c., “ several grades of discipleship in connexion with



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these establishments.

I. There are the ordinary worshippers of all the different Hindu castes, who still retaining their position in the world and their home ties, become disciples in the simple hope that their prayers offered under the auspices of their spiritual guides, will be heard and their temporal wishes granted.

II. There are also those who forsaking the world and their homes, join the fraternity of devotees in view solely to their eternal well being, a privilege which is within the reach of all castes of Hindus. Of these later those who were Brahmins and Chhatris before initiation are exempted from manual labor, while the menial offices of cooking, sweeping, water drawing &c. devolve upon those of the brethren who were originally of the lower castes.

A disciple of the 2nd class isfor a time admitted as a novice and intrusted with unimportant secular offices only. He is then required to make a round of the great places of pilgrimage such as Dwarka Jagarnath, Gya *c., and on his return thence he is finally admitted to all the privileges of the order; celibacy is enforced, and those who surreptitiously marry, or steal, are expelled from the brotherhood. Brahmins and Chhatris are admitted membership without limit as to age, but candidates of other castes must be under the age of sixteen years, so that they may readily inbibe the doctrines of the order. The orders of the Mahand tand his advisers, the heads of Thoks, must be implicity obeyed. The best of the disciples are chosen to remain at the temple to conduct the devotions in solitude.

*Nirmohi sect.-* It is said that one Gobind Das came from Jaipur some 200 years ago and having acquired a few Bighas of revenue-free land, he built a shrine and settled himself at Ram Gaht. Mahant Tulshi Das is the sixth in succession. There are now tow branches of this order, one at Ram ghat and the other occupying the temples at Guptar Gaht. They have rent free holdings in Busti, Mankapur and Khurdabad.



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*The Digambari sect.*- Siri Balram Das came to Ajudhia 200 years ago, whence it is not known, and havign built a temple settled here. Mahant Hira Das is the Seventh incumbent. The establishment of resident disciples is very small being limited to 15; they have several revenue free holdings in the district.

*The Khaki sect.*- When Ramchandr became an exile from Ajudhia his brother Lachhman is said in his grief to have smeared his body with ashes and to have accompanied him. Hence he was called *Khaki* and his admiring followers bear that name to this date. In the days of Shuja-ud-Dowla on Mahant Dya Ram is said to have come from Chitrkot, and having obtained 4 bighas of land, he thereon established the akhara, and this order of Bairagis now includes 180 persons, of whom 50 are resident and 100 itinerant. This extablishment has some small assignments of land in this, and in the Gondah district. Ram Das the present Mahant is seventh in succession from the local founder of the order.

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*The Mahanirbani sect.*- Mahant Parsotam Das came to Ajudhia from Kotah Bundi in the days of Shuja-ud-Dowla, and built a temple at Ajudhia. Dial Das the present incumbent is the sixth in succession. He has 25 disciples, the great majority of whom are itinerant mendicants. The works Mahanirbani imply the worshipping of god without asking for favors, either in this world or the next.

*The Santoki Sect.*- Mahant Rati Ram arrived at Ajudhia from Jaipur in the days of Mansur Ali Khan, and building a temple founded this order. Two or three generations after him the temple was abandoned by his followers and one Nidhi Singh, an influential distiller in the days of the Ex-king, took the site and built thereon another temple. After this Khushal Das ofthis order returned to Ajudhia and lived and died under an Asok tree, and there the temple which is now used by the fraternity, was built by Ramkishn Das the present head of the community.

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*The Janmasthan and other temples*.- It is locally affirmed that at the Mahomedan conquest there were three important Hindu shrines, with but few devotees attached, at Ajudhia which was then little other than a wilderness. These were the "Janmasthan," the "Sargadwar mandir" also known as "Ram Darbar" and the "Tareta-ke-Thakur."

On the first of these the emperor Babar built the mosque which still bears his name, A.D. 1528. On the second Aurangzeb did the same A.D. 1658-1707; and on the third that sovereign, or his predecessor, built a mosque, according to the well known Mahomedan principle of enforcing their religion on all those whom they conquered.

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The Janmasthan marks the place where Ram Chandr was born. The Sargadwar is the gate through which he passed into paradise, possibly the spot where his body was burned. The Tareta-ke-Thakur was famous ad the place where Rama performed a great sacrifice, and which he commemorated by setting up there images of himself add Sita.

*Babar's mosque*- According to Leyden's memoirs of Babar that emperor encamped at the junction of the Serwa and Gogra rivers two orthree kos east from Ajudhia, on the 28th March 1528, and there he halted 7 or 8 days settling the surrounding country. A well known hunting ground is spoken of in that work, 7 or 8 kos above Oudh, on the banks of the Surju. It is remarkable that in all the copies of Babar's life now known, the pages that relate to his doings at Ajudhia are wanting. In two places in the Babari mosque the year in which it was built 935 H., corresponding with 1528 A.D. is carved in stone, along with inscriptions dedicated to the glory of



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that emperor.

If Ajudhia was then little other than a wild, it must at least have possessed a fine temple in the Janmasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Babari Mosque. These are of strong close-grained dark slate-colored or black stone, called by the natives *Kasoti* (literally touch-stone,) and carved with different devices. To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately.

*Hindu and Musalman differences*.- The Janmasthan is within a few hundred paces of the Hanuman Garhi. In 1855 when a great rupture took place between the Hindus and Mahomedans, the former occupied the Hanuman Garhi in force, while the Musalmans took possession of the Janmastham. The Mahomedans on that occasion actually charged up the steps of the Hanuman Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt, took the Janmasthan, at the gate of which 75 Mahomedans are buried in the "Martyrs' grave" (ganj-shahid.) Several of the King's Regiments were looking on all the time, but their orders were not to interfere. It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque-temple. Since British rule a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings.

The two other old mosques to which allusion has been made (known by the common people by the same of *Nourang Shah,* by whom they mean Aurangzeb,) are now mere picturesque ruins. Nothing has been done gby the Hindus to restore the old Mandir of "Ram Darbar." The "Tareta-ke-Thakur" was reproduced near the



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old ruin by the Raja of Kalu, whose estate is said to be in the Punjab, more than two centuries ago; and it was improved upon afterwards by Hilla Bai, Marathin, who also built the adjoining ghat A.D. 1784. She was the widow of Jaswant Rai, Holkar, of Indore, from which family Rs. 231 are still annually received at this shrine.

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**GAZETTEER OF THE PROVINCE OF OUDH**

**VOL. I.-A TO G**

**(THREE VOLS IN ONE) Page 4 and 5**

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Four *thaks:-*

*1. Kishan Dasi. 2. Tulsi Dasi. 3. Mani Rami. 4. Jankisaran Dasi.*

*There are in this sect-* first, lay brothers, second anchorites;



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the former do not abandon the world, the latter first make a round of the sacred places, Dwarka, Jagannath, Gya, and are then admitted to full brotherhood: celibacy is enforced- all castes are admitted, but Brahmans and Chhattris have two exceptional privileges, they are admitted over the age of sixteen and they are exempted from servile offices.

*Nirmohi sect.-* It is said that one Gobind Das came from Jaipur some two hundred years ago, and having acquired a few bighas of revenue-free land, he built a shrine and settled himself at Ram Ghat. Mahant Tulsi Das is the sixth in succession. There are now two branches of this order, one at Ram ghat, and the other occupying the temples at Guptar Ghat. They have rent-free holdings in Basti, Mankapur, and Khurdabad.

*The Digambari sect.-* Sri Balram Das came to Ajodhya two hundred years ago, Whence it is not known, and having built a temple settled here. Mahant Hira Das is the seventh incumbent. The establishment of resident disciples is very small, being limited to fifteen; they have several revenue-free holdings in the district.

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**PAGES 6-7**

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*Hindu and Musalman*.- The Janamasthan is within a few



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hundred paces of the Hanoman Garhi. In 1855, when a great rupture took place between the Hindus and Muhammadans, the former occupied the Hanoman Garhi in force, while the Musalmans took possession of the Janamasthan. The Muhammadans on that occasion actually charged up the steps of the Hanoman Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the Janamasthan, at the gate of which seventy-five Muhammadans are buried in the "martyrs' grave" (Ganj-I-Shahidan). Eleven Hindus were killed. Several of the King's regiments were looking on all the time, but their orders were not to interfere. It is said that up to that time the Hindus and Muhammadans alike used to worship in the mosque-temple. Since British rule a railing has been put up to prevent disputes, within which, in the mosque, the Muhammadans pray; while outside the fence the Hindus have raised a platform on which they make their offerings. A second attempt was made shortly afterwards by Molvi Amir Ali of Amethi; the object was to seize the alleged site of an old mosque on the Hanoman Garhi.

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The two other old mosques to which allusion has been made (known by the common people by the name of *Naurang Shah,* by whom they mean Aurangzeb, are now mere picturesque ruins. Nothing has been done by the Hindus to restore the old *mandir* of Ram Darbar. The Treta-ke-Thakur was reproduced near the old ruin by the Raja of Kalu, whose estate is said to be in the Panjab, more than two centuries ago; and it was improved upon afterwards by Aholya Bai, Marathin, who also built the adjoining ghat, A.D. 1784. She was the widow of Jaswant Rae, Holkar of Indor, from which family Rs.231 are still annually received at this shrine.

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617. *The restoration by Vikramajit.*- To him the restoration of the neglected and forest-concealed Ajudhya is universally attributed. His main clue in tracing the ancient city was of course the holy reiver Sarju, and his next was the shrine still known as Nagesher-nath, which is dedicated to Mahado, and which presumably escaped the devastation of the Buddhist and Atheist periods. With these clues, and aided by descriptions which he found recoded in ancient manuscrips, the different spots rendered sacred by association with the worldly act of the defified Rama were identified and Vikramajit is said to have indicated the different shrines to which pilgrims from afar still in thousands half-yearly flock.

618. *Ramkot*- The most remarkable of those was of course Ramkot, the strong hold of Ramchandar. This fort covered a large extent of ground, and, according to ancient manuscripts, it was surrounded by 20*bastions, each of which was commanded by one of Rama's famous generals, after whom they took the names by which they are still known. Within the fortwere eight royal mansions,† where dwelt the patiarch Dasrath, his wives, and Rama, his deified son……

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| | | | |
|---|---|---|---|
| *1. | Hanuman Garhi. | 11. | Kuteswar. |
| 2. | Sugreon | 12. | Labidh Bawan. |
| 3. | Ungad. | 13. | Mayand. |
| 4. | Dibadh. | 14. | Rkhach. |
| 5. | Nal. | 15. | Surumbha |
| 6. | Nil. | 16. | Bibhi Khan |
| 7. | Sukhen. | 17. | Pindark. |
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| 10. | Dadh Biktr | 20. | Kesri. |

†1. Rattan Singasin (throne-room).

2. Kosilla Mandr (the palce of Kosilla, Rja Dasrath's 1st wife).

3. Sumantra Mandr (ditto ditto 2nd wife).

4. Kekai Bhawan (ditto ditto 3rd do.)

5. Subha Mandr (the court-house).



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6. Janam Asthan (Rama's birthplace).
7. Nowratan (assembly room of the queens).
8. Kunak Bhawan (the golen palace of Ramchandar).

619. Sir H.Elliot mentions that on the occasion of Vikramajit's visit to Ajudhya he erected temples at 360 places rendered sacred by association with Rama. Of these shrines but 42 are known to the present generation, and as there are but few things that are really old to be seen in Ajudhya, most of these must be of comparatively recent restoration. Alist of these shrines is given as appendix A. (see para. 701), as well as of numberous thakurdwaras, &c., which have been, or are daily being, built by different nobles of Hindustan to the glorification of Ramchandar, his generals, and other members of his royal race. There are also six Mandirs of the Jain faith, to which allusion has already been made.

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662. *The Khaki sect*.- When Ramchandar became an exile from Ajudhya, his brother Lachhman is said in his grief to have smeared his body with ashes and to have accompanied him. Hence he was called *Khaki,* and his admiring and his admiring followers bear that name to this date. In the days of Shuja-ud-dault one Mahant Daya Ram is said to have come from Chitrkot, and having obtained 4 bighas of land, he thereon established the akhara, and this order of Bairagis now includes 180 persons, of whom 50 are resident and 100 itinerant. This establishment has some small assignments of land in this and in the Gonda district. Ram Das, the present Mahant, is seventh in succession from the local founder of the order.

663. *The Maha-nirbani sect*.- Mahant Parsotam Das came to Ajudhya from Kotah Bundi in the days of Shuja-ud-daula, and built a temple at Ajudhya. Dial Das, the present incumbent, is the sixth in succession. He has 25 disciples, the great majority



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664. *The Santokhi sect*- Mahant Rati Ram arrived at Ajudhya from Jaipur in the days of Mansur Ali Khan, and, builing a temple, founded this order. Two or three generations after him the temple was abandoned by his followers, and one Nidhi Singh, an influential distiller in the days of the ex-king, took the site and built thereon another temple. After this Khushal Das of this order returned to Ajudhya and lived and died under an asok tree, and there the temple which is now used by the fraternity was built by Ramkishn Das, the present head of the community.

665. *The Niralambhi sect*.- Siri Birmal Das is said to have come from Kotah in the ime of Shuja-ud-daula and to have built a temple in Ajudhya, but it was afterwards abandoned. Subsequently, Narsing Das of this order erected a new building near Darshan Sing's temple. The present head of the fraternity is Ram Sewak, and they are dependent solely on the offerings of pilgrims.

666. *The Janmasthan and other temples*.- It is locally affirmed that at the Mahomedan conquest there were three important Hindu shrines, with but few devotees attached, at Ajudhya, which was then little other than a wilderness. These were the "Janmasthan," the "Sargadwar mandir," also known as "Ram Darbar," and "Tareta-ke-Thakur." On the first of these the Emperor Babar built the mosque which still bears his name, A.D. 1528; on the second Aurangzeb did the same, A.D. 1658-1707; and on the third that sovereign, or his predercessor, built a mosque according to the well-known Mahomedan principle of enfocing their religion on all those whom they conquered. The Janmasthan marks the place where Ramchandar was



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born. The Sargadwar is the gate through which he passed into Paradiese, possibly the spot where his body was burned. The treta-ke-Thakur was famous as the place where Rama performed a great sacrifice, and which he commemorated by setting up there images of himself and Sita.

667. *Babar's mosque.*- According to Leyden's Memoirs of Babar, that emperor encamped at the junction of the Serwu and Gegra rivers, two or three *kos* east from Ajudhya, on the 28th March, 1528 and there he halted seven or eight days, settling the surrounding country. A well-known hunting-ground is spoken of in that work, seven or eight *kos* above Oudh, on the banks of the Sarju. It is remarkable that in all the copies of Babar's life now known the pages that relate to his doings at Ajudhya are wanting. In two places in the Babari mosque the year in which it was built, 935 H., corresponding with 1528 A.D., is carved in stone, along with inscriptions dedicated to the glory of that emperor.

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668. If Ajudhya was then little other than wild, it must at least have possessed a fine temple in the Janmasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Babari mosque. These are of strong close-graineddark slate-colored or black stone, called by the natives *Kasoti* (literally, touch-stone), and carved with different devices. To my thinking, these strongly resemble Buddhist pillars that I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre, and capital, and round or octagonal intermediately.

669. *Hindu and Musalman differnce.*-The Janmasthan is within a few hundered paces to the Hanuman Garhi. In 1855, when a great rupture took place between the Hindu and Mahomedans, the former occupied the Hanuman Garhi in force, while the



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Musalmans took possession of the Janmasthan. The Mahomeans on that occasion actually charged up the steps of the Hanuman Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the Janmasthan, at the gate of which 75 Mahomedans are buried in the "Martys" grave" (Ganj-shahid). Several of the king's regim ents were looking on all the time, but their ordes were not to interfere. It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque temple. Since British rule a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have, raised a platform on which they make their offerings.

670. The two other old mosques, to which allusion has been made (known by the common people by the name of *Naurang Shah,* by whom they mean Aurangzedb), are now mere picturesque ruins Nothing has been done by the Hindus to restore the old Mandir of "Ram Darbar." The "Tareta-ke-Thakur" was reproduced near the old ruin by the Raja of Kalu, whose estate is said to be in the Panjab, more than two centuries ago; and it was impoved upon afterwards by Hilla Bai Marathin, who also built the adjoining ghat, A.D. 1784. She was the widow of Jaswant Rae Holkar of Indore, from which family Rs.231 are still annually received at this shrine.

671. *The Jain hierarchs; the Jain temples.*- The generally received opinion of this sect is that they are a branch of the Buddhists who escaped the fate of the orthodox followers of Gautama in the eighth and ninth centuries, by conforming somewhat to Brahminism and even helping to persecute the Buddhists. Hence many Jains acknowledge Shiva, and in the south are even divided into castes. The precise period of the schism is unknown. The Jains recognize 24 Jainas or tirthankaras or



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hierarchs, and in this they resemble the Hindus.

672. *Adinath.*- The first of these and founder of the sect was Adinath, also called Rishabbanath, also Adisarjidwal and Rikabdeo. This Jaina was thirteen times incarnate, the last time in the family of Ikshwaku of the solar race, when he was born at Ajudhya, his father's name being Nabi and his mother's Miru. He died at Mount Abu in Gujrat, where the oldest temple is dedicated to him, A.D. 960. The Jains, according to Ward (recent edition), allege that they formely extended over the whole of Aryu and Bharata- Khunda and that all those who had any just pretensions to be of Kshatriya descent were of their sect, and on the same authority Rishabha, another name for the same hierarch, was the head of this arheistical sect.

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**IMPERIAL GAZETTEER OF INDIA**
**PROVINCIAL SERIES**
**UNITED PROVINCES OF AGRA AND OUDH**
**VOL.II**

**(PAGES 388-89)**

**Ajodhya Town** (in Sanskrit *Ayodhya;* now known as Ajudhia).- Town in Fyzabad District, united Provinces, situated in 26° 48' N. and 82° 12' E., on the right bank of the Gogra, and on branch of the Oudh and Rohilkhand Railway. Population (1901), 21, 584. The interest of Ajodhya centres in its ancient history. The old city has almost entirely disappeared, and only its outlines are marked by an extensive tract of elevated ground. But according to tradition Ajodhya was in remote antiquity one of the largest and most magnificent of Indian cities. It is said to have covered an area of 12 *yojanas* or 80 to 100 miles in circumference, though the limits according to modern tradition extend only about 6 miles from Guptar Ghat on the west to Ram Ghat on the east. Ajodhya was the capital of the kingdom of Kosala and contained the court of the great king Dasaratha, fifty-sixty monarch of the Solar line in descent from Raja Manu. The opening chapters of the Ramayana recount the magnificence of the city, the glories of the monarch, and the virtues, wealth, and loyalty of his people. Dasaratha was the father of Rama Chandra, the hero of the epic, whose cult has experienced a great revival in modern times. With the fall of the last of the Solar line, Raja Sumintra, the one hundred and thirteenth monarch, Ajodhya became a wilderness and the royal family dispersed. From different members of this scattered stock the Rajas of Udaipur, Jaipur, &c., claim descent. Tradition relates that Ajodhya was restored by king Vikramaditya of Ujjain, whole identity is a matter of dispute. Ajodhya was of small importance in Buddhist times, when Saketa became the chief city of Kisala. It is



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still uncertain where Saketa was situated, and it has been suggested that it occupied part of the ancient city of Ajodhya. Numismatic evidence points to the rule of a line of independent Rajas, in or near Ajodhya, about the commencement of the Christian era. The identifications of Ajodhya with the capitals of Sha-chi, 'O-yu-t'o, or Pi-so-kia, visited by the Chinese pilgrims, are all doubtful.

Under the rule of the early Muhammadan kings of Delhi, Ajodhya or Awadh was the seat of a governor whose authority extended over a varying tract of country. When Akbar had firmly established his power in Northern India, the city became the capital of a *Subah* or province. In the eighteenth century it was for a time the nominal head-quarters of the early Nawabs of Oudh. In 1765, however, Shuja-ud-daula made ‘his residence at FYZABAD, a few miles away, and Ajodhya lost all importance, except as a religious centre.

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The present town stretches inland from a high bluff overlooking the Gogra. At one corner of a vast mound know as Ramkot, or the fort of Rama, is the holy spot where the here was born. Most of the enclosure is occupied by a mosque built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace. Close by is a larger temple in which is shown the cooking-place of Sita, the faithful wife of Rama. A lofty temple stands on the bank of the Gogra at the place where Lakshmana bathed; and Hanuman, king of the moneys, is worshipped in a large temple in the town, approached by an immense flight of steps, which bears the name Hanuman Garhi. Other noticeable temples built during the eighteenth and nineteenth centuries are the Kanakbhawan, a fine building erected by a Rani of Tikamgarh, the Nageshwarnath templ, Darshan Singh’s temple, and a small marble temple built by the present Maharaja. Ajodhya also contains a number of Jain temples, five of which were built in the eighteenth century to mark the birthplaces of the five hierarchs who



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are said to have been born at Ajodhya. Besides the mosque of Babur, two ruined mosques, built by Aurangzeb, stand on the sites of celebrated Hindu Shrines-the Swargadwara, where Rama's body was cremated, and the Treta-ka-Thakur, where he sacrificed. An inscription of Jain Chand, the last king of Kanauj, has been found in the latter. Three graves are reverenced by Muslmans as the tombs of Noah, Seth, and Job, and the two last are mentioned under those names in the *Ain-i-Akbari.* A large mound close by, called the Maniparbat, is said to have been dropped by Hanuman when carrying a portion of the Himalays, while another tradition asserts that it was formed by the coolies who built Ramkot shaking their baskets as they left work; it possibly covers a ruined *stupa.*

Modern building include the spacious residence of the Maharaja of Ajodhya (see AJODHYA ESTATE) and two dispensaries. For administrative purposes Ajodhya forms part of the FYZABAD Municipality. There is little or no trade; but three great fairs take place annually in March-April, July-August, and October-November, which are sometimes attended by 400,000 persons. At special fairs the attendance has been estimated at as many as a million. There is one public school, while ten Sanskrit schools contain 350 students.

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**FYZABAD A GAZETTEER**

**BEING**

**VOL. XL III**

**OF THE**

**DISTRICT GAZETTEERS OF THE UNITED PROVINCES OF AGRA AND OUDH**

**BY**

**H.R. NEVILL, I.C.S.**

## PREFACE

The articles dealing with the district of Fyzabad and its various subdivisions, towns and village in the old Gazetteer of the Province of Oudh, were taken almost wholly from the valuable and diffuse Settlement Report of Mr. A.F. Millett, which embodied a large proportion of the remarkable notes and reports of Mr. Patrick Carnegy and the late Sir John Woodburn. These contained much that is now obsolete and still more of a purely traditional and speculative character. In compiling the present volume I have found this work of great assistance, but I am far more deeply indebted to Mr. J.W. Hose, I.C.S., for the unsparing labour he has devoted to the collection of fresh material and to his valuable corrections and criticisms, The ancient history of the district has been furnished by Mr. R. Burn, I.C.S., and the rest I have collated from the various available sources.

ALLAHABAD:
February, 1905. H.R.N.

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(PAGES 172-77) (1905 Edition)

Ajodhya is united with Fyzabad to form a singly municipality, and the details of its administration will be found in the article on the district headquarters. The first enumeration its inhabitants took place at the Oudh census of 1869, and it then contained a population of 9,949 souls. Since that time the place has rapidly increased in size. By 1881 the total had risen to 11,643, but has since almost doubled. There are no figures extant to show the number of inhabitants in 1891, as the town was already merged in the Fyzabad municipality; but at the last census of 1901 it contained 21, 584 souls, exclusive of the large number of visitors from the district and elsewhere who had come to attend the great fair on the 2nd of March. They lived in 6,471 houses, of which 2,920 were of brick or of masonry Watch and ward is maintained by a force of 40 municipal police, located in four *chaukis.* There is also a regular police-station, a post an telegraph office, a cattle-pound, and a number of schools. These include a vernacular middle school under the district board, and ten Sanskrit *patshalas* under private management, several of them maintained by the temple foundations. There is also a first class hospital given to the town by Rai Sri Ram Bahadur of Rasulpur and called by his name.

Ajodhya is undoubtedly a place of immense antiquity, but its early history is very obscure. The city is intimately connected with the mass of legend referrin to Ram Vhandra and the Solar race, and was certainly the capital of several reigning dynasties. What is know for certain of its history in ancient times has already been recorded in the opening pages of Chapter V. From the seventh century A.D. for a long period the place appears to have been almost deserted, though it rose again in importance under the Musalmans, who made it the seat of government for a large province. That it was still regarded as a holy spot by the Hindus is clear from the fact of its desecration by Babar and Aurangzeb, but it would appear that



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the presence of a Muhammadan governor and his court kept the Hindu shrines continually in the background. Ajodhya was a mint-town of Akbar and also of Muhammad Shah, some *dams* of the latter being inscribed "Akhtarnagar Awadh." It is not clear when Ajodhya first began to assume its present proportions: the change presumably occurred when the capital was removed to the new city of Fyzabad and the Qila Mubarak or fort of Saadat Khan near Lachhmangaht was abandoned for his country reisidence at the "Bangla". With the departure of the court the Hindus were left to themselves, and numerous temples and monasteries sprang into existence. Probably the rise in importance was in some degree due to the growing popularity of the Ramayan of Tulsi Das. The progress has been even more rapid since annexation; but before the middle of the nineteenth century Ajodhya was regarded as a great and even dangerous stronghold of Hinduism, as the constant fights between the rival creeds and the alarm they occasioned in court circles bear witness. This development was not due to any particular person. The great family of Sakaldipi Brahmans, whose representative bears the recent title of Maharaja of Ajodhya, had but little to do with the place, and the fine palace of the Maharaja in the east of the city and its adjoining temples are of very recent origin.

Ajodhya is pre-eminently a city of temples and apart from these there are but few points of interest in the place. Not all of these places of worship are connected with the Hindu religion. There are six Jain shrines which have been already mentioned in Chapter III in connection with Jainism in this district; and there are also the Musalman mosques and tombs. It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ajodhya and little else. These were the Janamasthan temple, the Swargaddwar, and the Treta-ka-Thakur, and each was successively made the object of attention of different Musalman rulers. The Janamasthan was in Ramkot and marked the



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birthplace of Rama. In 1528 A.D. Bar came to Ajodhya and halted here for a week. He distroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columsn are in good preservation; they are of close-grained black stone, called by the natives *kasauti,* and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit; both are in Persian and bear the date 935 Hijri. Of the authenticity of the inscription there can be no doubt, but no record of the visit to Ajodhya is to be found in the Musalman historians. It must have occurred about the time of his expedition to Bihar.

This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On many occasion the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janamasthan in force and thence making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made a counter-attack and stormed the Janamasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyrs' resting- place. Several of the king's regiments were present, but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organized regular expedition with the object of destroying the Hanuman Garhi; but he and his forces were stopped in the Bara Banki district. It is said that up to this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put up in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one.



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The other mosques were built by Aurangzeb and are now in ruins. That on the Swargaddwar replaced an ancient temple which has never been restored. The Treta-ka-Thakur marked the place where Ram performed a great sacrifice and set up images of himself and Sita. This was reproduced by the Raja of Kulu in the Punjab more than two centuries ago; it was improved by Ahalya Bai, the widow of Jaswant Rai Holkar of Indore in 1784, and the same person built the adjoining ghat. As the temple could not commemorate her name, she built another called after herself and gave an annual assignment of Rs.231 toit, the sum being still paid by the ruler of Indore. The ancient images were said to have beenrecovered from the river where they had been thrown by Aurangzeb, and were placed in the new Treta-ka Mandir. This temple is always closed during the day and is only opened at night on the 11th of the dark and light halves of each month, and for two or three nights on the occasion of the Ramnaumi and Katiki fairs. The temple is endowed with two or three villages in Basti. Purchased from the offerings made at the shrine.

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Near the Mani Parbat are to tombes with are venerated as those of the patriarchs Seth and Tob. They are mentioned in the *Ain-I-Akbari* as being of six and seven yards in length respectively. They are agains spoken of in the *Araish-i-Mahfil.* To these coloney Wilford adds that of Noah, which is still shown near the police-station. The story goes that they fell here fighting the Hindus and thus acquired the rank of martyrs; pssibly there is some truth in the story, as it may be that certain Musalmans bearing these names were killed in one of the requent religious conflicts some four centuries ago, the date which Colonel Wilford assigns to the erections. Other shrines held sacred by Musalmans include that of Shah Juran Ghori, who is said to have come with Shahab-ud-din and destroyed the Jain temple of Adinath in Murao Tola near the Swargaddwar, giving his name to the mound on which his tomb stands; the shrine of



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Naurahni Khurd Makka, on of the earliest Musalman immigrants and a renowned saint, said to have been named Mir Ahmad and to have derived his cognomen from Naurahni whence he came, and from the muhalla of Ajodhya in which his tomb stands; that of Khwaja Hathi, a follower of Babar, whose enshrined tomb on the Kabir Tila, one of the chief bastions of Ramkot, is still revered; and that of Makhdum Shaikh Bhikha, a western devotee, who flourished some 200 years ago and was buried to the east of the city. The shrines of Shah Saman Faiad-ras and of Shah Chup are other relics of Muhammadan antiquity, of which all traditions are lost.

The only remaining institutions of Muslaman origin are the Hayat Bakhsh and the Farhat Bakhsh, formerly royal gardens which have now passed into Hindu hands. The former was assigned to Pandit Uma Datt by the British Government, and the latter is partly owned by the Raja of Jaipur and partly by the Digambari faqirs to whom it was made over in part compensation for the Guptar Park in cantonments.

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The Hindu temples are all intimately connected with the history of Ajodhya. Most of them are of comparatively recent origin, as it would appear that almost all the ancient shrines were destroyed by Aurangzeb and other Musalman zealots. The sacred places of Ajodhya are exceedingly numerous. The spot according to Hindu mythology represents the forehead of Vishnu and is the seat of learning and the chief of the seven *tiraths.* It is undoubtedly the most important centre of Vishnu worship in Oudh, if not in the whole of Upper India, and claims precedence over Muttra and Hardwar. It is only natural, therefore, that the sacred places connected with Vishnu in his various incarnations and especially that of Ram Chandra, the best known of all, should be many in number and should extend beyond the immediate precincts of the city, even as far as Bhadarsa and Bilharaghat. In 1902 a local committee was formed with the object of commemorating the



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coronation of His imperial Majestly King Edward VII, and a sum of over Rs.1,000 was collected and expended on the erection of stone pillars marking the sacred spots in Ajodhya and its neighbourhood. This work has been carried out and no fewer than 145 such stones have been erected; their ostensible purpose being to preserve the memory of the various holy spots and to serve as a guide to pilgrims and others interested in the place. A complete enumeration would be useless without some descriptive and historical account of each, and only the more important need be here mentioned.

The chief place of worship in Ajodhya is the ancient citadel of Ramkot which stood on elevated ground in the western portion of the city. The old ramparts have long is appeared, but the mound remains, and on it sat and a number of large temples. Foremost amoung these is the Hanuman Garhi, massive structure in the shape of a four-sided fort with circular bastions at each angle. Above this on the hill to the west stood the Janamasthan or birthplace of Rama, and close by are the Kanak Bhawan, a very fine building erected by the Rani of Tikamgarh or Orchha; the Sita Rasoi or Sita's kitchen; the Bara Asthan, the headquarters of a fraternity called the Bara Akhara; the Ratan Singhasan marking the place where Rama was installed after his return from exile; the Rank Mahal, Anand Bhawan, Kaushalia Bhawan or Janam Bhumi, and the temple of Amar Das, as well as many smaller temples and shirnes.

From the Hanuman Garhi the main road leads north to the river, passing, the Bhur and Shisha Mahal temples on the left, and on the right those of Kirshna, Uma Datt, and Tulsi Das. Along the river to the west of the road are the bathing ghats and above them a number of temples, the most important places being the Swargaddwar, the Janki Tirath, the ancient Nageshwarnath temple of Mahadeo, the Chandra Hari, Lachhmanghat or Sahasradhara, and the Lachhman Qila, on the site of the old Nawabi for known as the Qila Mubarak. East of the road along the river bank are many more



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tmeples and holy places extending as far as Ramghat, near which is a cluster of shrines of more or less importance. Mention may be made of the Sugriva Kund, the Dharam Hari, the temple built by the Babu of Sursur in Muzaffarpur, the Mani Ram Chhaoni and Maharaja's marble temple a little north of the *kotwali.*

Beyond the Maharaja's palace and the Rani Bazar to the south, in the direction of Darshannagar, is the peculiar mond know as the mani Parbat. This tands some sixty-five feet high and is undoubtedly of artificial origin, possibly representing the remains of a Buddhist stupa. One legend, howe er, states that when Hanuman was sent back from Ceylon to the Himalayas to bring thence a healing herb for Llachhman's wound, be brought with him a whole mountain in order to makd certain of his errand, and a portion of this broke off and fell in Ajodhya. A second account, which is the locally accepted tradition, stats that the mound was made by Rama's labourers who, when returning home in the evening, cleaned their baskets at this spot; hence the name Orajhar or basket shakings. To the south-east of Ramakot are two smaller mounds, one of which is known as the Sugriva Parbat; and these, too, were supposed by General Cunningham to be of Buddhist origin.

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**FYZABAD :**

**A GAZETTEER**

**BEING**

**VOLUME XL III**

**OF THE DISTRICT GAZETTEERS OF THE UNIED PROVINCES**

**OF AGRA AND OUDH**

**BY**

**H.R. NEVILI., I.C.S. (1928 edition)**

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February, 1905. H.R.N.

**(PAGES 177….)**

AHRAULI, Pargana MAJHAURA, *Tahsil* AKBARPUR.

A small village lying in latitude 26° 31' north and longitude 82° 35' east, on the west side of the road from Fyzabad to Akbarpur



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and Janunpur, at a distance of about two miles west of the Katahri station on the Oudh and Rohilkhand loop line, five miles south-east of Goshainganj, and some nine miles north-west from Akbarpur. To the south of the village runs the Marha river. The place is merely of importance as containing a police-station, a cattle-pound, and a small bazar in which markets are held twice a week. The population at the last census numbered but 233 inhabitants, the majority of whom were Brahmans. Ahrauli has a total area of 182 acres and is assessed to a revenue of Rs.75. The village lands are divided into three portions, two of which are held by the Saiyid taluqdars of Pirpur and the third by a resident Rajput.

**AJODHYA**, *Pargana* **HAVELI OUDH,** *Tahsil* ***FYZABAD***

The ancient city of Ajodhya stands on the right bank of the ghagra, or Sarju as it is called within the sacred precincts, in latitude 26º 48' north and longitude 82° 13' east, at a distance of some four miles north-east from the city of Fyzabad, with which it is connected by a metalled road. Parallel to the latter runs the branch line of railway to Ajodhyaghat on the river bank, leaving the main line at Ranupali. The Ajodhya station lies about a mile and a half to the south of the town, to which it has access by a metalled road. A similar road runs south from the centre of the town to join the Jaunpur road at Darshannagar. Besides these there are several other branch and cross roads giving access to all parts of the place. The river is crossed by a bridge of boats at Ajodhyagaht, leased to the Bengal and North-Western Railway; in the rains its place is taken by a ferry steamer.

Ajodhya is united with Fyzabad to form a single municipality, and the details of its administration will be found in the article on the district headquarters. The first enumeration of its inhabitants took place at the Oudh census of 1869, and it contained a population of 9,949 souls. Since that time the place has rapidly increased in size. By 1881 the total had risen to 11,643, but has since almost



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doubled. There are no figures extant to show the number of inhabitants in 1891, as the town was already merged in the Fyzabad municipality; but at the last census of 1901 it contained 21,584 souls exclusive of the large number of visitors from the district and elsewhere who had come to attend the great fair on the 2nd of March. They lived in 6,471 houses, of which 2,920 were of brick or of masonry. Watch and ward is maintained by a force of 40 municipal police, located in four *chaukis.* There is also a regular police-station, a post and telegraph office, a cattle-pound, and a number of schools. These include a vernacular middle school under the district board, and ten Sanskrit *patshalas* under private management, several of them maintained by the temple foundations. There is also a first class hospital give to the town by Rai Sri Ram Bahadur of Rasulpur and called by his name.

Ajodhya is undoubtedly a place of immense antiquity, but its early history is very obscure. The city is intimately connected with the mass of legend referring to Ram Chandra and the Solar race, and was certainly the capital of several reigning dynasties. What is known for certain of its history in ancient times has already been recorded in the opening pages of Chapter V. From he seventh century A.D. For a long period the place appears to have been almost deserted, though it rose again in importance under the Musalmans, who made it the seat of government for a large province. That it was still regarded as a holy spot by the Hindus is clear from the fact of its desecration by Babar and Aurangzeb, but it would appear that the presence of a Muhammadan governor and his court kept the Hindu shrines continually in the background. Ajodhya was a mint-town of Akbar and also of Muhammad Shah, some *dams* of the latter being inscribed "Akhtarnagar Awadh." It is not clear when Ajodhya first began to assume its present proportions: the change presumably occurred when the capital was removed to the new city of Fyzabad and the Qila Mubarak or fort of



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Saadat Khan near Lachhmangaht was abandoned for his country residence at "Bangla." With the departure of the ourt the Hindus were left to themselves, and numerous temples and monasteries sprang into existence. Probably the rise in importance was in some degree due to the growing popularity of the Ramayan of Tulsi Das. The progress has been even more rapid since annexation; but before the middle of the nineteenth century Ajodhya was regarded as a great and even dangerous stronghold of Hinduism, as the constant fights between the rival creeds and the alarm they occasioned in court circles bear witness. This development was not due to any particular person. The great family of Sakaldipi Brahmans, whose representative bears the recent title of Maharaja of Ajodhya, had but little to do with the place, and the fine palace of the Maharaja in the east of the city and its adjoining temples are of very recent origin.

Ajodhya is pre-eminently a city of temples and apart from these there are but few points of interest in the place. Not all of these places of worship are connected with the Hindu religion. There are six Jain shrines which have been already mentioned in Chapter III in connection with Jainism in this district; and there are also the Musalman mosques and tombs. It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ajodhya and little else. These were the Janamasthan temple, the Swargaddwar, and the Treta-ka-Thakur, and each was successively made the object of attention of different Musalman rulers. The Janamasthan was in Ramkot and marked the birthplace of Rama. In 1528 A.D. Babar came to Ajodhya and halted here for a week. He distorted the ancient tmple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation; they are of close-grained balck stone, called by the natives *kasauti,* and carved with various devices. Their length is from seven to eight feet, and the shape square at the



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base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit; both are in Persian and bear the date 935 Hijri. Of the authenticity of the inscription there can be no doubt, but no record of the visit of Ajodhya is to be found in the Musalman historians. It must have occurred about the time of his expedition to Bihar.

This desecration of the most sacred spot in the city caused great bitternes between Hindus and Musalmans. On many occasion the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janamasthan in force and thence making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made a counter-attack and stormed the Janamasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyrs' resting –place. Several of the king's regiments were present, but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organized regular expedition with the object of destroying the Hanuman Garhi; but he and his forces were stopped in the Bara Banki district. It is said that up to this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put up on front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one.

The other mosques were built by Aurangzeb and are now in ruins. That on the Swargaddwar replaced an ancient temple which has never been restored. The Treta-ka-Thakur marked the place where Ram performed a great sacrifice and set up images of himself and Sita. This was reproduced by the Raja of Kulu in the Punjab more than two centuries ago; it was improved by Ahalya Bai, the widow of Jaswant Rai Holkar of Indore in 1784, and the same



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person built the adjoining ghat. As the temple could not commemorate her name, she built another called after herself and gave an annual assignment of Rs.231 to it, the sum being still paid by the ruler of Indore. The ancient images were said to have been recovered from the river where they had been thrown by Aurangzeb, and were placed in the new Treta-ka Mandir. This temple is always closed during the day and is only opened at night on the 11th of the dark and light halves of each month, and for two or three nights on the occasion of the Ramnaumi and Kaki fairs. The temple is endowed with two or three villages in Basti. purchased from the offerings made at the shrine.

Near the Mani Parbt are two tombs with are venerated as those of the patriarchs Seth and Tob. They are mentioned in the *Ain-i-Akbari* as being of six and seven yards in length respectively. They are agains spoken of in the *Araish-i-Mahfil*. To these Colonel wilford adds that of Noah, which is still shown near the police-station. The story goes that they fell here fighting the Hindus and thus acquired the rank of martyrs; possibly there is some truth in the story, as it may be that certain Musalmans bearing these names were killed in one of the requent religious conflicts some four centuries ago, the date which Colonel Wilford assigns to the erections. Other shrines held sacred by Musalmans include that of Shah Juran Ghori, who is said to have come with Shahab-ud-din and destroyed the Jain temple of Adinath in Murao tola near the Swargaddwar, giving his name to the mound on which his tomb stands; the shrine of Naurahni Khurd Makka, on of the earliest Musalman immigrants and a renowned saint, said to have been named Mir Ahmad and to have derived his cognomen from Naurahni whence he came, and from the muhalla of Ajodhya in which his tomb stands; that of khwaja Hathi, a follower of Babar, whose enshrined tomb on the Kabir Tila, one of the chief bastions of Ramkot, is still revered; and that of Makhdum Shaikh Bhikha, a western devotee, who flourished



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some 200 years ago and was buried to the east of the city. The shrines of Shah Saman Fariad-ras and of Shah Chup are other relics of Muhammadan antiquity, of which all traditions are lost.

The only remaining institutions of Muslaman origin are the Hayat Bakhsh and the Farhat Bakhsh, formerly royal gardens which have now passed into Hindu hands. The former was assigned to Pandit Uma Datt by the British Government, and the latter is partly owned by the Raja of Jaipur and partly by the Digambari faqirs to whom it was made over in part compensation for the Guptar Park in cantonments.

The Hindu temples are all intimately connected with the history of Ajodhya. Most of them are of comparatively recent origin, as it would appear that almost all the ancient shrines were destroyed by Aurangzeb and other Musalman zealots. The sacred places of Ajodhya are exceedingly numerous. The spot according to Hindu mythology represents the forehead of Vishnu and is the seat of learning and the chief o the seven *tiraths.* It is undoubtedly the most important centre of Vishnu worship in Oudh, if not in the whole of Upper India, and claims precedence over Muttra and Hardwar. It is only natural, therefore, that the sacred places connected with Vishnu in his various incarnations and especially that of Ram Chandra, the best known of all, should be many in number and should extend beyond the immediate precincts of the city, even as far as Bhadarsa and Bilharaghat. In 1902 a local committee was formed with the object of commemorating the coronation of His Imperial Majesty King Edward VII, and a sum of over Rs.1,000 was collected and expended on the erection of stone pillars marking the sacred spots in Ajodhya and its neighbourhood. This work has been carried out and no fewer than 145 such stones have been erected; their ostensible purpose being to preserve the memory of the various holy spots and to serve as a guide to pilgrims and others interested in the place. A complete enumeration would



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be useless without some descriptive and historical account of each, and only the more important need be here mentioned.

The chief place of worship in Ajodhya is the ancient citadel of Ramkot which stood on elevated ground in the western portion of the city. The old ramparts have long disappeared, but the mound remains, and on it sat and a number of large temples. Foremost amoung these is the Hanuman Garhi, massive structure in the shape of a four-sided fort with circular bastions at each angle. Above this on the hill to the west stood the Janamasthan or birthplace of Rama, and close by are the Kanak Bhawan, a very fine building erected by the Rani of Tikamgarh or Orchha; the Sita Rasoi or Sita's kitchen; the Bara Asthan, the headquarters of a fraternity called the Bara Akhara; the Ratan Singhasan marking the place where Rama was installed after his return from exile; the Rank Mahal, Anand Bhawan, Kaushalia Bhawan or Janam Bhumi, and the temple of Amar Das, as well as many smaller temples an shrines.

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From the Hanuman Garhi the main road leads north to the river, passing, the Bhur and Shisha Mahal temples on the left, and on the right those of Krisna, Uma Datt, and Tulsi Das. Along the river to the west of the road are the bathing ghats and above them a number of temples, the most important places being the Swargaddwar, the Janki Tirath, the ancient Nageshwarnath temple of Mahadeo, the Chandra Hari, Lachhmanghat or Sahasradhara, and the Lachhman Qila, on the site of the old Nawabi fort known as the Qila Mubarak. East of the road along the river bank are many more temples and holy places extending as far as Ramghat, near which is a cluster of shrines of more or less importance. Mention may be made of the Sugriva Kund, the Dharam Hari, the temple built by the Babu of Sursur in Muzaffarpur, the Mani Ram Chhaoni and Maharaja's marble temple a little north of the *kotwali.*

Beyond the Maharaja's palace and the Rani Bazar to the south, in the direction of Darshannagar, is the peculiar mond know



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as the Mani Parbat. This stands some sixty-five feet high and is undoubtedly of artificial origin, possibly representing the remains of a Buddhist stupa. One legend, however, states that when Hanuman was sent back from Ceylon to the Himalayas to bring thence a healing herb for Lachhman's wound, be brought with him a whole mountain in order to makd certain of the errand, and a portion of this broke off and fell in Ajodhya. A second account, which is the locally accepted tradition, states that the mound was made by Rama's labourers who, when returning home in the evening, cleaned their baskets at this spot; hence the name Orajhar or basket shakings. To the south-east of Ramakot are two smaller mounds, one of which is known as the Sugriva Parbat; and these, too, were supposed by General Cunningham to be of Buddhist origin.

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**UTTAR PRADESH DISTRICT GAZETTEERS FAIZABAD**

**BY**

**(Shrimati) ESHA BASANTI JOSHI, B.A. (Hons),**

## Preface

This is the second in the series of the revised gazetteers of the districts of Uttar Pradesh (the first being that of the district of Lucknow). The first gazetteer of Faizabad was compiled by H.R. Nevill and was published in 1905.

Prior to 1905, information about this district was available, as a booklet, *A Historical Sketch of Tahsil Fyzabad, Zillah Fyzabad,* was written by the then deputy commissioner of the district (P. Carnegy) and published in 1870. The Reports of the first and second Settlements of the district contained much useful information and the district also found a place in the *Ouch Gazetteer* which was published in 1877.

The spelling of the name of the district (which is the same as that of the headquarters town) was changed from 'Fyzabad' to 'Faizabad' on November 4, 1947, by a Government order.

The spellings of Indian words in the text, such as dewan, vizir, sirkar, kutcha, etc., are the same as those used in standard English dictionaries and such words have not been italicised or included in the glossary.

Generally the figures pertaining to population are those of the census of 1951 (unless otherwise stated).

The more common and accepted diacritical marks have been used but only in the ancient history section of chapter II and in the portion relating to ancient culture in chapter XV. A glossary of Indian words and terms and a bibliography of the more important works used or referred to in the preparation of the gazetteer will be found at the end of the book.

I would like to take this opportunity to thank the members of



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the Advisory Board for having proffered their help and advice and for going through the drafts of the chapters and to the Central Gazetteer Unit for their suggestions and cooperation; the scheme of contents of this gazetteer conforms as closely as possible to the all-India pattern laid down by the Government of India. I would also like to thank those officials and non-officials who in one way or another (by supplying material, photographs and other types of data) have helped in the preparation, printing and bringing out of this volume.

September 15, 1960 ESHA
BASANTI JOSHI

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**UTTAR PRADESH DISTRICT GAZETTEERS FAIZABAD (PAGES 33, 34)**

The sunga line of Ayodhya had certainly become extinct with the advent of the Kushanas into whose hands Kosala passed in the 1st century A.D., and who ruled over it for a century or so. Tibetan and Chinese writings contain in the traditions of Kanishka's conflict with the kings of Saketa and Pataliputra and of their being subdued by him. This victory brought to him the famous poet and theologian, Asvaghosha, author of *Bhddhacharita* and *Saundarananda* who was originally a learned Brahmana of Saketa and had become a convert of Buddhism.

The third class belongs to a later dynasty and the coins are round pieces, struck from dies an usually bearing on the obverse the device of a bull facing an upright standard or spear and on the reverse a bird (presumably a cock) and a palm tree with a river (or snake) and sometimes a framed *nandipada* also. The names of rulers supplied by this series are: Sayyamitra, Ayumitra (Aryamitra), Sanghamitra, Vijayamitra, Kumudasena, Ajavarman and Devamitra. The actual sequence of these rulers is not known but there is little doubt that they belong to a single dynasty and were probably feudatories of the Kushanas. It appears that their rule lasted till the rise of the Guptas.

**The Gupta-** Chandragupta I was the real founder of the kingdom which he extended up to Saketa (Avadh) and Prayaga (Allahabad). If the spurious Gaya copper plate inscription is to be believed, his son and successor, the great conqueror Samudragupta, had a *jayaskandhavara (camp of victory)* in Ayodhya. The *Vayupurana* also mentions that Saketa (or Ayodhya) was included in the domains of Guptas.

According to tradition the credit for the restoration of Ayodhya goes to king Vikramaditya of Ujjai, who is usually identified with Chandragupta II Vikramaditya (379-413 A.D.), the



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son and successor of Samudragupta. There is reason to believe that in the 5th century A.D. Ayodhya rather than Pataliputra was the premier city of the Gupta empire.

**PAGES 35-36**

**Post Gupta Period-** With the decline of the Gupta in the 6th century A.D., Ayodhya also began gradually to become desolate. At this time a new dynasty, that of the Maukharis, with its capital at Kanauj, assumed an important position on the political map of northern India and this kingdom included Avadh. A large hoard of Maukhari coins was discovered in village Bhitaura (pargana mangalsi, tahsil Faizabad) and some were found by Rivett Carnac in Ayodhya itself. Many of these coins were found to be associated with those of Siladitya-Pratapasila whom Sir Richard Burn identifies with Harsha Vardhana (606-647) into whose hands the dominions of the Maukharis had passed. if this is correct, it would be a direct proof that Ayodhya was under the rule of Harsha.

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During his reign the famous Chinese pilgrim Hiuen Tasang (630-644 A.D.) passed through Avadh. Travelling from Kanauj and crossing the Ganga to the south he reached the O-yu-to country. The capital of this country, which was about a mile to the south of the river, has generally been identified with Ayodhya, although, on account of difficulties of direction ad distance, Cunningham proposes a different site for Hiuen Tsang's O-yu-to.

According to Hiuen Tsang, this region yielded good crops, was luxuriant in fruits and flowers and had a genial climate. The people had agreeable ways, were fond of good deeds and were devoted to practical learning. Here there were about 100 Buddhist monasteries, more than 3,000 *Mahayani and Hinayani* monks and only ten *deva* (non-Buddhist god) temples, the non- Buddhists being but few in number. Then the pilgrim goes on to give an account of the Buddhist scholars, Asanga and Vasubandhu, and of the Buddhist monuments of the place, but is silent about its government.



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**PAGES 46-47**

Under the Jaunpur kings Avadh was administered in a better way than under the later Sultans of Delhi. The local zamindars and rajas also appear to have strengthened their position and the Sharqi rulers (surrounded as they were by petty though independent principalities) had to placeate them to maintain peace and order in their kingdom. It was in the reign of Ibrahim Shah Sharqi (1401-1440 A.D.) that Mir Saiyid Muhammad Ashraf Jahangir Simnani, author of *Lataif-I-Ashrafi* and number of important mystical works, went from Jaunpur to Kichhauchha (now in tahsil Tanda) and died there on 27h Muharam, 808 H. (25th July, 1405 A.D.). He is said to have exercised a great deal of influence on the local population.

From 1452 to 1480, Bahlul (the founder of the Lodi dynasty of the Afghans) had to wage incessant war against the Sharqi Sultans before he could put end to their power.

Avadh again became a part of the Sultanate of Delhi and was given by Bahlul to an Afghan noble named Kala Pahar Farmuli. Sultan Husain Sharqi, an ambitious man (who had retired to Bihar), took every opportunity to retrieve the ground he had lost. Avadh and Jaunpur remained in a disturbed condition till about 1495, when Sikandar Lodi was able to consolidate his empire as far as Bihar. But peace was short-lived, for many Afghan nobles were alienated from his successor, Ibrahim Lodi. In the early years of the latter's reign a civil war broke out between the Sultan and his brother, Jalal Khan, whose followers defeated Sai Khan, son of Mubarak Khan Lodi of Avadh. But Jalal Khan's power could not last very long and Avadh again came uner the sway of Ibrahim Lodi.

**The Mughals-** On the eve of Babur's invasion, Bayazid Farmuli held Avadh. After Ibrahim Lodi's death in the battle of Panipat (1526), he, with a number of other Afghan chiefs, joined Babur and a portion of Avadh, carrying a large amount of revenue, was assigned to him by Babur. But he soon rebelled against his new



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master who himself hastened towards the east in February, 1528, ordering Chin Timur Sultan to proceed in advance to crush the rebels. The latter reached Avadh as a result of which Bayazid and his family escaped to Ghazipur. Babur himself reached Avadh (Ayodhya) and stayed there for a few days and was greatly impressed with the "garens, running water, well designed buildings, trees, particularly mango trees, and various birds ofcoloured plumage." He appointed Baqi Tashqandi the governor of Avadh, who subdued the rebellious local chiefs. During his regime Baqi built a mosque in Ayodhya in 1528. The inscription inside the mosque gives the date of the construction of the building in the last line and is as follows:

*Ba farmuda-I-Shah Babur ki adlash*

*Bina ist ta kakh-I-garun mulaqi*

*Bina kard in muhbit-i-qudiyan*

*Amir-i-saadat-nishan Mir Baqi*

*Buvad khair baqi-chu sal-i-benaish*

*Ayan shud ke guftam-Buvad Khair baqi*

[By the command of the Emperor Babur whose justice is an edifice reaching up to the very height of the heavens, The goodhearted Mir Baqi built this alighting-place of angles; *Buvad khair baqi! (*may this goodness last for ever!) The year of building it was made clear likewise when I said, Buvad Khair baqi (=935).]

**Pages 352, 353, 354**

Ayodhya is pre-eminently a town of temples but not all the places of worship are connected with the Hindu religion. There are some Jain shrines and several Muslim mosques and tombs. It is said that at the time of the Muslim conquest there were three important Hindu shrines here and little else, the Janmasthan temple, the Swargadwar and the Treta-ke-Thakur. The Janmasthan was in



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Ramkot and marked the birthplace of Rama. It seems that in 1528 A.D. Babur visited Ayodhya and under his orders this ancient temple was destroyed and on the site was built what came to be known as Babur's mosque. The material of the old temple was largely employed in building the mosque and a few of the original columns are still in good preservation; they are of close grained balck stone (*kasauti)* bearing various Hindu bas-reliefs (see Plate I), the outer beam of the main structure being of sandal wood. The height of the columns is seven to eight feet, the shape of the base, the middle section and the capital is square, the rest being round or octagonal. There are two inscriptions in Persian, one on the outside and the other on the pulpit bearing the date 935 *Hijri.* Subsequently Aurangzeb also desecrated the shrines of Ayodhya which led to prolonged bitterness between the Hindus and Muslims. The latter occupied the Janmasthan by force and also made an assault on Hanuman Garhi. Attacks and counter-attacks coninued, culminating in the bloodshed of 1855 under the leadership of Maulvi Amir Ali. As a result, in 1858 an outer enclosure was put up on front of the mosque and the Hindus, who were forbidden access to the inner yard, had to perform their puja on a platform outside. Since 1949 the position has changed and the Hindus have succeeded in installing the images of Rama and Sita in the mosque owing to which the spot has become he object of much litigation. Now the inner yard is protected by an armed guard and only a few Hindu *pujaris* (priests) are allowed access to the inner sanctum.

Outside the outer wall of this contested shrine there is an old and broken image of the Varah (boar). There are a number of mounds in the vicinity bearing traces of different layers of brick work. A good view of the Saryu and the country beyond may be seen from the old platform o one of these mounds.

Other mosques built by Aurangzeb are now in ruins. That near Swargadwar replaced an ancient temple. Near the Maniparvat



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there are two graves (venerated as those of the patriarchs Seth and Job) which are mentioned in the *Ain-i-Akbari* as being six and seven yards in length respectively. A grave about 9 yards long and reputed to be that of Noah, is situated near the police-station. Another shrine held sacred by the Muslims is that of Shah Juran Ghori who is said to have come with Shahabud-din and destroyed the Jain temple of Adinath in the Murao Tola near Swargadear, giving his name to the mound on which his tomb stands. The shrine of naurahni Khurd Makka takes its name from one of the earliest Muslim immigrants and a renowned saint, Mir Ahmad (who is said to have derived his cognomen from the place Naurahni from where he came). The tomb on Kabir-tila (one of the chief bastions of Ramkot) is still revered as that of Khwaja Hathi, a follower of Babur.

There are some other old shrines such as those of Makhdum Shaikh Bhikha (a devotee who lived about 250 years ago), of Shah Saman Fariad-ras and of Shah Chup. The only remaining institutions of Muslim origin are the Hayat Bakhsh and the Farhat Bakhsh, for mer royal gardens which later passed into Hindu hands.

Among the numerous temples of Ayodhyua is the Treta-ke-Thakur which marks the place where Rama performed an *ashvamedh yajna* and set up images of Sita and himself. About three centuries ago, the Raja of Kulu built a new temple, presumably on the same site. It was improved in 1784 by Ahalya Bai, the famous Holkar queen, who also built the adjoining ghat. The ancient images (of black stone) were said to have been thrown into the river by Aurangzeb and to have been recovered and placed in the new temple know as Kaleram-ka-mandir.

The chief place of worship in Ayodhya is the site of the ancient citadel of Ramkot which stood on elevated ground in the western part of the city. The old ramparts have long since disappeared but the mound remains and on it stand a number of



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temples. The Hanuman Garhi, a massive structure in the shape of a four-sided fort with circular bastions at each corner, houses a temple Hanuman and is the most popular shrine in Ayodhya.

The *Mahant* (pontiff) of Hanuman Garhi claims to have in his possession a record indicating that the present structure was constructed on the site of some land granted by a Nawab of Avadh to sadhu who cured him of a severe illness.

Among other places of interest is the Kanak-bhavan. Legend has it that Kaikeyi built it for Sita, and that it was originally the place of Rams. Subsequently it appears to have fallen into decay and to have been restored time and again by various kings, including Vikramaditya,. The present temple was built by Rani Krishnabhanu Kunwari of Orchha in 1891. There are some modern paintings and a small library here as well as a copy of Sanskrit inscription which seems to imply that on Tuesday, the 2nd of the dark fortnight of Pausa in Yudhisshthir *samvat 2431,* King Vikramaditya, the son of Gandharva Sen, restored this temple and installed in it the images of Rama and Sita.

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Other sacred places are the Sita Rasoi (sita's kitchen), the Barasthan, the Ratna-singhasan (marking the place where Rama was enthroned after his return from exile), the Rang-mahal, Anand-bhawan, Kaushalya –bhavan and the temple of Ksheereshwarnath containing the image of Siva said to have been installed by Kaushalaya.

From Hanuman Gari the main road lads north to the river passing the Bhur and the Shish-mahal temples on the left and on the right those of Krishan, Uma dutt and Tulsidas. To Tulsidas is dedicated a temple, Tulsi-chaura, which is said to be the place where he started writing his great epic, *Ramacharitmanasa.*

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**The Encyclopedia of India and of Eastern and Southern Asia By Surgeon General Edward Balfour.**

**Publisher: Bernard Quaritch, 15 Piceadilly, 1885, London**

**Page 56:**

**AYODHYA,** on the right bank of the Gogra River, Near Fyzabad in Oudh, is in latitude on 26° 48' 20" North; and longitude 82° 24' 40" E. It has now a population of 7518 of Hindus and Mahomadans but in ancient times it was the capital of the kingdom of Kosla, the Modern Oudh, ruled over by the great King Dasarath of the Solar line, and father of Ram Chandra. At one time it is said to have covered an area of 12 yojana, equal of 96 miles. During Buddhist supremacy Ajodhya decline, but on the revival of Brahmanism it was restored by King Vikramaditya (AD 57). There are many Jain Temple and three mosque on the site of three Hindu shrines, - the Janmsthan on the site where Ram was born, the Swarg Dwar (Mandir) where his remains were burns, and the Tareta Ka Thakur, framed as the seen of one of his great sacrifices. A mausoleum is here of the Babu Begum and is the finest in Oudh.

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***ARCHAEOLOGICAL SURVEY OF INDIA.***

**THE MONUMENT ANTIQUITIES AND INSCRIPTIONS, IN THE NORTH-WESTERN PROVINCES AND OUDH, DESCRIBED AND ARRANGED**

**BY**

**A. FUHRER, PH. D.,**

**ARCHAIOLOGICAL SURVEY, NORTH-WESTERN AND OUDH.**

**PAGES 295-97**

On the south the steps were much broken, and on the east he was unable to dig owing to the presence of huge banyan tree which stands in the very position which they would have occupied. His survey also revealed the very curious fact that the four gateways did not occupy the four cardinal points, the northern gate being 17 ½ ° to the east of the magnetic meridian.

There is a small *lingam* on the mound, which with the supposed statue of Sita-Mai in a small modern temple, shares the devotion of the villagers. The figure is 3' 4" in height, and presents a dancing girl resting on her left foot on prostrate human figure, with her right knee bent. Her left hand rests on her hips, while her right hand is raised above her head grasping the branch of the favourite *sal* tree. A parrot is perched on her upper left arm under the *sal* branches, which on the left side have broken into flower. The stone of which this statue is made is the common red sandstone of the Fathpur Sikri quarries near Mathura; and as the whole of the costume and the attitude and pose of the figure with the crouching man under the feet are similar to those of the Mathura figures, there is little doubt that this statue was carved at Mathura.

The ruined stupa is now named after this statur Sita-dohar, or "Sita's mound," and the large lake close by, which is about a mile in length, is simply known as Sita-dohar-tal, or "the lake of Sita's mound."

There is an isolated mound 500 feet to the west of this stupa,



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which would appear to be the remains of a small monastery. The traces of the walls show a square of 80 feet, with towers at the four corners. A little further to the west-nor-west, at a distance of 3,700 feet from the stupa, there is a long low mound upwards of 800 feet from north to south and 500 or 600 feet from east to west, which may have been the site of the old town. It now belongs to the recently established village of Allabbakshpur; but as the land still belongs to Tandwa, the mound most probably represents the site of the old town visited by Fa Hian and Hiuen Tsiang. It is now called Bar-ki-bhari, or "banyan tree mound."

Near the great stupa on the south side there are the remains of several small isolated buildings containing from two to three rooms each.

At 300 feet to the east-south-east of the great stupa, there is a small round-shaped mound, which from its appearance seems to be the remains of a second stupa.

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The accounts given by the two Chinese pilgrims of the sacred buildings at Tandwa agree in all main points, but they disagree as to the number of stupas, which Fa Hian makes to be three, while Hiuen Tsiang describes only two. Both of the pilgrims were informed that Tandwa was the birth-place of Kasyapa Buddha, but this is at variance with the Buddhist chronicles, which refer his birth to Banaras.

## II.- FAIZABAD DISTRICT

1. Ajudhya, famous place of pilgrimage, in pargana Haveli Audh of tahsil Faizabad, on the right bank of the river Ghagra, lat. 26º -47'., long. 82°-15' E., two miles east of head-quarters, is the ancient city of Ayodhya, described in the Ramayana as situated on the bank of the Sarayu, or Sarju river. It is said to have been 12 *yojanas,* or nearly 100 miles in circumference, for which we should probably read 12 *kos or* 24 miles,- and extent which the old city will all its



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gardens might once possibly have covered. The distance from the Guptar Ghat on the west to Ram Ghat on the east is just six miles in a direct line; and if we suppose that the city with its suburbs and gardens formerly occupied the whole intervening space to a depth of two miles, its circuit would have greed exactly with the smaller measurement of 12 *kos*. At the present day the people point to Ram Ghat and Guptar Ghat as the eastern and western boundaries of the old city, and the southern boundary they extend to Bharatkund near Bhadarsa, a distance of six *kos*. But as these limits include all places of pilgrimage, it would seem that the people consider them to have been formerly inside the city, which was certainly not the case. In the *Ain-i-Akbari* the old city is said to have measured 148 *kos* in length by 36 *kos* in breadth, or in other words, it covered the whole province of Audh to the south of the Ghaghra river. The origin of the larger number is obvious. The 12 *yojanas* of the Ramayana, which are equal to 48 *kos,* being considered too small for the great city of Ramachandra, the Brahmanas simply added 100 *kos* to make the size tally with their own extravagant notions. The present city of Ayodhya, which is confined to the north-east corner of the old site, is just two miles in length by about three-quarters of a mile in breadth; but not one-half of this extent is occupied by buildings, and the whole place wears a look of decay. There are no high mounds of ruins covered with broken statues and sculptured pillars, such as mark the sites of other ancient cities, but only a low irregular mass of rubbish heaps, from which all the bricks have been excavated for the houses of the neighbourning town of Faizabad. This Musalman city, which is two miles and a half in length by one mile in breadth, is built chiefly of materials extracted from the ruins of Ayodhya. The two cities together occupy an area of nearly six square miles, or just about one-half of the probable size of the ancient capital of Rama.

According to the Ramayana, the city of Ayodhya was founded



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by Manu, the progenitor of all mankind. In the time of Dasaratha, the father of Rama, it was fortified with towers and gates and surrounded by a deep ditch. No traces of these works now remain, nor is it likely, indeed, that any portion of the old city should exist, as the Ayodhya of Rama is said to have been destroyed after the death of Brihadbala, after which it lay deserted until the time of Vikramaditya of Ujjayini, who, according to tradition, came in search of the holy city, erected a fort called Ramgarh, but down the jangal by which the ruins were covered, and erected 360 temples on the spots sanctified by the extraordinary actions of Rama. The Vikramaditya of this story, General Cunningham takes to be Chandragupta II, of the Imperial Gupta dynasty, A.D. 395-415, whose rule certainly extended to Ujjayini, as his *inscriptions* have been found at Sanchiand Udaygiri Bhilsa.

The are several very holy Brahmanical and Jaina temples about Ayodhya, but they are all of modern date and without any architectural pretensions whatever; but there can be no doubt that most of them occupy the sites of more ancient temples that were destroyed by the Musalmans. Thus Ramkot, or Hanuman Garhi, on the east side of the city, is a small walled fort surrounding a modern temple on the top of an ancient mound. This fort is said to have formerly covered a large extent of ground, and, according to tradition, it was surrounded by 20 bastions, each of which was commanded by one of Rama's famous generals after whom they took the names by which they are still known. Within the fort were eight royal mansions, where dwelt Dasaratha, his wives, and Rama, his deified son. The name Ramkot is certainly old, but the temple of Hanuman is not older than the time of Aurangzib. Ram Ghat, at the north-east corner of the city, is said to be the spot where Rama bathed, and Svargadvaram, also called the Ram Darbar, on the north-west, is believed to be the lace where his body was burned. Treta-ke-Thakur is famous as the place where Rama performed a



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great sacrifice, and which he commemorated by setting up there images of himself and Sita. Close by is the Lakshmana Ghat, where his brother Lakshmana bathed, and about one quarter of a mile distant, in the very heart of the city, stands the Janmasthanam, or "birth-place temple," of Rama. Almost due west, and upwards of five miles distant is the Guptar Ghat, with its group of modern whitewashed temples. This is the place where Lakshmana is said to have disappeared, and hence its name of Guptar, for gupta, "hidden or concealed." Some say that it was Rama who disappeared at this place, but this is at variance with the story of his cremation at Svargadvaram.

There are five Digambara temples at Ayodhya which were built in Samvat 1781, in the time of Shuja-ad-daulah, to mark the birth-places of five Tirthamkaras, viz., Adinatha, Ajitanatha, Abhinandanatha, Sumatinatha, and Anantajit, who are said to have been born at Ayodhya. The temple of Adinatha is situated near the Svargadvaram on a mound, known as Shah-Juran-ka-tila, on which there are many Musalman tombs and a masjid. According to the local Musalman tradition, Makhdum Shah Juran Ghori, who came to Audh with Shahab-ad-din Ghori, destroyed the ancient temple of Adinatha and erected on its ruins the Musalman edifices which gave to the mound the name by which it is still known. Besides these five temples of the Digambaras there is a sixth temple of the Svetambaras, dedicated to Ajitanatha, which was built in Samvat 1881.

It is locally affirmed that at the Musalman conquest there were three important Hindu temples at Ayodhya: these were the Janmasthanam, the Svargadvaram, and the Treta-ke-Thakur. On the first of these Mir Khan built a masjid, in A.H. 930, during the reign of Babar, which still bears his name. This old temple must have been a very fine one, for many of its columns have been utilized by the Musalmans in the construction of Babar's Masjid. These are of



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strong, close-grained, dark-coloured, or black stone, called by the natives *kasauti,* “touch-stone slate,” and carved with different devices; they are from seven to eight feet long, square at the base, center and capital, and round or octagonal intermediately. On the second and third Aurangzib built masjids, which are now mere picturesque ruins. A fragmentary *inscription* of Jayachchhandra of Kanauj, dated Samvat 1241, and recording the erection of temple Vishnu, was rescued from the ruins of Aurangzib's Masjid, known as Treta-ke-Thakur, and is now in the Faizabad Museum.

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## APPENDIX A.
## LIST OF THE SACRED PLACES IN AND ABOUT AJUDHIA.

| Number | Name of sacred place | Name of founder or restorer | Number of years since it was founded or restored | Number of generations since founded or restored. | Land attached and other means of support. | | | Sect and special object of veneration. | Number of resident disciples. | For particulars see page. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Ares | How obtained | Other means. | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 1. | Janam Asthan, .... | Ramadasji, ..... | 166 | 7 | Ac. R. P<br>1 1 0 | VISHNU Mzs. Bgs.<br>Given by Mir Masum ali mafidar. | Income of 7 25 | Gudar, Ramchandar | 22 | 20 | Great astonishment has been expressed at the recent vitality of the Hindu religion |
| 2. | Ratan Singasin, ..... | Mohandas, ..... | 150 | 5 | 1 2 0 | Land of Ramkote, .. | Income of 0 600 | Gudar, Ram Janki ... | 20 | | At Ajudhia, and it was to test |
| 3. | Kanak bhawan, ..... | Laljidas, ..... | 200 | 6 | 2 2 0 | Not known, ... | Ditto. 1 51 | Ramanundi, Ramchander, | 10 | | The extent of this chiefly that with no small amount of |
| 4. | Thakur of Treta, ..... | An old place, repaired by Raja of Kalu and Hullabye | 250 | 7 | 2 2 0 | Given by Raja of Kalu, | Raja of Kalu gives 231 yearly | Beshno, Thakur, ..... | 5 | 21 | Labour, this statement has been prepared. As the |
| 5. | Hunuman Gadhi, .... | Bikramajit afterwards by Nawab Munsur Ali Khan. | 1,900 and 100 | .... | 0 3 0 | From Govt. of the time. | Numerous revenue Free assignments, | Nirbani, Hanuman, . . | 400 | 18 | Information it contains may be permanently useful I have |
| 6. | Sugreo Tila, | Mangaldas. .... | 200 | 3 | 1 0 0 | Place of great antiqui -ty, | Uninhabited | Ram Kabir, Sugreo, | 8 | | Considered it well to give it a place here. This information |
| 7. | Angad Tila, | .... | An ancient place. | .... | 0 1 0 | Old place, | Uninhabited, | | | | Is as correct as it can now be |
| 8. | Matganjindr, | Bikramajit, | Ditto, | 5 | 0 0 15 | Ditto, | Alms and offerings | Mohamedans, formerly A Hindu shrine | 2 | | Made, and that is all that I can say. |
| 9. | Rampershad, | Bikramajit, | 1,900 | 12 | 0 1 10 | Old place | Offerings made to the Debi. | Beshno, Debi, | 1 | | Many of the places first mentioned in this return are |
| 10. | Gudhi of Kosilyadas, | Gobinddas, | 300 | 7 | 0 3 0 | Mafi, | One Mafi mouzah, | Do, Ram Janki | 30 | | Those which accordingly to |
| 11. | Akhara Ramghat Nirmohi. | Gobinddas Mahant. | 250 | 6 | 1 2 20 | Given by Gungaram, | 9 ½ bighas income | Ramanundi, Rugnathji. | 25 | | Tradition were identified at the beginning of our era by |
| 12. | Asthan of Rampershad | Rampershad | 200 | 7 | 2 3 0 | Do, by Azhar Husen, Mafidar. | Income of Certain lands | Gudar, Saligram, | 50 | | Bikramajit as being specially sacred for their connexion |
| 13. | Akhara Nir Alambhi, | Baramdas, | 200 | 6 | 0 1 20 | Do, by Achari | No fixed means of support | Ramanundi, Rugnathji | 4 | | With the acts of Rama. They have been restored in |
| 14. | Ditto Ram Golela | Ram Golela, | 200 | 4 | 8 2 0 | Government land | Income from 100 Bgs | Gudar, Janki | 8 | | Comparatively modern times as set forth in Columns 3& 4. |
| 15. | Akhara Santokhidas | Ratiram | 200 | 5 | 0 3 0 | Given by Gungaram Achari. | No fixed means of Support. | Ramanundi, Rugnathji. | 4 | | In addition to the places mentioned in Column 2 of |
| 16. | Ditto Maha nirbani, | Persotamdas | 200 | 5 | 1 1 0 | purchased | Ditto | Ditto do.... | 25 | | this return, there are 56 |

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## APPENDIX A. - *(Continued)*

| Number | Name of sacred place | Name of founder or restorer | Number of years since it was founded or restored | Number of generations since founded or restored. | Land attached and other means of support. | | | Sect and special object of veneration. | Number of resident disciples. | For particulars see page. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Ares | How obtained | Other means. | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 17. | Ditto Digambari, .... | Balramdas ..... | 200 | 9 | Ac. R. P 2 0 0 | by Achari VISHNU | Mzs. Bgs. Income of 126 Bgs. | Ditto do... | 15 | | tanks and ponds which are held sacred by the pilgrims who visit Ajudhia-I detail |
| 18. | Asthan Parsotamdas, Achari | Ganga Ram, | 200 | 7 | 1 3 0 | Mafi , .. | 77 Bighas Mafi | Achari, Sriman Narain | 20 | | them here. |
| 19. | Ditto Sunkhar ..... | Ragho, Bikramajit ..... | 200 | 4 | 0 1 2 0 | Nazul, ... | No fixed means of support | Parmahns, Rugnathji | 15 | | I Lachhman kund, 2 Besist kund, 3 Bamdeo kund, |
| 20. | Ditto, ditto ..... | Ditto, | Ditto | 5 | 0 3 0 | Purchased , | Ditto | Ditto ..... | 12 | | 4 Sagar kund, 5 Chakar |
| 21. | Ditto of Bawanji, .... | Mahant Jankidas | 200 | 7 | 0 2 0 | By Acharji | Income of one mouzah | Achari, Rugnath ji. . | 5 | | Tiruth 6 Byram kund, 7 Hanuman kund 8 Sunkhar |
| 22. | Ditto of Ambardas | Haridasji .... | 150 | 5 | 1 1 0 | Place of great antiquity | Do., of 3 chaks and 100 Bighas | Gudar, do, | 16 | | 9 Agna kund 10 Chir Sagar (Kheronia) 11 Ugarsar 12 Dhaneja sagar 13 Betarni |
| 23. | Ditto of Kowariaji | Bhugwandas,.... | 150 | 5 | 1 0 0 | Purchased for Rs. 25 | Do,, of 650 Bighas Mafi | Srisumpda, Janki-Burlb | 20 | | 14 Suraj kund 15 Rut kund 16 Ram kund 17 Ruthia |
| 24. | Ditto of Rae Burkat | Rugnathdas | 150 | 4 | 0 2 0 | Given by Gungaram | Mafi in Pachhimrath | Ramanundi, Sri Kishon | 8 | | 18 Punhad 19 Bharat kund 20 Barun, 21 Nirmali kund |
| 25. | Mandir Narainon Lachhmanghat. | Pande Kishon Dut,, | 150 | 4 | 0 1 0 | Do, by Nawab | 3 Mouzahs 80 Bighas | Ramanji sampda Luchhman. | 25 | | 22 Jamthara 23 Mahabra, 24 Pichas Mochan 25 Ganesh |
| 26. | Manoharji-ka-asthan, | Madhodas, | 150 | 7 | 0 3 0 | Purchased, | 1 Do, 500 do. ..... | Achari, Ramjanki .... | 16 | | Kund, 26 Bidya kund 27 Sita |
| 27. | Asthan Sarjudas, | Ajudhiadas,. | 125 | 5 | 0 2 0 | Mafi given by Government | Offerings at the shrine | Sri sampda, Rughnathji | 5 | | Kund, 28 Khajua kund, 29 Datwan kund, 30 Pahum |
| 28. | Ditto of Madkurya | By few of his disciples. | 125 | 3 | 0 0 24 | Ramgolelaji | Income from 50 K Bighas. | Gudar, Ram Janki, | 4 | | Kund 31 Dasrath kund, 32 Kosilya kund, 33 Somintra |
| 29. | Ditto of Birkat Nasti, | Khatris of Punjab,, | 125 | 4 | 2 2 0 | Not known, | Some Mafi in Gondah district | Ramanundi, Sri Kishon. | 7 | | Kund, 34 Kakai kund, 35 Durga kund 36 Bilhar, 37 Na- |
| 30. | Ditto of Paltudas, .. | Paltuparshad, ....., | 125 | 4 | 2 1 0 | Ditto | Some land in parganah Pachhimrath | Satnami, Samadh, | 25 | | Ndgram, 38 Satrahan kund, 39 Jeta kund 40 Sugreo kund, 41 Sriram kund, 42 Bh- |
| 31. | Ditto of Raghodas | Raghodas, ..... | 125 | 5 | 2 0 0 | Purchased | Some Mafi | Odasi, Ramjanki ... | 8 | | Abhikhan kund, 43 Indarki |

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| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 32. | Ditto of Lambu Gopaldas & Surjudas, | Bhurat Dasji | 110 | 3 | 1 1 0 | Public, | Income from 1325 Bighas | Gudar, do, ..... | 15 | Kund, 44 Muntresur kund, 45 Gya kup 46 Ram Rekha. |

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*Sultanpour*. *Facherpour*, autrement *Pacarpour*, a. u. F. c. b. *Ferosabad*, de même. *Navághar*, forteresse. *Garánsa*, a. u. F. e b.

Du Domaine de *Kerabad* relèvent: *Baròr Anzana*. *Bessva*, a. u. F. c. b. *Bessara*. *Pèla*. *Tschitapour*. *Kerabad*, a. u. F. c. b. *Sándi*, de même. *Sara*. *Sadanpour*. *Gopamao*. a. u. F. c. b. *Khiri*. *Kherighar*, avec une forteresse importante, partie en pierre, partie en brique. *Khorkéla*. *Kánghatmao*. *Lahàrpour*. *Matschreta*. *Nimcàr*, a. u. F. c. b. sur le bord oriental du *Goumati*. *Hargaon*.

Selon les regitres de l'empire les revenus annuels de cette Province sont, de 321317119 *Dams*.

La plus grande somme, est de - - 9125651 Roupies.

La plus petite - - - - 4785771 Roupies.

Parmi les villes de cette province, *Avad* (ou *Oude*) & *Lacnav* sont deux des principales & des plus anciennes, & méritent une mention particulière.

*Avad*, appelée *Adjudea*, par les Indous lettrés, est une ville de la plus haute antiquité. Ses maisons ne sont (pour la plûpart) que de limon, couvertes de paille, ou de tuiles; plusieurs (cependant) sont de brique. La rue principale va du Sud au Nord, & a un mille environ de longueur. La largeur (de la ville) est un peu moins grande. Sa partie occidentale est assise sur une colline de terre, ainsi que celle du Nord. Celle du Nord-est repose sur des éminences. Vers *Bangla* elle est unie.

Aujourdhui cette ville n'est gueres peuplée, depuis la fondation de *Bangla* ou *Fésabad*, ville nouvelle où le Gouverneur a établi sa résidence, & où un très grand nombre (d'habitans d'*Oude*) se sont transplantés.

Sur la rive Sud (du *Deva*) se trouvent divers bâtimens construits par les gentils, en mémoire de *Ram*, qui se prolongent du Levant au Couchant (a).

Le

(a) Il est très probable que c'est à ces bâtimens qu'appartiennent ceux que représente la Planche XIII, n. 1 & 2. (B)

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Le lieu le plus remarquable eſt celui que l'on nomme *Sorgadoári*, c'eſt à dire: le temple céleſte. Car ils diſent que *Ram* a enlevé de là au ciel tous les habitans de la ville: ce qui a quelque reſſemblance avec l'aſcenſion du Seigneur. La ville alors déſerte fut repeuplée & rendue à ſon premier état par *Bikarmadjit*, ce fameux Roi d'*Oudjen*.

Il y avoit ici un temple conſtruit ſur le bord élevé du fleuve; mais *Aurengzebe*, toujours attentif à propager la ſecte de Mahomet & ayant en horreur les gentils, le fit démolir & remplacer par une mosquée accompagnée de deux obéliſques, afin d'abolir juſqu'au ſouvenir de la ſuperſtition Indoue. Une autre moſquée bâtie par les Maures eſt contiguë à celle-là vers le Levant.

Près du *Sorgadoari* eſt un édifice bâti en long par *Nabalray*, un Indou, cidevant lieutenant du gouverneur (*proprætor*) de cette province (*a*).

Mais un endroit fameux particulièrement, eſt celui qu'on appelle *Sitha raſſoi*, c'eſt à dire, la *table de Sitha*, femme de *Ram*. Ce lieu eſt attenant à la ville, au Midi, & ſitué ſur une éminence de terre.

L'empereur *Aurengzebe* a fait démolir la forteresſe appelée *Ramcòt*, & a élevé au même lieu un temple mahométan, à triple coupole. D'autres diſent qu'il a été conſtruit par *Bàbor*. On y voit 14 colonnes de pierre noire, hautes de 5 empans, qui occupoient l'emplacement de la forteresſe. Douze de ces colonnes portent maintenant les arcades intérieures de la Mosquée; deux (de ces 12) ſont placées à la porte du cloître. Les deux autres ſont partie du tombeau d'un certain Maure. On raconte que ces colonnes, ou plûtôt ces débris de colonnes artiſtement travaillées ont été apportées de l'ile de *Lanca* ou *Selendip* [appelée *Ceylan* par les Européens] par *Hanumann*, Roi des Singes.

On voit ſur la gauche une caiſſe carrée élevée à 5 pouces de terre, revêtue de chaux, longue d'environ 5 aunes, large tout au plus de 4. Les Indous la nom-



*a*) Voyez la Planche. XXV. n. 2.

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XIII

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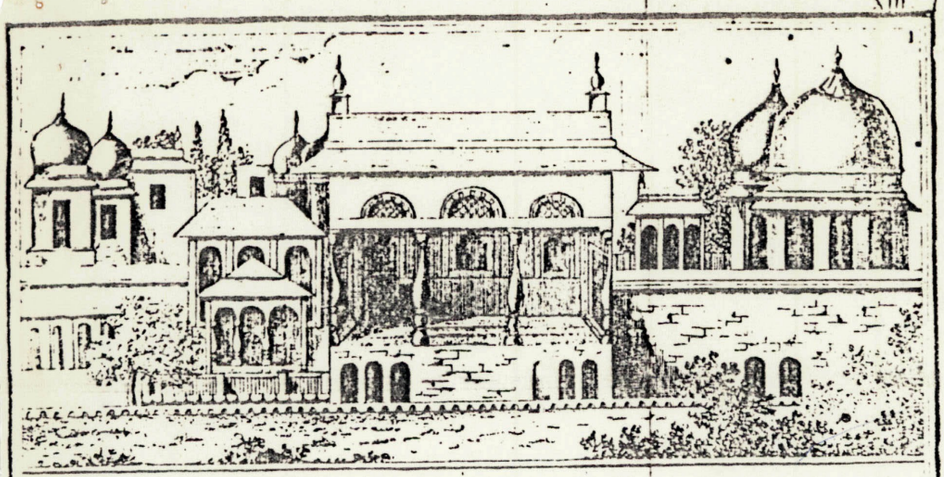
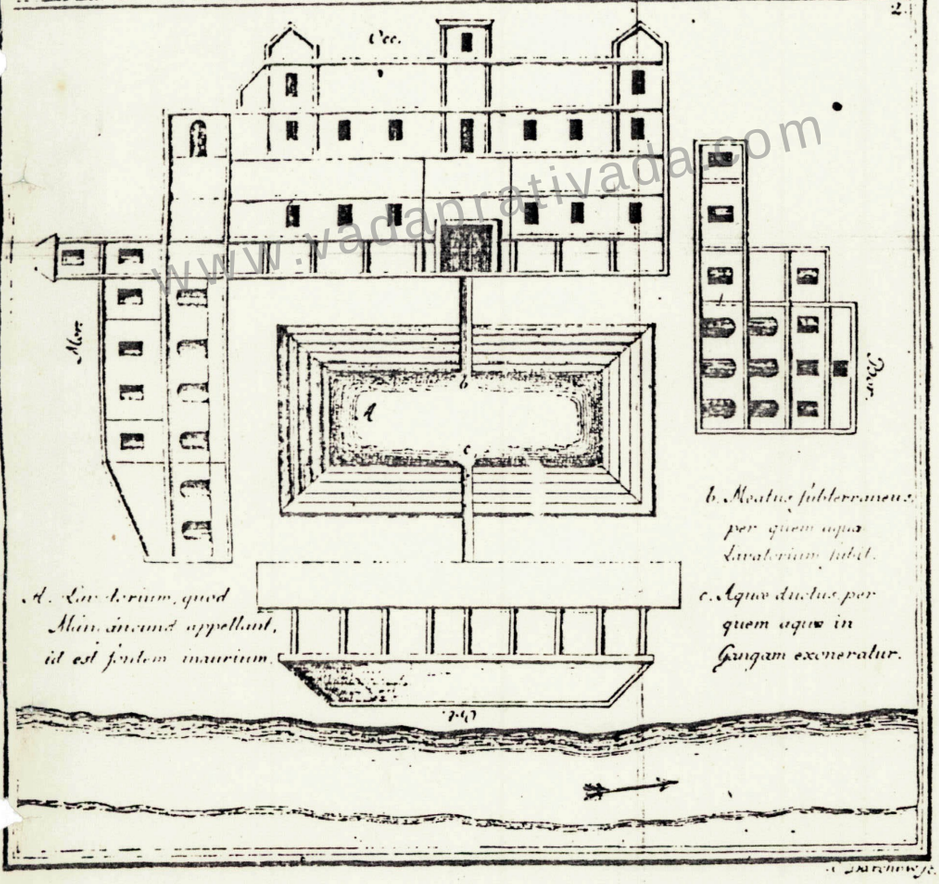


Aedes cujusdam ex Monachis Ethnicis qui Avadi degunt.

2




b. Meatus subterraneus per quem aqua Lavatorium subit.

A. Lavatorium, quod Mancancund appellant, id est fontem inaurium.

c. Aquae ductus per quem aqua in Gangam exoneratur.

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nomment *Bédi*, c'eſt à dire, le berceau. La raiſon en eſt, qu'il y avoit autrefois ici une maiſon où *Beſchan* nâquit en ſe produiſant ſous la figure de *Ram*, & où ſont auſſi nés, dit-on, ſes trois frères. Dans la ſuite *Aurengzebe* ou ſelon d'autres, *Bâbor*, fit raſer ce lieu: afin d'ôter aux gentils l'occaſion d'y pratiquer leurs ſuperſtitions; néanmoins ils rendent encore un culte ſuperſtitieux à l'un & l'autre endroit: ſavoir, à celui où étoit la maiſon natale de *Ram*, en en faiſant trois fois le tour, proſternés par terre. Les deux endroits ſont entourés d'une muraille baſſe garnie de créneaux. On entre dans l'avantſalle par une porte baſſe ceintrée.

Pas loin de là eſt un endroit où l'on creuſe des grains de riz noirs convertis en petites pierres, que l'on dit être cachés ſous terre depuis le tems de *Ram*.

Le 24 du mois *Tſchét*, un grand concours de peuple célebre ici le jour de naiſſance de *Ram* ſi fameux dans l'Inde entiére.

Cette vaſte ville eſt éloignée d'un mille de *Bangla*, à l'Eſt vers l'E. N. E. enſorte que ſa latitude auſſi ſera plus grande d'une minute environ que celle de *Bangla*.

La forteresſe conſtruite en quarré, aſſiſe ſur le bord élevé du fleuve, eſt munie de tours rondes & baſſes. Les murs ont beſoin de réparation. Elle eſt dégarnie d'habitans & point en état de défenſe. Autrefois les Gouverneurs de la Province y avoient leur réſidence: *Sadatkhan* effrayé par un mauvais augure la transféra à *Bangla*. Aujourd'hui elle eſt détruite de fond en comble.

Depuis l'endroit où ſont plantés les canons, jusqu'à *Oude;* par l'eſpace de 2 milles, le *Gagra* prend ſon cours vers l'Eſt, faiſant un double coude, l'un près de la partie occidentale de la ville, l'autre à peu de diſtance de là vers l'Oueſt; ſe repliant de là vers le N. E. ¼ E., il baigne la ville à l'Oueſt; après quoi il retourne vers l'Eſt, proche de la partie ſeptentrionale. Mais il change ſon cours presque toutes les années. Son lit eſt égal (en largeur) à celui du Danube près de la citadelle d'*In-*



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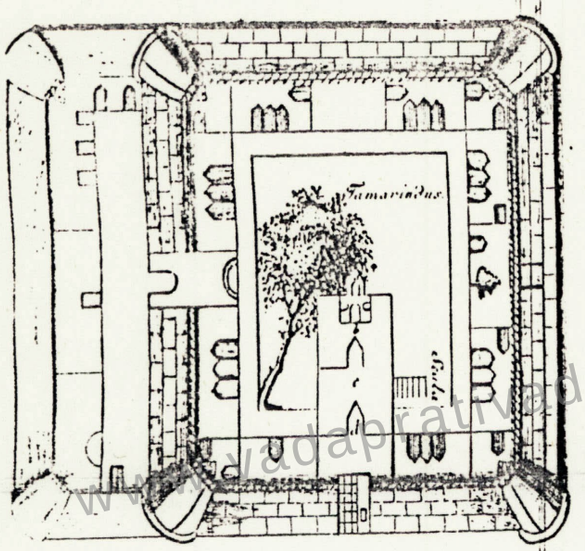
(102)
1691
XIV. 102

a. Foramen unius palmi altitudine, quatuor digitorum latitudine, in quod Ramtschandem sese immisisse et evanuisse asserunt.

b. Vestibulum primum, longum 2 1/4 palm. latum 3 1/2 palm.

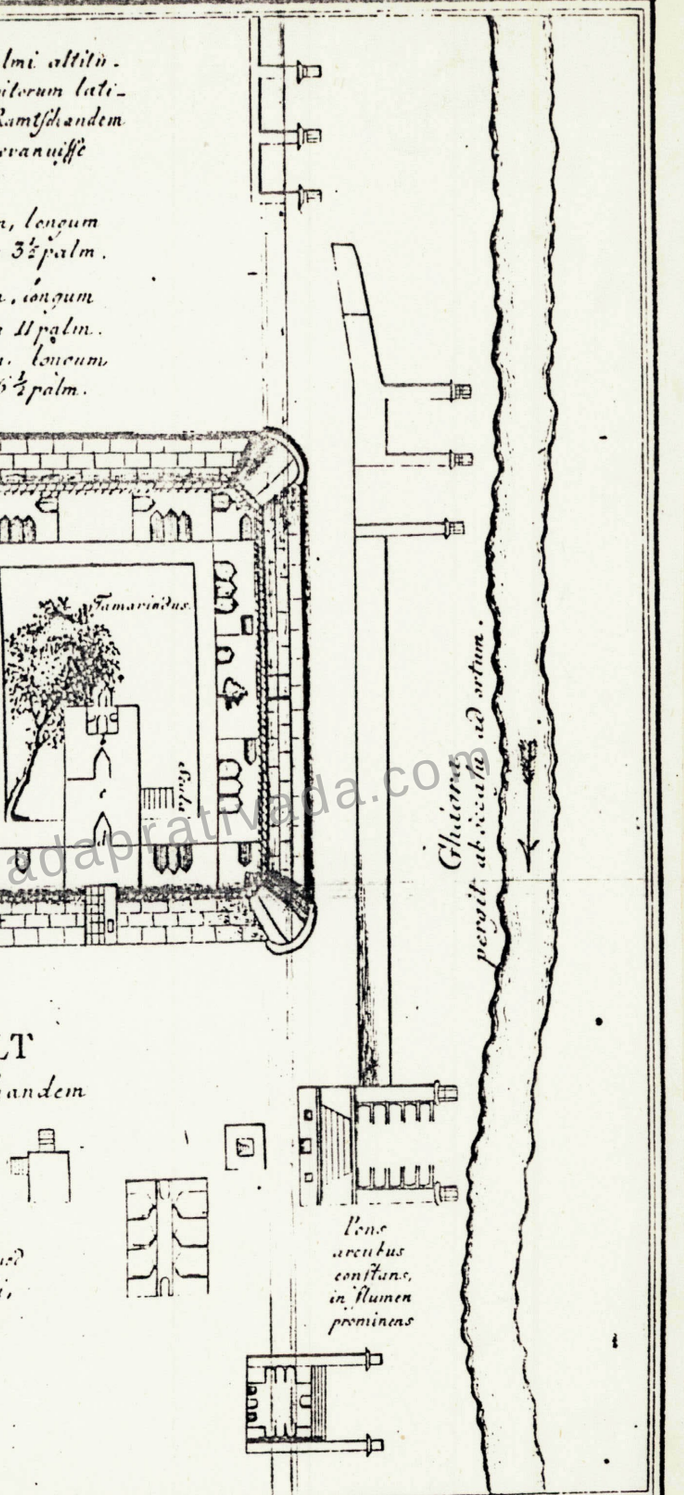
c. Vestibulum alterum, longum 2 3/4 palmos. latum 11 palm.

d. Vestibulum tertium. longum 10 palmos, lat. 6 1/2 palm.




GOPTÀR GHÀLT
id est locus, in quo Ràmtschandem evanuisse dicunt.

Monumentum novum, quod in memoriam Ràmtschandi, hic hiatu terræ absorpti, erectum fuit.

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d'*Ingolſtadt* en Bavière, mais le volume de ſes eaux eſt moindre. Dans la ſaiſon des pluies il s'étend fort au large; tellement que dans quelques endroits ſa largeur paſſe un mille & demi.

*Bangla* ou *Feſabad* a été fondée par *Sádatkhan*, après qu'il eut abandonné la ville d'*Oude*. Originaire de la Perſe, il fut, il y a plus de 40 ans, Gouverneur de cette province; il bâtit un palais (*a*), planta un jardin admirable, dans le goût Perſan, & établit ici ſa réſidence. Peu à peu cet endroit devint une ville, qui a plus d'un mille en longueur.

Le Gouverneur actuel, petit fils de celui-là, a orné la ville de pluſieurs bâtimens & jardins, après qu'en 1765 les Anglois la lui eurent rendue avec toute la province; il a auſſi aggrandi la place du marché qui étoit ci-devant étroite, & a muni la forteresſe d'un foſſé, de tours rondes & d'un rempart, en ſorte que la forte population en a fait une ville d'une très grande enceinte. La latitude géographique de cette place, obſervée en 1767, s'eſt trouvée de 26°. 29'.

*Goptárgath* eſt un endroit planté d'arbres touffus, à un mille de *Bangla*, ſur la rive Sud du *Gagra*. Il eſt aſſis ſur une colline peu rapide, & muni de petites tours de terre aux quatre côtés. On voit au milieu un trou ſoûterrain, couvert d'une coupole de grandeur médiocre. Tout auprès eſt un arbre Tamarinier haut & âgé. Un portique régne à l'entour. On dit que *Ram*, après avoir vaincu le Géant *Ravan* & être revenu de *Lanka*, eſt deſcendu dans cette foſſe & y a diſparu: de là vient qu'on a donné à l'endroit le nom de *Gouptar*, qui ſignifie: Départ pour les airs. Vous avez donc là une Deſcente aux enfers, de même que vous aviez à *Oude* une Montée au ciel. On pourra ſe faire par la figure une idée du local & de la forme de cet endroit. (*b*)

Le *Gagra* fait ici deux coudes en ſe diviſant en deux bras: l'un, le plus grand, prend ſon cours vers le Nord-eſt; l'autre, le plus petit, coule vers *Bangla*. De

*Goup-*

(*a*) C'eſt ce palais ſans doute que repréſente la Planche XVI. n. 1.

(*b*) Voyez la Planche XIV, où *Galt* eſt une faute d'écriture de l'original.



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**INTELLIGENCE BUREAU**
**(Ministry of Home Affairs)**
******

**Subject:** **Prechecking of English translation of document in French – order passed by the Special Full Bench of the Allahabad High Court at Lucknow- Reg.**

MHA may please refer to their UO no. 71016/21/2005-Ay dated February 9, 2010 on the subject mentioned above.

2. As desired, a copy of our UO no. 3/R/2009(RJB)-191 dated August 22, 2009 is enclosed.

9/2/10

**(Rajeev Ranjan Verma)**
**Deputy Director**

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**MHA : (Shri Govind Bharti)**
**DIB UO No. 3/R/2009 (RJB) - 61 dated February 9, 2010**

Encl: As above

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## CERTIFICATE

This is to certify that the above is true and correct French to English translation of the document, a copy of which is also enclosed herewith. The translation has been done by a Class-I officer of this department, who is well qualified to undertake such work, being Master in Arts (M.A.) in English Literature from Madurai Kamraj University, Certificate Course in French from Alliance Francaise, Chennai, Diploma in French from Alliance Francaise, Chennai and Advance Diploma in French from School of Foreign Languages, Ministry of Defence, Government of India.

(T.J.Kavitha)
Assistant Director
Intelligence Bureau
MHA, New Delhi

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Annexure - 1

Para wise comments, to the objections filed by Mohd. Hashim against the extracts of Book TIEFENTHALER and translation of the same, are as under:

1) Fact
2) No comments
3) No comments
4)

A-C) No comments: However, it is submitted that the first copy of the documents provided to us was not legible. The second time we got a scanned copy which better in legibility and the translation (page wise and line) was done of that document.

5) The discrepancy shown in the translation work was rechecked by official of the IB and our comments are as follows:

| S.No. | French words | 1st translation of French documents- not fully legible | 2nd translation of the French documents based on scanned copy | Remarks |
|---|---|---|---|---|
| (A) | a.u.F.e.b | Not translated | Not translated | No comments |
| (B) | | Pacherpur | Facherpour | Necessary correction done based on better legibility. |
| (C) | | Garanfa | Garansa | Do |
| (D) | | are created | are rebuilt | Verbatim translation. No factual error |
| (E) | | Kerabad, Sara | Kerabad, Sindi, likewise, Sara | Due to legibility omitted words in the first are |

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| | | | | |
|---|---|---|---|---|
| | | | | included in 2nd translation |
| (F) | | Niman | Nimcar | Necessary spelling correction done based on better legibility. |
| (G) | | --- the annual income of this province is about<br>-the highest amount is about<br>-the smallest amount is about | -- the annual income of this province is about<br>- the highest *1--------.<br>- the smallest *2---------. | In accordance to the original ' amount is about' should be retained after *1 and deleted after *2.<br>Inadvertently this phrase is deleted in both *1 and *2 |
| (H) | | The Western and the northern sides, are situated on a mud hill.<br><br>The North eastern part of the city is situated on Knolls | Its western side and that of north as well, are situated on a mud hill. That of the North east is situated on Knolls | Paragraph alignment not done in first translation.<br>Proper alignment and restructure of sentence as per the scanned copy done in the second translation.<br>No factual error. |
| (I) | | Today, the city is hardly populated. | Today the city has been hardly populated | The word 'est' means both is as well as has |

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| | | | | |
|---|---|---|---|---|
| | | | | been. (There is no present perfect in French). No Factual error. |
| (J) | | On the south bank of Deva are found many buildings constructed by people in memory of Ram | On the south bank (of Deva) are found various buildings constructed by the nobles in memory of Ram, extending from east to west | "extending from east to west" was added due to legibility in the 2nd translation |
| (K) | | A square box raised 5 inches above the ground---- can be seen there | On the left is seen a square box raised 5 inches above the ground | " on the left" is added in 2nd translation due to better legibility. |
| (L) | | Height | maximum width | Change due to better legible copy of the document |
| (M) | | The two spots are surrounded by a low crenellated wall<br><br>One of which enters the front hall, through a semi circular door | The two spots are surrounded by a low constructed with battlements<br><br>One enters the front hall, through a semi circular door | As crenellated wall means walls with battlements. There is no factual error. of which inadvertently typed in 1st translation |
| (N) | | Sadarkhan | Sadatkhan | Necessary correction done based on |

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| | | | | |
|---|---|---|---|---|
| | | | | better legibility. |
| (O) | | It washes the city in the west, after that it turns towards east | It washes the city in the west, after that it returns towards east | The French word 'tourne' means 'turns' and the French word 'retourne' means 'returns' Due to illegibility of the prefix 're' in the first translation instead of return it was written as turns. Necessary correction done based on better legibility. |
| (P) | | --- could have a big city with a big surrounding wall.<br><br>The geographical latitude of this place, observed in 1767 was situated | --- could have a big city with a big surrounding wall. The geographical latitude of this place, observed in 1767 was situated | Paragraph alignment properly done in accordance with scanned copy. |
| (Q) | | Another building covered with a dome and used as a tomb to a | Another building covered with a dome and used as a tomb to a Muslim was built | The French word 'mahométan was translated as Muslim |

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| | | | | |
|---|---|---|---|---|
| | | Muslim peer was built on the same hill | on the same hill | peer. Peer being superfluous has been removed in 2nd translation. No change in meaning. |
| (R) | | The length of this city from Racabgans to the south up to Iffagans in the North, is about a mile and a half. The breadth from Chodagans or from sunrise to sunset (perhaps east to west) is about a mile and more | The length of this city from Racagans to the south up Issagans in the North, is about a mile and a half. The breadth from Chodagans or east to west is about more than a mile | The word sunrise and sunset are literal translation of east and west respectively. The explanatory note was given in bracket in the first translation. In the second translation the exact meaning of the word were given without any explanatory note. |
| (S) | | Due to the unevenness of the ground, one can walk only by taking digressions and by climbing up | Due to the unevenness of the ground, one can walk in the city only by taking digressions and by climbing up | Due to legibility in the second copy, the words "in the city" omitted in the first are included in the 2nd. |

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| | | | | |
|---|---|---|---|---|
| | | and down | and down | |

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**Annexure - 2**

Para wise comments on the objections raised by Shri Ved Prakash, Advocate for the plaintiff are as follows:

1. That on page no. 252 in para 6 line 2, the word "Fifabad" is said to have been wrongly spelt as Fesabad. The font used was that of 18th Century and not the modern French/English font. The exact spelling is Fesabad and is pronounced (in French) as फेजाबाद.

2. That on page no. 253 in the first line word the Sorgadoari has been retained with same spelling. The pronunciation of this word is सोंग दिवारी.

3. That the word 'Oudjen' (pronounced as उज्जैन ) was wrongly typed as Oude. It is acknowledged that the word 'oude' should be replaced with 'Oudjen'. The English equivalent of Oudjen is Ujjain.

4. It is submitted that the French word 'Empans' was duly translated as 'spans'. However, it is not legible whether it is 5 spans or 6 spans. The original document may be consulted for ascertaining the correct number.

Definition of 'empan', from the French Dictionary LAROUSSE 1996 (Annexure1)

| Definition and explanation in French | Translation in English |
|---|---|
| Empan – ancienne é mesure de longeur égale à la distance entre l'extrémité du pouce et celle du petit dans leur écart maximum | Old measure for length equal to the distance between the end of thumb and that of the small one when they are apart to the maximum |

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**Annexure - 2**

Para wise comments on the objections raised by Shri Ved Prakash, Advocate for the plaintiff are as follows:

1. That on page no. 252 in para 6 line 2, the word "Fifabad" is said to have been wrongly spelt as Fesabad. The font used was that of 18th Century and not the modern French/English font. The exact spelling is Fesabad and is pronounced (in French) as फेज़ाबाद.

2. That on page no. 253 in the first line word the Sorgadoari has been retained with same spelling. The pronunciation of this word is सौगदाबोरी.

3. That the word 'Oudjen' (pronounced as उज्जैन ) was wrongly typed as Oude. It is acknowledged that the word 'oude' should be replaced with 'Oudjen'. The English equivalent of Oudjen is Ujjain.

4. It is submitted that the French word 'Empans' was duly translated as 'spans'. However, it is not legible whether it is 5 spans or 6 spans. The original document may be consulted for ascertaining the correct number.

Definition of 'empan', from the French Dictionary LAROUSSE 1996 (Annexure1)

| Definition and explanation in French | Translation in English |
|---|---|
| Empan – ancienne é mesure de longeur égale à la distance entre l'extrémité du pouce et celle du petit dans leur écart maximum | Old measure for length equal to the distance between the end of thumb and that of the small one when they are apart to the maximum |

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Definition of 'empan', from the French Dictionary LAROUSSE 1969 with pictorial illustration (copy enclosed for reference REF1)

| Definition and explanation in French | Translation in English |
|---|---|
| Distance comprise entre l'extrémité du pouce et celle du petit doigt très écartés (de 22 a 24 cm) | Distance at full stretch comprising between the end of the thumb and that of the small finger. |

Copy enclosed – picture is self explanatory

5. It is submitted that the French word "aunes" was translated as 'ells'. The objection raised was that the word aunes has been wrongly translated as ells and that 'aunes' is equivalent to 1.20 mtr. as per the annexure 1 enclosed. It is submitted that one ell is equal to 41 inches as per Oxford Dictionary (copy enclosed for reference REF2)) which is equivalent to 1.04 mtr. which is closer to the above figure. The word pouce has been correctly translated as inch.

6. No comments.

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*I rely upon the leniency and kindness of YOUR MAJESTY, in this regard, and I do not take undue advantage of these precious qualities to make you devote time for a tedious verbosity. I conclude with profound respect.*

LORD

YOUR MAJESTY

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*Sultanpour, (B)Facherpour,* otherwise known as *Pacarpour Ferosabad* likewise *Navaghar fortress, (C)Garansa.*

Under the domain of *Kerabad (D)* are rebuilt: *Baror Anzana, Befsva Beffara, Pela, Tschitapour, Kerabad, ????? (A) Sindi, (E) likewise Sara, Sadanpour, Gopamao, Khiri, Kherighar* with a prominent fortress partly made of stone and partly made of bricks, *Khorkela, Laharopur, Matsehreta, (F)Nimcar* on the eastern bank of *Guomati, Hargaon.*

According to the registers of the empire, the annual Income of this province is about 321317119 Dams
The highest - is about 9125651 rupees.
The smallest - [redacted] *(G)* - 4785771 rupees.

Of all the cities of this region, *Avad (*or *Oude*) and *Lacnav* are the two of the major and very ancient cities which are worth mentioning.

*Avad* called as *Adjudea*, by the educated Hindus, is a city of very olden times. Its houses are (mostly) made up of mud only; covered with straw or tiles. Many (however), are made of bricks. The main street goes from South to North and it has a length of about a mile. The width (of the city) is a little lesser. Its western side and that of North as well, are situated on a mud hill. *(H)* (*)That of north-east is situated on knolls. Towards Bangla it is united.

Today, this city *(I)* has been hardly populated., since the foundation of *Bangla* or *Fesabad* – a new city where the Governor established his residence – and in which a great number (of inhabitants of *Oude)* settled in.

On the South bank (of *Deva)* are found variuos buildings constructed by the nobles in memory of *Ram, (J)* extending from East to West (a)

---

**(a) It is most likely that those shown in the Illustration XIII nos. 1 and 2 belong to these buildings.**



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The most remarkable place is the one which is called *Sorgadaori*, which means : the celestial temple. Because they say that *Ram* took away all the inhabitants of the city from there to heaven : This has some resemblance/ similarity to the Ascent of the Lord. The city, thus deserted, was repopulated and was brought back to its earlier status by *Bikarmadjit* – the famous king of *Oude* (OUDH).

There was a temple in this place constructed on the elevated bank of the river. But *Aurengzebe*, always keen to propagate the creed of Mohammed and abhorring the noble people, got it demolished and replaced with a mosque and two obelisks, with a view to obliterate even the very memory of the Hindu superstition. Another mosque built by the Moors is adjacent to the one towards the East.

Close to *Sorgadoari* is a building constructed lengthways by *Nabalray*, a Hindu, a formerly lieutenant of the Governor (propraetor) of this region (a).

But a place especially famous is the one called *Sitha Rassoi* i.e. the table of *Sita*, wife of *Ram,* adjoining to the city in the South, and is situated on a mud hill.

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Emperor *Aurengzebe* got the fortress called *Ramcot demolished* and got a Muslim temple, with triple domes, constructed at the same place. Others say that it was constructed by *'Babor'*. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there. Twelve of these pillars now support the interior arcades of the mosque. Two (of these 12) are placed at the entrance of the cloister. The two others are part of the tomb of some 'Moor'. It is narrated that these pillars, or rather this debris of the pillars skillfully made, were brought from the island of *Lanca* or *Selendip* (called *Ceylan* by the Europeans) by *Hanuman*, King of Monkeys.

On the left *(K)* is seen a square box raised 5 inches above the ground, with borders made of lime, with a length of more than 5 ells and a *(L)* maximum width of about 4 ells. The Hindus call it

---

(a) See the Illustration XXV no. 2



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*Bedi* i.e.'the cradle. The reason for this is that once upon a time, here was a house where *Beschan* was born in the form of *Ram.* It is said that his three brothers too were born here. Subsequently, *Aurengzebe* or *Babor*, according to others, got this place razed in order to deny the noble people, the opportunity of practising their superstitions. However, there still exists some superstitious cult in some place or other. For example, in the place where the native house of *Ram* existed, they go around 3 times and prostrate on the floor. The two spots are surrounded by a low wall constructed with battlements. *(M)* (*) One enters the front hall through a low semi-circular door.

Not far from there is a place where one digs out grains of black rice, turned into small stones, which are said to have been hidden under the earth since the time of *Ram.*

On the 24th of the *Tschet* month, a big gathering of people is done here to celebrate the birthday of *Ram*, so famous in the entire India.

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This vast city is a mile away from *Bangla* at the east towards E. N. E such that its latitude also will be greater by about one minute than that of *Bangla*.

The fortress constructed in square form situated on the elevated bank of the river, is equipped with round and low towers. The walls need to be repaired. It is uninhabited and is not protected. Earlier, the Governors of the province had their residence here. *Sadatkhan(N)* frightened by a bad forecast got it transferred to *Bangla*. Today, it is destroyed from top to bottom.

9/2/10

In a space of 2 miles, from the place where the canons are planted up to '*Oude'*, the *Gagra* takes its course towards east, making a double bend – one close to the western side of the city and the other, a little distance from there, towards the West. And bending from there towards the NE and ¼ E, it washes the city in the West; after that, it returns *(O)* towards the East, close to the northern side. But it has been changing its course almost every year. Its river bed is equal (in width) to that of *Danube*, near the citadel of



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*Ingoldstadt* in *Bavaria*, but the volume of water is less. In rainy season, it increases breadth-wise in such a way that at some places, its breadth exceeds a mile and a half.

*Bangla* or *Fesabad* was founded by *Sadatkhan*, after he had abandoned the city of 'Oude'. A native of Persia, he was, the Governor of this province, more than 40 years ago. He constructed a palace (a) cultivated a nice garden, in the Persian style and established his residence here. Gradually, this place became a city, the length of which is more than a mile.

The Present Governor, grandson of that person, adorned the city with many buildings and gardens, after the entire province was returned to him by the British, in 1765. He also widened the passage which was narrow earlier and provided the fortress with a ditch, round towers and a rampart, so that the thick population could have a city with a big surrounding wall. (*)(P)The geographical latitude of this place, observed in 1767, was situated at 26° – 29°.

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*Goptargath* is a place planted with thick trees, a mile away from *Bangla,* on the southern bank of *Gagra*. It is situated on a hill which is less steep, and is provided with mud towers on four sides. An underground pit is seen in the middle, covered with a medium sized dome. Near it is a very old and big tamarind tree.
A portico extends around it. It is said that *Ram*, after having defeated the *Giant Ravan* and having returned from *Lanka*, descended into this pit and disappeared. Deriving from this, this place was named '*Gouptar*' which means 'Departure for the Air'. Therefore, you have *Descent into the Hell*, there, which is similar to '*Rising into the Sky*' that you had in '*Oude*'. One will be able to have an idea about the locality and shape/form of this place (b) from the figure.

The *Gagra* makes two bends here by dividing itself into two branches the bigger one flows towards North-East; the other smaller one flows towards *Bangla*.

---

**(a) It is, undoubtedly, this palace that is shown in the Illustration XVI no. 1**

**(b) See the Illustration XVI where Galt is wrongly spelt from the original.**



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It is half a mile from *Gouptargath* to the place of canons: the distance that *Gagra* covers from the West ¼ North West to the East and ¼ South East.

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(b) See the Illustration XV. no.1



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# OF INDIA,

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**First Astronomer and M. ord de l'Acad des Sc. B.L.Berlin. Associé des Academies & Sociétés des Sciences de St. Petersburg, Stockholm, Upsala, Copenhagen, Lyons, Bologna and many others**

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*I rely upon the leniency and kindness of YOUR MAJESTY, in this regard, and I do not take undue advantage of these precious qualities to make you devote time for a tedious verbosity. I conclude with profound respect.*

LORD

YOUR MAJESTY

At Berlin, the 2nd August,
1786.

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9/2/10

Your humble, submissive and obedient servant
JEAN BERNOULLI
des Acad. RR des Sc. de Stockholm, Berlin and others



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*Sultanpour, Facherpour,* otherwise known as *Pacarpour Ferosabad* likewise *Navaghar fortress, Garansa.*

Under the domain of *Kerabad* are rebuilt: *Baror Anzana, Befsva Beffara, Pela, Tschitapour, Kerabad, Sindi, likewise Sara, Sadanpour, Gopamao, Khiri, Kherighar* with a prominent fortress partly made of stone and partly made of bricks, *Khorkela, Lahar pour, Matsehreta, Nimcar* on the eastern bank of *Goumati, Hargaon.*

| | | |
|---|---|---|
| According to the registers of the empire, the annual Income of this province is about | 321317119 | Dams |
| The highest - - - - | 9125651 | rupees. |
| The smallest - - - - | 4785771 | rupees. |

Of all the cities of this region, *Avad (*or *Oude*) and *Lacnav* are the two of the major and very ancient cities which are worth mentioning.

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*Avad* called as *Adjudea*, by the educated Hindus, is a city of very olden times. Its houses are (mostly) made up of mud only; covered with straw or tiles. Many (however), are made of bricks. The main street goes from South to North and it has a length of about a mile. The width (of the city) is a little lesser. Its western side and that of North as well, are situated on a mud hill. That of north-east is situated on knolls. Towards Bangla it is united.

Today, this city has been hardly populated., since the foundation of *Bangla* or *Fesabad* (1) – a new city where the Governor established his residence – and in which a great number (of inhabitants of *Oude)* settled in.

On the South bank (of *Deva)* are found variuos buildings constructed by the nobles in memory of *Ram*, extending from East to West (a)

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**(a) It is most likely that those shown in the Illustration XIII nos. 1 and 2 belong to these buildings.**



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The most remarkable place is the one which is called (2) *Sorgadaori*, which means : the celestial temple. Because they say that *Ram* took away all the inhabitants of the city from there to heaven : This has some resemblance/ similarity to the Ascent of the Lord. The city, thus deserted, was repopulated and was brought back to its earlier status by *Bikarmadjit* – the famous king of Oude (OUDH).[oudjen] (3)

There was a temple in this place constructed on the elevated bank of the river. But *Aurengzebe*, always keen to propagate the creed of Mohammed and abhorring the noble people, got it demolished and replaced with a mosque and two obelisks, with a view to obliterate even the very memory of the Hindu superstition. Another mosque built by the Moors is adjacent to the one towards the East.

Close to *Sorgadoari* is a building constructed lengthways by *Nabalray*, a Hindu, a formerly lieutenant of the Governor (propraetor) of this region (a).

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But a place especially famous is the one called *Sitha Rassoi* i.e. the table of *Sita*, wife of *Ram,* adjoining to the city in the South, and is situated on a mud hill.

Emperor *Aurengzebe* got the fortress called *Ramcot demolished* and got a Muslim temple, with triple domes, constructed at the same place. Others say that it was constructed by *'Babor'*. Fourteen black stone pillars of 5(?) span(4) high, which had existed at the site of the fortress, are seen there. Twelve of these pillars now support the interior arcades of the mosque. Two (of these 12) are placed at the entrance of the cloister. The two others are part of the tomb of some 'Moor'. It is narrated that these pillars, or rather this debris of the pillars skillfully made, were brought from the island of *Lanca* or *Selendip* (called *Ceylan* by the Europeans) by *Hanuman*, King of Monkeys.

On the left is seen a square box raised 5 inches above the ground, with borders made of lime, with a length of more than 5 ells(5) and a maximum width of about 4 ells. The Hindus call it

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(a) See the Illustration XXV no. 2



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*Bedi* i.e.'the cradle. The reason for this is that once upon a time, here was a house where *Beschan* was born in the form of *Ram.* It is said that his three brothers too were born here. Subsequently, *Aurengzebe* or *Babor*, according to others, got this place razed in order to deny the noble people, the opportunity of practising their superstitions. However, there still exists some superstitious cult in some place or other. For example, in the place where the native house of *Ram* existed, they go around 3 times and prostrate on the floor. The two spots are surrounded by a low wall constructed with battlements. One enters the front hall through a low semi-circular door.

Not far from there is a place where one digs out grains of black rice, turned into small stones, which are said to have been hidden under the earth since the time of *Ram.*

On the 24th of the *Tschet* month, a big gathering of people is done here to celebrate the birthday of *Ram*, so famous in the entire India.

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This vast city is a mile away from *Bangla* at the east towards E. N. E such that its latitude also will be greater by about one minute than that of *Bangla*.

9/2/10

The fortress constructed in square form situated on the elevated bank of the river, is equipped with round and low towers. The walls need to be repaired. It is uninhabited and is not protected. Earlier, the Governors of the province had their residence here. *Sadatkhan* frightened by a bad forecast got it transferred to *Bangla*. Today, it is destroyed from top to bottom.

In a space of 2 miles, from the place where the canons are planted up to '*Oude'*, the *Gagra* takes its course towards east, making a double bend – one close to the western side of the city and the other, a little distance from there, towards the West. And bending from there towards the NE and ¼ E, it washes the city in the West; after that, it returns towards the East, close to the northern side. But it has been changing its course almost every year. Its river bed is equal (in width) to that of *Danube*. near the citadel of



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*Ingoldstadt* in *Bavaria*, but the volume of water is less. In rainy season, it increases breadth-wise in such a way that at some places, its breadth exceeds a mile and a half.

*Bangla* or *Fesabad* was founded by *Sadatkhan*, after he had abandoned the city of 'Oude'. A native of Persia, he was, the Governor of this province, more than 40 years ago. He constructed a palace **(a)** cultivated a nice garden, in the Persian style and established his residence here. Gradually, this place became a city, the length of which is more than a mile.

The Present Governor, grandson of that person, adorned the city with many buildings and gardens, after the entire province was returned to him by the British, in 1765. He also widened the passage which was narrow earlier and provided the fortress with a ditch, round towers and a rampart, so that the thick population could have a city with a big surrounding wall. The geographical latitude of this place, observed in 1767, was situated at 26° – 29°.

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*Goptargath* is a place planted with thick trees, a mile away from *Bangla,* on the southern bank of *Gagra*. It is situated on a hill which is less steep, and is provided with mud towers on four sides. An underground pit is seen in the middle, covered with a medium sized dome. Near it is a very old and big tamarind tree. A portico extends around it. It is said that *Ram*, after having defeated the *Giant Ravan* and having returned from *Lanka*, descended into this pit and disappeared. Deriving from this, this place was named '*Gouptar*' which means 'Departure for the Air'. Therefore, you have *Descent into the Hell*, there, which is similar to '*Rising into the Sky*' that you had in '*Oude*'. One will be able to have an idea about the locality and shape/form of this place **(b)** from the figure.

9/2/10

The *Gagra* makes two bends here by dividing itself into two branches the bigger one flows towards North-East; the other smaller one flows towards *Bangla*.

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**(a) It is, undoubtedly, this palace that is shown in the Illustration XVI no. 1**

**(b) See the Illustration XVI where Galt is wrongly spelt from the original.**



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It is half a mile from *Gouptargath* to the place of canons: the distance that *Gagra* covers from the West ¼ North West to the East and ¼ South East.

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(b) See the Illustration XV. no.1

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## मन्दिर/मस्जिद एवं खम्भो के रंगीन चित्रों का विवरण
## (अभिलेख संख्या–200 सी–1)

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20. खम्भा सं0–14 के निचले भाग का छाया–चित्र संख्या–199।
21. खम्भा सं0–14 के निचले भाग का छाया–चित्र संख्या–199।

## मन्दिर/मस्जिद एवं खम्भो के श्वेत श्याम चित्रों का विवरण
## (अभिलेख संख्या–201 सी–1)

22. मन्दिर/मस्जिद के बाहरी और भीतरी दीवार के बीच के भाग में स्थित कौशल्या रसोई का चित्र संख्या–39।
23. मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व में बाहर की ओर लगे पत्थर के खम्भे (खम्भा सं0–3) का छाया–चित्र संख्या–55।
24. मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व में बाहर की ओर लगे पत्थर के खम्भे (खम्भा सं0–3) के निचले भाग का छाया–चित्र संख्या–57।
25. मुख्य भाग की पिछली दीवार के दायें पार्श्व के प्रारम्भ में लगे पत्थर के खम्भे (खम्भा सं0–7) के क्रम में लगे अगले पत्थर के खम्भे (खम्भा सं0–8) के निचले भाग का छाया–चित्र संख्या–76।
26. बीच के भाग की पिछली दीवार के बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–9) के निचले भाग का छाया–चित्र संख्या–88।
27. खम्भा सं0–10 के निचले भाग का छाया–चित्र संख्या–91।
28. खम्भा सं0–13 के निचले भाग का छाया–चित्र संख्या–103।
29. खम्भा सं0–13 के क्रम में उसके बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–14) का छाया–चित्र संख्या–104।
30. खम्भा सं0–14 के निचले भाग का छाया–चित्र संख्या–106।

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माननीय उच्च न्यायालय इलाहाबाद, लखनऊ पीठ लखनऊ

अन्य मूल वाद संख्या 5 सन् 1989

भगवान श्रीरामलला विराजमान श्रीराम जन्मभूमि आदि....वादीगण

बिल्द

श्री राजेन्द्र सिंह आदि ..... प्रतिवादीगण

मुख्य कथन शपथपत्र डा. राकेश तिवारी ओ. पी. डब्लू. 14 अंतर्गत आदेश 18 नियम 4 व्यवहार प्रक्रिया संहिता -

मैं राकेश तिवारी आयु लगभग 50 वर्ष पुत्र श्री महेश दत्त तिवारी निदेशक राज्य पुरातत्व संगठन उत्तर प्रदेश लखनऊ सशपथ निम्नलिखित कथन करता हूँ :-

1- मैं राज्य पुरातत्व संगठन उत्तर प्रदेश लखनऊ में माह अगस्त निदेशक के पद पर सन् 1989 से सेवारत हूँ ।

2- मैं अपनी टीम के साथ माननीय उच्च न्यायालय लखनऊ पीठ लखनऊ के आदेश के अनुपालन में सन् 1990 में अयोध्या स्थित विवादित स्थल पर जाकर वाद के पक्षकारों एवं उनके अधिवक्ताओं की उपस्थिति में विवादित भवन एवं परिसर का श्वेतश्याम व रंगीन फोटोग्राफी तथा वीडियोग्राफी अपने निर्देशन एवं देखरेख में करवाया था ।

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3- श्वेतश्याम व रंगीन फोटो विवादित भवन एवं परिसर के जिस-जिस भाग के लिये गये थे उनका विवरण अंकित करते हुए दो एलबम तैयार किया गया । यह दोनो एलबम तथा वीडियो कैसेट को माननीय उच्च न्यायालय लखनऊ पीठ लखनऊ को प्रेषित कर दिया था तथा निगेटिव अपने विभाग में सुरक्षित रखवा लिया था जो आज भी सुरक्षा रखे हुए हैं ।

4- दिसम्बर सन् 1992 में जब विवादित भवन ध्वस्त हो गया तो सचिव पर्यटन एवं सांस्कृतिक कार्य विभाग के आदेश पर मैं अपनी टीम के साथ विवादित स्थल पर गया जहाँ विवादित भवन का मलवा बिखरा हुआ था उनमें यहीं-यहीं प्राचीन पुरावशेष की श्रेणी में आने वाले प्रस्तरखण्ड भी धूल-धूसरित बिखरे हुए थे । विवादित स्थल के निकट ही स्थित रामकथा कुँज में भी उपरोक्त विवादित भवन के [redacted] पुरावशेष रखे हुए थे जहाँ धूलित मौजूद थी ।

5- जिलाधिकारी फैजाबाद की अपेक्षानुसार मेरे निर्देशन व देख-रेख तथा श्री गिरजा शंकर तिवारी निदेशक राम कथा संग्रहालय राज सदन, अयोध्या व श्री इन्द्र देव सिंह अपर नगर मजिस्ट्रेट फैजाबाद की उपस्थिति में राम कथा कुँज में रखे हुए

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पुरावशेषों पर संख्या आर. के. के. - 1 से लेकर आर. के. के. - 265 तक अंकित की गयी तथा तद्नुसार उन पुरावशेषों की सूची बनायी गयी जिस पर श्री गिरजा शंकर तिवारी व श्री इन्द्र देव सिंह ने अपने- अपने हस्ताक्षर मेरे समक्ष ही किये । उन सूची की प्रतियां सम्बन्धित अधिकारियों को प्रेषित कर दिया गया। उक्त पुरावशेषों की मूल सूची आठ पृष्ठों में व सचिव पर्यटक एवं सांस्कृतिक कार्य विभाग के पत्र अपने साथ लाया हूँ जिसकी छायाप्रति बतौर संलग्नक एक व दो के इस शपथपत्र के साथ संलग्न है । कालान्तर में पुनः निरीक्षण करने पर यह पाया गया कि एक वास्तुखण्ड पर गलती से दो नम्बर अंकित हो गये थे ।

6- उपर्युक्त पुरावशेषों की सूची मैंने स्वयं प्रमाणित करके माननीय उच्च न्यायालय लखनऊ पीठ लखनऊ को पहले भी प्रेषित किया है ।

लखनऊ

दिनांक 7. 2. 2003

शपथकर्ता

07.02.03

( डा. राकेश तिवारी )

ओ. पी. डब्लू. 14

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7/2/03

सत्यापन

मैं शपथकर्ता सत्यापित करता हूँ कि शपथपत्र की धारा

क्रमशः...../ 4

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। से 6 मेरे ज्ञान एवं प्राप्त जानकारी के आधार पर सत्य व सही है । इसमें कोई बात छिपायी नहीं गयी है औ न ही कोई गलत बयानी की गयी है । ईश्वर मेरी मदद करे ।

लखनऊ

दिनांक 7. 2. 2003

शपथकर्ता

। डा. राकेश तिवारी ।

ओ. पी. डब्लू. ।4

मैं बेद प्रकाश अधिवक्ता सत्यापित करता हूँ कि शपथकर्ता डा. राकेश तिवारी (ओ. पी. डब्लू. ।4) ने मेरे समक्ष इस शपथपत्र पर आज दिनांक 7. 2. 2003 को अपना हस्ताक्षर किया ।

I Identify The Deponent Who Has Signed Before Me.

लखनऊ

दिनांक 7. 2. 2003

। बेद प्रकाश ।

अधिवक्ता

COMMISSIONER FOR OATHS High Court. ALLAHABAD.

7/2/03

Solemnly affirmed before me.....at .....am/pm by the deponent..... who is indentified by Sri.....High Court:Lko Bench I have satisfied by exam -ining the deponent that he understanps the contents of the affidavit which have been readover and explained by me.

एस० पी० श्रीवास्तव
OATH COMMISSIONER
High Court Allahabad.
Lucknow Bench, Lucknow
No. 6111/8
Date 7/2/3

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ANNEXURE-1

रामकथा कुंज, अयोध्या, फैजाबाद में रखे अवशेषों की सूची (

| क्रम संख्या | पुरावशेष संख्या | माप | सामग्री | विवरण |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 1. | आर.के.के.-1 | 74x25.5 से.मी. | बफ सैण्ड स्टोन | नागरी लिपि में उत्कीर्ण आठ (आमर) और दो (नीचे) पंक्तियों का अभिलेख । |
| 2. | " " 2 | 1.14x26.5से.मी. | ब्लैक ग्रेनाइट स्टोन | घट पल्लव अलंकरण से युक्त षोडस फलकीय स्तम्भ । |
| 3. | " " 3 | 31x34 से.मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड । |
| 4. | " " 4 | 36x31 से.मी. | -तदैव- | अभिलिखित प्रस्तर खण्ड लिपि-अरबी । |
| 5. | " " 5 अ. | 1.16x56 से.मी. | -तदैव- | नागरी लिपि में बीस पंक्तियों का प्रस्तर अभिलेख । |
| 6. | " " 5 ब. | 56x52 से.मी. | -तदैव- | ----तदैव---- |
| 7. | " " 6 | 35x32 से.मी. | -तदैव- | मणिबन्ध अलंकरण से युक्त वास्तुखण्ड । |
| 8. | " " 7 | 39x14 से.मी. | कंकड़ | कंकड़ निर्मित आमलक (स्तम्भ के ऊपर रखा जाने वाला |
| 9. | " " 8 | 50x28 से.मी. | बफ सैण्ड स्टोन | रथिकाओं से युक्त अलंकृत प्रस्तर खण्ड । |
| 10. | " " 9 | 22x10.5 से.मी. | संगमरमर | बिजौरा । |
| 11. | " " 10 | 20 से.मी. व्यास | -तदैव- | कलश । |
| 12. | " " 11 | 43x28 से.मी. | कंकड़ | मणिबन्ध अलंकरण से युक्त वास्तुखण्ड । |
| 13. | " " 12 | 64x47 से.मी. | लाल रंग का पाषाण | द्वारशाखा स्तम्भ का खण्डित अधोभाग । |
| 14. | " " 13 | 31x29 से.मी. | बफ सैण्ड स्टोन | खण्डित आमलक । |
| 15. | " " 14 | 36x29 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 16. | " " 15 | 54x9 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 17. | " " 16 | 59x47 से.मी. | -तदैव- | फुल्लपद्म अलंकरण से युक्त मेहराबदार वास्तुखण्ड । |
| 18. | " " 17 | 35x34 से.मी. | -तदैव- | प्रेक पैटर्न अलंकरण से युक्त वास्तुखण्ड । |
| 19. | " " 18 | 38x26 से.मी. | -तदैव- | पद्म-पत्र अलंकरण से युक्त वास्तुखण्ड । |
| 20. | " " 19 | 49.5x22से.मी. | काला ग्रेनाइट पाषाण | घटपल्लव अलंकरण से युक्त खण्डित प्रस्तर स्तम्भ । |
| 21. | " " 20 | 23.5x24.5 से.मी. | बफ सैण्ड स्टोन | जटाजूट, श्मश्रु और कूर्च से युक्त शीर्ष (हेड) । |
| 22. | " " 21 | 45x38 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 23. | " " 22 | 50.5x23 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 24. | " " 23 | 44x24.5 से.मी. | -तदैव- | मालाधारी विद्याधरों और ताड़पत्र अलंकरण से युक्त वास्तुखण्ड । |
| 25. | " " 24 | 40 से.मी. व्यास | -तदैव- | फुल्लपद्म अलंकरण से युक्त वृत्ताकार वास्तुखण्ड । म में छिद्र जिसमें लौह अगला लगा है। |
| 26. | " " 25 | 54x49 से.मी. | -तदैव- | चन्द्रशाला अलंकरण से युक्त वास्तुखण्ड । |
| 27. | " " 26 | 32.5x31 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 28. | " " 27 | 77x30 से.मी. | संगमरमर | नागरी लिपि में अभिलेख युक्त पटिया । |
| 29. | " " 28 | 65x42 से.मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड । |
| 30. | " " 29 | 72x27 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |

पेज---

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| 1 | 2 | 3 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| 31. | आर.के.के.-30 | 74x24 सेमी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड (तोड़ा) । | |
| 32. | " " 31 | 53x33 सेमी0 | -तदैव- | अलंकृत वास्तुखण्ड । | |
| 33. | " " 32 | 73x25.5 सेमी. | -तदैव- | अलंकृत वास्तुखण्ड (तोड़ा) । | |
| 34. | " " 33 | 62.5x25.5 सेमी. | -तदैव- | ----तदैव--- | |
| 35. | " " 34 | 1.00x27.5 सेमी. | -तदैव- | ----तदैव--- | |
| 36. | " " 35 | 65x28 सेमी. | -तदैव- | मालाधारी विद्याधरों और ताड़पत्र अलंकरण से युक्त वास्तुख | |
| 37. | " " 36 | 1.06x28 सेमी. | -तदैव- | अलंकृत वास्तुखण्ड (तोड़ा) । | |
| 38. | " " 37 | 60.5x20.5 सेमी. | -तदैव- | ----तदैव--- | |
| 39. | " " 38 | 1.79x26 सेमी. | हरा ग्रेनाइट पाषाण | घटपल्लव अलंकरण से युक्त षोडस फलकीय प्रस्तर स्तम्भ । | |
| 40. | " " 39 | 62x26 से. मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड (तोड़ा) । | |
| 41. | " " 40 | 46x56 से. मी. | -तदैव- | मणिबन्ध और फुल्लपद्म अलंकरण से युक्त वास्तुखण्ड । | |
| 42. | " " 41 | 28.5x18 से. मी. | -तदैव- | अभिलिखित प्रस्तर खण्ड । लिपि-अरबी | |
| 43. | " " 42 | 43x35.5 से. मी. | -तदैव- | अलंकृत वास्तुखण्ड । | |
| 44. | " " 43 | 65x27 से. मी. | -तदैव- | अभिलिखित प्रस्तर खण्ड । लिपि-अरबी | |
| 45. | " " 44 | 95x50 से. मी. | -तदैव- | पंच शाखा द्वार स्तम्भ (खण्डित) । | |
| 46. | " " 45 | 65x52 से. मी. | -तदैव- | चन्द्रशाला अलंकरण से युक्त वास्तुखण्ड । | |
| 47. | " " 46 | 43 से. मी. व्यास | -तदैव- | फुल्लपद्म अलंकरण से युक्त वृत्ताकार वास्तुखण्ड । मध्य में छिद्र जिसमें कुछ फसाने हेतु लौह कीलक लगा है। | |
| 48. | " " 47 | 1.74x54 से. मी. | हरा ग्रेनाइट पाषाण | कीर्तिमुख और पद्म अलंकरण से युक्त वितान । | |
| 49. | " " 48 | 48x21 से. मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड । | |
| 50. | " " 49 | 1.80x26 से. मी. | हरा ग्रेनाइट पाषाण | घटपल्लव अलंकरण से युक्त षोडस फलकीय प्रस्तर स्तम्भ । | |
| 51. | " " 50 | 58x29 से. मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड । | |
| 52. | " " 51 | 75x24 से. मी. | -तदैव- | अलंकृत वास्तुखण्ड । | |
| 53. | " " 52 | 93x22.5 से. मी. | -तदैव- | अलंकृत वास्तुखण्ड (तोड़ा) । | |
| 54. | " " 53 | 1.65x26 से. मी. | काला ग्रेनाइट पाषाण | घटपल्लव अलंकरण से युक्त अष्टफलकीय प्रस्तर स्तम्भ । | |
| 55. | " " 54 | 41 से. मी. व्यास | बफ सैण्ड स्टोन | फुल्लपद्म अलंकरण से युक्त वृत्ताकार वास्तुखण्ड जिसके बीच में छिद्र है और उसमें लौहकीलक लगा है। | |
| 56. | " " 55 | 1.9x26 से. मी. | -तदैव- | मालाधारी विद्याधरों और ताड़पत्र अलंकरण से युक्त वास्तुख | |
| 57. | " " 56 | 34x32 से. मी. | -तदैव- | अलंकृत कुम्भिका । | |
| 58. | " " 57 | 34x49 से. मी. | ~~xxxx~~ कंकड़ | उद्गम युक्त रथिका में मणिबन्ध अलंकरण से युक्त वास्तुखण्ड | |
| 59. | " " 58 | 35x31 से. मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड । | |
| 60. | " " 59 | 50 वर्ग से. मी. | -तदैव- | त्रिदलीय फुल्लपद्म अलंकरण से युक्त पट वास्तुखण्ड । | |
| 61. | " " 60 | 39x29 से. मी. | -तदैव- | अलंकृत वास्तुखण्ड । | |
| 62. | " " 61 | 1.9x28 से. मी. | हरा ग्रेनाइट पाषाण | कच्छपारूढ़ यमुना से अंकित ~~xxxxxx~~ चतुः शाखीय द्वार स्तम्भ । | |
| 63. | " " 62 | 57x32 से. मी. | बफ सैण्ड स्टोन | फुल्लपद्म अलंकरणों से युक्त आला । | |
| 64. | " " 63 | 43 से. मी. व्यास | -तदैव- | वृत्ताकार प्रस्तर खण्ड । | |

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| 65. | आर. के. के.-64 | 74x28 से. मी. | तंगमरमर | अलंकृत रेलिंग का भाग । |
| 66. | " " 65 | 28x26 से. मी. | बफ सैण्ड स्टोन | कुम्भिका । |
| 67. | " " 66 | 76x30 से. मी. | तंगमरमर | अलंकृत रेलिंग का भाग (अभिलिखित) । |
| 68. | " " 67 | --तदैव-- | तंगमरमर | ----तदैव---- |
| 69. | " " 68 | 86x85 से. मी. | -तदैव- | मन्दिर के रेखाशिखर का भाग । |
| 70. | " " 69 | 1.00x20 से. मी. | -तदैव- | उत्तरंग (अभिलिखित) । |
| 71. | " " 70 | 75 से. मी. व्यास | बफ सैण्ड स्टोन | आमलक । |
| 72. | " " 71 | 77x30 से. मी. | तंगमरमर | अलंकृत रेलिंग का भाग (अभिलिखित) । |
| 73. | " " 72 | 73x15 से. मी. | -तदैव- | अलंकृत स्तम्भ । |
| 74. | " " 73 | 63x30 से. मी. | -तदैव- | --तदैव-- |
| 75. | " " 74 | 86x39.5 से. मी. | -तदैव- | पटिया । |
| 76. | " " 75 | 77x26 से. मी. | -तदैव- | अलंकृत रेलिंग का भाग। |
| 77. | " " 76 | 82x36.5 से. मी. | -तदैव- | पटिया । |
| 78. | " " 77 | 77x30 से. मी. | -तदैव- | अलंकृत रेलिंग का भाग ( अभिलिखित ) । |
| 79. | " " 78 | 62.5x30 से. मी. | -तदैव- | रेलिंग का अलंकृत स्तम्भ (अभिलिखित) । |
| 80. | " " 79 | 57x38 से. मी. | -तदैव- | रेलिंग का भाग (अलंकृत) । |
| 81. | " " 80 | 85x85 से. मी. | -तदैव- | मन्दिर का नौ रथीय रेखाशिखर । |
| 82. | " " 81 | 77x58 से. मी. | -तदैव- | मन्दिर के शिखर का भाग । |
| 83. | " " 82 | --तदैव-- | -तदैव- | ----तदैव---- |
| 84. | " " 83 | 78x67 से. मी. | -तदैव- | मन्दिर का नौ रथीय रेखाशिखर । |
| 85. | " " 84 | 87x38 से. मी. | -तदैव- | मन्दिर का नौ रथीय वेदीबन्द । |
| 86. | " " 85 | 77x38 से. मी. | -तदैव- | ----तदैव---- |
| 87. | " " 86 | 77x67 से. मी. | -तदैव- | नौ रथीय रेखाशिखर । |
| 88. | " " 87 | 1.00x15 से. मी. | -तदैव- | अलंकृत स्तम्भ । |
| 89. | " " 88 | 46x12.5 से. मी. | -तदैव- | अलंकृत लघु स्तम्भ । |
| 90. | " " 89 | 27x23 से. मी. | -तदैव- | अलंकृत स्तम्भ का भाग । |
| 91. | " " 90 | 85x70 से. मी. | -तदैव- | मन्दिर का नौ रथीय रेखाशिखर । |
| 92. | " " 91 | 37.5x27 से. मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 93. | " " 92 | 27x23 से. मी. | -तदैव- | अलंकृत स्तम्भ का भाग । |
| 94. | " " 93 | 1.01x37 से. मी. | -तदैव- | पटिया । |
| 95. | " " 94 | 39x30 से. मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 96. | " " 95 | 95x24.5 से. मी. | -तदैव- | अलंकृत पटिया । |
| 97. | " " 96 | 38.5x30 से. मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 98. | " " 97 | 89x36 से. मी. | -तदैव- | पद्म दल अलंकरण से युक्त पट्ट । |
| 99. | " " 98 | 30x26 से. मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 100. | " " 99 | 67x28 से. मी. | -तदैव- | रेलिंग का भाग । |

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| 101. | आर.के.के.-100 | 84x72 से.मी. | संगमरमर | मन्दिर का नौ रथीय रेखाशिखर । |
| 102. | " " 101 | 63x30 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 103. | " " 102 | 79x24.5 से.मी. | -तदैव- | अलंकृत पटिया । |
| 104. | " " 103 | 1.16x28 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 105. | " " 104 | 63x25 से.मी. | -तदैव- | गढ़न युक्त पट्ट । |
| 106. | " " 105 | 95x28 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 107. | " " 106 | 86.5x28 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 108. | " " 107 | 78x26.5 से.मी. | -तदैव- | ----तदैव---- |
| 109. | " " 108 | 78x28 से.मी. | -तदैव- | ----तदैव---- |
| 110. | " " 109 | 74x28 से.मी. | -तदैव- | ----तदैव---- |
| 111. | " " 110 | 50x28 से.मी. | -तदैव- | ----तदैव---- |
| 112. | " " 111 | 21x21 से.मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड । |
| 113. | " " 112 | 30x26.5 से.मी. | संगमरमर | अलंकृत रेलिंग का भाग । |
| 114. | " " 113 | 88x30 से.मी. | -तदैव- | पटिया । |
| 115. | " " 114 | 30x26 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 116. | " " 115 | 86x28.5 से.मी. | -तदैव- | ----तदैव---- |
| 117. | " " 116 | 8?x36.5 से.मी. | -तदैव- | पद्मदल अलंकरण से युक्त पट्ट । |
| 118. | " " 117 | 49x28 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 119. | " " 118 | 1.16x28 से.मी. | -तदैव- | ----तदैव---- |
| 120. | " " 119 | 22 से.मी. व्यास | -तदैव- | आमलसारिका की चन्द्रिका । |
| 121. | " " 120 | 63x28 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 122. | " " 121 | 85x43 से.मी. | -तदैव- | अभिलिखित पटिया । |
| 123. | " " 122 | 78x28 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 124. | " " 123 | 27.5x26.5 से.मी. | -तदैव- | ----तदैव---- |
| 125. | " " 124 | 60x30.5 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 126. | " " 125 | 30x26 से.मी. | -तदैव- | ----तदैव---- |
| 127. | " " 126 | 62.5x30 से.मी. | -तदैव- | ----तदैव---- |
| 128. | " " 127 | 28.5x30 से.मी. | -तदैव- | ----तदैव---- |
| 129. | " " 128 | 96.5x25.5 से.मी. | -तदैव- | अलंकृत पटिया । |
| 130. | " " 129 | 78x36 से.मी. | -तदैव- | पद्मदल पंक्ति अलंकरण से युक्त पट्ट । |
| 131. | " " 130 | 88x36.5 से.मी. | -तदैव- | ----तदैव---- |
| 132. | " " 131 | 61.5x30 से.मी. | -तदैव- | अलंकृत स्तम्भिका । |
| 133. | " " 132 | 48x38 से.मी. | -तदैव- | द्वार स्तम्भ के शीर्ष कर्ण का भाग । |
| 134. | " " 133 | 88x35 से.मी. | -तदैव- | त्रिकोणात्मक पटिया । |
| 135. | " " 134 | 80.5x1? से.मी. | -तदैव- | अलंकृत स्तम्भ । |

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Annexure-1/4 4/5



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| 136. | आर.के.के.-135 | 31x20 से.मी. | बफ सैण्ड स्टोन | अलंकृत वास्तुखण्ड (तोड़ा) । |
| 137. | " " 136 | 60x23.5 से.मी. | -तदैव- | पत्रलता अलंकरण से युक्त वास्तुखण्ड । |
| 138. | " " 137 | 53.5x54.5से.मी. | संगमरमर | अलंकृत एवं अभिलिखित पट्ट । |
| 139. | " " 138 | 30 से.मी. व्यास | -तदैव- | चार नागफणों से आवेष्ठित कलश । |
| 140. | " " 139 | 86.5x27.5से.मी. | -तदैव- | अभिलिखित रेलिंग का भाग । |
| 141. | " " 140 | 38x30 से.मी. | -तदैव- | ----तदैव---- |
| 142. | " " 141 | 61.5x30 से.मी. | -तदैव- | रेलिंग का अलंकृत भाग । |
| 143. | " " 142 | 87x30 से.मी. | -तदैव- | अभिलिखित पटिया । |
| 144. | " " 143 | 57x39 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 145. | " " 144 | 94x19.5 से.मी. | बफ सैण्ड स्टोन | वास्तुपट्ट । |
| 146. | " " 145 | 56.5x12.5से.मी. | संगमरमर | अभिलिखित पट्ट । |
| 147. | " " 146 | 46x28.5से.मी. | बफ सैण्ड स्टोन | वास्तुपट्ट । |
| 148. | " " 147 | 88.5x40.5से.मी. | संगमरमर | त्रिकोणात्मक अभिलिखित पट्ट । |
| 149. | " " 148 | 62x45.5 से.मी. | -तदैव- | अभिलिखित पटिया । |
| 150. | " " 149 | 86.5x38.5से.मी. | -तदैव- | अभिलिखित पटिया । |
| 151. | " " 150 | 1.01x36 से.मी. | -तदैव- | अभिलिखित वास्तुखण्ड । |
| 152. | " " 151 | 1.20x33 से.मी. | -तदैव- | त्रिकोणात्मक वास्तुखण्ड । |
| 153. | " " 152 | 88x23 से.मी. | -तदैव- | वास्तुपटिया । |
| 154. | " " 153 | 1.22x34 से.मी. | -तदैव- | त्रिकोणात्मक वास्तुपटिया । |
| 155. | " " 154 | 1.24x33 से.मी. | -तदैव- | ----तदैव---- |
| 156. | " " 155 | 1.18x33 से.मी. | -तदैव- | ----तदैव---- |
| 157. | " " 156 | 75x38 से.मी. | -तदैव- | वेदीबन्ध का भाग । |
| 158. | " " 157 | 73x28 से.मी. | -तदैव- | रेलिंग का भाग । |
| 159. | " " 158 | 84x45 से.मी. | -तदैव- | त्रिकोणात्मक वास्तुपटिया । |
| 160. | " " 159 | 49x28 से.मी. | -तदैव- | रेलिंग का अभिलिखित भाग । |
| 161. | " " 160 | 43x24.5 से.मी. | -तदैव- | अभिलिखित एवं गढ़नयुक्त वास्तुपट्ट |
| 162. | " " 161 | 48x24.5 से.मी. | -तदैव- | ----तदैव---- |
| 163. | " " 162 | 1.73x15 से.मी. | -तदैव- | अलंकृत वास्तु स्तम्भ । |
| 164. | " " 163 | 1.81x14.5से.मी. | -तदैव- | ----तदैव---- |
| 165. | " " 164 | -तदैव- | -तदैव- | ----तदैव---- |
| 166. | " " 165 | -तदैव- | -तदैव- | ----तदैव---- |
| 167. | " " 166 | -तदैव- | -तदैव- | ----तदैव---- |
| 168. | " " 167 | -तदैव- | -तदैव- | ----तदैव---- |
| 169. | " " 168 | -तदैव- | -तदैव- | ----तदैव---- |
| 170. | " " 169 | 1.81x15 से.मी. | -तदैव- | अलंकृत वास्तुस्तम्भ । |
| 171. | " " 170 | -तदैव- | -तदैव- | ----तदैव---- |
| 172. | " " 171 | -तदैव | -तदैव- | ----तदैव---- |

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| 173 | आर.के.के.-172 | 1.81x15 से.मी. | संगमरमर | अलंकृत वास्तु स्तम्भ । |
| 174. | " " 173 | 1.67x15 से.मी. | -तदैव- | -अलंकृतद्वार स्तम्भ । |
| 175. | " " 174 | 1.67x15 से.मी. | -तदैव- | ----तदैव---- |
| 176. | " " 175 | 1.67x15 से.मी. | -तदैव- | ----तदैव---- |
| 177. | " " 176 | 52.5x27.5से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 178. | " " 177 | 54x25 से.मी. | -तदैव- | अभिलिखित एवं गढ़नयुक्त वास्तुपट्ट |
| 179. | " " 178 | 62.5x27.5से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 180. | " " 179 | 27.5x61.5से.मी. | -तदैव- | ----तदैव---- |
| 181. | " " 180 | 58x27.5 से.मी. | -तदैव- | ----तदैव---- |
| 182. | " " 181 | 72.5x27.5से.मी. | -तदैव- | ----तदैव---- |
| 183. | " " 182 | 66x28 से.मी. | -तदैव- | ----तदैव---- |
| 184. | " " 183 | 85x46 से.मी. | -तदैव- | त्रिकोणात्मक वास्तुपटिया । |
| 185. | " " 184 | 69x13 से.मी. | -तदैव- | अलंकृत वास्तुखण्ड । |
| 186. | " " 185 | 40x24.5 से.मी. | -तदैव- | अलंकृत एवं अभिलिखित पट्ट । |
| 187. | " " 186 | 1.16x36.5से.मी. | -तदैव- | त्रिकोणात्मक वास्तुपटिया । |
| 188. | " " 187 | 39x24 से.मी. | -तदैव- | अभिलिखित एवं अलंकृत वास्तुपट्ट । |
| 189. | " " 188 | 49x25 से.मी. | -तदैव- | ----तदैव---- |
| 190. | " " 189 | 63x13 से.मी. | -तदैव- | अलंकृत वास्तुपट्ट । |
| 191. | " " 190. | 90x36 से.मी. | -तदैव- | वास्तुपटिया । |
| 192. | " " 191 | 1.00x15 से.मी. | -तदैव- | अभिलिखित उत्तरंग । |
| 193. | " " 192 | 24x20 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 194. | " " 193 | 54x12.5 से.मी. | -तदैव- | अभिलिखित एवं अलंकृत वास्तुपट्ट । |
| 195. | " " 194 | 63x12 से.मी. | -तदैव- | अभिलिखित एवं गढ़नयुक्त वास्तुपट्ट । |
| 196. | " " 195 | 64.5x13 से.मी. | -तदैव- | अलंकृत वास्तुपट्ट । |
| 197. | " " 196 | 61x12.5 से.मी. | -तदैव- | अभिलिखित एवं अलंकृत वास्तुपट्ट । |
| 198. | " " 197 | 46x13 से.मी. | -तदैव- | ----तदैव---- |
| 199. | " " 198 | 61x40 से.मी. | -तदैव- | वास्तुपटिया । |
| 200. | " " 199 | 61x42.5 से.मी. | -तदैव- | ----तदैव---- |
| 201. | " " 200 | 52.5x26 से.मी. | बफ़ेलैम्ड स्टोन | गढ़नयुक्त वास्तुखण्ड । |
| 202. | " " 201 | 41x28 से.मी. | -तदैव- | खण्डित चरणयुक्त पद्मपीठ । |
| 203. | " " 202 | 38x24 से.मी. | संगमरमर | तप्तरथ रेखाशिखर । |
| 204. | " " 203 | 57x38 से.मी. | -तदैव- | वास्तुपटिया । |
| 205. | " " 204 | 90x36 से.मी. | -तदैव- | पद्मदल पंक्ति से युक्त पटिया । |
| 206. | " " 205 | 47x24.5 से.मी. | -तदैव- | अभिलिखित एवं गढ़नयुक्त वास्तुपट्ट । |
| 207. | " " 206 | 87x24.5 से.मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 208. | " " 207 | 63x27 [illegible] | -तदैव- | त्रिकोणात्मक वास्तुपटिया । |

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| 209. | आर.के.के.-208 | 62x30 से.मी. | संगमरमर | रेलिंग का भाग । |
| 210. | " " 209 | 95x40 से.मी. | -तदैव- | स्थानक द्विभुज प्रतिमा । |
| 211. | " " 210 | 60x8 से.मी. | -तदैव- | पद्मपत्र अलंकरण से युक्त वास्तुपट्ट । |
| 212. | " " 211 | 38x19.5 से.मी. | -तदैव- | काले रंग से लेपित पक्षी । |
| 213. | " " 212 | 99x25 से.मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 214. | " " 213 | 1.23x35 से.मी. | -तदैव- | त्रिकोणात्मक वास्तुपट्ट । |
| 215. | " " 214 | 42x27.5 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 216. | " " 215 | 87x38 से.मी. | -तदैव- | नौ रथीय वेदीबन्ध का भाग । |
| 217. | " " 216 | 70x13 से.मी. | -तदैव- | अभिलिखित पट्ट । |
| 218. | " " 217 | 43.5x12 से.मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 219. | " " 218 | 63x12.5 से.मी. | -तदैव- | ----तदैव--- |
| 220. | " " 219 | 93.5x11.5से.मी. | -तदैव- | ----तदैव--- |
| 221. | " " 220 | 91x12 से.मी. | -तदैव- | ----तदैव--- |
| 222. | " " 221 | 71.5x27.5से.मी. | -तदैव- | अभिलिखित एवं अलंकृत रेलिंग का भाग । |
| 223. | " " 222 | 87x44.5 से.मी. | -तदैव- | त्रिकोणात्मक वास्तुपटिया । |
| 224. | " " 223 | 81x27.5 से.मी. | -तदैव- | अलंकृत रेलिंग का भाग । |
| 225. | " " 224 | 54x25 से.मी. | -तदैव- | अभिलिखित एवं गढ़नयुक्त वास्तुपट्ट । |
| 226. | " " 225 | 77x17 से.मी. | -तदैव- | अलंकृत वास्तुपट्ट । |
| 227. | " " 226 | 1.03x36 से.मी. | -तदैव- | पद्मदल पंक्ति से अलंकृत पट्ट । |
| 228. | " " 227 | 88x36 से.मी. | -तदैव- | वास्तुपटिया । |
| 229. | " " 228 | 76x23.5 से.मी. | बफ सैण्ड स्टोन | वास्तुखण्ड । |
| 230. | " " 229 | 1.18x43 से.मी. | संगमरमर | त्रिकोणात्मक वास्तु पटिया |
| 231. | " " 230 | 99x36 से.मी. | -तदैव- | पद्मदल पंक्ति से अलंकृत पट्ट । |
| 232. | " " 231 | 80x15 से.मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 233. | " " 232 | 92x15 से.मी. | -तदैव- | गढ़नयुक्त वास्तुस्तम्भ । |
| 234. | " " 233 | 74x15 से.मी. | -तदैव- | ----तदैव---- |
| 235. | " " 234 | 1.67x16 से.मी. | -तदैव- | अलंकृत द्वार स्तम्भ । |
| 236. | " " 235 | 1.82x15 से.मी. | -तदैव- | गढ़नयुक्त वास्तुस्तम्भ । |
| 237. | " " 236 | 61x15.5 से.मी. | -तदैव- | अभिलिखित एवं गढ़नयुक्त वास्तु स्तम्भ । |
| 238. | " " 237 | 74.5x14.5से.मी. | -तदैव- | गढ़नयुक्त वास्तुस्तम्भ । |
| 239. | " " 238 | 80x11.5 से.मी. | -तदैव- | अभिलिखित पट्ट । |
| 240. | " " 239 | 98x15 से.मी. | -तदैव- | गढ़नयुक्त वास्तुस्तम्भ । |
| 241. | " " 240 | 88x12 से.मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 242. | " " 241 | 84x14.5 से.मी. | -तदैव- | उत्तरंग । |
| 243. | " " 242 | -तदैव- | -तदैव- | ----तदैव---- |
| 244. | " " 243 | 94x14.5 से.मी. | -तदैव- | गढ़नयुक्त वास्तुस्तम्भ । |

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| 245. | आर. के. के.-244 | 91×15 से. मी. | संगमरमर | गढ़नयुक्त वास्तुस्तम्भ । |
| 246. | " " 245 | 80×19.5 से. मी. | -तदैव- | ----तदैव----- |
| 247. | " " 246 | 1.25×25 से. मी. | -तदैव- | अभिलिखित एवं गढ़नयुक्त वास्तुपट्ट । |
| 248. | " " 247 | 80.5×15 से. मी. | -तदैव- | उत्तरंग । |
| 249. | " " 248 | 1.00×15 से. मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 250. | " " 249 | 67.5×12.5से. मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 251. | " " 250 | 75.5×15 से. मी. | -तदैव- | गढ़नयुक्त वास्तुस्तम्भ । |
| 252. | " " 251 | 91.5×14 से. मी. | -तदैव- | ----तदैव---- |
| 253. | " " 252 | 45×12 से. मी. | -तदैव- | गढ़नयुक्त वास्तुपट्ट । |
| 254. | " " 253 | 65×12 से. मी. | -तदैव- | ----तदैव---- |
| 255. | " " 254 | 82×11.5 से. मी. | -तदैव- | ----तदैव---- |
| 256. | " " 255 | 79×12 से. मी. | -तदैव- | ----तदैव---- |
| 257. | " " 256 | 84.5×54 से. मी. | -तदैव- | वास्तुपटिया । |
| 258. | " " 257 | 29×22 से. मी. | -तदैव- | रेलिंग का भाग । |
| 259. | " " 258 | 53×37 से. मी. | -तदैव- | चरण चौकी । |
| 260. | " " 259 | 79×36 से. मी. | -तदैव- | वास्तुपटिया । |
| 261. | " " 260 | 95×70 से. मी. | -तदैव- | सीमेंट से ईंटों को चिनाई करके बनाये गये भाग पर गणेश, लक्ष्मी, ~~षड्~~ षडानन और वृषभ की प्रतिमा । |
| 262. | " " 261 | 67.5×52 से. मी. | पीतल | घण्ट । |
| 263. | " " 262 | 53.5×40 से. मी. | पीतल | घण्ट । |
| 264. | " " 263 ए. | 92.5×82.5 ×95 से. मी. | रजत/काष्ठ | रजत पत्र से चढ़ाकर बनायी गयी काष्ठ की चौकी |
| 265. | " " 263 बी. | 92×11 से. मी. | -तदैव- | रजत पत्र से चढ़ाकर बनायी गयी काष्ठ चौकी का खण्ड । |

19/12/92

(गिरिजा शंकर तिवारी)
निदेशक
रामकथा संग्रहालय
राम-सदन, अयोध्या
फैजाबाद

9/12/92

(इन्द्र देव सिंह)
अपर नगर मजिस्ट्रेट
फैजाबाद

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## मन्दिर/मस्जिद एवं खम्भो के रंगीन चित्रों का विवरण
## (अभिलेख संख्या–200 सी–1)

1. पहले दरवाजे के दाएं पार्श्व के पत्थर के खम्भे (खम्भा सं0–1) का छाया–चित्र संख्या–48।

2- पहले दरवाजे के दाएं पार्श्व के पत्थर के खम्भे (खम्भा सं0–1) का निचले भाग का छाया–चित्र संख्या–50।

3- पहले दरवाजे के बाएं पार्श्व के पत्थर के खम्भे (खम्भा सं0–2) का का छाया–चित्र संख्या–51।

4- पहले दरवाजे के बाएं पार्श्व के पत्थर के खम्भे (खम्भा सं0–2) का का छाया–चित्र संख्या–51।

5- पहले दरवाजे के बाएं पार्श्व के पत्थर के खम्भे (खम्भा सं0–2) के उपरी भाग का छाया–चित्र संख्या–54।

6- मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व के बाहर की ओर लगे पत्थर के खम्भे (खम्भा सं0–3) का छाया–चित्र संख्या–104।

7- मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व के बाहर की ओर लगे पत्थर के खम्भे (खम्भा सं0–3) का छाया–चित्र संख्या–105।

8- मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व के बाहर की ओर लगे पत्थर के खम्भे (खम्भा सं0–3) के निचले भाग का छाया–चित्र संख्या–109।

9- मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व में भीतर की ओर लगे पत्थर के खम्भे (खम्भा सं0–4) के निचले भाग का छाया–चित्र संख्या–114।

10- मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व में भीतर की ओर लगे पत्थर के खम्भे (खम्भा सं0–4) के निचले भाग का छाया–चित्र संख्या–115।

11- मन्दिर/मस्जिद की मुख्य भाग की पिछली दीवार के दायें पार्श्व के प्रारम्भ में लगे पत्थर के खम्भे (खम्भा सं0–7) के निचले भाग का छाया–चित्र संख्या–141।

12- मन्दिर/मस्जिद की मुख्य भाग की पिछली दीवार के दायें पार्श्व के प्रारम्भ में लगे पत्थर के खम्भे (खम्भा सं0–7) के बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–8) का छाया–चित्र संख्या–146।

13- मन्दिर/मस्जिद की मुख्य भाग की पिछली दीवार के दायें पार्श्व के प्रारम्भ में लगे पत्थर के खम्भे (खम्भा सं0–7) के बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–8) के निचले भाग का छाया–चित्र संख्या–147।

14- मन्दिर/मस्जिद की बीच भाग की पिछली दीवार के बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–9) के क्रम में बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–10) के निचले भाग का छाया–चित्र संख्या–166।

15- मन्दिर/मस्जिद की बीच भाग की पिछली दीवार के बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–9) के क्रम में बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–10) के निचले भाग का छाया–चित्र संख्या–167।

16- खम्भा सं0–11 के निचले भाग का छाया–चित्र संख्या–181।

17- खम्भा सं0–11 के निचले भाग का छाया–चित्र संख्या–186।

18- खम्भा सं0–12 के निचले भाग का छाया–चित्र संख्या–187।

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19- खम्भा सं0–13 के उपरी भाग का छाया–चित्र संख्या–195।
20- खम्भा सं0–14 के निचले भाग का छाया–चित्र संख्या–199।
21- खम्भा सं0–14 के निचले भाग का छाया–चित्र संख्या–199।

## मन्दिर/मस्जिद एवं खम्भो के श्वेत श्याम चित्रों का विवरण
## (अभिलेख संख्या–201 सी–1)

22. मन्दिर/मस्जिद के बाहरी और भीतरी दीवार के बीच के भाग में स्थित कौशल्या रसोई का चित्र संख्या–39।
23- मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व में बाहर की ओर लगे पत्थर के खम्भे (खम्भा सं0–3) का छाया–चित्र संख्या–55।
24- मन्दिर/मस्जिद की मुख्य इमारत के बीच के दरवाजे के दायें पार्श्व में बाहर की ओर लगे पत्थर के खम्भे (खम्भा सं0–3) के निचले भाग का छाया–चित्र संख्या–57।
25- मुख्य भाग की पिछली दीवार के दायें पार्श्व के प्रारम्भ में लगे पत्थर के खम्भे (खम्भा सं0–7) के क्रम में लगे अगले पत्थर के खम्भे (खम्भा सं0–8) के निचले भाग का छाया–चित्र संख्या–76।
26- बीच के भाग की पिछली दीवार के बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–9) के निचले भाग का छाया–चित्र संख्या–88।
27- खम्भा सं0–10 के निचले भाग का छाया–चित्र संख्या–91।
28- खम्भा सं0–13 के निचले भाग का छाया–चित्र संख्या–103।
29- खम्भा सं0–13 के क्रम में उसके बायें पार्श्व में लगे पत्थर के खम्भे (खम्भा सं0–14) का छाया–चित्र संख्या–104।
30- खम्भा सं0–14 के निचले भाग का छाया–चित्र संख्या–106।

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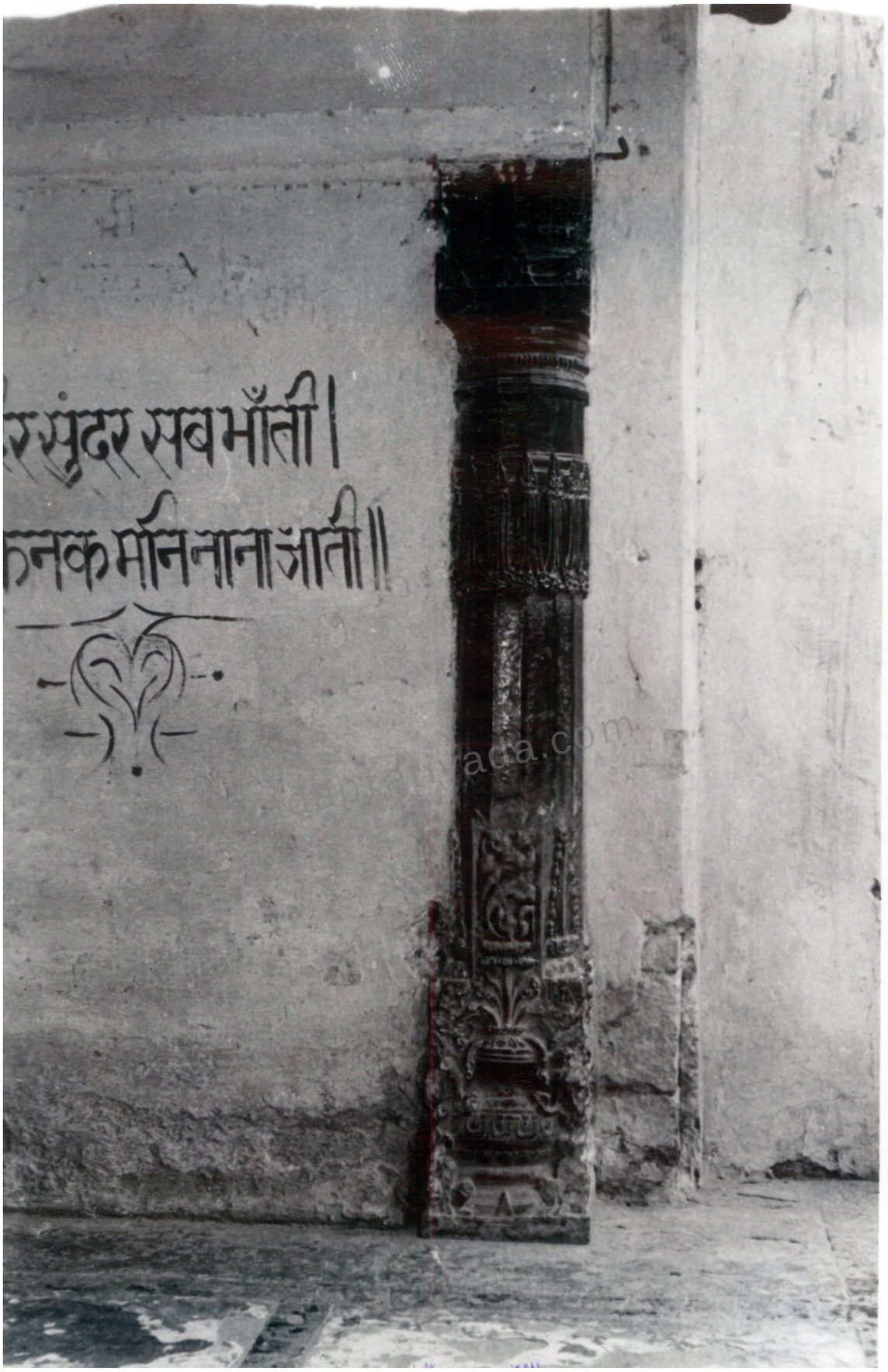


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306-G1

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH: LUCKNOW.

O.O.S. NO. 5 of 1989.

Bhagwan Sri Rama Lala Virajman at Sri Ram Janma Bhumi & others. .....Plaintiffs.

versus.

Sri Rajendra Singh & others. .....Defendants.

**List of documents filed on 07.02.2002 on behalf of the plaintiffs pursuant to the court's order dated 30.10.1996/12.7.2001 passed in the Civil Misc. Application No. 28 (O) of 1996**

This list of documents has been filed on behalf of the plaintiffs through their counsel Sri Vireshwar Dwivedi Advocate.

| Sl No. | Description of the documents | Pages. |
|---|---|---|
| 1. | Original report dated 3.2.2002 of Dr. K.V.Ramesh about the Ayodhya Vishnu Hari Temple inscription (with three photostat copies thereof) | 11 Ex O.S5—2 |

(Vireshwar Dwivedi)
Advocate. 07.02.02
Counsel for the Plaintiffs.

Lucknow.
Dated. 07.02.2002

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Hon'ble Sudhir Narain, J
Hon'ble S.R. Alam, J.
Hon'ble Bhanwar Singh, J.

The documents filed on 8.2.2002 are taken on record subject to objection and proof as required under the provisions of the Indian Evidence Act.

The defendants have also right to give evidence in rebuttal in respect of the evidence which is being taken on record.

Dt/- 30.7.2002

Sharma

Reader 8/2/2002
at 2.30 pm
8/2/02

Hon. Sudhir Narain, J
Hon. S.R. Alam, J
Hon. Bhanwar Singh, J

The plaintiff's in OS No. 5 of 1989 has filed two documents. The learned counsel for D.P.W 4 and other defendants may file objection within one week from today. List this application along with application no. 7 of 2002 on 25/2/2002

8/2/2002

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Ex0.0.5-2 306-C1/1

## Ayodhyā Viṣṇu-Hari Temple Inscription

K.V. Ramesh

The subjoined stone inscription is engeaved on a rectangular stone slab, the written area roughly covering an area of 115 cms X55. cms. The slab as at present extant is diagonally broken in two leading to the loss of a couple of letters in almost every line. Besides, the first and last two lines have suffered heavy damage resulting in the loss of many letters. All in all, the loss of letters have proved a handicap to epigraphists and Sanskritists in the matter of fully interpreting the contents of the text. Nevertheless, the overall purport and the crux of its import are clear beyond doubt. In the first instance a hurriedly prepared estampage, and in recent times, a high quality estampage as well as some photographs were all provided by Dr. S.P.Gupta, Chairman, Archaeological Society of India, New Delhi for which I am highly thankful to him.

The text of the inscription is written in fairly chaste Sanskrit, the orthographical features being regular for the period to which the inscription belongs, namely the middle of the 12th Century A.D. The inscription is not in any way dated, but may be assigned, with confidence, to the middle of the 12th Century on palaeographical grounds as well as the internal evidence provided by the inscriptional text in question.

But for the opening salutation to Śiva at the very beginning, the entire text of the inscription is composed in Sanskrit verse of fairly high literary excellence. As has been stated above, the palaeographical and orthographical features are normal for the period to which the inscription belongs, viz. the middle of the 12th century A.D. This was an important period of transition from classical Sanskrit to the North Indian vernaculars. This can be easily identified in contemporaneous inscriptions, including the present one, in the confusion in the use of class nasals and *anusvāra*, and in the employment of the sibilants and palatals.

As for the contents of the text, it is fully reflective of medeival vanity as far as the eulogies of the heroes mentioned in the inscription are concerned. The most important internal historical information we get from this epigraph is the mention of Govindachandra, obviously of the Gahadavala dynasty, who ruled over a fairly vast empire from 1114 to 1155 A.D.

Admitted Rajaja Ambika

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Verse 1 is entirely lost. Verse 2, which is badly mutilated, refers to Trivikrama and,hence, may have been composed in praise of Lord Viṣṇu. Verse 3, which is also badly damaged, seems to allude to the near-total decimation of the warrior clans by Bhārgava-Paraśurāma. Verse 4 refers to the emergence of a Kṣatriya family, heroes born in which successfully resurrected the decadent warrior clans. According to Verse 5, in that noble family was born the beloved of the people, Māme. Verse 7 speaks of his detachment from mundane thingswhile Verse 8 informs us that he bequeathed his realm and wealth to his son Sallakṣaṇa. Verses 9 to 14 contain conventional praises showered on this Sallakṣaṇa in which the poet has displayed a high level of poetic imagination. Verse 15 refers to the birth of his son whose stunning resemblance to his father was the talk among the people. Verse 16 refers to this son as Alhaṇa and credits him with retrieving the past power and glory of his family. While the next two verses (17 and 18) contain his conventional praise, verse 19 gives the information that his nephew, Meghasuta by name, as superseding a certain Anayacandra and obtaining the Lordship of Saketa-maṇḍala through the grace of the senior Lord of the earth, Govindacandra. While verse 20 lauds the military might of this hero, verse 21 gives the important information that, in order to ensure his easy passage into the heavens, Meghasuta built a lofty stone temple for the god Viṣṇu-Hari. From verse 22 we learn that he, who was responsible for the stability of Govindacandra's empire, was succeeded by thr younger Āyuṣyacandra as the Lord of Sāketa-maṇḍala. Verse 23 contains his conventional praise. According to verse 24, he set up residence in the city of Ayodhyā, which was adorned with lofty abodes, intellectuals and temples, and added to the entire Sāketa-maṇḍala thousands of small and big water reservoirs. Verses 25 and 26 contain more conventional praises of Āyuṣyacandra. Verse 27, which is partly damaged, alludes to the well-known episodes of Viṣṇu's incarnations as Narasiṃha, Kṛṣna, Vāmana and Rāma. The badly damaged verse 28 refers to a king (probably Āyuṣyacandra) as warding off the danger of invasion from the west (i.e., from the invading Muslim forces). Verse 29, which is incomplete, mentions the king Āyuṣyacandra.

The reference to Sāketa-maṇḍala is interesting. It is well

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known that North India, just as in the case of the South, was divided into administrave divisions called *maṇḍalas* ( see the word *maṇḍala* in the indices to H.C.Ray's monumental two-volume work ' The Dynastic History of Northern India', II edn., 1973, Delhi.).

TEXT

[Metres: verses 1(?), 2,3,4,10,13,20,21,27, Śārdūlavikrīḍitam; verses 5,6,7,17,19,24,25, 28, Vasantatilakā; verse 8, Śikhariṇī; verses 9, 22, 23,29 Upajāti; verses 11, 18, 26, Anuṣṭubh; verses 12, Hariṇī; Verse 14, Śālinī; verse 16, Rathoddhatā; verse 15, Mālinī]

१. . नमः शिवा[य][II*] - - - U U - U-U UU- - - U - - U - - - - UU-
U - U U U - - - U - - U - [I*] - - - U U - U - U U U - - - U - - U - - -
- U U - U - U U U - - - U - - U - - - - U U - U - U U U - - - U - - U
- [II* 1] - - - U U - स्-त्रिविक्रम-तनोर्-आ - U - - U - प्रांशुत्वेन निखर्व्व-षो-

२.डश-समुद्देशांदधानस्तनुं [I]
संवर्त्त-प्रमद्-ओद्धत्तःकुलगिरि-ग्राव-प्रहार-क्वणद्-ब्रह्माण्डं करसंपुटेन
विधुवन्-मध्यो ह - - U - [II*2] - - द्भार्ग्गव वि U - U U U -
द्वंसो(शोऽ)वतंसो भुवः I यस्मिन्-रा-

३. U U - ल-संक्लिमिर्-इव स्थायिन्य्-उदंचद्-भुज - - श्च्-ओपचिते
परार्थ-घटना वंध्य्-आननं जज्ञिरे II [3*] ते
चंडीपति-चंड-तांडव-चलच्-चूडा U - -U -
ब्रह्मांड्-ओच्च-कपाल-रंध्र-सरणी-प्रस्थायि-सत्कीर्त्तयः I वीरास्-तत्र कुले
जनिं जगृहि-

४.रे ये भार्ग्गवीय्-आहव-क्षीण-क्षत्रिय-शेष-रक्षण-विधौ (ब)द्धोऽभियोगग्रहः
II[4*]वंश्यन्-तद्-एव
कुलम्-आकुलता-निवृत्ति-निर्व्यूढम्-अप्रतिम-[विक्रम]-जन्मभूमिः I
यत्र्-आतिसाहस-सहश्र(स्र)-समिद्ध-धामा मामेऽजनिष्ट जगद्-इष्टतम्-ओत्त-

५.मश्रीःII [5*] मा मे दयास्तु वपुषि द्रविणेषु तृष्णा
निष्णातिर्-अप्य्-अविरसा सरसेंद्रिय्-आर्थे I इत्युद्गृणन्न्-अनुदिनं स
दिनेशवत्सो मामे प - U जगदे जगदेक[वीरः] II [6*]
तद्-युद्धकेलि-दलित्-आखिल-मेद-भिल्ल-पल्ली-सहस्र-वनितासु निकुंजगासु I
उत्कंट-

६. का विटपिनो विट-विष्टितानि ते स्वस्तनेषु जघनेषु मुहुर्-लिखंतः II [7*]
पुरा कीर्त्त्या न्यस्तन्-तदनु तनुन्-आध्यासितुमना मनस्वी स्वर्लोकं

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परिणतिम्-उपे[त्य्-आति]शयिनीं [I*] स सर्व्वस्वं क्षत्रं क इव भुवि सल्लक्षण-सुते श्रिया सार्द्धन्-दध्रे हुतभुजि विव-

७. श्वा(स्वा)न्-इव महः II

[8*]तद्-धाम-निस्सीमम्-अमह्यम्-अन्यैर्-अन्य्-ऐव सा काचन दान-शक्तेः I अमानुषं पौरुषम्-आविरासीत्-सल्लक्षणे विश्व-विलक्षणन्-तत् II [9*] खड्गः श्रीकर[वालत्-आ]धिकं(क)रणं वा(बा)हुर्-महावाहिनी कीर्त्तिः संभृत-[सू]पकार-विधये पाच्यं सदा दं-

८. शनं I राज्येन्-आपि विना निजोपकरणान्य्-एतानि निःकंटकं यत्-सां(सा)म्राज्य-परिच्छदं विरचिरे चिंता-वितान्-ओज्झितं(तम्) II [10*] समर्-आजिर-भाजोऽस्य चिरं निस्त्रिंश एव सः I [खड्गश्-च्-आ]पि धृतो मूर्ध्ना यो जहार्-आसु(शु) जीवितं(तम्) II [11*] [मलय-]वलयस्य्-आन्ते शांते

९. वियत्तटिनी तटे हिमगिरि-गुहागेह-द्वारे दरीम्-अधिनैषधीं I प्रथम-लिखितां सिद्धैर्-यस्य प्रशस्ति-पदावलीं पठति निपुणं स्त्रैणं मोदान्-नभस्थलचारिणां(णाम्) II [12*] कैलास्-आचल-मेखलासु मलय-स्वच्छेषु मेरोःशिरोभागे स्वर्गतरंगिणी-तटभुवि-

१०. स्थानेषु च्-आन्येष्व्-अपि I कृत्वा तर्प्पण-शिल्पजां प्रतिकृतिं वृद्ध-ओपदेशात्-पति-प्राप्त्यै खेचरकन्यकाभिर्-अनिशं यद्-बाहुर्-अभ्यर्च्यते II [13*] एज्यग्व सः पेशलैर्-इष्ट-सिद्धि-प्रा - - -पह्नरं स्वं जगद्भिः I गेहे यस्य श्री-विलास्-आभिरामे व्या-

११. गाद्वै तं गीयते चारण्-औघैः II [14*] अमरपुर-पुरंध्री-वं(बं)धुताम्-अव्यलीकां भजति सुकृत-रासौ(शौ) तत्र सल्लक्षण्-आख्ये I प्रतिवपुर्-इव तस्य प्राप्य सद्योऽनवद्यं सुतम्-उदित-विवेकं लोक-कौतूहलं तत् II [15*] अल्हणः प्रणय-पेशलः सतां गर्ज्जतां क्रकच-

१२. कोटिर्-उत्कटः I आनिनाय नय-निन्हवेन यः प्रहृतां प्रकृति-चंचलां श्रियं(यम्) II [16*] लोक्-ओत्तरः स खलु कोऽपि यदा' भिमुख्येऽहंकार-राशिर्-अगलच्-चिर-संभृतोऽपि I संसारि-पाश-भिदु - Uदृशैव यस्य जाताश्लथाः सुकृत दुःकृत कंचुकाश्च II [17*]

१३. पौरुष-प्रतिरंध्र्-ईति पुरंध्र्-ईति च बिभ्यतां I येन लोक्-आनुरुद्ध्-आपि प्रतिषिद्धा नग्-ओन्नतिः II [18*] तद्-भ्रातृजो जगति मेघसुतः श्रुताढ्यः श्रीमान्-अभूद्-अनयचंद्र-पद्-आभिलंघ्यः I गोविंदचंद्र-धरणींद्र

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गुरु-प्रसादात्-साकेत-मंडल-पतित्वम्-अ-

१४. लंभि येन II [19*] स(श)श्वत्संगर-रंग-नर्तित-रिपु-स्कंधेन युद्ध्-ओद्धुरा वीरास्-तेन न केवलं बलवता ये दुर्म्मदा मोचिताः I अप्य्-उद्दाम-चमु-प्रदान-निरत-स्वान्तेन च्-ऐकान्ततो दूर्-आरूढ-वयस्यता-मदम्-असौ कल्पद्रुमस्य्-आजितः II [20*] टंक्-ओत्खात-वि-

१५.

शाल-शैल-शिखर-श्रेणी-शिला-संहति-व्यूहैर्-विष्णुहरेर्-हिरण्य-कलश-श्री-सुन्दरं मन्दिरं I पूर्व्वैर्-अप्य्-अकृतं | नृपतिभिर्-येन्-एदम्-इत्य्-अद्भुतं संसार्-आर्णव-शीघ्र-लंघन-लघ्-ऊपायन्-धिया ध्यायता II [21*] गोविन्दचंद्र-क्षितिपाल-राज्य-

१६. स्थैर्याय निस्तंद्र-भुज्-आर्गलस्य I अथ प्रपेदेऽस्य पदं कनीयान्-आयुष्यचंद्रोऽल्हण-सूनुर्-एव II [22*] न साहसांकेन न शूद्रकेण तस्य्-ओपमानं विदधुः कवींद्राः I कृतं भिया यस्य पुरो न कामाद्-अन्येन मन्ये धनुर्-आततज्यं (ज्यम्) II [23*]

१७. उद्दाम-सौध-विबुध्-आलयनीम्-अयोध्याम्-अध्यास्य तेन नय-निन्हुत-वैशसेन I साकेत-मंडलम्-अखंडम्-अकारि कूप-वापी-प्रतिश्रय-तडाग-सहश्र(स्र)-मिश्रं II [24*] निद्रा-निरोध-विधये निजवल्लभानां हेमाचल्-आमल-शिलातल-तल्प-

१८. लीनाः I कस्तूरिक्-एण-तरुणी-श्रवण-ओपभोग्य-योग्यं जगुः सरस-मग्न-रसो यशोऽस्य II [24*] अविमुक्त-विशालाक्षी ललित्-आनंदिता सदा I कासी(श्-ई)व यस्य देहश्रीः सतां निर्व्वाण-कारणं(णम्) II [26*] अस्थिभ्यो वितरन्-हिरण्यक-

१९. सिपुं संयम्य वा(बा)णं रणे कुर्व्वाणो व(ब)लिराज-वा(बा)हु-दलनं कृत्वा व(ब)हून्-विक्रमान् I कुर्व्वन्-दुष्ट-दशाननस्य हनन - - U- - U कः कोऽप्य्-अन्यः स दश्-आधिको UUU- - -U पुण्यो तता [27*] अद्येह -U नृपते UU

२०. तो निहन्ति पाश्चात्यभीतिमपि भीषणबाहुदंडः I तेजः प्रभावमहतां महसीयमेव पूर्व्वापरा UUU-UU-U-- [28*] पुण्यैः प्रजानां परिणामवद्भिः ख्याते क्षितौ राज U-U-श्री [I*]आयुष्य[चंद्र] UU-

Transliteration

Rajshri

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1. . nama: śivā[ya] ( there is space enough in the erased portion for accommodating a verse in a lengthy metre like Śārdūlavikrīḍitam).-
- - U U - s-Trivikrama-tanor-ā - U - - U - prāṃśutvena nikharva-ṣo-
2. ḍaśa-samuddeśāṃ-dadhānas-tanuṃ saṃvartta-pramad-oddhata:-kulagiri-grāva-prahāra-kvaṇad-bra hmāṇḍaṃ kara-sampuṭena vivu(bu)dhān-madhyo ha - - U -[ll 2*] [śrīmad]-Bhārggava vi U - U U U -dvaṃso(śo')vataṃso bhuva: l yasmin-rā
3.U U - la-saṅklimir-iva sthāyiny-udañcad-bhuja - - ś-c-opacite parārtha-ghaṭanā vandhy-ānanaṃ jajñire ll[3*] te Caṇḍīpati-caṇḍa-tāṇḍava-calac-cūḍā U - - U - brahmāṇḍ-occa-kapāla-randhra-saraṇī-prasthāyi-satkīrttaya: l vīrās-tatra kule janiṃ jagṛhi-
4.re ye Bhārggavīy-āhava-kṣīṇa-kṣatriya-śeṣa-rakṣaṇa-vidhau-(ba)ddho' bhiyogagraha:ll[4*] vaṃśyan-tad-eva-kulam-ākulatā-nivṛtti-nirvyūḍham-apratima-[vikrama]-janmabhūmi:l yatr-ātisāhasa-sahaśra(sra)-samiddha-dhāmā Māme'janiṣṭa jagad-iṣṭatam-otta-
5.maśrī:ll[5*] mā me dayāstu vapuṣi draviṇeṣu tṛṣṇā niṣṇātir-apy-avirasā sarasendriy-ārthe l ity-udgṛṇann-anudinaṃ sa Dineśavatso mā me pa - U jagade jagadeka[vīra:] ll[6*] tad-yuddha-keli-dalit-ākhila-Meda-Bhilla-pallī-sahasra-vanitāsu nikuñjagāsu l utkaṇṭa-
6. kā viṭapino viṭa-viṣṭitāni te sva-staneṣu jaghaneṣu muhur-likhanta: ll[7*] purā kīrttyā nyastan-tadanu tanun-ādhyāsitumanā manasvī svarlokaṃ pariṇatim-upe[ty-āti]śayinīṃ sa sarvvasvaṃ kṣatraṃ ka iva bhuvi Sallakṣaṇa-sute śriyā s-ārddhan-dadhre Hutabhuji viva-
7. śvā(svā)n-iva maha: ll[8*] tad-dhāma-nissīmam-amahyam-anyair-any-aiva sā kācana dāna-śakte: l amānuṣaṃ pauruṣama-āvirāsīt-Sallakṣaṇe viśva-vilakṣaṇan-tat ll[9*] khaḍga: śrīkara[vālat-ā]dhikaṃ(ka)raṇaṃ vā(bā)hur-mahāvāhinī kīrtti: sambhṛta-[sū]pakāra-vidhaye pācyaṃ sadā daṃ-
8. śanāṃ l rājyen-āpi vinā nijopakaraṇāny-etāni ni:kaṇṭakaṃ yat-sāmrājya-paricchadaṃ viracire cintā-vitān-ojjhitaṃ(tam) ll[10*] samar-ājira-bhājo'sya ciraṃ nistriṃśa eva sa: l[ khaḍgaś-c-ā]pi dhṛto mūrdhnā yo jahār-āsu(śu) jīvitam(tam) ll[11*]

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[Malaya]-valayasy-ānte śānte

9. Viyattatinī tate Himagiri-guhā-geha-dvāre darīm-adhinaiṣadhīṃ I prathama-likhitāṃ siddhair-yasya praśasti-padāvalīṃ paṭhati nipuṇaṃ straiṇaṃ modān-nabhasthalacāriṇāṃ(ṇām)II[12*] Kailāsācala-mekhalāsu Malaya-svaccheṣu mero:śirobhāge svargga-taraṅginī-taṭabhuvi-

10. sthāneṣu c-ānyeṣv-api I kṛtvā tarppaṇa-śilpajāṃ pratikṛtiṃ vṛddh-opadeśāt-pati-prāptyai khecarakanyakābhir-aniśaṃ yad-bāhur-abhyarcyate II[13*] ejya-gva sa: peśalair-iṣṭasiddhi-prā - - -pahnaraṃ svaṃ jagadbhi: I gehe yasya śrī-vilās-ābhirāme vyā-

11. gād-vai taṃ gīyate cāraṇ-aughai: II[14*] Amarapura-purandhrī-vandhutāmavyalīkāṃ bhajati sukṛtarāsau tatra sallakṣaṇākhye I prativapuriva tasya prāpya sadyo'navadyaṃ sutamuditavivekaṃ lokakautūhalaṃ tat II[15*] Alhaṇa: praṇaya-peśala: satāṃ garjjatāṃ krakaca-

12. koṭirutkaṭa:I āninīya nayaninhavena ya: prahṛtāṃ prakṛticañcalāṃ śriyaṃ (yam) II[16*] lokottara: sa khalu ko'pi yadābhimukhye'haṅkārarāśiragalaccirasambhṛto'pi I saṃsāripāśabhidu - udṛśaiva yasya jātāślathā: sukṛta du:kṛta kañcukāśca II[17*]

13. pauruṣapratirandhrīti purandhrīti ca bibhyatāṃ I yena lokānuruddhāpi pratiṣiddhā nagonnati: II[18*] tadbhrātṛjo jagati meghasuta: śrutāḍhya: śrīmānabhūdanayacandrapadābhilaṅghya: I govindacandra dharaṇīndra guruprasādātsāketamaṇḍalapatitvama-

14. lambhi yena II[19*] saśvatsaṅgararaṅganartitaripuskandhena yuddhoddhurā vīrāstena na kevalaṃ balavatā ye durmmadā mocitā: I apyuddāmacamupradānaniratasvāntena caikāntato dūrārūḍhavayasyatāmadamasau kalpadrumasyājita: II[20*] ṭaṅkotkhātavi-

15. śālaśailaśikharaśreṇīśilāsaṃhativyūhairviṣṇuharerhiraṇyakalaśaśrī sundaraṃ mandiraṃ I pūrvvairapyakṛtaṃ kṛtaṃ nṛpatibhiryenedamityadbhutaṃ saṃsārārṇava-śīghra-laṅghana-laghūpāyan-dhiyā dhyāyatā II[21*] govindacandra-kṣtipāla-rājya-

16. sthairyāya-nistandra-bhujārgalasya I atha prapede'sya padaṃ kanīyān-Āyuṣyacandro'lhaṇa-sūnur-eva II[22*] na Sāhasāṅkena

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na Śūdrakeṇa tasy-opamānaṃ vidadhu: kavīndrā:I kṛtaṃ bhiyā yasya puro na kāmād-anyena manye dhanur-ātatajyaṃ (m) II[23*]
17uddāma-saudha-vibudh-ālayanīm-Ayodhyām-adhyāsya tena naya-ninhuta-vaiśayena I Sāketa-maṇḍalam-akhaṇḍam-akāri kūpa-vāpī-pratiśraya-taḍāga-sahaśra(sra)-miśraṃ(śram) II[24*] nidrā-nirodha-vidhaye nija-vallabhānāṃ Hemācala-āmala-śilātala-talpa-
18.līnā:kastūrik-eṇa-taruṇī-śravaṇ-opabhogya-yogyaṃ jagu: sarasa-magna-raso yaśo'sya II[25*] avimukta-viśālākṣī lalit-ānanditā sadā I kāsīva yasya dehaśrī: satāṃ nirvvāṇa-kāraṇaṃ(ṇam) II[26*] asthibhyo vitaran-Hiraṇyaka-
19. sipuṃ saṃyamya Vā(Bā)ṇaṃ raṇe kurvvāṇo Va(Ba)lirāja-vā(bā)hu-dalanaṃ kṛtvā va(ba)hūn-vikramān I kurvvan-duṣṭa-Daśānanasya
hanana - - U - - U ka: ko'py-anya: sa daś-ādhiko U U U - - - U puṇyo tatā II[27*] ady-eha - U nṛpate U U
20. to nihanti pāścātya-bhītim-api bhīṣaṇa-bāhu-daṇḍaṃ:(m) I teja: prabhāva-mahatāṃ mahas-īyam-eva pūrvv-āparā U U U - U U - U - - [28*] [puṇyai] : prajānāṃ pariṇāmavadbhi: khyāte kṣitau rāja . . . . . śrī Āyuṣyaca . . . . . .

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TRANSLATION

Line 1. . . Obeisance to [Lord*] Śiva . . . . . .
Lines 1-2, verse 1. [This line is nearly totally erased. But there is enough space for a verse in a lengthy metre such as *Śārdūlavikrīḍitam* ].
Lines 1-2, verse 2. . . . of the physique of [Lord] Trivikrama . . . . by His height containing within His body the sixteen doctrines(or *mahā-vidyās*) . . . . . in Whose palm He holds the universe like (holding) the Moon, whose *kulagiri* ( in the case of Bhārata-varṣa, one of the seven great mountain ranges, *viz*., Mahendra, Malaya, Sahya, Śuktimat, Ṛkṣa, Vindhya and Pāriyātra) whose falling rocks(,while striking one another,) create noise had, out of wanton arrogance . . . . . .
Lines 2-3, verse 3. The illustrious Bhārgava (i.e., Paraśurāma) . . . . . an ornament of the earth . . . . like insects . . . . with firm hands upraised . . . . . having increased, events brought into existence, barren faces. . . . . .
Lines 3-4, verse 4. during the violent dance of the Lord of (the

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goddess) Caṇḍī ( i.e., Lord Śiva) , from thr rocking head-jewel . . . . genuine reputations which emanated from the opening in the skull-shaped spherical half of the universe . .In that family heroestook their birth, who were determined to resurrect the warrior clan which had been rendered weak by the wars waged by Bhārgava (Paraśurāma) (against them).

Lines4-5, verse 5. Noble was that very family which was the birth-place of valour which had successfully removed the sufferings of the other (Kṣatriya clans) in which Māme, the abode of thousands of perfect and extremely valorous deeds and who was the utmost favourite of the world.

Line5, verse 6. That very Son of the Sun (i.e., Karṇa), Māme, the unequalled hero of the world, uttered everyday the words " may I have no mercy on (my) body, may I not hanker for material wealth,may I be diligently disinterested in sensual temptations . . . .

Lines 5-6, verse 7. The thorny trees, like the sensuous villains, repeatedly wrote ( i.e., scratched) on the skins of the breasts and hips and loins of the womenfolk of the tribal villages of the plains and hills who had taken refuge in the thickets as a result of the destruction of their abodes in sportive wars waged by him.

Lines 6- 7, verse 8. His fame alone having pervaded till then the heavens, the high-minded [Māme], wishing to go to the heavens in person and reside there in that wonderful world, he bequeathed his entire realm along with all the wealth to his son Sallakṣaṇa just as the Sun-god had bequathed all his lustre to the Fire-god.

Line 7, verse 9. As a result of some unknown power of the gift of that realm, which had no bounds and was other-worldly, a super-human valour manifested itself in Sallakṣaṇa; it was indeed an earthly exception.

Lines 7- 8, verse 10. The sword was at the tip of his fingers, his hand was verily the great army, his fame, like sumptuously cooked delicacies, were ever palatable; even without a kingdom to rule, these personal instruments enabled him to spread extensively an empire *sans* worries.

Line 8, verse 11. He who was for long intervals enjoying himself on battle-fields, bore on his head his ruthless sword, which was quick to end the lives (of his enemies).

Lines 8-9, verse 12. Within the serene surroundings of the Malaya mountain, on the banks of the heavenly Ganges, at the entrances of the cave-dwellings of the Himalayas, in the caverns in which the

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hunter-tribes dwell, the accomplished womenfolk gaily sing (literally, read) the strings of his eulogy composed for the first time by the semi-divine beings moving about in the skies.

Lines 10-11, verse 13. On the advice tendered by the elders, in the terrains of the Himalayas, in the pristine pure regions of the Malaya (mountains), in the lands along the banks of the heavenly Ganges as well as in other regions the semi-divine unmarried girls, with intent to gain husbands, ever offer worship to the hands of the satiating images sculpted in his (i.e., Sallakṣaṇa's) likeness.

Lines 10- 11, verse 14. He who is to be offered oblations by the beautiful for the realization of their desires . . . . himself by the worlds . . . . in whose abode, which is pleasing with wealth and happiness, hi is sung about by multitudes of celestial singers.

Lines 11-12, verse 15. The people look upon as a phenomenon the fact that, Sallakṣaṇa, who was, through good fortune, enjoying the genuine company of the damsels of the heavens, had happily begotten a son who, by appearance, was no different from his father.

Lines 11- 12, verse 16. [That son] Alhaṇa, who was the beloved of the good people, is like a pointed saw to the war-mongers. He retrieved the splendour of the habitually fickle-minded Goddess of wealth by means of fair and persuasive means.

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Line 12, verse 17. He was indeed extraordinary and whenever he confronted (his foes the heap of their) arrogance, accumulated over a protracted period, melted away. The garb of good deeds and bad deeds (worn by them) slipped away by his mere looks.

Line 13, verse 18. He was the destroyer of (his enemies' manliness, and made those who were afraid effeminate; as against the belief among the people, his eminence far dwarfed that of the lofty mountains.

Lines 13-14, verse 19. His nephew (literally brother's son), the widely celebrated Meghasuta, the illustrious one, who superceded Anayacandra; he earned the lordship of Sāketa-maṇḍala through the grace of his elder, the Lord of the earth, Govindacandra.

Line 14, verse 20. Not only did he, who was powerful, put an end to the arrogant warriors who were dancing in unrestrained frenzy in the battles constantly fought by him, but he also gave (to his people) an excellent army which was replete with (soldiers comparable to ) the wish-fulfilling trees.

Lines 14-15, verse 21. By him, who was meditating in his mind on

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the easiest means of quickly jumping across the ocean of worldly attachments, was erected this beautiful temple of [The god] Viṣṇu-Hari, [on a scale] never before done by the preceding kings, compactly formed[i.e. built] with rows of large and lofty stones which had been sculpted out.

Lines 15-16, verse 22. The position of Alhaṇa, whose tireless shoulders were like safety latches for the stability of the king Govindacandra's empire, was subsequently occupied by his younger (son?) Āyuṣyacandra.

Line 16,verse 23. Great poets dared not compare him with Sāhasāṅka and Śūdraka; out of sheer fear none save the God of Love dared draw the bow-string in his presence.

Line 17, verse 24. By him, who was of good conduct, and abhorred strife, while residing at Ayodhyā, which had towering abodes, intellectuals and temples, Sāketa-Maṇḍala was endowed with thousands of wells, reservoirs, alms-houses, tanks.

Lines 17-18, verse 25. The young damsels, who were as attractive as the female musk-deer and does, while they rested on the cool surfaces of the Himalayan rocks, sang about his (i.e., Āyuṣyacandra's) fame.

Line 18, verse 26. Whose bodily splendour, which was ever characterised by glowing eyes, was at all times pleasant with gentle feelings, was a source of salvation for the good just as (the holy pilgrimage centre) Kāśī is.

Lines 18-19, verse 27. Separating [the flesh and blood of the demon] Hiraṇyakaśipu from his skeleton, subduing [the demon] Bāṇa in battle, tearing asunder the arms of the [demon-]king Bali, and performing many valorous deeds, having killed the evil Ten-headed [demon Rāvaṇa], . . . . . .

Lines 19-20, verse 28. And now, the fierce arms of the ruler . . . annihilates even the fear caused by the westerns(i.e., the Islamic invaders from the west).The brilliance of the mighty great ones . . . east and west . . . .. .

Line 20, verse 29. Because of the subjects' effective acts of merit, the king being famous in the world . . . . . the illustrious Āyuṣyacandra . . . . . .

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Ex O.O.S.-5 – 2

Proved by O.P.W. 10 Dr. K.V. Ramesh on 11-11-2002.

Note. This document comprises into 11 pages

By order of the Court

29.11.2007

O.S.D. (R.J.B.-B.M.)

Admitted Rayana Avulli. for deft no 20 in rosno 4/1989

Denial for deft No 4 24/1/07

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**Paper No. 319/1Ga**
**Ext.15.**

Copy of report of the Deputy Commissioner Faizabad in compliance with Commissioner's dated 14.5.1877 recorded in the appeal of Mohd. Asgar incharge of the Janam Asthan Mosque at Ajodya kept in Mis. Appeal no. 56 decided on 13.12.77 by the Commissioner, Faizabad Dn in re Mohd. Asghar Vs. Khem Dass.

Report called for by Commissioner's note of 14 May 1877 recorded on the appeal of Mohammad Asgur in charge of the Janum Asthan Mosque at Ajdodhia.

---

1.A doorway has recently been opened in the wall of the Janum-Asthan not at all in Baber's mosque, but in the wall which in front is divided from the mosque by a railing. This opening was necessary to give a separate suit on fair days to visitors to the Janum-Asthan. There was one opening only, so the crush was very great and life was in/dangered. I marked out the spot for the opening myself so there is no need to depute any European officer. This petition is merely un/attempt to annoy the Hindu by making it dependent on the pleasure of the mosque people to open or close the 2nd door in which the Mohamdans can have …..... interest.

2. No objection was made to the opening of this second door.

3.On the 10th November 1873 Baldeo Das was ordered in writing by the Deputy Commissioner to remove an image placed on the Janum-Asthan platform. A report was made by someone (probably a police officer) that he had gone to the house of Baldeo Dass and found that the latter had gone to Gonda. The order was explained to Gyandas and other priests who said could not carry out the order. The order passed on this (15 …. was that if the other party (i.e. the complainant) would name person on whom an order of removal could be served such ….. should be served.

4. These apparently the matter-rested. There is no later on the file.

Sd. g.....
Dy Commissioner

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**Paper No. 320/Ga**

**Ext. 16.**

Copy of Commissioner's order dated 13.12.77 in

Misc. Appeal No. 56 Mohd. Asghar Vs. Khem Dass.

Claim:- Dispute about open of a door in the Mosque compound wall of Janam Asthan Ajodya Oudh Khas Parg. Haveli Oudh Distt. Faizabad.

As the order in question was opened by the Deputy Commissioner in the interests of the public safety I decline to interfere.

Appeal dismissed.

13.12.77 Sd. Illegible

Faizabad O. Commissioner.

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Copy of Commissioner's order dated 13.12.77 in

Misc. appeal No.56 Mohd Asghar Vs. Khem Dass.

Claim:-Dispute about open of a door in the Mosque compound wall of JanamAsthan Ajodya Oudh Khas Parg. Haveli Oudh Distt. Faizabad.

As the door in question was opened by the Deputy Commissioner in the interests of the public safety I decline to interfere Appeal dismissed.

Sd. Illegible.

O.Commissioner.

13.12.77
Faizabad.

Har Nandan Kishor
29/5/57

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COURT FEE INDIA TWO ANNAS 2As

COURT FEE INDIA EIGHT ANNAS 8As

COURT FEE INDIA 8As EIGHT ANNAS

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1835

Genuineness admitted
Contents Denied
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بعدالت جناب سب جج صاحب بہادر مقدالہ

نقل تجویز مستوجہ مسل مقدمہ ابو عزیز بنام

محمد مہ سید محمد اصغر بنام راجہ بیر داس مقبلہ ۱۰ جون

تجویز عدالت حسبقہ

آج یہ مسل بحاضری مع بعض زور وکیل مدعا علیہ پیش ہو کر بمد خط مسل واضح ہوا کہ مقدمہ میں یہ دو امر منفع للب قرار پائی ہیں اوّل یہ کہ آیا مع بعض نصف نصف سہولیہ ثبوتی جو بوجہ وکث سنیں پائی نہیں رہے ہیں یا صرف مدعا علیہ۔

دوم اگر وکیل نے بعد سنہ ۱۲۸۶ف و سنہ ۱۲۸۶ف پہ کر یہ تحصیلی وکث ہوئی۔

ثبوت سے مدعی نے پانچ گواہان و مدعا علیہ دو گواہان پیش کئے گواہ مدعی اگرچہ بظاہر معید مطلب مدعی گواہی دیتے ہیں و گواہان مدعا علیہ معید رہنے وقوع ہے۔ لیکن بمقابلہ بیانات گواہان مدعی کے رسیس عدالت سے سرسری بیانات گواہان مدعا علیہ کو موثر و مرجح بدیں وجہ ہے کہ خود اپنے گواہ گنگا بہرسا دفانوگو مرسہ گواہ مدعی بیانات گواہان مدعا علیہ حاصل ہے کہ ہمیشہ سے بالیاری گذشتہ صدر مدعا علیہ پیشکار آمدنی تحصیلی وصول کرتا رہا ہے یہ بیان فانوگو گواہ مدعی نہایت منجب ہے کہ باوجود نہ پانے کسی سال منافع آمدنی تحصیلی دوکانات مدعی کے صرف رسمخانہ زبانی مدعی بر خلاف گذشتہ کمیونسر فانوگو نے نصف نصف آمدنی پر معاملہ کے بیان دراصل ہو جانا مدعا علیہ کا عرضیاً خلاف قیاس و عقل ہے کہ زبانی رسمخانہ تحصیلدار و اپنے فانوگو سے

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न: ५

فیصلہ پر استحقاق دائمی اپنے کو دوام کے لئے کوئی شخص دیدیوے اگر حاکم بنظر انصاف عدالتانہ فیصلہ ہمچو قسم کرتا ہے تاہم اپیل جوڈیشلی تک لوگ باز نہیں آتے چنانچہ عدالت کے سوال جرح پر قانونگو کے زبان سے بیساختہ یہ جواب نکل گیا کہ بنظر مصلحت خلاف گذشتہ نصفا نصف فریقین کا حصہ آمدنی میں قرار دیا گیا وہ مقام بیان قانونگو قابل ملاحظہ ہے اس عدالت کے نزدیک اگر کسی وجہ خاص سے ایسا ہوا بھی ہو جسکا روئداد مقدمہ سے تعین اس عدالت کو نہیں ہے وایک آمدنی میلہ کے بالفرض نصفا نصف تقسیم ہو جاوے مگر جبکہ دیگر میلہ اسطرف چار سال چار سال میں کے

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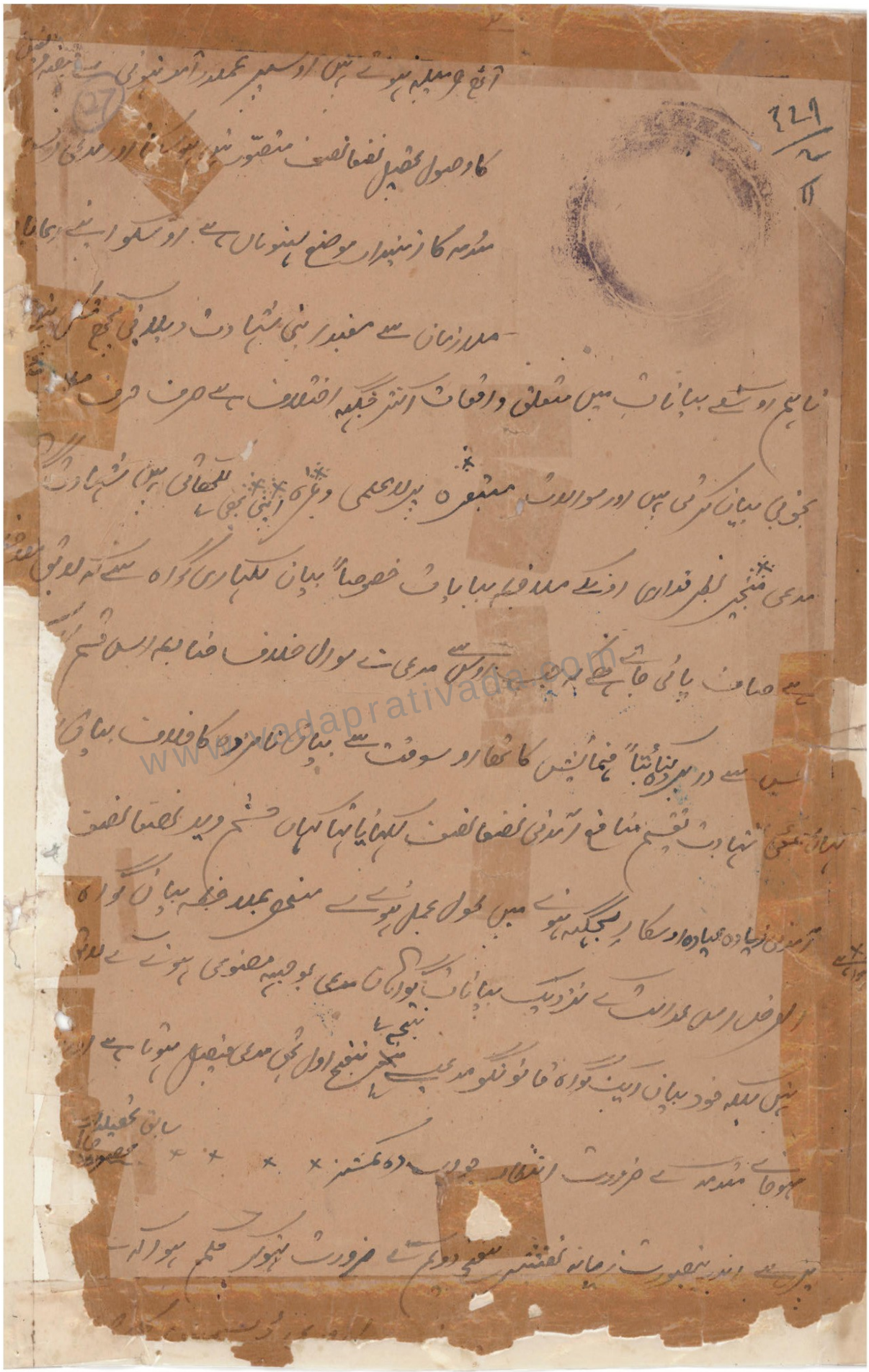

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**<u>एक्जिबिट-17</u>**

बअदालत ज़नाब सब जज साहब बहादुर फ़ैज़ाबाद

तजवीज अदालत हक़ीक़ा मुकदमा सैय्यद मुहम्मद असग़र बनाम रघुबर दास फैसला 18 जून सन् 1883 नकल तजवीज़ मशमूल मिसल मुकदमा अलिया नम्बरी नम्बर 1374/943 अदालत खफ़ीफ़ा आज यह मिसिल बहाज़िरी फ़रीकैन और वकील मुद्दालेह पेश होकर बुमलाहिज़ा मिसिल वाज़ा हुआ और इस मुक़दमा में यह दो अम्र तनकीह तलब क़रार पाये हैं। अव्वल यह कि आयां फ़रीक़ैन निस्फ़ किराया बैठकी चबूतरा व तख़्त सनीनयाफ़्ता में पाते रहे हैं या सिर्फ मुद्दालय ? दोयम, अगर फ़रीक़ैन तो किस क़दर आमदनी सन् 1288 फ़0 व 1289 फ़0 यह किराया बैठकी व तख्त हुई ?सबूत में मुद्दई ने पांच नफ़र गवाहान व मुद्दालय ने दो नफ़र पेश किये, गवाहान मुद्दई अगरचे वज़ाहिर मुफ़ीद मतलब मुद्दई गवाही देते हैं जो गवाहान मुद्दालय मुफ़ीद अपने फ़रीकैन के लेकिन बमुकाबिले बयानात गवाहान मुद्दई के इस अदालत के नज़दीक बयानात गवाहान मुद्दालय को फ़ौक़ियात व तरज़ीह बदीं वजह है कि ख़ुद एक गवाह गंगा प्रसाद क़ानूनगो परगना गवाह मुद्दई से तसदीक़ बयानात गवाहान मुद्दालय हासिल है कि हमेशा से बसालाहे गुज़िस्ता सिर्फ़ मुद्दालय लेना कुल आमदनी ठेकी वसूल करता रहा है । यह बयान क़ानूनगो गवाह मुद्दई निहायत तॉजुबख़ेज़ है कि बावजूद न पाने किसी साल मुनाफा आमदनी बैठकी की दुकानात मुद्दई के सिर्फ इस्तग़ासा ज़बा मुद्दई पर ख़िलाफ़ गुज़िस्ता क्योंकर क़ानूनगो ने निस्फ़ा निस्फ़ आमदनी पर मामला फ़रीक़ैन से किया व राज़ी हो जाना मुद्दालय का सरीहन ख़िलाफ़ क़यास व अक़ल है कि जबानी इस्तगासा तहसीलदार व एक क़ानूनगो के फ़ैसला पर हस्तहक़ाक दायमी अपने को दवाम के

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लिए कोई शख़्स दे देवें। अगर हाकिम बनज़र इन्साफ़ अदालताना फ़ैसला हम लो क़िस्म करता है ताहम अपील जुडीशियली तक वाज़ नहीं आते चुनांचे अदालत के

सवाल जिरह पर क़ानूनगो ज़बान से बसाख़्ता यह मसलेहत ख़िलाफ़ गुज़िश्ता निस्फ़ा निस्फ़ फरीकैन का हिस्सा आमदनी में क़रार दिया गया । वह पैग़ाम बयान क़ानूनगो क़ाबिले मुलाहिज़ा है, इस अदालत के नज़दीक अगर किसी वजह ख़ास से ऐसा हुआ भी हो जिसका रुव्दाद मुक़दमा से यक़ीन इस अदालत को नहीं है व एक आमदनी मेले के विलफ़र्ज निस्फ़ा निस्फ़ तक़सीम भी हो जावे मगर जब कि दीगर मेला इस तरफ़ चार साढ़े चार साल में के आठ नौ मेले होते हैं उस पर अमल दरआमद न होने से क़ब्जा फ़रीक़ैन का वसूल तहसील निस्फ़ा निस्फ़ मुतसव्वर नहीं हो सकता और मुद्दई उस मुक़दमा का ज़िमीदार मौज़ा शहनवां है उसकी अपने रियाया व मुलाज़मान से मुफ़ीद अपनी शहादत दिलानी कुछ मुश्किल नहीं है ताहम उसके बयानात में मुतालिक वाक़ियात अकसर जगह अरनतलाफ़ है सिर्फ सिर्फ़ मतदब मुद्दई को बख़ूबी बयान करने हैं और सवालात मातबरा पर लाइल्मी वगैरह अपनी भी लिखाते हैं । शहादत गवाहान मुद्दई बतरफ़दारी उनके मुलाहिज़ा बयानात ख़सूसन बयान लिखा दिये गवाह से लायक़ मुलाहिज़ा है साफ़ॅ पाई जाती है कि जब उसने मुद्दई से सवाल ख़िलाफ़ ज़ावता इस किस्म का किया जिससे दर पर्दा क़नायतन फ़हमाइश का था उस वक्त से बयान नामज़दा का ख़िलाफ़ बयान साबित हो गया जिसकी शहायत तकसीम मुनाफ़ा आमदनी निस्फ़ा निस्फ़ लिखाया था यहाँ चश्मदीद निस्फ़ा निस्फ़ बकीद आमदनी ज़्यादा मियादा उसका इस जगह न होने में तूल अमल होने से मनुहार बमुलाहिज़ा बयान गवाह उलअर्ज़ गया इस अदालत के नज़दीक बयानात गवाहान मुद्दई बेवजह मसनूई बहोने के लायक़ नहीं बल्कि खुद बयान एक गवाह कानूनगो मुद्दई से तनक़ीह अव्वल बहक़ मुद्दई फ़ैसला होता है और हो जाने मुकद्दमा के ज़रुरत इन्तज़ार जवाबदेह कमिश्नर ..... साबिक तहसीलदार हाल असिस्टेन्ट कमिश्नर पर है । अन्दरुनी सूरत जमाना नुक्तसर तनकीह दोयम के जरुरत ना होकर हुक्म हुआ कि हस्ब दफा 154 जाब्ता दीवानी

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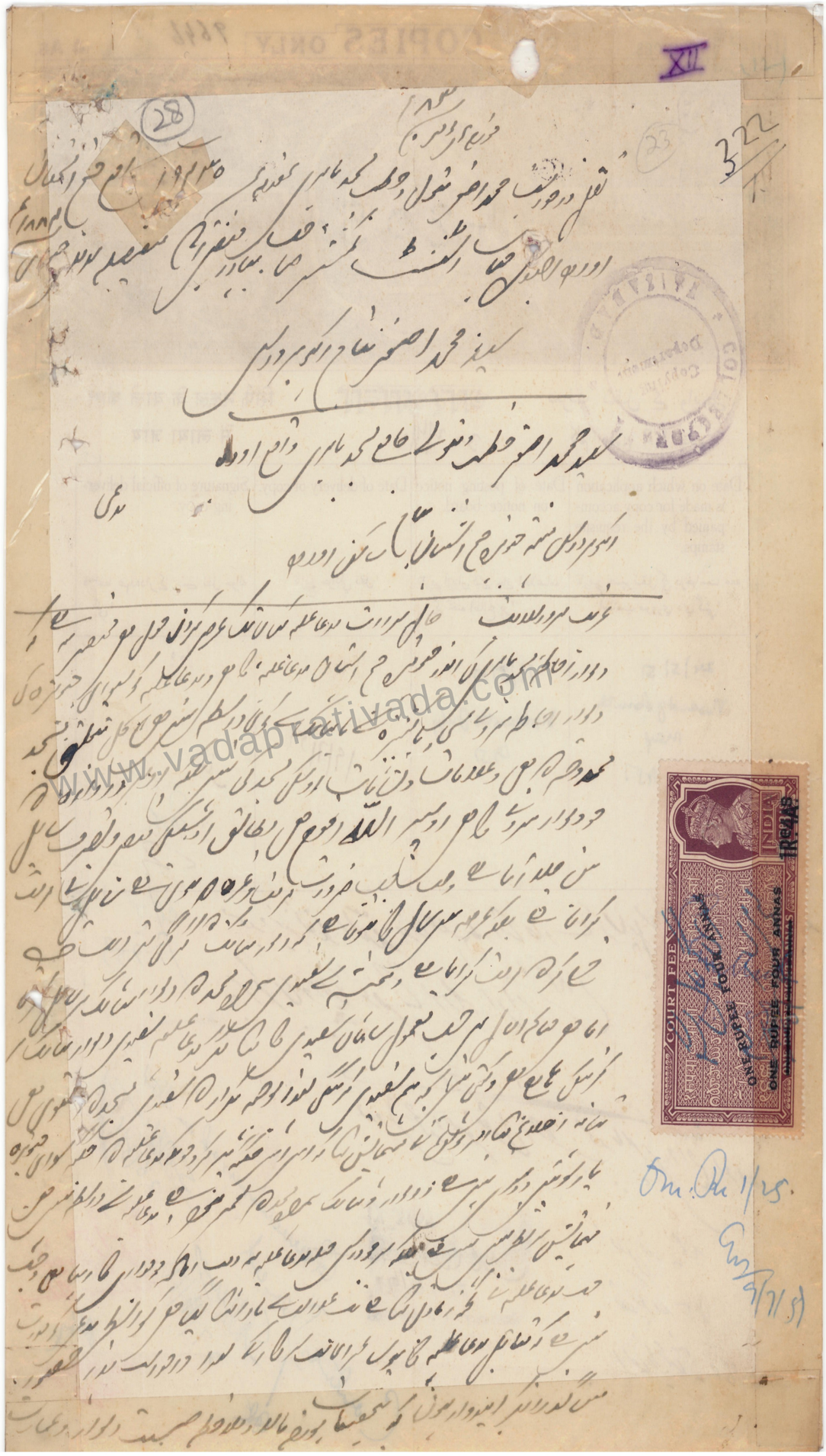

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**<u>एक्जिबिट-18</u>**

मोरखा 2 नवम्बर 1883 ई0

नकल दरख्वास्त मुहम्मद असग़र मुतवल्ली व

ख़तीब मस्जिद बाबरी बमुकदमा नं0 96435 वाक़्या जन्म अस्थान अवध

बइजलासी साहिब असिस्टेन्ट कमिश्नर साहिब बहादुर फ़ैजाबाद 22 जनवरी सन्1884 ई0।

सैय्यद मुहम्मद असग़ार बनाम रघुबर दास

सैय्यद मुहम्मद असग़ार खतीब व

मुतवल्ली जामा मस्जिद बाबरी वाक़्या अवध.....मुद्दई

बनाम

रघुबर दास महन्त चबूतरा जन्मअस्थान साकिन अवध.....मुद्दालय

गरीब परवर सलामत। हाल शरायत मुद्दालिया कहां तक अर्ज़ करूँ हाल जो मुख़्तसर ये है कि दीवार अहाता मस्जिद बाबरी के अन्दर चबूतरा जन्म अस्थान मुद्दालया का है और मुद्दालया की सिवाय चबूतरा के दीवार अहाता बेरुनी से या कटेहरा से या फाटक से कोई वास्ता नहीं है कुल मुत्तालिका मस्जिद व ममदुहा के है व अलामात व निशानात उसमें मस्जिद के नहीं बल्कि ऊपर दरवाजा जा दीवार बैरुनी का है उस पर अल्लाह का रक़अ हे मुताबिक उसके फ़ैज़ वबसर्फ़ सायल में चला आता है व जब ज़रुरत मरम्मत वग़ैरह की होती है, सायल ने मरम्मत कराया है बल्कि अर्सा तीन साल का हुआ है कि दीवार फाटक की गिर गई तब 50 रु0 खर्चा करके मरम्मत कराया है हमेशा से सफेदी हमराह मस्जिद कि दीवार फाटक पर सायल करता आया है चुनाँचे इस साल भी हस्ब मामूल सामान सफ़ेदी का लिया मगर

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**(R.S. No.2/50)**

**एक्जिबिट-19**

नकल दरख्वास्त शीतल दुबे थानेदार अवध मोरखा 28 नवम्बर सन् 1858ई0 मुकदमा नं0 884 व मुकद्दमा अर्ज़ी थानेदार अवध दर बारह खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त निहंग सिंह फकीर ख़ालसा वाक़्या मुहल्ला राम कोट ( कोट राम चन्द्र) परगना हवेली अवध तहसील व जिला फ़ैज़ाबाद मोरखा 15 दिसम्बर सन् 1858 ई0

गरीब परवर सलामत,

खुदावन्द आज के रोज़ मुसम्मी निहंग सिंह फ़कीर ख़ालसा साकिन मुल्क पंजाब बीच मसजिद जन्म अस्थान के होम और पूजा गुर गोविन्द सिंह मुकहैर किया और निशान श्री भगवान के खड़ा किया और पच्चीस नफ़र सिख़्त भी वास्ते हिफ़ाजत वक़्त खड़ा करने निशान के वहां थे । वाजिब न अर्ज़ किया । आफ़ताब दौलत इकबाल का रौशन हो खुश। फ़क़त

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अर्जी

फ़िदवी शीतल दुबे थानेदार अवध मोरखा 28 नवम्बर सन् 1858 ईसवी

दस्तखत सीतल दुबे बख़त हिन्दी



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**O.O.S. No. 1/89**

**(R.S. No.2/50)**

**<u>एक्जिबिट-20</u>**

नक़ल दरख्वास्त मुहम्मद ख़तीब व मुअज़्ज़िन मस्जिद बाबरी वाक़्या अवध मोरख़ा 30 नवम्बर सन् 1858 ई0 मुकद्दमा नं0 884 मुकद्दमा अर्जी थानेदार अवध दर बारह खड़ा करने निशान दर मस्जिद जन्मअस्थान सन्त निहंग सिंह फ़क़ीर ख़ालसा कि मुहल्ला राम कोट ( कोट राम चन्दर ) परगना हवेली अवध तहसील व ज़िला फ़ैज़ाबाद मुनफ़सिला 15 दिसम्बर सन् 1858 ईसवी । .....

ग़रीब परवर आदिले ज़मां सलामत,

जनाब आली सान्हा जदीद सर्ज़द हुआ है कि मुसम्मी निंहग सिंह पंजाब सिक्खहान मुलाज़िम सरकार दौलत दार बआवमी बैरागियान जन्मअस्थान के बानी फ़साद हैं। बीच मस्जिद बाबरी वाक़्या अवध क़रीब महराब व मिम्बर के एक चबूतरा मिट्टी का बबुलंदी चहार अंगुस्त बनाके कंकरों से मामूर करके क़ायम किया है बवजह रोशनी आतिश के क़रार दिया है व चबूतरा मस्जिद अन्दर कटहरा के ऊपर चबूतरा मस्जिद के चबूतरा जदीद कि बल्कि यह वो माकूफ़ हुई है । यह बुलंदी तक़मीनन सवा गज़ की तैयार करके निशान व तस्वीर बुत इस्तला किया है व बराबर उसके एक गड्ढा खोद कर मुण्डेर पुख़्ता करवा उसकी तैयार करके आतिश रोशन की है पूजा व होम में मसरुपद्य हैं व जाबजा मस्जिद में कोयले से राम राम लिखा है। आदिले रियाया, यह मुक़ाम इन्साफ़ का है । इसी तरह जुल्म ज़्यादती व अहले हनूद अहले इस्लाम पर करते हैं व हज़ूर मालिक, फ़रीक़ैन के हैं व मज़मून इस्त्हार बादशाही से साफ सरीह है कि मज़हब पर कोई फ़रीक़ बग़र्ज कर्फ़ी बनावेगा व अगर एहतियातन मु वादरत करेगा तो सरकार से सज़ायाब होगा । जनाब आली, मुकाम ग़ौर का है, मस्जिद मुक़ाम इबादत मुसलमान है बल्कि बखिलाफ इसकि पूजा होग की व साबिक में क़बिल बल्वा अमलदारी सरकार

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मुक़ाम जन्म अस्थान के सदहा बरस से परेशान पड़ा रहता था व अहले हनूद पूजा करते थे । चबूतरा बसाज़िश शिव गुलाम थानेदार अवध के बैरागियों ने शबाशब में बासदूर हुक्त सरकार का वास्ते मुमानियत के नाफ़िज हुआ था । बबुलंदी एक बालिश्त तैयार कर लिया । उस वक्त साहब डिप्टी कमिश्नर बहादुर ने बमूजिब हुक्म ज़नाब साहिब कमिश्नर बहादुर के थानेदार की मौकूफ़ किया व बैरागी पर जुर्माना संगीन हुआ । अब फिलहाल उस चबूतरा मो भी तखमीनन सवा गज़ तैयार करा लिया। इस सूरत सरीह ज़्यादती साबित है । लिहाज़ा उम्मीदवार हूँ कि बनाम मुर्तज़ा ख़ान कोतवाल शहर सदूर हुक्म होवे कि कोतवाल बचश्मे खुद मुआइना करके अमूरात जदीद खुदवा डालें व मर्दान हनूद को बाहर मस्जिद के करें व निशान बुत उलटवाएं व बस्याही लिखी को धुलवा देंवें व आइन्दा कि हुक़्म करें वाजिब जानके अर्ज़ किया।

सैय्यद मुहम्मद ख़तीब मुअज़्ज़िन

मस्जिद बाबरी वाक़्या अवध

मोरख़ा 30 नवम्बर सन् 1858ईस्वी

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**(R.S. No.2/50)**

**<u>एक्जिबिट-21</u>**

नकल रिपोर्ट शीतल दुबे थानेदार अवध मोरख़ा 1 दिसम्बर सन् 1858 ई0 मुकद्दमा नं0 884 बमुकदमा अर्ज़ी थानेदार अवध दर बारह खड़ा करने निशान दर मसजिद जन्म अस्थान सन्त निहंग सिंह फ़क़ीर ख़ालसा वाक़्या मुहल्ला राम कोट (कोट राम चन्दर ) परगना हवेली अवध तहसील व ज़िला फ़ैज़ाबाद मुनफ़सिला 15 दिसम्बर सन् 1858 ई0 ।

ग़रीब परवर सलामत,

खुदाबन्दे परवाज़ हजूर वास्ते तलबी निहंस सिंह फ़क़ीर जो कि मस्जिद जन्म अस्थान में मुक़ीम है, तारीख 30 नवम्बर सन 1858 ई0 कि सादर हुआ चुनाँचे बतौर वास्ते परवाना वकार वालों के यह ताबेदार जो मुक़र्रर थाना नज़दीक़ फ़क़ीर मज़कूर के गया औरा मज़मून परवाना से बखूबी इत्तला की, यह ज़बानी भी हर चन्द के फहमाइश करके कहा लेकिन फ़क़ीर मज़कूर सिर्फ यह बात कहा कि यह जगह निरंकार की है व साहब बहादुर मालिक मुल्क इन्साफ़ करना चाहिए और अपने जाने के बारे में कुछ नहीं कहा व ना जाता है । आइन्दा जो हुकुम होवे मुताबिक उसके तामील करें मैं बतौर एक सरहद में हूँ । वाजिब जान कर गुजारिश किया मारुज़ा 1 दिसम्बर सन् 1858 ईस्वी ।

अलअब्द

शीतल दुबे थानदोर अवध

दस्तख़त बख़त हिन्दी

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**एक्जिबिट -22**

नकल रिपोर्ट थानेदार अवध मोरख़ा 6 दिसम्बर सन् 1858 ई0 व मुकद्दमा नं0 884 बमुकदमा अर्ज़ी थानेदार अवध दर बारह खड़ा करने निशान दर मसजिद जन्म अस्थान सन्त निहंग सिंह फ़क़ीर ख़ालसा वाक़्या मुहल्ला राम कोट (कोट राम चन्दर) परगना हवेली अवध तहसील व ज़िला फ़ैज़ाबाद मुनफ़सिला 15 दिसम्बर सन् 1858 ई0 ।

ग़रीब परवर सलामत,

परवाना वक़ारुल तलब निहंग सिंह फ़क़ीर साकिन मस्जिद जन्म अस्थान के वारिज हुआ चुनॉचे हस्बुल हुक्म हजूरे बाला के बजरिये रिपोर्ट हाजा फ़क़ीर मज़कूर व ख़िदमत बन्दगान वाला है हाजिर होता है । वाजिब जानकर गुज़ारिश किया फ़क़त मोरखा 6 दिसम्बर सन 1858 ईस्वी ।

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अलअब्द

शीतल दुबे थानेदार अवध



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**एक्जिबिट-23**

नक़ल__दरख़्वास्त मुहम्मदी शाह साकिन राम कोट मोरख़ा 9 अप्रैल सन 1860 ई0 बरुए मिसल नं0 884 बमुकद्दमा / अर्जी थानेदार अवध दर बारह खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त टेक संह फ़क़ीर ख़ालसा मुहल्ला राम कोट (कोट राम चन्दर ) परगना ह वेली अवध तहसील व जिला फ़ैज़ाबाद मुन्फ़सला 15 दिसम्बर सन 1858 ई0

दुआगो मुहम्मदी शाह साकिन मुहल्ला राम कोट सायल

बदरख़्वास्त मुत्सवी फ़रमाया जाये पट्टा आराजी मौज़ा राम कोट ता फ़ैसला नज़ूल

ग़रीब परवर सलामत,

ज़नाब आली, गुज़ारिश यह है कि हस्बुल हुक्म सरकार उक़दस आला के हज़ूर ने मौज़ा राम कोट को नज़ूल क़रार दिया और इज़हार जुम्मा गवाह का सरकार ने क़लमबन्द फ़रमाया और दो किता सनद हक़ियत आराज़ी ज़रे ख़रीद महक़मा नज़ूल के तादादी 3 बीघा पुख़्ता व दो बीघा ख़ाम मिसल मुक़द्दमा दाख़िल सरकार है व तारीख 14 वास्ते तहक़ीक़ात जमीहं सुसाइटी व बैरागियान महन्तान अवध के मुक़र्रर फ़रमाया अब मुत्सिम साहब वास्ते देने पट्टा के हमको तलब करके कहते हैं कि पट्टा ले लो और हमको बवजह ज़मींदारी जदीद होने मुहम्मद ज़ाफ़र कि पट्टा लेना मन्जूर नहीं है और हक़तल्फी हमारी मुतसव्वर है व बाद तहक़ीक़ात नजूल के जैसी राय हज़ूर की होगी वैसा बजा लावेंगे । लिहाज़ा उम्मीदवार है कि बनाम मुत्सिम साहब के हुक्म हो कि ताफैसला हज़ूर के पट्टा मुल्तवी रखा जावे । वाजिब जान कर अर्ज़ किया ।

अर्जी

दुआगो मुहम्मदी शाह साकिन राम कोट

मोरखा 9 अप्रैल सन् 1868 ई0

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الف نمبر ۳۵۰

بعد الف جناب سید جج صاحب بہادر فیض آباد

نقل عرضیہ دعوی مشمولہ مسل مقدمہ الف نمبری نمبر ۱۸۸۳ء / ۱۳۷۳ / ۹۲۳ / ۱۸۸۳ء

مقدمہ سید محمد اصغر بنام رگھوبر داس فیصلہ ۱۸ جون ۱۸۸۳ء

جناب منصف بہادر عقیل فیض آباد

سید محمد اصغر ولد سید راجب علی قوم سید پیشہ زمینداری و معافیداری عمر ۵۰ برس ساکن و زمیندار

موضع سنہواں پرگنہ حویلی اودھ عقیل فیض آباد ۔ ۔ ۔ ۔ ۔ مدعی

بنام

رگھوبر داس منتہ چیلہ تلسی منتہ چبوترہ جنم استھان و نرموہی اکہاڑہ واقع اودھ

دھیری مرو ساکن اودھ ۔ ۔ ۔ ۔ ۔ مدعا علیہ

مدعی حسب ذیل عرض کرتا ہے ۔

تصریح دعوی دلایا ہے کہ رابہ ٹیکی چبوترہ و تخت واقع دروازہ مسجد بابری اودھ بابتہ میلہ کاتکی و رام نومی بر بنا حقیت بابتہ سنہ ۱۲۸۸ فصلی و بابتہ سنہ ۱۲۸۹ فصلی بجانب تصور بروئے پٹہ

۱ ۔ یہ کہ صحن و چبوترہ پیش دروازہ مسجد بابری جنم استھان ملکیت مدعی ہے کہ جس پر قدیم الایام سے بزور میلہ کاتکی و رام نومی مع دیگر ایام میں دوکانات پھول و بتاشہ اہل حرفہ یعنی اہل شہر رکھتے ہیں کہ جسکا ٹھیکہ ہمیشہ سے ۵ سالانہ پر ہوتا ہے تجویز مدعی و مدعا علیہ منجملہ اوسکے نصف حق مدعی و نصف مدعا علیہ ہے باہم تقسیم کر لیتے ہیں ۔

۲ ۔ یہ کہ سنہ ۱۲۸۸ فصلی میں قبل نہان کاتکی و رام نومی مدعا علیہ نے براہ بدنیتی بجائے ۵ کی ۵ پٹہ ٹھیکہ خلاف عملدرآمد بلا تجویز مدعی محض ٹھیکہ بنام فقیری مراؤ ساکن اودھ بابتہ ہر دو میلہ کے کر کے متصرف ہر دو حصہ کا ہوا و مطابق اسکی بابتہ سنہ ۱۲۸۹ فصلی میں کاروائی کیا ۔

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Ex. 29 052/50 Gopal Singh Zakoor Ahmad

Denied S.A. Husain 27/11/64

Denied

Dated 13.1.60

Gopal Singh Vishwakarma

Gopal Singh Vishwakarma

Dated 13.1.60

Dated 1.3.50

Dated 1.3.50

१२८७ فصلی بروی پٹہ

حصہ مدعی

حصہ مدعا علیہ

१२८७ فصلی بروی پٹہ

حصہ مدعی

حصہ مدعا علیہ

مدعی مستغیث ہے کہ بعد تحقیقات لوازمہ عدالت ڈگری باضافہ خرچہ کے فرمائی جاوے۔ بنای دعوی ۱۲۸۸ فصلی ۷ نومبر ۱۸۸۰ء

مدعی معترض ہے کہ جو کچھ عرضیدعوی میں عرض کیا ہے صحیح ہے۔ بابتہ ۱۲۸۹ فصلی ۶ نومبر ۸۲ء

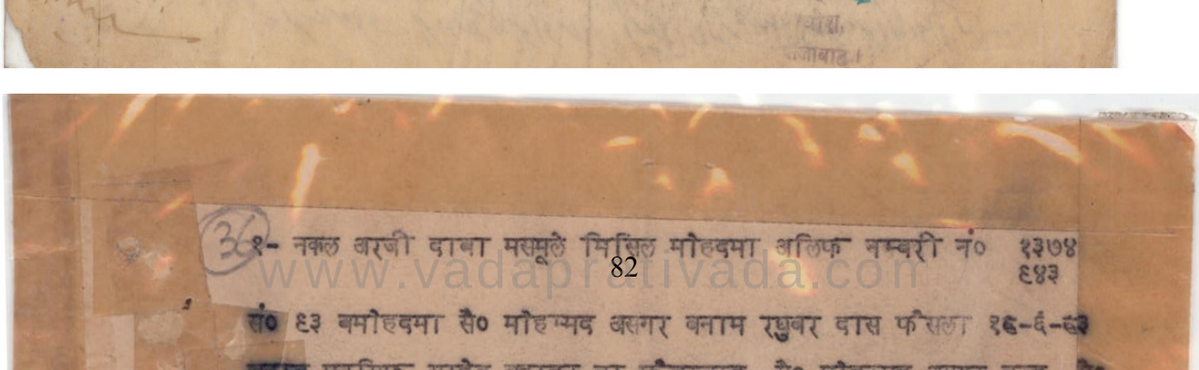
دستخط محمد اصغر ×××

سید محمد اصغر زمیندار خطیب متولی مسجد بابری واقع اودھ مورخہ ۲۲ اکتوبر ۸۲ء

सत्य प्रतिलिपि

राम वरन बवारी

प्रथ १.३.५०



36 १- नकल अरजी दावा मसमूले मिसिल मोहदमा अलिफ नम्बरी नं० १३७४ ९४३

सं० ९३ बमोहदमा सै० मोहम्मद असगर बनाम रघुवर दास फैसला १९-६-९३

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(36) १- नकल अरजी दावा मसमूले मिसिल मोहदमा अलिफ नम्बरी नं० १३७४
६४३

सं० ६३ बमोहदमा सै० मोहम्मद असगर बनाम रघुबर दास फैसला १६-६-६३
जनाब मुनसिफ साहेब बहादुर ता फैजाबाद सै० मोहम्मद असगर बल्द सै०
रजब अली कौम सैयद पेशा जिम्मीदारी बो माफीदारी उम्र ५५ बरस बो
जिमीदारी मौजा सहिनबा प्रगना हवेली अवध त० फैजाबाद मुद्दई

बनाम

रघुबर दास महन्थ चेला तुलसी महन्थ चबूत्रा जन्म स्थान बो निर मोही अखाड़ा
बाकै अवध ।

बो मफरीक मुराब सा० अवध मुद्दालेह

मुद्दई हस्ब जैल अर्ज करता है ।
तसरीह दावा दिलापाने ३० रू० केराया बैठकी चबूत्रा बो तख्त बाकै दरवाजा
मसजिद बाबरी अवध बाबत मेला कातकी बो रामनौमी बरबिनाय हकीयत बाबत सं० १२८८ फ० बो बाबत सं० १२८९ फ० बहिसाब ------ बरूये पट्टा
१- यह कि सेहन बो चबूत्रा पेशा दरवाजा मसजिद बाबरी जन्म स्थान मिलकियत
मुद्दई है कि जिस पर कदीमुल बयौम से बरोज मेला कातकी बो राम नौमी
में अययाम में दुकानात फूल बो बताशा अहले हुरफा यानी अहले शहर
रखते हैं कि जिस का ठीका हमेशा से ३५ रू० सालाना पर होता है बतजबीज
मुद्दई बो मुद्दालेह मिनजुमिला उसके निस्फ हक मुद्दई बो निस्फ मुद्दालेह है ।
बाहम तकसीम करते हैं

२- यह कि सं० १२८८ फ० में कब्ल नहान कातकी बो राम नौमी
२- मुद्दालेह ने बराह बद नैती बजाय ३५ रू० के ३० रू० पट्टा ठीका खिलाफ
अमल दरामद बिला तजबीज मुद्दई महज ठीका बनाम फकीरे मुराब सा० अवध
बाबत हर दो मेला के करके मुतसररिफ हर दो हिस्से का हुआ बो मोताबिक
उसके बाबत सं० १२८९ फसली में कार्रवाई किया ।
१२८८ फ० बरये पट्टा हिस्सा मुद्दई मुद्दालेह
३० रू० १५रू० १५रू०
१२८९ हिबरोया पट्टा १५ रू० १५रू०
३० रू०

मुद्दई मुस्तगीस है कि बाद तहकीकात लवाजिम अदालत डिग्री बहजाफा के
फरमाई जावें ।

बिनाय दावा १२८८ फ० बाबत सं० १२८९ फ०
--- ---
७ -११-- ८० ६-११-८२ ई०

मुद्दई मुकिर है कि जो कुछ अरजी दावा में अर्ज किया है सही है अलबद द० मोहम्मद
असगर जिमीदार
[illegible] सै० मो० असगर जिमीदार [illegible]
मौर्ख २२-१०-८२

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XI

(37)

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320/II

نقل تجویز مورخہ ۲۲ اگست ۱۸۷۱ء مخولہ مسل حقیت موضع کوٹ رامچندر پرگنہ حویلی اودھ تحصیل و ضلع فیض آباد جلد سوم سنہ ۱۳۲۱

محمد اصغر وغیرہ مدعیان بنام سرکار بہادر مدعا علیہ دعوی آراضی رام کوٹ پرگنہ حویلی اودھ فیصلہ ۲۲ اگست ۱۸۷۱ء

---

اظہار گواہان مدعی تحریر ہو کر اوٹداد ملاحظہ ہی دراسے مدعی دعویدار حقیت اعلے آراضی قبرستان و درختان اعلی واقع اوسکے

جو مقابل دروازہ مسجد بابر شاہ و ضلع استھان کے ہیں تحقیقات سے قبضہ مالکانہ درختان اعلی مدعویہ مدعی

کا ثابت ہوتا ہے مگر زمین ملکیت مدعی کے نہیں ہے یہ قبرستان عام و صحن دروازہ مسجد و ضلع استھان کے ہیں

اسے آراضی ملکیت کے نہیں ہو سکتے لہذا

حکم ہوا کہ

ڈگری حق ملکیت مدعی درختان اعلی واقع قبرستان عام نمبری خسرہ مخولہ مسل اندر موضع رام کوٹ

پرگنہ حویلی اودھ بحق مدعی کے ہو و دعوی مدعی ثابت ملکیت آراضی قبرستان کے و مسمس ہو و لو

دیکرے فریق کو دیا جاوے و پروانہ بنام صدر منصرم واسطے عملدرآمد ہیچ کاغذات بندوبست کے تحریر ہو کر

مسل مقدمہ داخل دفتر ہو لکھا ۲۲ اگست ۱۸۷۱ء

دیگر تجربہ سکت انگریزی

دیگر تجربہ سکت اردو

نوٹ = یہ نقشہ نشانات ہمیشہ تحریر ہیں

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Gopal Singh
vs
Zahoor Ahmad

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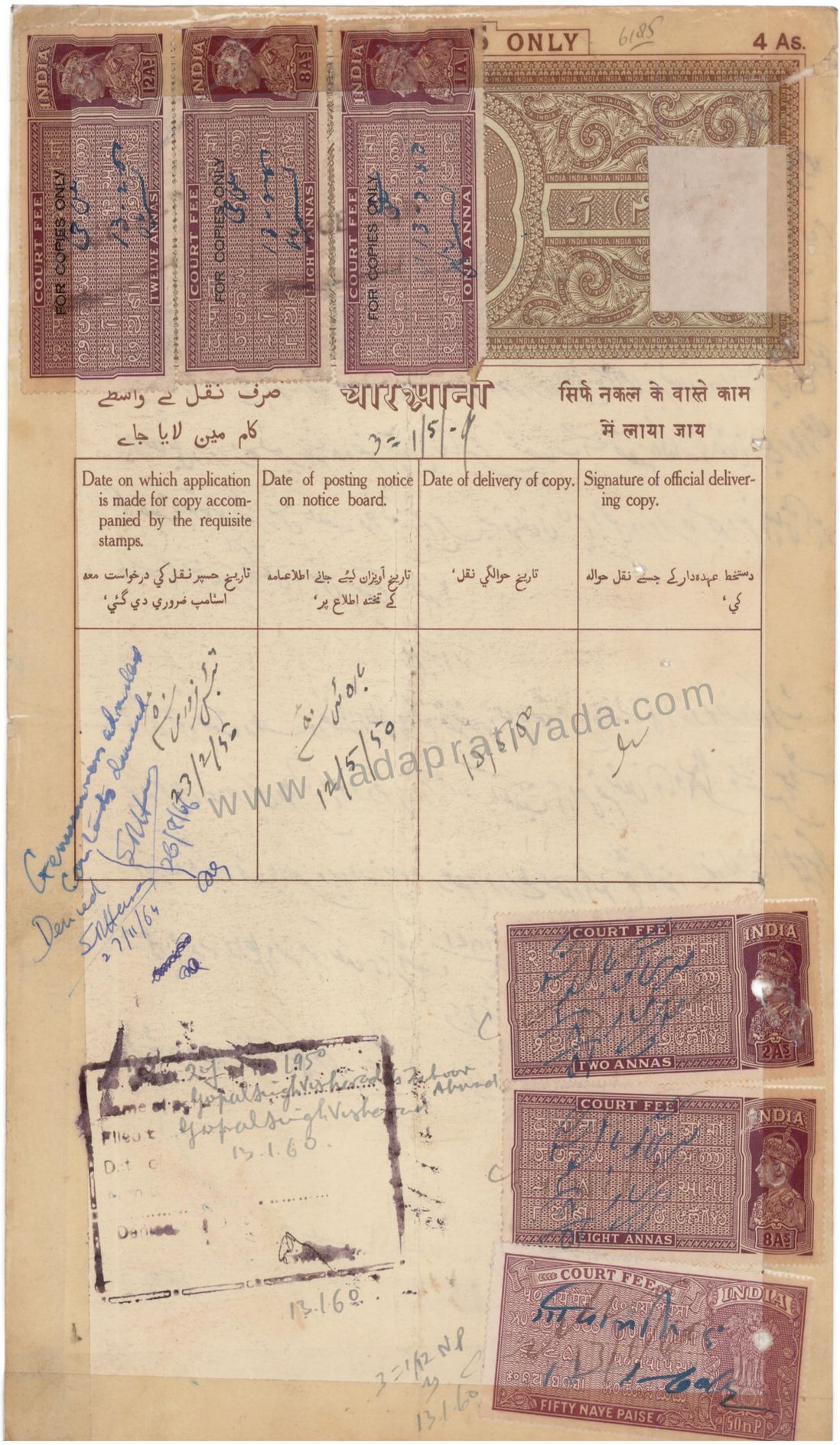


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नकल तजवीज मोर्खे २२-६-१९७१ मसमूलमिसिल हकीयत मौजा कोट राम राम चन्दर प्रगना हवेली अवध तहसील व जिला फैजाबाद जिल्द सोम बसता न०१३२

मोहम्मद असगर वगैरह मुद्दैयान बनाम सरकार बहादुर मुद्दई

दावा आराजी राम कोट प्रगना हवेली फैसला २२-६-७१ इजहार गवाहान मुद्दई तहरीर हो कर रुयदाद मुलाहिजा में हर आये मुद्दई दावेदार हकीयत आला आराजी कबरिस्तान बो दरख्तान इमली बाके उसके जो हायल दरवाजा मसजिद बाबर शाह बो जन्म स्थान के है तहकीकात से कब्जा मालकाना दरख्तान इमली मुतदाबिया मुद्दई का साबित होता है मगर जमीन मिलकियत मुद्दई की नही है यह कबरिस्तान आम बो सुहन दरवाजा मसजिद बो जन्म स्थान के है ऐसी आराजी मिलकियत किसी की नहीं हो सकती है लिहाजा

हुक्म हुआ कि

कि डिग्री हक मिलकियत दरख्तान इमली बाके कबरिस्तान आम नम्बरी खसरा मसमूले मिसिल अन्दर मौजा राम कोट प्रगना हवेली अवध बहक मुद्दई के हो बो दावा मुद्दई बाबत मिलकियत आराजी कबरिस्तान के डिसमिस हो बे नक्शा डिग्री फरीक को दिया जायं मिस सरबाना बनाम मुन्सरिम बास्ते अमलदरामद कागजात बन्दोबस्त के तहरीर हो कर मिसिल मोकदमा दाखिल दफ्तर हो लिखा २२-६-७१

द० शिकस्त अंग्रेजी
दू० शिकस्त अरहू

नोट:- नीशानात हम शक्ल तहरीर है।

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Gopal Singh Vishwad Vs Zahoor Ahmed
Gopal Singh Vishwad
13/1/60

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नकल आराजी ~~[illegible]~~ दावा मशमूले मिसिल हकीयत मौजा कोट राम चन्द्र प्रगना हवेली अवध तहसील व जिला फैजाबाद जिल्द सायम बस्ता १३२ मोहम्मद असगर वगैरह मुद्दैयान बनाम सरकार बहादुर मुद्दालेह दावा आराजी राम कोट प्रगना हवेली अवध फैसला २२ अगस्त सन १८७१ ई०

बसीगा बन्दोबस्त १२५ न० हदबस्त

आराजी मुतदाबिया

७१५२

सै०

१६०३

३

~~[illegible]~~ सैय्यद मुहम्मद असगर बो मोहम्मद अफजल नेवासा सैय्यद हुसैन अली मुतबफ्फी तखीब व मुतबल्ली मसजिद बाबरी बाके जन्म स्थान अवध

सरकार बहादुर मुद्दालेह

बदावा------ कब्जा उपर ७।,२ जरीबी में २१ दरख्तान इमली बो खन्डहल बाके दरबाजा मसजिद बाबरी बाके मसजिद जन्म स्थान अवध बमौजिब खसरा हस्ब अमलदरामद कदीम ।

गरीब परवर सलामत,

ओहदा खतरीब बो मुतबल्ली जामें मसजिद बाबरी बाके जन्म स्थान अवध पुश्त दर पुश्त से व नसलन बाद नसलन पंच फैज बो तसरूफ बुजुरगान हम सायल के चला आता है बल्कि दरख्तान २१ इमली पंच बो तसदुर हम सायलान बो बुजुरगान हम सायलान के रहा है मुद्दत हुआ उसपर काबिज व मुतसरिफ हूं बो बसब्ब मशीयत हकीयत के रजब अली शाह फकीराबाद कुछ बुजुरगान हम सायल का था वे मुलाजिम हम सायल का रहा है जिस वक्त फकीर मजकूर ने अहद शाही में खिलाफ राय हम सायल का हुआ तब उसको बाहर मकान से कर दिया तब से कब्जा उसपर बाग इमली बो खन्डहल के बहाल है बो कभी कुछ मोहाखलत जानिब हम मुद्दैयान व मौका बले बरमदास बो गैरह हो के डिग्री हम सायलान की हुई है बो तोबेसदर हुकुम बहाल रहा है बो कब्जा हकीयत में बमोकदमा माधो दास चेला बरम दास मुद्दई बनाम सरकार बहादुर मुद्दालेह मिसिल में मौजूद हैं उसमें उजुरदार या कि डिग्री ।

२- हम सायलान की हुई है होवे लेकिन अदालत से हिदायत दायर करने मोहम्मद सानी में नम्बर के हुई बो अलावा इस के हम मुद्दैयान [illegible] जिला सबूत कब्जा को मौजूद है इसलिए दरख्वास्त में नम्बर बारी हजूर में [illegible] दी गई उम्मेदवार हूं कि बाद तहकीकात लबाजमा अदालत डिग्री तुकिया बा दरख्तान इमली बो खन्डहल बनाम हम मुद्दैयान के फरमाई जावें बाजबन अर्ज किया ।

ता० २२-२-७०

हम मो० असगर बो मो० अफजल कि नाम मेरा अरजीदावा में मौजूद है अकरार यह है कि जो कुछ अर्ज किया है अजरुये इल्म व यकीन के सही है ।

द० उर्दू मो असगर बो मो० अफजल

मो० असगर बो मो० अफजल नेवासा सै० हुसैन अली खतीम मोउज्जुन मसजिद बाबरी ।

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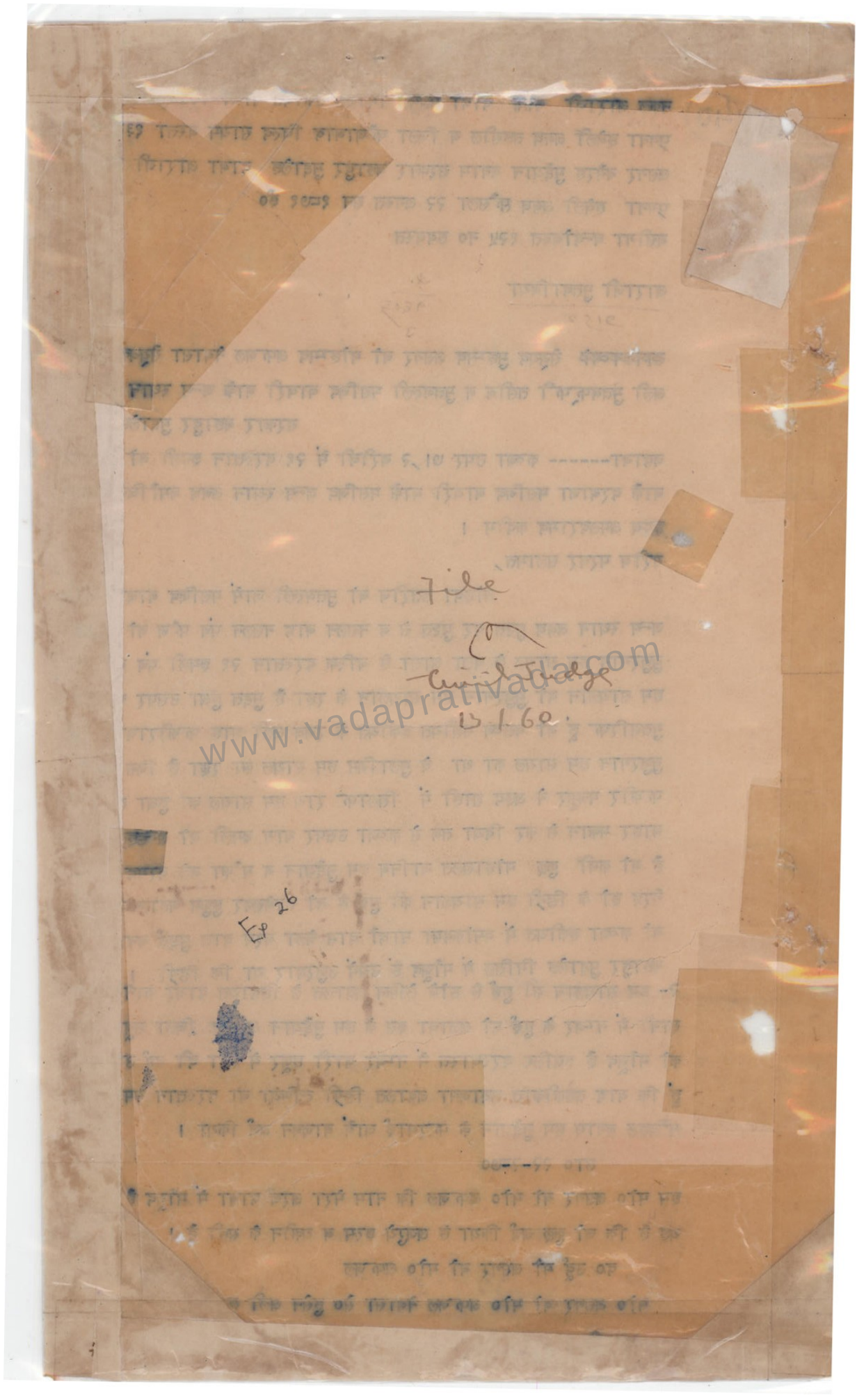

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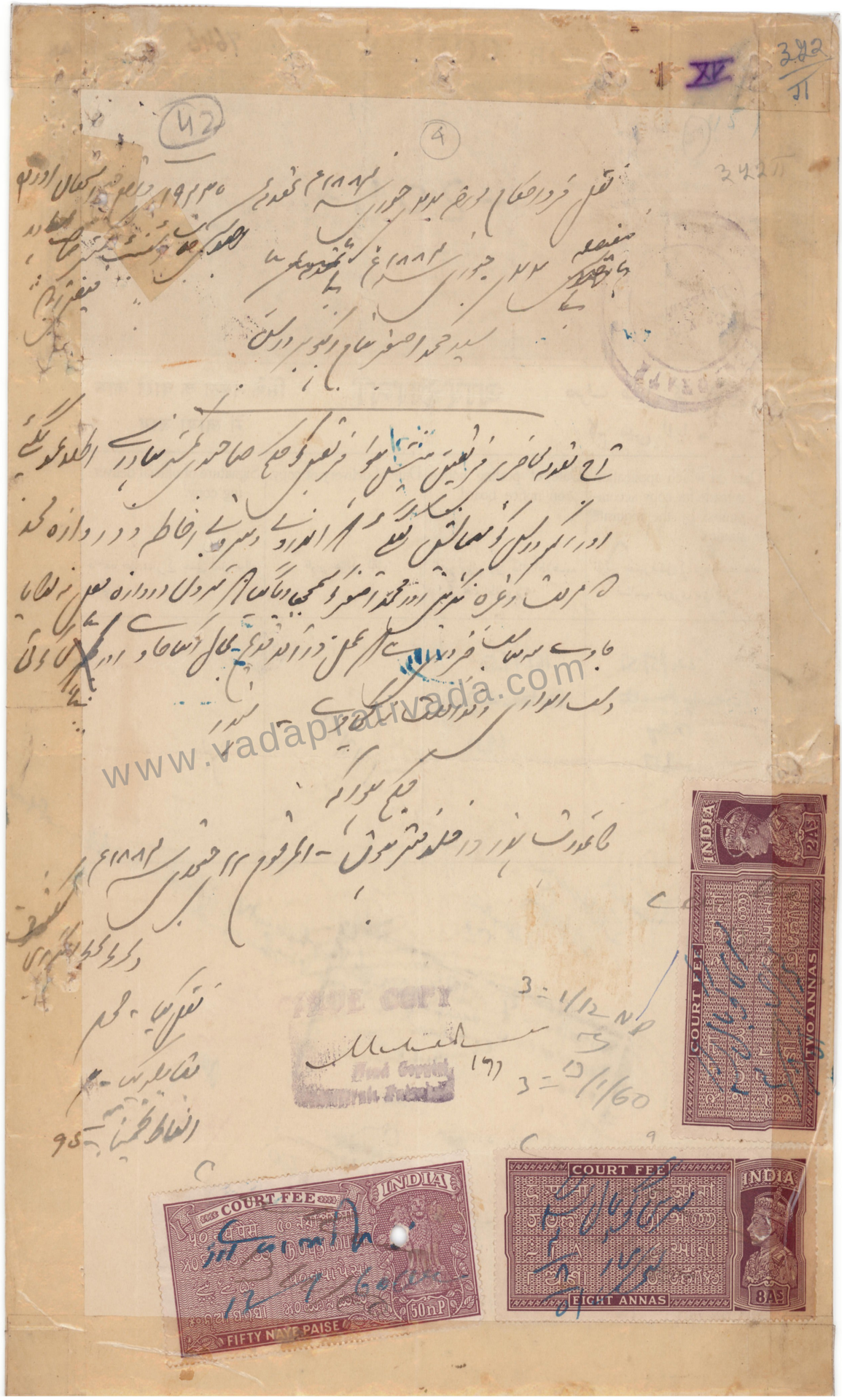

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| 4/5/51 fourth ...nay 1951 | 16/7/51 Sixteenth July 1951 | 19/7/51 | |

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Gopal Singh Visharad Vs. Zahoor Ahmad Ter
Gopal Singh Visharad
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Gopal Singh
Vs
Zahoor Ahmad
Ch. Judge
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नक्ल फर्द अहकाम मौर्ख २२ जनवरी १८८४ ई० मुकदमा नं० १९१३५

(43) (43)

बाबे जन्म स्थान अवध मुन फैसला २२ जनवरी १८८४ ई० इजलासी जनाब

असिस्टेन्ट कमिश्नर साहब बहादुर फैजाबाद

सैय्यद मुहम्मद असगर

बनाम

रघुबर दास

~~सैय्यद मुहम्मद~~

आज मुकदमा बहाजिरी फरीकैन पेश हुआ फरीकैन को हुक्म साहब डिप्टी व कमिश्नर से इत्तिला दी गई और रघुबर दास को फहमाइश की गई कि बन्दकनी व बेरूनी अहाता व दरवाजा मसजिद की मरम्मत बगैरह न करें और मुहम्मद असगर को भि समझा दिया गया कि बेरूनी दरवाजा कुफ्ल न लगाया जावें यह निहायत जरूरी है कि अमल दरामद कदीम बहाल रखा जावें और कोई दस्त अन्दाजी व मदाखलत न की जावें ।

हुक्म हुआ कि

कागजात हाजा दाखिल दफ्तर हो अलमरकूम

२२ जनवरी ८४ ई०

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Name of applicant Gopal Singh
Filed by ... Gopal Singh
Date of ...
Date fixed ...
Date of ...
Date of ...
Date of

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नकल हुक्म मौर्खे १२ अक्तूबर सन १८६६ ई० बरतबक दरख्वास्त
मुहम्मद अफजल मुतवल्ली मसजिद बाबरी बाबै अवध सानः खिलाफ
तुलसी दास बगैरह शहर अज्ञान जन्म स्थान मकरूजा २५ सितम्बर
सन १८६६ ई० बमुकदमा नम्बर २२३ साकिन मुहल्ला कौठ राम चन्द्र
परगना हवेली अवध जिला फैजाबाद इजलासी जनाब डिप्टी कमिश्नर
साहब बहादुर फैजाबाद मुनफसिला १८ मार्च सन ६१ ई० व
शराफत अली बनाम असगाली सिंह

हुक्म हुआ कि

दाखिल दफ्तर होवे १२ अक्तूबर सन १८६६ ई०

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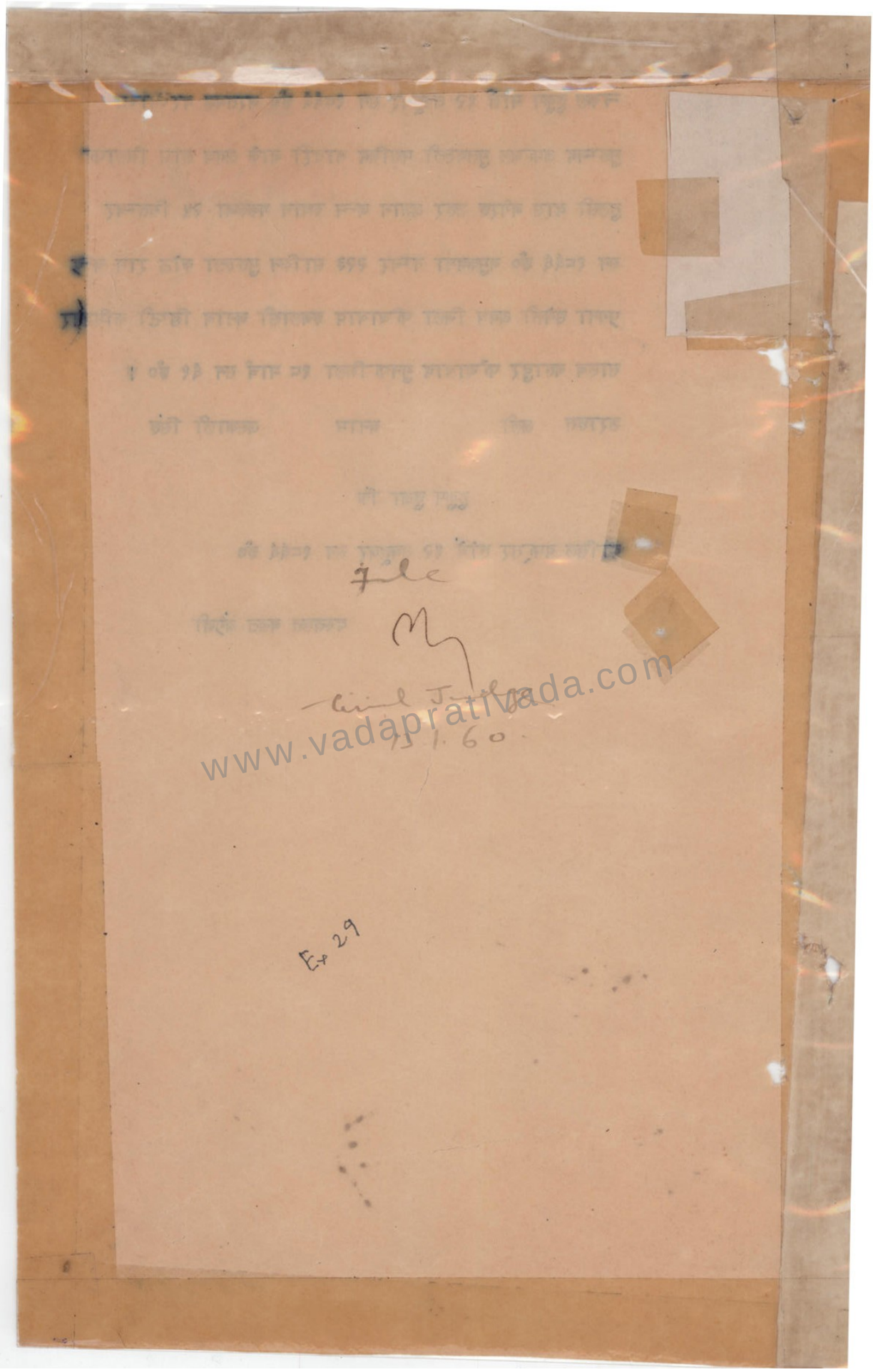


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IX

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نقل مراسلہ کمشنر صاحب بہادر ضلع فیض آباد نمبر ۵۶ مؤرخہ ۳ دسمبر ۱۹۷۶ء

مسمی محمد اصغر ولد سید محمد عابد حسین مدعی مقدمہ حسب علی خطیب و متولی مسجد بابری واقع محلہ سنگھان اودھ مدعی اپیلانٹ

بنام

سید محمد اصغر ولد سید محمد عابد حسین خطیب و متولی مسجد بابری واقع محلہ سنگھان اودھ مدعی اپیلانٹ ... مدعی

بنام

مہنت رگھوبر داس مہنت جنم استھان و نرموہی اکھاڑہ واقع اودھ مدعا علیہ رسپانڈنٹ ... مدعا علیہ

اپیل منجانب مدعی حکم ڈگلس کمشنر صاحب بہادر ضلع فیض آباد مورخہ ۲۶ دسمبر ۱۸۸۵ء بوجوہات ذیل نہ لگنے امید دار انصاف ہے۔

دفعہ اول۔ چبوترہ پر مندر اماکن مسجد کا ہی محوطہ جس میں مسجد بنی ہوئی ہے وہ متولی مسجد کی ہے حسب بیان متولی مسجد کی کہ مسجد بنی ہوئی مسلمانوں کے قبضہ میں ہے اور وہ مسجد کی ہے اور اس کے گرد کا احاطہ مسجد کا ہے اور مسجد کے اندر ہندو بھی جاتے ہیں اور پوجا کرتے ہیں اور چبوترہ پر بھی ہندو پوجا کرتے ہیں اور مسلمان بھی نماز پڑھتے ہیں

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دفعہ ۶ - قدیم سے اسلامیت و رسالہ بندیت کی تنازع چلا آرہا ہے اور حکم سرکار قدیم سے یہ ہے کہ رسالہ بندیت کو کوئی امر جدید کہے - بوجہ روپوشی ہونے بلدیو داس بیراگی کی حکم مصدرہ ۱۷ نومبر ۱۸۷۳ء تعمیل نہیں ہوا یعنی ابھی تک وہ مورت مطابق حکم حضور نہیں اوٹھائی گئی رسالہ بندیت بغرض قبضہ کرنے کے دیوار مسجد پر انواع و اقسام کی امور جدید کیا کرتا ہے وہ وقت مخالفت کے آمادہ فساد ہوتا ہے چنانچہ اندر احاطہ مذکور کے جو لہا بنانا ہے اور رسوئیں کرنا تھی کہ یہ امر پہلے بھی نہ ہوا وہاں فقط ایک جھوٹا سا جو لہا واسطے پونجہ کی سابق تھا اسکو بھی اوسنے وسیع کر لیا ہے

دفعہ ۷ - اسلامیت سلم رسیدہ امیدوار انصاف حضور کا یہ ہے کہ بعد ملاحظہ مسل حکم مصدرہ ۱۷ نومبر ۱۸۷۳ء کہ سررشتہ میں موجود ہے ملاحظہ فرما کر ان امور جدید کا جو بنیاد و باعث فساد ہے ازہیں تدارک و انسداد فرمایا جاوے و حق رسی اسلامیت کی ہو واجب تھا عرض کیا فقط

محمد اصغر خطیب و خوزن و متوفی مسجد بابری بر جنم استھان اودھ

ساکن و محمد دار شوک پرگنہ جوبلی اودھ

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Gopal Singh
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Hari Nandan Kishor
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चूंकि यह सबूत तहरीरी से नसब व मराकब है लायक मुलाहिजा मौका की थी बस क्योंकि अदालत मातहद ने पेश हो सकता था अन्दर इस सबूत अपीलान्ट उमीद बार है कि बनजर इन्साफ मुलाहिजा मौका फरमाया जावें ताकि सबूत बवजह अशिल बहक अपीलान्ट जाहिर हो जावें ।

दफा ५- जिस हालत में कि अपीलान्ट की दरख्वास्त यह थी कि उसे सिर्फ अपीलान्ट से दरवाजा बनवाया जावें जिस अपीलान्ट मुस्तैद भी था और 'यार होना दरवाजा ~~बनवाया जावें जिस अपीलान्ट~~ का १०, १५ में मुमकिन था उस सूरत में अपीलान्ट की इजाजत मिलना चाहिए या जो सरकार अपने यह तमाम से तैयार करा देती रेस्पाडेन्ट खिलाफ रद्द कर किसी तरह इजाजत नहीं मिलना चाहिए था । यह सिर्फ चालाकी रेस्पान्डेन्ट बनजर व फसाद आइन्दा की है कि रिसपान्डेन्ट हुसूल इजाजत तामील दरवाजा की हीला से ज्यादा रूपया सेफ करने दरवाजा में मूर्तियों म्वाफिक मजहब के अपने का हो रहा है इन्साफ का मोकाम है कि दीवाल दरवाजा मुतालिफ मसजिद पर मूर्तियों का रहना किस कदर खिलाफ मजहब अहेल इस्लाम बल्कि आम बुत परस्ता अमर अहल मुसलमान के है लिहाजा अपीलान्ट व उमेद इम्सदाद ~~मजह~~ फसाद आइन्दा के मुस्तदई इन्साफ हुजुर का है ।

दफा ६- कदीम से अपीलान्ट व रिसपान्डेन्ट से तनाजा चला आ रहा है और हुकुम सरकार कदीम से यह है कि रिसपान्डेन्ट कोई अल्म जदीद न करे । बवजह सपोस होने बलदेव दास बैरागी को हुकुम मसदूरे ७ नवम्बर सन १८७३ ई० तामील नहीं हुआ । यानी अभी तक वह मूर्ति मुताबिक हुकुम हुजूर नहीं उठाई गई रेस्पान्डेन्ट व कदर कब्जा करने के दीवाल व पसजिद पर अनवाख अखसाम के अमूल जदीद किया करता है वह वक्त मुमानियत के अमादा फसाद होता है चुनाचें अहाता मजकूर के चुल्हा बनाया है और रसोई करता है कि यह अंग पहले कभी न हुआ जहां फखत एक छोटा चूल्हा वास्ते ---------- के साबित में था उसको भी उसने बंसी कर लिया है ।

दफा ७- अपीलान्ट शीतम रसीद उमेदवार इन्साफ हुजूर का है कि बाद मुलाहिजा मिसिल हुकुम मसदूरे ति नवम्बर सन १८७३ ई० के तिरिस्ते में मौजूद है मुलाहजा फरमा कर इन अमल जदीद का जो बुनियाद व बाजस व तकरार है तदारूक व इन्सदाद फरमाया जावें व हक दसों अपीलान्ट की हो वाजिब या अर्ज किया ।

अजी फिद्री

मुहम्मद असरख सतीफ, मुम्बजन सुतबफ्फी मस्जिद [illegible] जान स्थान

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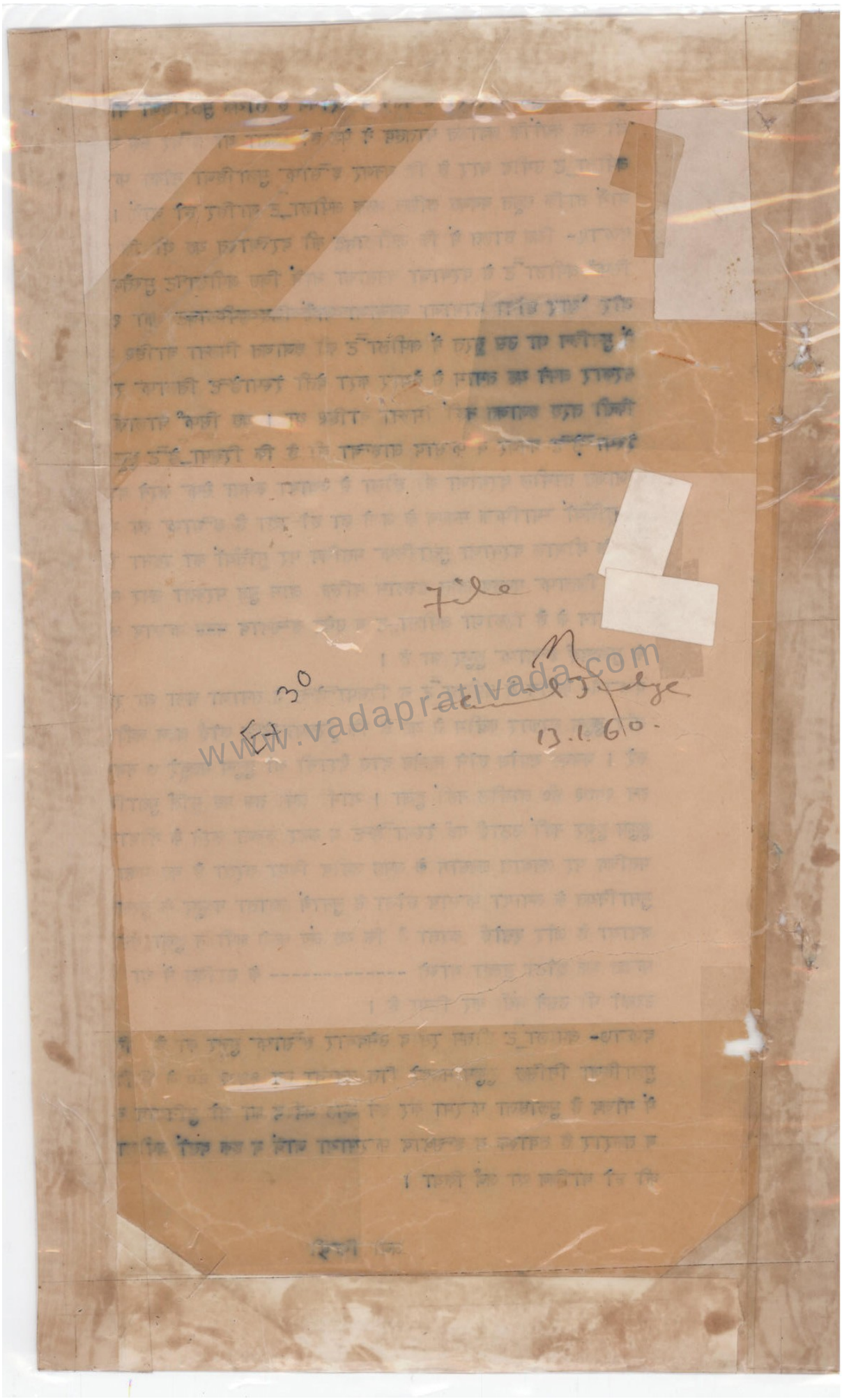

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नक़ल असवाब अपील नम्बरी 56 बाबत मस्जिद बाबरी वाक़्या जन्म अस्थान अवध इजलास ज़नाब कमिश्नर साहब बहादुर फ़ैजाबाद 13 दिसम्बर सन् 1870 ई0.. .. . . ..

सैय्यद मोहम्मद असग़र बल्द सैय्यद रजब अली खतीब व मुतवल्ली मस्जिद बाबरी वाक़्या जन्म अस्थान अवध मुद्दई/अपीलान्ट

बनाम

खेमदास महन्त जन्म अस्थान व निरमोही अखाड़ा मौज़ा अवध..... मुद्दालय/रिस्पाडेन्ट

अर्ज़ीदावा – बहजूर फ़ैज़ मंजूर खुदावंद नेमत क़बायल क़ायम बला शान जनाब कमिश्नर साहिब बहादुर क़िस्मत फ़ैज़ाबाद दाम इक़बाल

सैय्यद मुहम्मद असग़र वल्द सैयद रजब अली ख़तीब व मुतवल्ली मस्जिद बाबरी वाक़्या जन्म अस्थान अवध . . . . ... . . . . . मुद्दई /अपीलाण्ट

बनाम

खेमदास महन्त जन्म अस्थान व निरमोही अखाड़ा मौजा अवध.....मुद्दालया/रेस्पांडेन्ट

अपील मिना राजी हुक्म डिप्टी कमिश्नर साहिब बहादुर ज़िला फ़ैज़ाबाद मोरखा 3 अप्रैल सन् 1877 ई0 बवजूहात ज़ेल गोलिंगर उम्मीदवार इन्साफ़ का है।

दफा 1 :हर गाह दीवार अहाता मस्जिद की है तो जो तामीरात मस्जिद की है वह मुतवल्ली मस्जिद के है जिसको मुआफी मस्जिद की सनद सरकार से मरहमत हुई थी मुताबिक़ होना चाहिए, न रिस्पाण्डेण्ट हनूद से ।

दफा–2 : यह कि यह असूल आम है कि कुल अमूर मुतवल्ली मुसाहिद मुसलमानों की मुसलमानों को सिर धोना चाहिए व अन्दर मुत्वल्ली शिवाला व बाहर हिन्दुओं को सिर धोना चाहिए। किसी कानून के मफ़ाद भी ख़िलाफ़ इन असूल के नहीं है बावजूद इसके हाकिम मातहत ने इजाज़त बनाने दरवाज़ा जदीद व दीवार अहाता मस्जिद जानिब शमाल रिस्पाण्डेण्ट को दी है। यह अम्र खिलाफ असूल आम चीज़ ख़िलाफ़ अमल दरामद क़दीम है क्योंकि ज़माना क़दीम से रिस्पाण्डेन्ट कुछ इलाक़ा दीवार मस्जिद से बंधा रखा है । इसका हज़ूर से उम्मीद किया गया है कि हजूर फ़ैज़

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मन्जूर अमूर मुतालिक़ा मज़हब अहले इस्लाम को और मुतालिक़ा मज़हब अहले हनूद से अलहैदा ख़सरा देंगे।

दफा 3 : मुलाहिज़ा मिसल मुक़द्दमा मुहम्मद असग़र अपीलाण्ट बनाम महन्त बलदेव दास मोरख़ा 7 नवम्बर सन् 1873 ईसवी इजलास हज़ूर के वाक़्या होगा कि पनाह हज़ूर के हुक्म उठा दी जाये। मूरत यानी चरण पादुका का हो चुका है। पस जबकि अख़्त्यार रखे जाने मूरत का चबूतरे पर न दिया गया तो वापसी की सूरत में अख़्त्यार दिये जाने दीवार मस्जिद का रिस्पाण्डेन्ट दिया जा सकता है और इस तौर का अख़्त्यार रखे जाने मूरत का चबूतरे पर नहीं दिया गया तो पस किसी सूरत में अख़्त्यार बनाने दीवार मस्जिद का रिस्पाण्डेण्ट दिया जा सकता है और इस तरह अख़्त्यार दिया जाना एक अम्र ख़िलाफ़ इन्साफ अदालत है।

दफा 4 : यह कि सबूत तहरीरी जो हाकिम मातहत ने मुन्दर्जा हुक्म फरमाया है, कैफ़ियत उसकी यह है कि एक उम्दा सबूत यह है कि दीवार अहाता बेरुनी मस्जिद के दरवाजे पर नाम अल्लाह का कुन्दा व तहरीर है। चूँकि यह सबूत तहरीरी से हिस्ब ओ हरकत है, लायक़ मुलाहिज़ा मौक़ा के है पस क्योंकि अदालत मातहत में पेश हो सकता था अन्दरी इस सबूत अपीलाण्ट उम्मीदवार है कि बनज़र इन्साफ़ मुलाहिज़ा मौक़ा फ़रमाया जावे ताकि सबूत बजगह असिल वहक़ अपीलाण्ट ज़ाहिर हो जावे।

दफा 5 : जिस हालत में कि अपीलान्ट की दरख़्वास्त यह थी कि उसी कुरा अपीलान्ट पर दरवाज़ा बनवाया जावे जिस पर अपीलाण्ट मुस्तैद भी था और तैयार होना दरवाजा का 10 या 15 रु0 में मुमकिन था उस सूरत में अपीलाण्ट को इजाज़त मिलना चाहिए था और खुद सरकार अपने ऐहतमास से तैयार करा देती। रिस्पाण्डेण्ट ख़िलाफ़ अमूर को किसी तरह इजाजत नहीं मिलना चाहिए था। यह सिर्फ चालाक़ी रिस्पाण्डेण्ट बनज़र फ़साद आइन्दा की है कि रिस्पाण्डेन्ट असूल इज़ाज़त तामीर दरवाज़ा की हीला से ज़्यादा रुपया सर्फ करने दरवाज़ा मयं मूर्तियों मुआफ़िक़ मजहब के अपने का हो रहा है। इन्साफ़ का मुक़ाम है कि दीवार दरवाज़ा मुतालिक़ मस्जिद पर मूर्तियों का बनना किस क़दर अमूर खिलाफ़ मज़हब अहले इस्लाम बल्कि जुल्म बुत परस्तान ऊपर अहले मुसलमान के है। लिहाज़ा अपीलाण्ट व बाउम्मीद हम्सदाद पक्स फसाद इस्लजा के मुस्तदई इन्साफ़ हजूर का है।

दफा 6 : क़दीम से अपीलाण्ट व रिस्पाण्डेन्ट से तनाजा चला आ रहा है और हुक्म सरकार क़दीम से यह है कि रिस्पाण्डेण्ट कोई अम्र जदीद न करे। बवजह ~~सबबस~~ होने बलदेव

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दास बैरागी को हुक्म मसदूरे 7 नवम्बर सन् 1873 ई0 तामील नहीं हुआ। यानी अभी तक वह मूर्ति मुताबिक़ हुक्म हजूर नहीं उठाई गई। रिस्पाण्डेण्ट व तार्ज़ क़ब्ज़ा करके दीवार मस्जिद पर अनवाम व अक़याम को अमूर जदीद किया करता है। वह वक़्त मुमानियत के आमादा फ़साद होता है चुनॉचे अन्दर अहाता मज़कूर के जो चूल्हा बनाया है और रसोई करता है कि यह अम्र पहले कभी न हुआ वहॉ फ़क़त एक छोटा चूल्हा वास्ते पूजा के लायक था। उसको भी उसने वाज़ा कर लिया है।

दफा 7 : अपीलाण्ट शीतल रसीदर उम्मीदवार इन्साफ हुज़ूर यह है कि वाद मुलाहिजा मिसल हुक़्म मसदूरे सात नवम्बर सन् 1873 ई0 के सररिश्ता में मौजूद है। मुलाहिज़ा फ़रमा कर इन अमूर जदीद का जो बुनियाद बायस फ़साद व तक़रार है, तदारुक व इन्सदाद फ़रमाया जावे व ह़कदारी अपीलाण्ट की हो। वाजिब था अर्ज़ किया फ़क़त।

अलअब्द

अर्ज़ी

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Advocate for JPL

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नकल दरखास्त मीर रज्जव अली मोरखा ५ नवम्बर १८६०

व मोका दिया न० २२३ साकिन मोहल्ला कोट राम चादर परगना

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ओकाली सिहं

मुद्दाअलेह

दरखास्त यह है कि वीद मुलाहिजा मजमून अ जी दावा हाजा जो चवूतरा था कि फसे मसजिद वावरी वाके अवध मुद्दाअलेह वना लिया है वाद तहकीकात मुनहदिम फरमाया जाय तो नीज मुचलिका मुद्दाअलेह से अदम मजाहिमत वास्ते दादरसी अन्दुल तलव ले लिया जावै:

गरीव परवरसलामत,

हाल खुद हाकिमी वो शारो पुशती वो नीज हंगी मुद्दाअलेह का वन्दरगाह हुजूर मे किया गुजारिश करूं एसी करीव ३० रोज के होता है कि मुद्दाअलेह ने एक चवूतरा अ राह जबरदस्ती वो खिलाफ अमल दरामद कवरिस्तान मुलहिका मसजिद वावरी मे मावैन कवर काजी हदूद मर हूम के वना लिया है वो हर रोज चवूतरा वढता जाता है हाला कि उस मना किया जाता है मगर किसी तरह वाज नहीं आता वल्कि आमादा हगामान वो तकरार होता है वो प्फिदवी वखौफ सरकार तरह देता है साविकन अरसा करीव डेढ वरस के हुआ हो गा कि हरी दास महथं हनुमान गढी ने जबरदस्ती मकान वनाना चाहा था कि वह मोकदिमा दायर अदालत हौ कर डिगरी वहक मुद्दई सादिर हुई वो फैसला जिला ता मोहकिमा आलिया कमिशनरी वहाल रहा वल्कि मुचलिका अदम मजाहिमत हरी दास मजकूर से लिा गया कि वह मिसिल शिरिस्ता मे मोजूद है व नीज कमिशनरी साहव वाहदुर मुद्दाअलेह मजकूर ने फन्डा वास्ते व वरमा होने नजाकी करीव मसजिद के याने सहन मे

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नसब किया था कि साहब मोहकिम अलेह ने बाद मुलाहिजा फन्डा नसब साख्ता मुद्दाअलेह खुद वा डाला व नीज पैमाइश फरमाया था कि शराजू उस की कभी

मुद्दाअलेह अजराह अदूल हुक्मी सरकार मुरतब अमर न खारा का हुआ है और वरसानी कवरिस्तान हुये एसी तरगीव से वहुत परेशान मुद्दईयान इलावा इस के जब मुअज्जन मसजिद मे अजान देता है तो वह नाकूल यानी शखं वजाता है तो आली जा एसा कभी नहीं हुआ व सरकार हाकिम दोनो फरीक के है लिहाजा दरखास्त हाजा हुजूर मे गुजारिश कर उमेदवार है कि मुद्दाअलेह हरकत वेजा से वाज रख्खा जावे वाद तहकीकात चवूतरा जदीद तामीर शाखता मुद्दाअलेह से जो कभी वहां न था वना लिया है मुनहदिम फरमाया जावे व नीज कित मुचलका अदम मुजाहमत व वजाने शखं वक्त आजान मुद्दाअलेह ले लिया जावे कि हम गरीब है मुद्दाअलेह से न जीत पावे गे वाजिव जान कर अर्ज किया:

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## एक्जिबिट ए–22

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बइजलास मुनसिफ साहब बहादुर

महन्त रघुबर दास महन्त स्थान जन्म स्थान वाक़े अयोध्या..... मुद्दई

बनाम

जनाब सेक्रेटरी आफ़ स्टेट हिन्द बइजलास कौंसिल..... मुद्दालैह मुद्दई मज़कूर हस्ब जैल अर्ज़ है –

दावा इजाजत फरमाई जाने तामीर मन्दिर यानी मुमानियत फरमाई जाने मुद्दालैह को कि मुद्दई को तामीर मन्दिर से उपर चबूतरा जन्म स्थान वाके अयोध्या उत्तर 17 फिट पूरब 21 फिट दक्षिण 17 फिट न रेाकें मालियत दावे का तायुन बमोजिब निर्ख बाजार नहीं हो सकता है । इसलिए बमोजिब मद नं0 17 फिकरा 6 ज़मीमा दोएम ऐक्ट एन 70 ई0 कोर्ट फीस लगाया गया व नक्शा मुनसल्का से कैफियत मौका के बखूबी मालूम हो सकती है।

दफा–1 यह कि मकाम जन्म स्थान वाके अयोध्या शहर फैजाबाद एक निहायत कदीम और मुतबर्रिक मुआबिदगाह अहले हुनूद का है और मुद्दई इस मुआबिद गाह का महन्त है।

दफा–2. यह कि चबूतरा जन्म स्थान पूरब पच्छिम 21 फुट उत्तर दक्षिण्सा 17 फिट है उस पर चरण पादुका गड़ी हुई है और एक छोटा सा मन्दिर रखा हुआ है कि जिसकी परस्तिश होती है ।

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दफा–3 यह कि चबूतरा मज़कूर बकब्जा मुद्दई है उस पर कोई इमारत न होने से हर मौसम में मुद्दई और दीगर फुकरा को निहायत तकलीफ होती है। गर्मी में तपिश से व बरसात में पानी से व सरदी में शिद्दते सरदी से व इस चबूतरे पर मंदिर तामीर होने से किसी तरह का कोई हर्ज किसी का नहीं है बल्कि तामीर मंदिर से मुद्दई व दीगर फुकरा व यात्रियो को हर तरह का आराम मिलेगा।

दफा–4. यह कि जनाब डिप्टी कमिश्नर बहादुर फैजाबाद ने करीब मार्च या अप्रैल सन 83 ई0 मे बवजह उज्रदारी चन्द मुसलमानान के तामीर होने मंदिर की मुमानियत की । उस पर सायल ने एक अर्ज़दाश्त बहुजूर लोकल गवर्नमेंट रवाना की। व जब कोई जवाब न अता हुआ तो मुद्दर्द ने नोटिस महेकूमा दफा 424 जाब्ता दीवानी बतारीख 18 अगस्त सन 84 ई0 बदफ्तर साहेब सेक्रेटरी लोकल गवर्नमेंट दाखिल की लेकिन उस का भी कोई जवाब न मिला । पस जहूर बिनाए दावा तारीख मुमानियत से बमुकाम अयोध्या अन्दर हदूद अदालत के पैदा हुई।

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दफा–5. यह कि एक खैर ख्वाह रियाया को इख्तेयार है कि जिस तरह की इमारत चाहे अपनी मक़बूजा व ममलूका ज़मीन पर तामीर करे व गवर्नमेंट आदिल और मुनसिफ़ पर फर्ज़ है कि रियाया की हिफाजत करे और उन के हुकूक के मिलने में मदद दे व वास्ते कायम रहने अमन व अमान के मुनासिब बन्दोबस्त फरमाये लेहाज़ा मुद्दई मुस्तदई :अपठनीयः है कि डिग्री बनाने मंदिर उपर चबूतरा जन्म स्थान वाक़ै अयोध्या उत्तर 17 फिट पूरब 21 फिट दक्षिण–17 फिट पच्छिम 21 फिट के फरमाई जावे कि मुद्दालैह मुमानियत व मुजाहिमत मुद्दई निस्बत बनाने मंदिर के न करें व खर्चा मुक़दमा जिम्मे मुद्दालैह आयद किया जावे ।



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रसीद डाकखाना बाबत नोटिस

फिदवी महन्त रघुबर दास मुद्दई

मोर्रखा 19 जनवरी सन 1885ई0 मैं रघुबर दास महन्त जन्म स्थान अयोध्या मुद्दई तस्दीक करता हूॅ कि मजमून अर्जी दावा हर पॉच दफात का बइल्म व यकीन मरे सब सही व दुरुस्त है।

ह0 महन्त रघुबर दास

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**<u>एक्जिबिट ए–23</u>**

**O.O.S. No. 1/89**

**(R.S.No. 2/50)**

अर्जी दावा बहुजूर जनाब सब जज बहादुर

:अपठनीयः मिनजानिब मुद्दालैह

रघुबर दास महन्त निरमोही अक्खाड़ा वाक़ै अवध.....मुद्दई

बनाम

सरकार बहादुर क़ैसरे हिन्द व मोहम्मद असगर खतीब व मुतवल्ली जामे मस्जिद वाक़ै अवध ..... मुद्दाअलैय

तसरीह दावा तामीर मंदिर उपर चबूतरा अन्दर अहाता मस्जिद बाबरी

गरीब परवर आदिल ज़मां सलामत

दफा–1. यह कि मुकदमा बहुत साफ़ मोहताज इन्साफ़ है वय अगरचे बहस दलायल बहुत कुछ बतरदीद दावा मुद्दई गुज़ारिश हा`सकती है मगर बतक़वियत आदिलुल मसाफत मुख़तसिरन गुजारिश करता हूँ :1ः अव्वल यह कि जब बाबरशाह मालिके मुल्क व बादशाहे वक्त ने यह मस्जिद तामीर किया व अहाता मस्जिद के दरवाजे के उपर संगी पर लफ़्ज अल्लाह कुन्दा कराके नसब किया व माफी उसके मसारिफ को तहरीर फरमायी तो बमुकाबिला मालिके मुल्क मकॉ तामरी गाह बादशाह वक्त के अन्दर मिलकियत दूसरे शख्स के कहां बाकी रही पस तावक्तेके बादशाह तामीर कुनिन्दा मस्जिद ने अपने मस्जिद के अहाते के अन्दर या उसके कायम मुकाम दूसरे बादशाह ने कोई जुजे जमीन यह जमीन जिस पर चबूतरा है मूरिसान मुद्दई को न दी हो मुद्दई मालिक उस जमीन का नहीं हो सकता है । मुद्दई न`यह सुबूत इस मिलकियत निस्बत चबूतरा कोई दस्तावेज :अपठनीयः न बादशह मौसूपफ या किसी और बादशाह व हाकिमे वक्त पेश नहीं किये पस जब कि मुद्दई ने निस्बत इस टुकड़ा जमीन के मिलकियत उस पर हासिल नही की तो गैर की मिलकियत में कानून व इनसाफन कोई हक उसको मंदिर बनाने का नहीं है।

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दफा–2. अगर मुद्दई अन्दर अहाता मस्जिद के आमदरफ़त हुआ कि बजोम व बातिल अपने दलील मिलकियत अपने या उन पर अहले हुनूद के समझत हो तो यह सही नहीं हो सकता क्योंकि जाहिर है कि अक्सर इमाम बाड़ा व मस्जिद व मुकाबिर इमारात उम्दा मआबद अहले इस्लाम में बअय्यामे तकरीबात मखसूस व दीगर अय्याम में हमेशा जॅू ता जॅू हुनूद जाते हैं और नजरो नियाज चढ़ाते हैं! अहले इसलाम की मुमानियत नहीं होती इसी तरह अहले इसलाम मआविद हुनूद में जाते व आमदरफ्त रखते हैं तो किसी मुकाम पर आमदरफ्त रखने से या नजरो नियाज चढ़ाने से वह मुकाम उनकी मिलकियत नहीं हो जाता ।

दफा–3. जाहिर है कि वक्त तामीर मस्जिद से ता 1856ई0 इस मुकाम पर चबूतरा नहीं था । 1857 ई0 में बना और जब इस्तिगासा मुसलमानान हुकु खोदने चबूतरे का सादर हुआ पस जाहिर है कि बिना इस चबूतरे की 1857ई0 से हुई है ।

दफा–4. अब लायक गौर फरमाने यह अमर है कि बाद ःअपठनीयः चबूतरा जदीद किन अखतियारात से नशिस्त बरखास्त व आमदो रफत हुनूद के इस चबूतरे पर रही है । जाहिर है कि नशिस्त बरखास्त मुद्दई और उसके फिरके के बशर्तहा व शुरुतहा बकैद इस अमर के है कोइ अमर जदीद न करने पावे कायम रखे गये । पस 1857 ई0 से भी अखतियारात मालिकाना मुद्दई को हासिल न हुआ बल्कि अगर मुद्दई या किसी हिन्दू ने कोई अमर जदीद अन्दर अहाता मस्जिद करना चाहा उसकी सरकार से मुमानियत की गई और एक फकीर ने बतरीक कुटी छप्पर डाला था वह मिसमार व दफा कर दिया गया तो यही मुकाम इन्साफ है कि जब 368 वर्श से उमूमन 1857 ई0 से खुसूसन कोई सनद अपने मिलकियत के या किसी फ़ेल मालिकाना के जिससे मिलकियत मुद्दई जाहिर हो हासिल न की तो कोई हक़ उसको अन्दर अहाता मस्जिद व ऐन फर्श मस्जिद पर मंदिर बनाने का दावा नहीं हो सकता है पस यह ख्याल मुद्दई कि यह चबूतरा हमार है, और जब कि चबूतरा हमारा है ता`उस पर

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मंदिर बनाने का भी अखतियार हमको है महज बनफ़्सानियत मजहबी गलत फहमी मुद्दई की है क्योंकि उस चबूतरे पर बैठना या चढ़ावा चढ़ाने का भी अखतियार मालिकाना बिला किसी तारुज के नहीं है ।

दफा–5. नुकूल एहकाम मुतादिद जो बअवक़ात मुखतलिफ बमुकाबिला हम मुद्दालैह निस्बत मुमानियत अमरे जदीद बइनहिदाम मकान ऐन रसोई सीताजी के बइनहिदाम कुटी जो फकीर ने बनायी थी बलिहाज़ अमलदरामद कदीमे व अदम मिलकियत मुद्दई इन्तिजामन व बनजर कुश्त व खून माबैन अहले इस्लाम व हुनूद जो पेश्तर हुआ था कानून बअखतियार जायज खुद सीग़ा मजाज से जारी किये हैं। वह वाक़ै मतालिका इस मुकदमे के और यह सुबूत कामिल हमारे बयानात के हैं और उन्हीं एहकाम से ख़ुसूसन हुकुम 23 फरवरी सन 1857ई मुद्दई को जहूर बिनाये दावा पैदा हुई व हद समाअत आरिज़ दावा हाज हुंई और उन जुमला एहकाम बाजाब्ता के मन्जूरी से अदालते दीवानी भी चश्मो पेाशी नहीं फरमा सकती। बराबर वह नाफिज व जारी है मुद्दई ने उनको मन्सूख नहीं कराया और बिला दावा जारी तनसीख इस मुकदमा में मन्सूख नहीं हो सकते और उन एहकाम के खिलाफ कोई फैसला सादिर होना खिलाफ कानून है क्योंकि मन्सूखी उन एहकाम नातिका के बिला दावा दारी तनसीख लाजिम आती है इसलिए उम्मीदवार हूॅ कि बाद मुलाहिजा कागजात व उजरात बएखराज दावा मुद्दई हकीर से फरमाई जावे, वाजिब था अर्ज किया। फिदवी मीर मोहम्मद असगर मुतवल्ली मस्जिद बाबरी, मुद्दालैह मोर्रिख 22 दिसम्बर, सन 1885ई0 मारफत मोहम्मद नजीर खां व मौलवी मोहम्मद अफ़ज़ल वुकला मुद्दाअलैह

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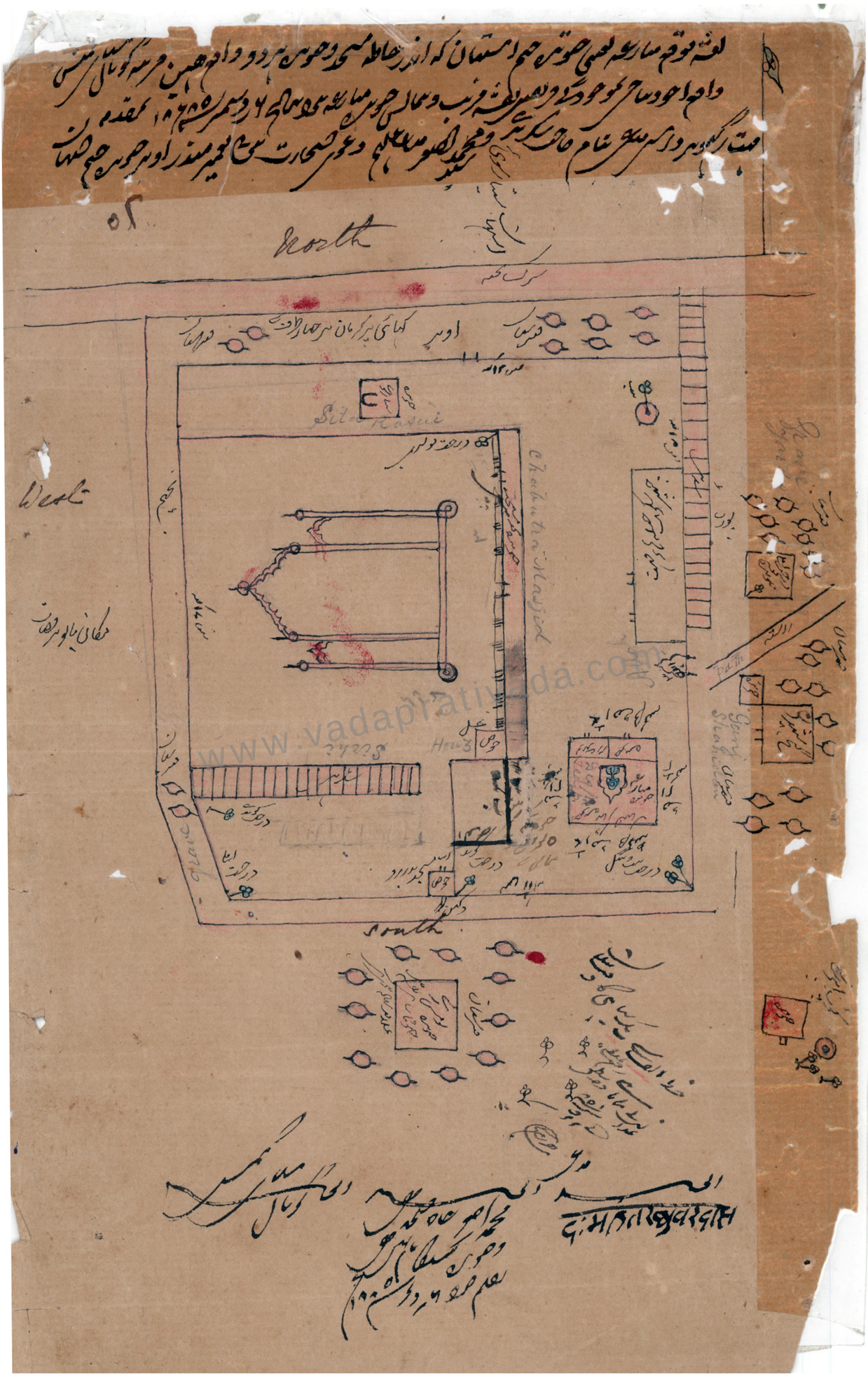


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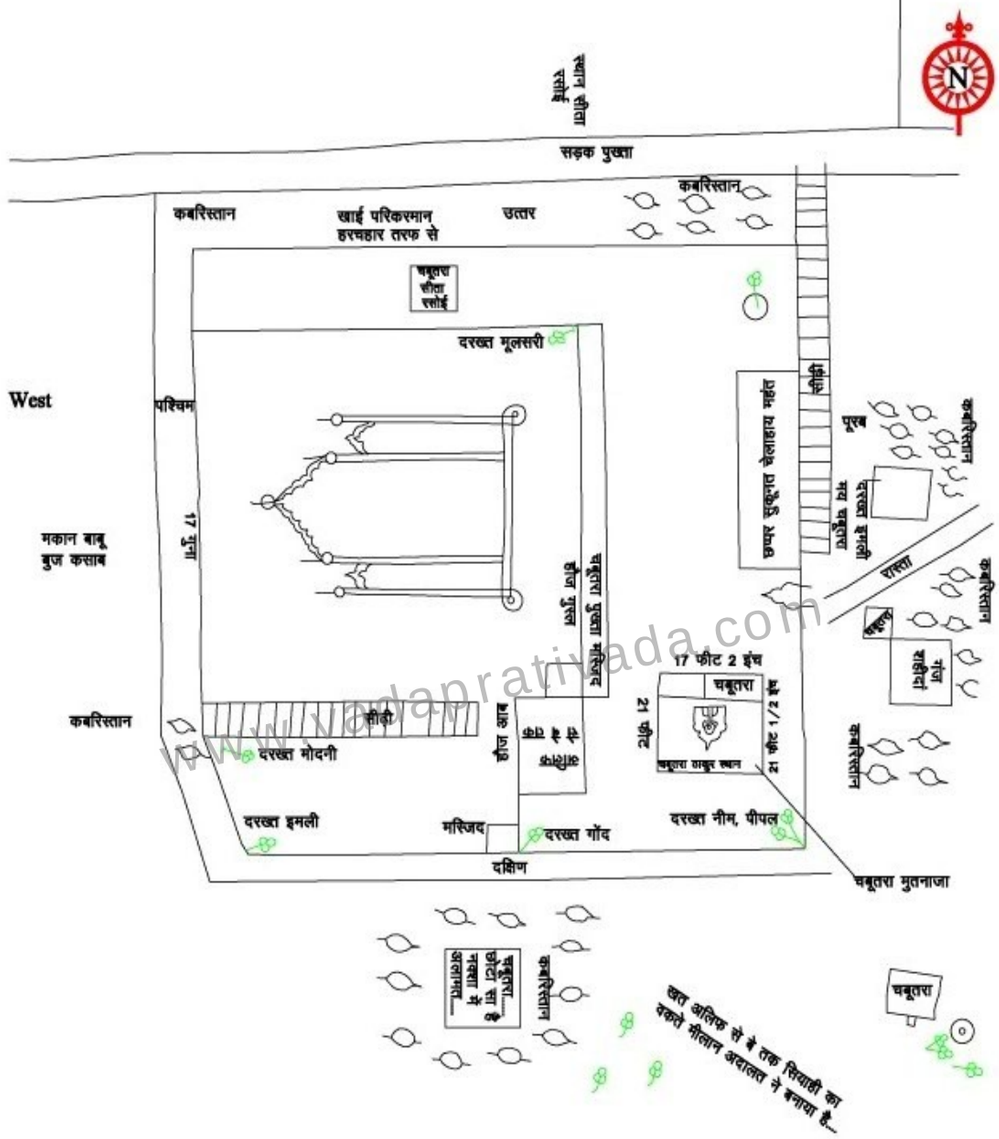
एक्जीविट–ए 25, ओ0ओ0एस0 1/89

नक्शा मौका मुतनाजा यानी चबूतरा जनम स्थान कि अन्दर हाता मस्जिद व चबूतरा हर दो वाके हैं मुरल्तिबा गोपाल सहाय मुंशी वाके अयोध्या जी बमौजूदगी फरीकैन नक्शा मुरूतब व पैमाइशी चबूतरा मुतनांजा हुआ बतारीख 06 दिसम्बर 1885 ई0 बमुकदमा महंत रघुबर दास मुद्दई बनाम साहब सेकरेट्री व सय्यद मोहम्मद असगर मुद्दआअलैहिम दावा इमारत बनवाने तामीर मन्दिर ऊपर चबूतरा जनम स्थान




अलअब्द गोपाल सहाय कमिशनर

अलअब्द मोहम्द असगर चाह मास्जद है व चबूतरा किसी का नाम नहीं है बकलम खुद 6 दिसम्बर 1885 ई0

दःमहंतरघुवरदास

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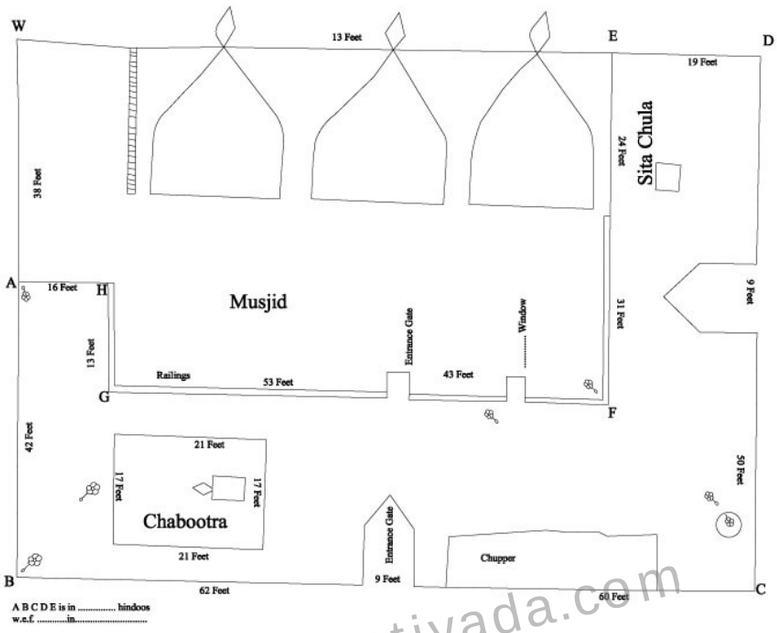


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**एक्जिबिट ए : 26**

O.O.S. No. 1 of 1989

(R.S. No. 2/1950)

बअदालत जनाब सब जज साहेब बहादुर फैजाबाद

नकल तजवीज बमुकदमा बमुकदमा 61/280 सन् 1885 ई0 मुजव्विज़ा पं0 हरि किशन साहेब सब जज बहादुर फैजाबाद मोर्रिखा 24 दिसम्बर सन 1885ई0

महन्त रघुबर दास महन्त स्थान जन्म स्थान वाकै अयोध्या

बनाम साहेब सेक्रेटरी आफ स्टेट हिन्द व मोहम्मद असगर

दावा इजाजत तामीर मंदिर

तजवीज अदालत–

आज यह मिसिल बहाजिरी मुद्दई व कक्कूमल वकील उसके व पंडित विशम्भर नाथ वकील सरकार व मोहम्मद असगर मुद्दालैय व वकील उसके पेश होकर बमुलाहिजा जुमला कागजात मिसिल वाज़ैह हुआ कि मुद्दई जन्म स्थान का महन्त है उसकी नालिश बनाम सेक्रेटरी आफ़ स्टेट पेश हुई बाद अज़ां मोहम्मद असगर हस्बे दरख्वास्त उसके मुद्दालैय क़रार दिया गया । ख़ुलासा दावा मुद्दई यह है कि चबूतरा जन्म–स्थान पूरब–पच्छिम 21 फिट, उत्तर–दक्खिन 17 फिट मकबूजा मुद्दई है और उस पर कोई इमारत न होने हर मौसम में मुद्दई व दीग़र फुग़रा को निहायत तकलीफ़ होती है गरमी में तपिश से व बरसात में पानी सरमा में शिद्दे सरदी से व इस चबूतरे पर तामीरे मंदिर से कोई हर्ज नहीं है । जो परस्तिश अब होती है वही होगी वजूह मिनजानिब साहेब डिप्टी कमिश्नर तामीर मंदिर में मुमानियत होती है इसलिए मुद्दई मुस्तदई है कि तामीर मंदिर उपर चबूतरा मज़कूरा फरमायी जावे व बजरिये मरम्मत :अपठनीयः तरीख जहूर बिनाये दावा 15 जून सन 1884 ई0 जाहिर करे । वकीले सरकार ने जवाब तहरीरी में बखुलासा पेश किया कि चबूतरे से मुद्दई को बेदखल नहीं किया इसलिए बिनाये दावा पैदा नहीं है और दावे में हद्दे समाअत भाी आरिज़ है और चाराजोई मुतादावेआ का मुद्दई मुस्तहक़ नहीं है । मोहम्मद असगर मुद्दालैय ने जवाब तहरीरी बदीं ख़ुलासा

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दाखिल किया कि स्टाम्प नालिश काफी नहीं है बलिहाज़ क़ीमत इमारत स्टाम्प लगना चाहिए और हदे समाआत भी आरिज़ है और आराज़ी चबूतरा ज़ायद कायम है और मकबूजा मुद्दई भी नहीं है और मुद्दई को उस पर तामीर करने को कोई बहुत बार मुमानियत हो चुकी है। बनज़र बहालाते मुक़दमा छः अमर तनकीह तलब क़रार पाये थे :1ः अव्वल यह कि आया यह नालिश बकागज स्टाम्प काफी है।

:2ः दोयम मियाद समाआत आरिज है । :3ः सोयम अगर नहीं तो ज़हूर बिनाये दावा पैदा है। :4ः चहारुम ऐसी दादरसी जायज़ है या खिलाफ़ कानून :5ः पंजुम तादाद आराजी चबूतरा किस कद्र है। :6ः शशुम वह आराज़ी चबूतरा मिल्कियत व मक़बूज़ा फरीकैन में से किसकी है । बारे सबूत तनकीह अव्वल व सोयम व चहारुम व शशुम जिम्मे मुद्दई व दोयम का बारे सबूत जिम्मे मुद्दालैय व पंजुम मुतालिक़ पैमाइश व तरदीद तनकीह शिशुम जिम्मे मुद्दालैय तजवीज हुई है । और मारफत गोपाल सहाय अमीन नक़्शा मौक़ा मुतनाज़िया खिंचवाकर शामिल मिसिल हुआ जो : अपठनीयः मौक़ा के बाद लाएके तरमीम समझा गया कि तरमीम उसके होकर वह इबारत तरमीम दर्ज नक्शा के की बनिस्बत तनकीहात के फ़रीक़ैन ने कागजात ज़ैल पेश किये–

सुबूत तहरीरी मिनजानिब मुद्दई

नकल इन्तेख़ाब गज़ेटियर सूबा अवध सफ़ा 7 मतबूआ हुक्म गवर्नमेंट मई जरनल एशियाटिक सोसाइटी बाबत तरजुमा अयोध्या महात्म

सबूत मिनजानिब मुद्दालैय्

हुकुम :अपठनीयः साहब बहादुर क़ायम मुक़ाम डिप्टी कमिश्नर मय तरजुमा हुकुम कायम मुकाम साहेब कमिश्नर बहादुर

नकल तजवीज इजलासी :अपठनीयः साहब बहादुर सब कमिश्नर व मन्जूरी जनाब :अपठनीयः साहब डिप्टी कमिश्नर बहादुर निस्बत इन्हिदाम मकान रसोई सीता जी

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परचा दस्तखती फारबेस साहब बहादुर साबिक डिप्टी कमिश्नर बहादुर मारुज़ा 23 फरवरी सन 1857 ई0 नक़ल हुकुम साहेब डिप्टी कमिश्नर बहादुर 6 दिसम्बर सन 1885 ई0 नक़ल फ़ैसला इजलासी :अपठनीयः साहब बहादुर :अपठनीयः 3 दिसम्बर सन 1860ई0 व 16 मार्च सन 1881 ई0 बमुकदमा मीर रजब अली बनाम :अपठनीयः सिंह नक़ल कैफ़ियत भोलानाथ दरोग़ा नजूल 8 सितम्बर 1866ई0 नक़ल हुकुम मिर्ज़ा खुदादाद बेग साहेब बमोजिब मन्जूरी हुकुम साहब डिप्टी कमिश्नर बहादुर 12 जनवरी सन 1884ई0 नकल हुकुम जनाब असिस्टेंट कमिश्नर :अपठनीयः मोहम्मद असगर मुद्दई बनाम गोविन्द राम नक़ल अर्ज़ी गुरमुख सिंह साकिन शहर लाहौर 18 मई सन 83ई0 नक़ल अर्ज़ी व हुकुम मीर शाह मुन्शी वग़ैरह :अपठनीयः 17 जनवरी सन 1885ई0 बरसरे मौक़ा बहाज़िरी फ़रीक़ैन व वकील मुद्दई व दरोग़ा नजूल तहीक़ीक़ात अमल में आई चार चार गवाहान मिनजानिब मुद्दई व मु0 असगर मुद्दाअलैह पेश हुए के बयानात लिये गये मिनजानिब सरकार कोई गवाह पेश करने की ज़रुरत न समझी गई । बाद समात बहस वुकला फ़रीक़ैन निसबत तनक़ीह अव्वल के ज़ाहिर है कि मुद्दई की चारा जूई इस अम्र की है कि इजाज़त तामीर मंदिर की दी जावे । मिनजानिब मोहम्मद असग़र मुद्दाअलैह है कि जिस कदर लागत का मंदिर तामीर किया जावे उस ख़र्चे पर स्टाम्प होना चाहिए या चबूतरे की क़ीमत लगाकर स्टाम्प

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दाख़िल होना चाहिए । बमुलाहिज़ा ज़मीमा दोयम दफ़ा 17 ज़िमनी 6 एक्ट 7, 1870 ई0 यह साफ़ ज़ाहिर है कि जिस शै मुतदाविया की कीमत बमोजिब निर्ख़ बाज़ार के हो सकती हो उसके लिए 10 रु0 का स्टाम्प काफी है। तामीर मंदिर सौ में भी व हज़ार व ज़ायद उसे चन्द हज़ार में भी हो सकती है। कोई ताअयुन उसका नहीं है पस इजाज़त ऐसी तामीर के लिए ताअयुन निर्ख़ बाज़ार नहीं हो सकता व चबूतरे की दख़लयाबी का दावा नहीं है कि क़ीमत चबूतरा पर स्टाम्प लिया जावे इसलिए स्टाम्प 10 रु काफी व वाजिब है ।

निस्बत तनक़ीह दोएम वाज़ेह हुआ कि कोई इत्तिलानामा ममलूका दफ़ा 145 ज़ाब्ते फ़ौजदारी का साहेब मजिस्ट्रेट ज़िला ने हस्ब ज़ाबिता बनाम मुद्दई जारी नहीं फरमाया कि जिसका मन्सूख़ करना मुद्दई पर वाजिब होता एक शख़्स गुरमुख सिंह पंजाबी वास्ते तामीर मंदिर के पत्थर लाया था कि उसके उठाने के वास्ते साहेब डिप्टी कमिश्नर बहादुर ने बनाम गुरमुख सिंह हुकुम नाफ़िज़ फ़रमाया व जो

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हुकुम साहेब बहादुर :अपठनीयः ममदुहूल है वह साफ़ है कि मुन्शी लाल व राम नरायन जिसका कारिन्दा गुरमुख सिंह और जो पत्थर वास्ते बनाने के लाया है इजाज़त नहीं दी जा सकती और साहब कमिश्नर बहादुर ने अपील इस बिना पर नामंजूर फ़रमाई है कि क़ब्ल से कोई इजाज़त तामीर के नहीं की हस्ब क़ायदा जरुर है कि कत्रबल से इजाज़त तामीर हासिल की जावे पस बमुकाबले मुद्दई कोई हुक्म मुमानियत तामीर मंदिर पर चबूतरा सादिर नहीं हुआ पस मुद्दई किसी हुक्म को मन्सूख कराना वाजिब व लाज़िम नहीं और नज़ीर पेश करदा वकील सरकार से ताल्लुक़ नहीं है क्योंकि उस नज़ीर में हुकुम बमुकाबले मुद्दई सादिर हुआ था इस मुकदमे में बाबत तामीर चबूतरा कोई हुकुम बमुकाबले मुद्दई नाफ़िज़ नहीं हुआ अलावा बरीं बमुलाहज़ा दफ़ा 23 एक्ट 15 सन 1877 यह अमर अयां है कि ऐसे मुक़दम में हर वक़्त नालिश हो सकती है क्योंकि जब जब हुकुम नामन्जूरी का दिया जावे उससे जदीद बिनाये दावा पैदा होने पर नालिश जदीद हो सकती है अलावा इसके बमुक़दमात हमजो किस्म के लिए कोई ख़ास मद एक्ट हद समाअत में पाई नहीं जाती है। इसलिए छः साल की मीयाद बमोजिब मद नम्बर 120 एक्ट 15 सन 1877 ई0 दुरुस्त और मुनासिब मालूम होती है इसलिए इस मुकदमे में कोई मियाद आरिज़ नहीं है । निस्बत तनकीह सोयम बिला उज़र मुद्दाअलैह के हद समाअत आरिज़ व साथ उसके उज़्र यह पैदा हुई बिनाए दावा नाक़िस पाये जाते हैं अलाबाबरीं मुद्दई को मुमानियत तामीर की जाती है और मुद्दई लोकल गवर्नमेंट में अर्ज़दाश्त के उस पर मुद्दई को हुक्म तामीर सादिर नहीं हुआ बिना दावे हाज़ा को ज़रुर व मुद्दई मुस्तहेक नालिश का है । निस्बत तनकीह पन्जुम के मौक़े पर पैमाइश की और पैमाइश नक्शा सही है जो मुताबिक मुन्दर्जा दावा है कि मु हम्मद असगर को भी उस तादाद मुन्दर्जा अर्ज़ी दावा में अब कुछ उज़्र न रहा बल्कि वह कुछ तादाद कुछ इन्च में कम है तादाद फ़ीट सही है। निस्बत तनकीह शशुम बमुलाहिज़ा मौक़ा ज़ाहिर है कि चर यानी पादुका नक़्शा है

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जिसकी परसतिश होती है सिवाय इसके चबूतरे से मंदिर बाक़ैय चबूतरे पर एक मूरत ठाकुर जी रखी हुई है जिसकी परस्तिश होती है। चबूतरा मक़बूजा मुद्दई है कि जो कुछ उस पर चढ़ावा चढ़ता है वह मुद्दई लेता है कि इस बात यानी चढ़ावा को इस वक़्त मुहम्मद असगर मुद्दाअलैह भी तसलीम करते हैं। गवाहान मुद्दई से क़ब्ज़ा मुद्दई का बखूबी साबित है कि इस वजह से दीवार कटहरेदार हद हिन्दू मुसलमानान अहदा अर्से से क़ायम हुई है जिसका ज़िक्र आइन्दा मौक़े पर होगा । गवाहान मुद्दाअलैह कब्ज़ा चबूतरा मुद्दई से नवाक़फ़ियत ज़ाहिर करते हैं । दरम्यिान मस्जिद व चबूतरे के एक पुख़्ता दीवार कटरेहदार है कि नक़्शा मुरत्तिबा अमीन इसलाहे दावा के मुलाहिजा से बखूबी कैफ़ियत मौक़ा मुनकशिफ़ हो सकती है और साफ़ जाहिर है कि हुदूद दरमियान व चबूतरे की कायम की गई है और इसकी ताईद सरकारी ग़ज़ेटियर से जो क़ब्ल मुतानाज़ा हाल के मुरत्तिब हुआ बखूबी हासिल है कि पेशतर हिन्दू व मुसलमान दोनों इस मुक़ाम पर परस्तिश करते थे सन 1855 में बाद लड़ाई दरमियान हिन्दू व मुसलमान एक दीवार कटहरे की वास्ते रफ़े निज़ा के बना दी गई कि अन्दर उसके मुसलमानान व बाहर हिन्दू लोग परस्तिश करें इसलिए बाहर के दर्ज़े की आराज़ी मय चबूतरा मक़बूज़ा मुद्दई व हिन्दू लोगों की है। बाक़ी रही तनक़ीह चहारुम जिसपर दारोमदार डिग्री डिसमिस मुक़दमे का है यह मुक़ाम अलल उमूम मिस्ल दीगर तामीरात नहीं है कि मालिक व क़ाबिज़ को इख़्तयार तामीर मकान उपर अपनी आराज़ी व मक़बूज़ा के हासिह है बमुलाहिज़ा मौक़े की सूरते ख़ास उसकी पाई जाती है कि नक़्शे से मालूम हो सकता है यह मंदिर जाने का एक ही राह है गेा उस मुकाम पर जहां अहले हुनूद परस्तिश करते हैं क़दीम क़ब्ज़ा उनका है जिससे मिलकियत उनके में कोई कलाम नहीं हो सकता है और उसके इरद गिरद में मौक़े पर दीवार मस्जिद की पाई जाती है कि दरवाज़े बेरुनी पर लफ़्ज़ अल्ला कुन्दां है पस ऐसे मुक़ाम व चबूतरा पर अगरए मंदिर बनाया जावे तो मुत्तसिल व मुलहिक़ मस्जिद के घन्टा व शंख भी बजा करेगा जब कि एक ही रास्ते से दोनों फ़रीक हिन्दू व मुसलमान की गुज़र है और

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मंदिर  हिन्दुओं को बनोन की अगर इजाज़त दी जवे ो ग़ालिबन एक न एक रोज़ मुक़दमा फौज़दारी बरपा होकर नौबत कुश्त व खून हज़ारहा आदमी हो जावेगी इसी मसलेहत से हुक्काम फौज़दारी ने वक़्तन  फ़वक़्तन मुमानिअत तामीर जदीद मकान मज़हबी फ़रमाई है इसलिए यह अदालत भी  ख़्याल करती है कि मंदिर बनाने की इजाज़त ऐसे मौक़े पर देना गोया बुनियाद एक जंग व फ़साद की डालनी है पर दरमियान  हुनूद व अहले इसलाम दो फ़िरक़े मुख़लिफ़ के मसलेहत वक़्त इसी की मुक़तज़ी है और बदानिस्त इस अदालत के ऐसे मौक़े ख़ास पर इन्साफ़ भी यही चाहता है कि ऐसी दादरसी की इजाज़त न दी जावे और उसूले क़ानून  मुआदेहा के देखने से इस अदालत पर ज़ाहिर होता है कि इस मुआहदे की तामील किसी फ़रीक़ से न कराई जावे जो मुआहिदा ख़िलाफ़ मसलहेत आम के पाया जावे । पस हसब वजूहे बाला इस अदालत की राये में यह दादरसी मुद्दई  तरीक़े जायज़ के ख़िलाफ़ मुतसव्विर है जिससे नतीजा इस तन्कीह  का बहक़ मुद्दाअलैहिम  व दीगर तंक़ीहात का बहक़ मुद्दई फ़ैसल होकर –

हुक्म हुआ कि

हस्ब दफ़ा 198 ज़ाब्ता दीवानी दावा मुद्दई डिसमिस ख़र्चा फ़रीकैन ज़िम्मे फ़रीकैन मुकदमा दाख़िल दफ़्तर होवे ।

24 दिसम्बर सन 1885 ई0।

दस्तख़त हरिकिशन सब जज

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**O.O.S. No.1/1989**

**(R.S. No.2 of 1950)**

**Paper No. 95**

**Ext.A-27**

In the Court of the District Judge Faizabad

Civil Appeal No. 27 of 1885

Copy of judgement dated 18.5.86

passed by Coll. F.E.A. Chamier

District Judge, Faizabad in re-

Mahanth Raghubardas ..Plaintiff.

Vs.

1.Secy. of State of India 2. Mohammad Asghar...Defendant.

Appeal against the judgment and decree of Sri P. Hari Kishan, Sub-Judge, Fyzabad, dated 24 December 1885, dismissing plaintiff's Claim for permission of construction of temple

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March 18, 1886

Parties represented

I visited the land in dispute yesterday in the presence of all parties.

I found that the masjid built by the Emperor Babar Stands on the border of the town of Ayodhya, that is to say to the West and South it is clear of habitations. It is most unfortunate that a masjid should have been built on land specially held sacred by the Hindus, but as that event occurred 356 years ago , it is too late now to remedy the grievance all that can be done is to maintain the parties in status qua . In such a case as the present one any inaction (sic) would cause more harm and derangement of order than benefit.

The entrance of the enclosure is under a gateway which bears the superscription “Allah”-immediately on the left as the platform or chabutara of Masonry occupied by the Hindus. On this is a small superstructure of wood in the form of a tent.

This chabutara is said to indicate the birth place of Ram Chandra . In



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front of the gateway is the entry to the masonry platform of the masjid. A wall pierced here and there with railings divides the platform of the masjid from the enclosure in which stands the “Chabutara.”

The words of the Sub Judge “ Bahari Ke durja ke arazi mai chabutara makbooza mudai wa Hindu logon ke hai- jo is mukam par ahil hunud paristis karte hai kadim kabza unka hai. jis se milkiyat unke mai koi kayam nahi hai ho sakta hai.”

The words are redundant and are to be struck out of the judgement. The only question decided in this case is that the position of the parties will be maintained.

The true object of the suit was disclosed by B. Kuccu Mal yesterday when we were standing near the masjid - namely the British Govt. as no respectable persons was asked. through its Courts to remedy an injustice committed by a Mohammadan Emperor. The Dy. Commissioner contends that the civil Court jurisdiction in this matter. The relief asked for brief in contravention of Clause (d) of Section 56 .Act I, 1877. It is not clear to me how the order of the 14 May, 1883 can be said to have been issued in connection with the public duties of any department of the Govt. of India on the local Government on the contrary the plaintiff states that the local Government has sent him no answer to his application . If it be said that the order of the 14 May, 1883 was passed by a Magistrate, then the section of the Criminal Procedure Code should have been cited under which the order was passed at page 304 V. I.L.R ,it is laid down that persons of whatever sect are at liberty to erect buildings there in conduct public worship provided neither invade the rights of property enjoyed by their neighbours nor cause a public nuisance etc. and subject to such directions as the Magistrates may give to prevent obstructions of the thorough fare or breaches of the public peace.

If the particular act complained of is to be viewed as the act of Govt. and that in the part which the Depy. Commissioner took he merely acted as officer of the Government intending to discharge his duties as a public servant with perfect good faith, even on the assumption if the act of the Depy. Commissioner was itself wrong as against the plaintiff and produced

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damage to him, the plaintiff must have the same remedy by the action against the door(sic) whether the act was his own or whether it was done by order of the Superior powers. The civil irresponsibility of the local Government could not be maintained with any show of justice if its agents were not responsible from tortuous acts . The reason why this suit is dismissed is that there is no "injuria" nothing which would give a right of action to the plaintiff.

The decisions, which I have been able to find as to the jurisdiction of the Civil Courts being barred refer to questions of a public right determined by a Magistrate -for instance a Civil Court could not entertained to set a side an order of a Magistrate which declares a road to be a public road .

This appeal will be dismissed as the Mohammadan defendant intervened of his own will , his costs will be paid by plaintiff only as to Court fees and costs of copies the Government pleader is allowed costs Rs.16/- in each Court.

18/26 March 1886 Sd./ F.E.A. Chamier.

.... District Judge.

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**Ext. A-42**

**O.O.S. NO. 1 OF 1989**
**(R.S. NO. 2/50)**

J u d g m e n t

Suit no. 29 of 1945.
Shia Central Board, U.P. Waqf,(Lucknow)
vs.
Sunni Central Board U.P. Waqf (Lucknow).

The dispute in this suit relates to an ancient and historic mosque in Janamasthan, Ajodhia, which was admittedly constructed during the reign of Babar Shah over four centuries ago. After the enactment of the U.P. Muslim waqfs Act (XIII of 1936), the mosque was included amongst the Sunni waqfs, a list of which was prepared by the chief Commissioner of Waqfs under S.4 of the Act and published in the Govt. Gazette, D.26.2. '44' (and has been under the defts. superintendence since then).

The plaintiff (Shia Waqfs Board )Seeks a declaration that the mosque is a Shia waqf together with the Idgah attached to it at Jalpa Mala, Ajodhia, and v. Bahrampur, Pargana Haveli, and 20 bighas odd land, known as Sholapuri grove Mahal Bahrampur, in Faizabad Tahsil. The case as sset out in the plaint was that the mosque was founded by Abdul Baqi, an Isna Ashri Shia, that it had been all along in possession of Shias who have been reciting there prayers therein and that its mutwallies too were shias belonging to Baqi's family. As regars the property, it was stated that the Nawab Vizor and subsequently the kings of Oudh, had granted a cash Nankar of Rs. 302/3/6 through parwanas & sannds for the maintenance of the mosque which was realised from the revenue of V. Shahnawa. The plaint proceeded that on the annexation of Oudh, the Nankar grant was maintained but the entire village Bahrampur and the Sholapur Grove was granted to the mutawallies for themaintenance of themosque and a decree for proprietary rights, revenue fee was passed in favour of the mutawallies at the time of the Ist. regular settlement and that the mutawalllies had been observing the trees of the grant and filing

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accounts before the S.D.O.

Under the circumstances narrated above, the plaintiff claimed that he was entitled to its supervision as it was a Shia waqf as contemplated by the Act prior to the institution of this suit (on 4.7.45) the plaintiff had also sent a notice as required by S.53 and the cause of action was based on the publication in the Gazette as it was alleged that the chief commissioner of waqf had not sent the list of Sunni waqf to the plaintiff.

The deft (Sunni Board) asserted that the mosque was founded by Emperor Babar who was a Sunni, that is feshnavaz Khatebbad Muezzis have been of the same seat and that it had always been used by the Sunnis of Ajodhya for saying their Friday prayers. He further alleged that formerly the mutawallies were also sunnis , but it appears that one of them became a convert to Shiaism during the closing period of the reign of the kings of Oudh (who were Shias). The deft further denied that Baqi was Shia and that the mutawallies belonged to his family.

As regards the Idgah it was alleged that it was quite independent of the mosque but was similarly used by the Sunnis for their Id and Baqrid prayers.The deft. also agreed that v. Baharanpur ansd the Sholapur Grove were dedicated for the maintenance of the mosque. There were some other legal pleas also set up on defence which will appear from the issues.

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the following issues arose for trial on the pleading (& the replications) in this case:-

1. (a) Was the mosque in suit built by Abdul Baqi an alleged by the plaintiff? If, so, was he a Shia as alleged?

(b) Whether the mosque or was constructed by Babar Shah as alleged by the deft ?

2. Is the suit within time?

3. Hs the mosque in suit been used by the members of the Sunni



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Act as alleged by the deft. for over 12 years? If so, its effect ?

4. Is the notice,Ex A-7 defective ? If so, its effect ?

5. To what relief, if any, is the plaintiff entitled?

Findings

Issues 1(a) & (b)

As has been mentioned the plaintiff hs in support of his case relied upon the fact that the mutawallis have all along remained Shias and were the descendents of Abdul Baqi. It would be convenient to dispose of the question whether the mutawallis are the descendants of Abdul Baqui before taking up the main question as to who was the founder of the mosque.

In the replication the following pedigree was given:-

R.A. Baqi

↓

S. Hizabr Ali

↓

Husain Ali

↓

Sukoonat Bibi= Rajabali

↓

| | | |
|---|---|---|
| ↓ | ↓ | ↓ |
| Ali Baqi | M.Afzal | M. Asghar |
| | | J.M. Razi |
| | | ↓ |
| ↓ | | ↓ |
| Kulab Husain | | M. Baki. |

This pedigree has not been seriously challenged as the deft. has not given a counter pedigree and it was admitted on the oral pleadings

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that Kalab Husain is the present mutawalli and before his (his brother ) M. Zaki was the mutwawalli until about a year ago, Kalab Husain pedigree and says that he had heard it from M. Zaki and their father and their Phoophi, Mat. Elahan, all of whom are dead. Then there is the testimony of Mumtaz Husain (P.W.2) a retired Tahsildar, about 83 years old, and a Zamindar of this district. His grand daughter's daughter is married to Kalab Husain and he further deposes that his elder brother, Altaf Husain, was he further deposes that his elder brother, Altaf Husain, was married to the daugher of Mohd. Ali, a brooothher of Rajabali and that he hs been Sarfarazali, another brother of Rajabali and M. Asghar (his son) from whom he heard the pedigree.

This witness was posted in this district as a Girdawar Qanoongo in 1889-90 and subsequently as a Munsarim during the 2nd settlement operation in 1892-93 and had occasion to go to V. Shahnawa, about 3 miles from Ajodhia, which is the village in which Rajabali and his descendants have been residing. Lastly there is the deposition of S. Naze Husain (P.W.3) who is about 32 years old and testifies that he is agrand son of Mohd. Ali, one of the brothers of Rajabali, and that his mother was the daughter of M.Afzal son of …….. This witness is a resident of village……heard the pedigree from his parents who are dead. There is one more witness on this point, namely S. Mohd. Husain (P.W.4) who is a resident of Ajodhya and deposes to being a grandson of Sayed Ali, one of the brother of Rajabali, and that he heard in the pedigree from his father who is dead. The last two witnesses also depose that Rajabali and his brothers were the sons of Fateh Ali.

This pedigree finds indirect support from the defendant's witnesses also who deposs that they heard from their ancestors that the former mutawallis were Sunnis and that Rajabali too was that first a Sunni but had become a Shia later on. There is also Ext. A-13, which is an application by M. Zaki datd 20.7.1938, to the commissioner of Waqfs, Faizabad, objecting to the treating of Bahorampur and the land

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in Bholapur waqf property and claiming that he had his ancestors were its proprietors. In this application too be gave his family pedigree which is further substantiated by Exs. 2/P.W. 1 and A 12 which are documents of the Summary settlement (1960).

As regards Abdul Baqi (who was admittedly a contemporary of Babar Shah) being a Shia, para 1 of Ex.A 13 contains a statements that all the persons given in the pedigree were Isra Ashri Shias. There is also the admission of the defendants' witnesses to which I have already referred, and in the opening of his case. Defts' learned counsel admitted that the descendants of Rajabali were Shian. The witnesses who have deposed about the pedigree have also stated that they heard from their ancestors that Mir Abdul Baqi(or Baqi) was a Shia and had come from Isphahan in Persia. There are verses engraved on tablet in the central arch of the mosque which will be repaired to later on, on which Mir Baqi has been described as an "Isphahani" i.e. a resident of Isphahan.

It was urged on behalf of the defts that the evidence about Mir Baqi being ashia was in admissible as it did not fall within the provision of S.32 (5) of the Evidence Act used in the absence of any……..the controry the perusal presumption was…. for the second proportion learned counsel relied upon the decisions reported in 30 Cal. (I.L.R.) 683 (at P. 686) 1932 Bombay (I.L.R.) 356 and 1933 Lah. (A.I.R.) 80.

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There is no doubt that these authorities lay down that unless the contrary in proved, the general presumption is that the Muslims in India re (Hanafi) Sunnis but it is displaced by an equally good presumption in the present case, that Baqi being a Persian was a Shia as is borne out from the following passage in Bailie's Digest, Pt. II. P.1 (2nd Edition) Referring to the Arabian adage that "all people follow the religion of their kings". He says:-

" the saying was exemplified to the fullest extent in Persia, where the whole of the people have become Shofia (sik) since the



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accession of the Sofee (aafavi) dynasty in A.D. 1499. The process of assimilation was less rapid in India, where though several of the Nawabs, or local governors, were (Sheealis (Shias…… This was eminently the case in Oudh (oudh), the Nawabs of which were hereditary viziers (Wazirs) of the empire……."

Now the mosque in suit was admittedly built during the time of Babar who ruled from 1526-1530 and is clear from the passage granted above that the Persians had become Shias before that period. It follows, therefore, that the presumption in the present case is that Baqi must have been a Shia. As regards the admissibility of the statement in S.13 and the deposition of the witnesses it has been observed in 1 Luck. (I.I.R.) 97, (at p.145) that a very liberal interpretation must be given to the words in S 32 (5) that "when the statement relates to the existence of any relationship by blood-relations", otherwise valuable evidence of family history would be excluded. In 27 I.S. 238 (at p.251), their lordships held that under S.49, the opinion of persons having especial means of knowledge regarding the usages of any family, are relevant. Lastly, in 1929 Cal. (A.I.R.) 533, it was laid down that declarations made before the controversy by dead persons on a matter of general or public interest, eventhough, hearsay, are admissible. In the present case, the witnesses examined by the plff on this point are related to Baqi's descendant, Sukoonat Bibi, and they depose to statements relating to a matter of general interest to the Muslim community as regards the mosque having been built by a Shia and also about the family traditions.

I, therefore, held that the evidence in this case proves that Abdul Baqi was a Shia.

Turning now to the main question whether the mosque was built by Abdul Baqi or by Babar Shah. It may be mentioned at the very outset that it was conceded by counsel for the plff. that Babar Shah was a Sunni, although in the replications a contrary assertion was made. It was also common ground between the counsels on both sides

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that the determining factor whether the mosque in suit was a “Shia” or “Sunni” waqf would be the religion of its founder as neither the waqf Act (XIII of 1936) nor the Muslim Law laid down any distinction between the two, and there was no prohibition for members of either sect to say their prayers in a mosque built by a member of the other sect.

The plff. has examined seven witnesses (P.ws 2-8) which include the witnesses who have deposed the pedigree in support of the mosque having been built by Baqi. All of them are Shias and depose to having said their daily prayers also sometimes in the mosque in suits.

It appears from the statement of S.Murtaz Husain (P.W.2) that besides learning from the members of Baqi’s family, namely M.Asghar and Sarfarazali (brother of Rabaali) and his own father that Baqi was one of the ministers of Babar and had built the mosque, he also made some inquiries in 1892-93 as Munsarin during the 2nd settlement. The witness deposes that Mr. Hoses the settlement officer, had asked him to find out the important placed in Ajudhia as he was going to visit it and the witness made inquiries from M. Abdul Karim, the Nazir Sadar and one Mir. Forzand Ali of Ajodhia, bother (sik) of whom are dead. S. Nazer Husain (P.W.3) mentions his mother who had heard from Sukoonat Bibi about the mosque, and Akbar Ali, Ashiqq Ali and Nasir Ali, sons of Syed Ali, a bother of Rajab ali. It may be mentioned again that he is a descendant of Mohd. Ali, another brother of Rajabali and his mother was a grand daughter of Rajabali. S. Mohib Husain (P.W.4) is a descendant of Syed Ali and says that he heard from his father (who was S/o Syed Ali), his uncle, Akbar Ali, who are dead that the mosque was built by Abdul Baqi. Kalab Husain (P.W.8) is the present mutawalli and says that he learnt from his father (M Razi) his brother, M.Zaki (who died only recently) and his father’s sister Mst. Elahan,that the mosque was built by Abdul Baqi. He further deposes that he maintains the mosque out of the income of it V.

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Baharmpur and some land in V. Sholopuri, though he did not admit that it was waqf property. He admits that the Peshnamaz (or the Imams) and the muozzies (who are paid by him) have been Sunnis and that the expenses of faraweek (sik) i.e. the distribution of Sweets and payments of persons who recite the Qoran during the month of Ramzan have been met by him and his father, who died about 30 years ago.

The other set of witnesses, namely S. Husain Agha, Mirja Ali Husain and Kammant Husain (Ps.5-7) are residents of this city and depose to having attended an iftar (fast breaking ) party by S. Hasan Agha in 1932 and 1936 when a majliss was held and collective prayers were said. The mother of Rahan Aghar come from mohalla Qaziana of a Ajodhia and he deposes that he heard from her, his father and some other persons about Baqi being the governor of Oudh during Babar's time…….

The source of …… to be Mohd. Zaki, who was a frined of Mirza Ali Husain (P.W.6) as well as of Karamat (P.W.7) and they also used to go to Bhahnawa for attending majlisses during the chehlum. Their evidence is not of much consequences in view of the fact that the Ist set of witnesses are more qualified on account of their relationship to know about the matter in controversy and if their testimony is not accepted, no higher value can be attached to the testimony of the 2nd set of witnesses.

Turning now to the oral evidence adduced by the defendant, he has examined Ikramullah (D.W.1), a zamindar of Ajodha, Mir Abdul Ghafoor (D.W.2), a muafidar, Moulvi Abdul Ghaffar (D.W.3), the present Imam of the mosque, Abdul Wahab (D.W.4) and Karamatullah (D.W.5) All these persons are sunni residents of Ajodhia and depose to having said their Juma prayers and attended the faranech (sik) in the mosque and having heard from their ancestors that the mosque was built by Babar Shah. The evidence of Abdul Ghaffur (D.W.3) shows that the office of Imam has been hereditary in his family and before

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him his father and grand father were the Imans and this fact is admitted by Kalb Husain (P.W.8). The witness is also the author of a book containing the history of Ajodhia and says that he had heard from his grand father about the mosque having been built by Babar Shah. The evidence of the other witness does not deserve any particular discussion as it is manly concerned with the offering of prayers by they Sunni residents of Ajodhia, which has been admitted by Kalab Husain as well as in the oral pleadings. As regards their knowledge about the founder of the mosque, they even deny having heard the name of Mir Baqi, which appears to be untrue as will be shown later on. Moreover, if the matter rested upon oral evidence alone, I would prefer to rely upon the testimony of the Ist set of plff's witnesses as their source of knowledge was more direct.

There remains the documentary evidence produced by the parties. The plaint as well as the documents filed by the (Ex 3-13 and Exs 1 and 2/P.W.1) show that (torn)…….

was granted by Nawabs of Oudh and after the annexation the British Govt. maintained the grant but committed it by granting the superior proprietary rights free of revenue in V. Bahoram pur ( Sholapuri) to Mohd. Asghar and Mohd. Afzul (sons of Rajab Ali) for which a decree (Ex.12) was passed in 1870 (Ist settlement) Ex.s 2/P.W.1 and A 12 are the extracts from the register of Muafi grants in which investigations had been completed in 1860. These documents show that the original cash Nankar was granted by Babar Shah to MirBaqi, who has been described Molvi and muezzin of the Babari Mosque for his subistence and the expenes of (maintaining) the mosque. These documents also show that Rajaba Ali, who is described son in law of Baqi's grand son Hussain Ali, and his son, M. Asghar, were the holders at that time and it may be reiterated that these documents establish the pedigree up to M. Asghar beyond any doubt.

Ex.A 16 is an application given in 1866 (A.D.) by Afzal (s/o

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Rajabali) who was one of the decree holders at the Ist. settlement (Ex.12) describing himself as the mutawalli, complaining against some bairagis of Ajodhia in which he stated that the musjid situate in Jananathan (i.e. the mosque in suit) had been built by Babar Shah, A.17 is a written statement by Mohd. Asghar of the year 1885 (in this court) in which too he has described Babar as the founder of the mosque and lastly in para 2 of Ex A 13 M. Zaki (in 1938) has made the same recital.

The Gazetteer of this district also contains references to this mosque at references to this mosque at Pp 173-174. It shows that according to local affirmations, Babar came to Ajodhia in 1528 A.D. and halted here for a week, during which he destroyed the Janamasthan temple and on its site built a mosque using largely the materials of the old structure. The author then goes on to remark that he record of the visit is to be found in Musalman historians but it must have occurred about the time of Babar's expedition to Bihar. The Ist. settlement report also gives the same history of this mosque and adds that according to soyders (sik) memoirs of Babar, the Emperor encamped about 5 or 6 miles from Ajodhya and stayed for a week, selting the surrounding country, though it was remarkable that his doings at Ajodhia were wanting in his own memoirs (Baharauama) (sik).

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For the plff it was argued that in their applications, M.Afzul, M.Asghar, and M.Zaki had not given their source of knowledge and their admission were not binding on the plff. as the representatives of the Shia community. The rulings in 11own. 1590 and S. (sik)own 306 were cited but they are inapplicable as here it has not been shown that the admission were made under certain circumstances with some particular motive and surely these persons were in a such better position to know about the mosque than the present witnesses who lose their knowledge upon the statement of persons who in their own term (sik), did not know anything directly. It is also obvious that the



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whole of the evidence on this point is hearesay and it cannot be gain said that the statements of Mohd. Afzul and M.Asghar are much more valuable than the statements of the plff's witnesses who have deposed after a dispute has arisen about the founder of the mosque.

The history of the mosque in the Gazetter of the settlement report was also sought to be impungned (sic) on the ground that Babar's visit to Ajodhia was not mentioned in any historical work and the settlement officer was not required to make any such investigation. I am unable to accept these contentions also as the books (sic) are works (sic) of reference and admissible under S.57 of the Evidence Act. Moreover, in dealing with matters like the present when no direct evidence is available, such works based on investigation on the spot and local tradition assume great importance and unless disproved by superior evidence, must be accepted as containing a correct history of the subjects mentioned therein;-

Lastly, there are the two inscriptions in the mosque which have been reprudenced in any inspection notes. These are also referred to in the Gazetter and according to the date in the inscription on the pulpit, it was built in 923 Hijri, while according to the other it was in 935 H. corresponding with 1528 A.D.. These incorruptions were the sheet-anchor of the plff's case but I am of the opinion that they are inconclusive.

The Ist. inscription contains three in completes in Bersian and when translated runs as follows:-

"By the order of Shah Babar, whose Justice went up to the skies (i.e. was well-known), Amir (Noble) Mir Baqi, of lofty grandear, built this restiny place for angels in 923 Hijri".

The second inscription is more elaborate and contains in the usual gigh-flown language (sic) on enlogy of Babar and describes Mr. Baqi of Isphahan as his adviser and the builder of the mosque. This inscription no doubt supports the plff's case, because it does not say that it was by the order of Babar Shah and it only refers to the reign of

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Babar but the Ist. comflet (sic) in the Ist increption (sic) near the pulpit, clearly supports the theory that Babar had ordered the building of the mosque as stated in the Gazette Returning Officer and the settlement report.

The aforementioned inference is trengthened from the fact that Babar had also made a grant for its upkeep.

Then, there is the admitted fact that within living memory the Imams and the Nuezzims in the mosque have been Sunnis, that they have been paid by mutawallis who have been shias, and that Faranech (sic), which is recited by Sunnis only and not by Shia (amongst whom it is prohibited) has been allowed by the mutwallis and paid for by them. In this connection, I may refer to Ex. A 20 which is a deed executed by H.Zaki in 1936 a agreed to pay the arrears to M. Abdul Ghuffer the Imam, and A 11, the accounts furnished by Kalab Husain (P.w.8. These facts are strongly suggestive of the fact that the founder of the mosque was a Sunni as had he been a Shia the funds for it maintenance would not have been utilised for Waqf. Act.

The notice, A 7, is also valid as it distinctly gives the cause of action.

Issues 5.

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The plff. is not entitled to any relief.

Order

The suit is dismissed but for reasons given earlier, I disallow costs to the defndants, 0-20 Returning Officer-1 C.P.C.

Sd.

S.A.Ahsan,

30.3.46



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کمشنر رپورٹ مسٹر محمد ابراہیم صاحب وقف الیکٹر مورخہ ۱۰ دسمبر ۴۹ء بابتہ مسجد بابری متعلقہ مثل دفعہ 26 وقف مسجد بابری ضلع مسلم

Waqf 26 Iyzahad

مسجد بابری اجودھیا

155 12

سکریٹری صاحب۔ مسجد بابری اجودھیا کے متولیان پہلے یکے بعد دیگرے میر اصغر صاحب۔ محمد راضی صاحب۔ محمد ذکی صاحب۔ ملک حسین صاحب تھے۔ ملک حسین صاحب سابق متولی کا انتقال ہو گیا ہے۔ لہذا دوسرے سوال پیدا ہوا۔ مضلع سیوان مسجد مذکور کے لئے وقف ہے۔ مسجد مذکور کا متولی ہمیشہ مضلع سیوان کا نمبردار ہوتا چلا آتا ہے کہ جو نمبردار ہوتا ہے وہی مسجد مذکور کا متولی بھی ہوتا ہے۔ مضلع میں دریافت سے اور تحقیقات سے معلوم ہوا کہ مضلع سیوان کے موجودہ نمبردار جناب جواد حسین صاحب ہیں اور یہی وصول تحصیل کرتے ہیں اور مسجد مذکور کا انتظام بھی کرتے ہیں۔ سید اظہر حسین صاحب لکھیا مضلع سیوان نے بیان دیا کہ موجودہ نمبردار جناب جواد حسین صاحب ہیں اور یہی وصول تحصیل کرتے ہیں اور مسجد مذکور کے متولی بھی ہیں۔ جناب جواد حسین صاحب کا بیان قلمبند کیا انہوں نے اقرار کیا کہ میں نمبردار ہوں اور متولی ہوں اور انہوں نے اپنا یہ بیان دیا کہ محنت سے تو بہت کا کام انجام دونگا اور مسجد کا ایک پیسہ بھی غبن نہ کرونگا اور باقاعدہ حساب کتاب رکھونگا اور وقف بورڈ کے ہر حکم کی تعمیل بھی کرونگا۔ ایسی حالت میں مناسب یہ معلوم ہوتا ہے کہ جناب جواد حسین صاحب کا نام بطور متولی درج کر لیا جاوے۔ شہر فیض آباد میں یہ معلوم ہوا کہ ہندوؤں اور سکھوں کے خوف سے کوئی شخص عشاء کے وقت نماز مسجد مذکور میں نہیں پڑھتا ہے اور رات کو اگر کوئی مسافر مسجد میں رہ جاتا ہے تو اسکو ہندو وغیرہ بہت تنگ کرتے ہیں۔ مسجد کے صحن کے باہر ہندوؤں کا ایک مندر ہے جہاں بہت سے پنڈوا رہتے ہیں اور جو مسجد میں مسلمان جاتا ہے اسے نیز اچھلا کہتے ہیں۔ میں موقعہ پر گیا اور تحقیقات سے معلوم ہوا کہ مندرجہ بالا باتیں صحیح ہیں۔ لوگوں نے یہاں تک کہا کہ مسجد کو پنڈوں سے کافی خطرہ ہے کہ اسکی دیوار وغیرہ کمزور کریں۔ مناسب یہ معلوم ہوتا ہے کہ ایک تحریر ڈپٹی کمشنر فیض آباد پاس روانہ کر دیا جاوے کہ وہ مسلمانوں کو جو مسجد میں نماز پڑھنے جاتے ہیں ان کو تنگ نہ کریں اور مسجد مذکور ایک شاہی عمارت ہے اسکے تحفظ کا کافی خیال کیا جاوے۔ دستخط مسٹر محمد ابراہیم اسکرار ناظم بخط اسکرار 10/12/49

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|---|---|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
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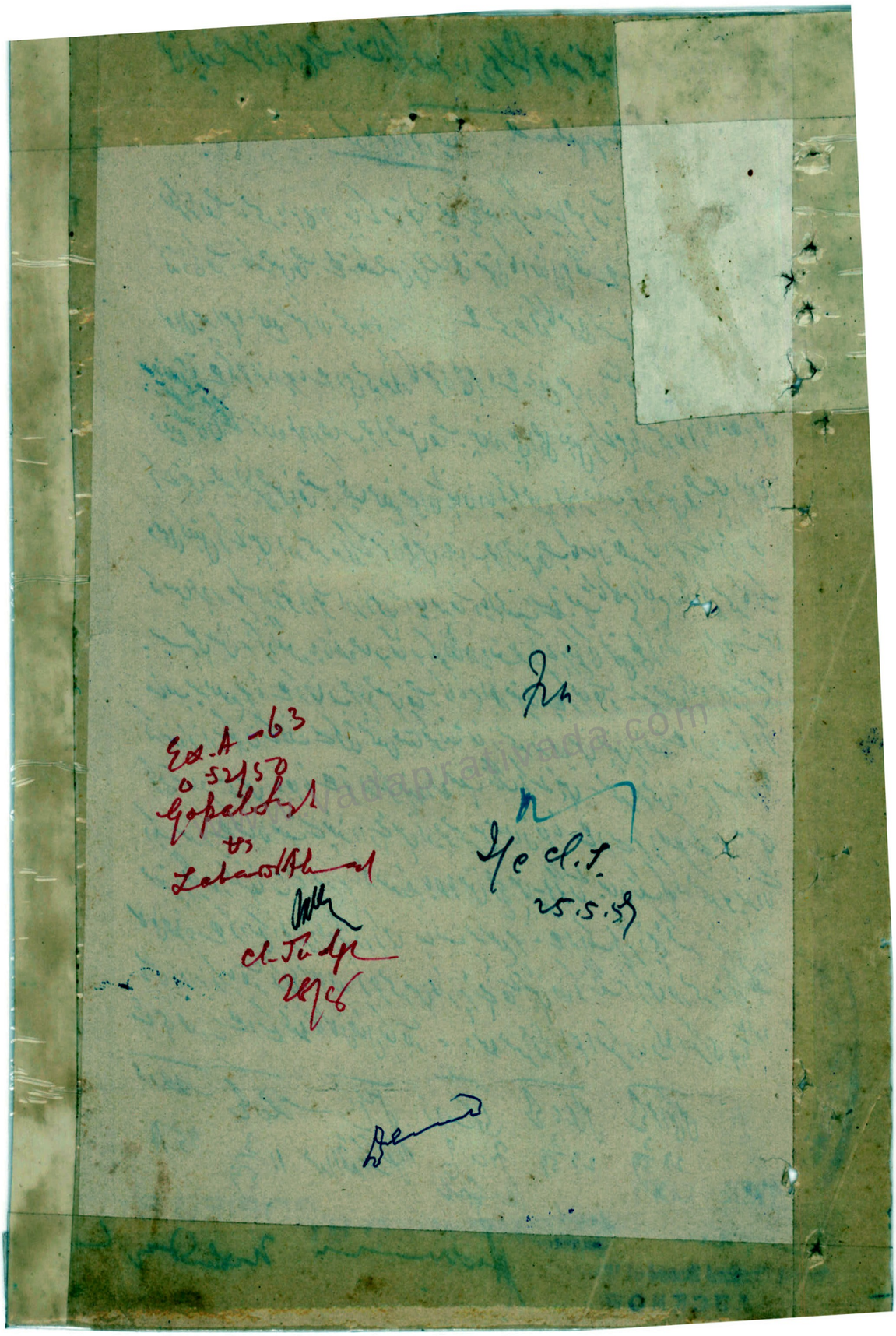


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Ex A63

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नकल रिपोर्ट मिस्टिर मुहम्मद इब्राहीम साहब वक्फ इन्क्सपेक्टर मुवर्रखा १० दिसम्बर सन् ४९ ई० बावत मसजिद बावरी मशमूला मिसिल वक्फ नम्बर २६ वक्फ मसजिद बावरी जिला फैजाबाद ।

मसजिद बावरी अयोध्या ।

सेक्रेटरी साहब - मसजिद बावरी अयोध्या के मुतावल्लियान पहले एके बाद दीगरे मीर असगर साहब , मुहम्मद रजी साहब, मुहम्मद अमजद अली साहब, मु० जकी साहब, कलबे हुसेन साहब थे । कलबेहुसेन साहब साबिक मुतवल्ली का इन्तकालात हो गया है लिहाजा दूसरे मुतवल्ली का तकर्रुर का सवाल पैदा हुआ मौजा सहनवा मसजिद मजकूर के लिये वक्फ है मसजिद मजकूर का मुतवल्ली हमेशा मौजा सहनवा का नम्बरदार होता चला आया है कि जो नम्बरदार होता है वही मसजिद मजकूर का मुतवल्ली भी होता है मौजे में दरियाफ्त से और तहकीकात से मालूम हुआ कि मौजासहनवा के मौजूदा नम्बरदार जनाब जौवाद हुसेन साहब हैं और यही उसूल तहसील करते हैं और मसजिद मजकूर का इन्तजाम भी करते हैं सैयद नवी हुसेन साहब मुखिया मौजा सहनवा में बयान दिया कि मौजूदा नम्बरदार जनाब जवाद हुसेन साहब हैं और यही वसूल तहसील करते हैं और मसजिद मजकूर के मुतावल्ली भी हैं जनाब जौवाद हुसेन साहब का बयान कलमबंद किया गया उन्होंने एकरार किया कि मैं नम्बरदार हूं और मुतवल्ली हूं उन्होंने अपना यह बयान दिया कि मेहनत से तौलियत का काम अन्जाम दूंगा और मसजिद का एक पैसा भी गबन नहीं करुंगा और बाकायदा हिसाब किताब रक्खूंगा और वक्फ बोर्ड की हर हुक्म की तामील भी करुंगा ऐसी हालत में मुनासिब

मुनासिब

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यह मालूम होता है कि जनाब जौवाद हुसैन साहब का नाम बतौर मुतवल्ली दर्ज कर लिया जाय शहर फैजाबाद में यह मालूम हुआ कि हिन्दुओं और सिक्खों के खौफ से कोई सख्स अशाय इशा के वक्त नमाज मसजिद मज्कूर में नहीं पढ़ता है और रात को अगर कोई मुसाफिर मसजिद में रह जाता है तो इसको हिन्दू वगैरह बहुत तंग करते हैं मसजिद के सेहन के बाहर हिन्दुओं का एक मंदिर है जहां बहुत से हिन्दू रहते हैं और जो मसजिद में मुसलमान जाता है उसको बुरा भला कहते हैं मैं मौके पर गया और तहकीकात से मालूम हुआ कि ब मुन्दर्जा बातें सही हैं लोगों ने यहां तक कहा कि मसजिद को हिन्दुओं से काफी खतरा है कि इसकी दीवार वगैरह कमजोर करें मुनासिब यह मालूम होता है कि एक तहरीर डिप्टी कमिश्नर फैजाबाद के पास रवाना कर दिया जाय कि वह मुसलमानों को जो मसजिद में नमाज पढ़ने जाते हैं उनको तंग न करें और मसजिद मज्कूर एक शाही इमारत है और इसके तहफ्फुज का काफी खयाल किया जावे ।

दस्तखत ह मिस्टर मुहम्मद इब्राहीम इन्सपेक्टर आफ वक्फ बखत अंग्रेजी १०.१२.४६. नम्बर दरख्वास्त ५६२. तारीख दरख्वास्त ११.३.५६ नाम सायल मिरजा अहमद बेग फैजाबाद उजरत मामूली मजमूई फ्री आफ कास्ट । नाम ता रीख बिनाय मिस्ल तैयारी २३.३.५६ तारीख हवालगी नक्ल मिस्ल २३.३.५६

Verified to be correct translation
23/9/92

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نقل الکتاب از مسٹر کمہ ایم اے اسسٹنٹ کمشنر فیض آباد مورخہ ۲۶ دسمبر ۴۹ء نمبر ۲۶ ریکارڈ برائے نقل

Waqf/26 Faizabad (156) (B)

موجودہ پوزیشن مسجد بابری اجودھیا

ستکر ہری صاحب۔ میں نے آج ۲۶ دسمبر کو اجودھیا میں مختلف حیثیت کی مسجد بابری کی تعمیر متعلقہ [illegible] مختصر تحقیقات کرنا تھا جس کے متعلقہ ذیل حالات اور واقعات معلوم ہوئے۔ عرصہ تین ماہ کا ہوتا ہے کہ بابا [illegible] جنم استھان دیکھنے اجودھیا آئے تھے اور یہاں آکر ہیرا گوپال یعنی پوجاریوں سے زور دار الفاظ میں جنم استھان پر رامائن کا پاٹ کرنے کو کہا۔ اس بات کی اشتہار عام اطراف و جوانب میں ہو گئی۔ بابا راگھو داس کے چیلے جا بجا ایک ماہ کے بعد رامائن کے پاٹ کیلئے ہزاروں ہندو اور پوجاری الہ آباد سے جمع ہوئے۔ سینکڑوں یاتری آئے۔ اس درمیان میں ہیرا گوپال نے مسجد کے باہر سامنے اور دکھن کونے قبرستان کا زیادہ تر حصہ کھود کر ہموار کر دیا۔ اور صفائی کرا دی اور چند قبروں کی جگہ پر چبوترہ بنا دیا۔ رامائن کے پاٹ کی تکمیل کے بعد پرسوں ۲۴ دسمبر کو ہوئی۔ اس کے بعد ہیرا گوپال نے مسجد کے باہر سامنے کی قبروں کو بھی کھود کر ہموار کر دیا۔ اور صفائی کرا دی۔ اس کے بعد ہیرا گوپال نے مسجد کے دروازہ کے سامنے ایک چبوترہ بنانا شروع کیا۔ اس پر پولیس نے جا کر ان کو روکا۔ اس پر ہیرا گوپال نے کہا کہ ہم تو یہاں پوجا کرنے کا چبوترہ بنا رہے ہیں۔ اس پر پولیس نے کام بند کرا دیا۔ اس وقت چبوترہ کی بنیاد کھدی ہوئی ہے۔ اس کے بعد ہیرا گوپال نے مسجد کے دروازہ کے سامنے ایک شیڈ بنا لیا ہے۔ اس شیڈ کے نیچے ہیرا گوپال اور ان کے ساتھی بیٹھتے ہیں۔ مسجد کے دروازہ کے سامنے ایک لوہے کا جنگلہ لگا ہوا ہے۔ اس جنگلہ کے باہر ہیرا گوپال نے ایک چبوترہ بنا لیا ہے۔ اس چبوترہ پر ہیرا گوپال اور ان کے ساتھی بیٹھتے ہیں۔ مسجد کے دروازہ کے سامنے ایک چبوترہ بنا ہو

آج جمعہ بھی ہے میں [illegible] پر گیا تو کیا دیکھتا ہوں کہ دس پندرہ بیراگی ڈنڈا اور [illegible] وغیرہ لیکر مسجد کے
صحن میں موجود ہیں اور بہت سے بیراگی مسجد کے دروازہ پر ڈنڈا وغیرہ لیکر بیٹھے ہیں اور اطراف و جوانب سے
[illegible] ہو رہے ہیں [illegible] کوتوال شہر اور پولیس وغیرہ کا کافی انتظام ہے مسلمانان جمعہ کی نماز
[illegible] معلوم کیا حشر ہو میں اب دریا پار کر کے [illegible] گونڈہ کیلئے جا رہا ہوں

(Sd) Mohd Ibrahim 23.12.49 Ayudhia [illegible]

| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
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Mohd [illegible]

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Central Board of Waqfs [illegible]
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Gopal Singh
v.
Lahore Ahmad
Cl. Judge
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I/c Cl. J.
25.5.59

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मोजूदा हालत मसजिद बाबरी अयोधिा

सेक्रेटरी साहब में २२ ,दिसम्बर सन् ४९ को अयोधिा बाजे तहकीखात मोजूदा हालत मसजिद बाबरी व कबरसतान आया और तमाम दिन तहकीकात करता रहा जिस से मुन्द्री जेल हालात और वाकेआत मालूम हुये । अर्सा ३ माह का हुआ है कि बाबा रघुदास जन्म स्थान देखने अयोधिा आये थे । और यहां आ कर बैरागियों पुजारियों से जोरदार अल्फाजों में कहा कि जन्म स्थान पर रामायन का पाठ होना चाहिये । इस बात की शोहरत तमाम अतराफ व जवार में हो गई बाबा रघुदास के चले जाने के बाद एक माह के बाद रामायण के पाठ के लिये हजारों हिन्दू और पुजारी और पंडित जमा हुये । हफ्तों पाट रहा । उस दरमियान में बैरागियों ने मसजिद के बाहर सामने और दाहिने वाले कबरसतान का ज्यादा तर हिस्सा खोद कर बराबर कर दिया और झन्डी लगा दिया और चन्द कबरों की जगह पर पत्थर रख दिया है रामयण के पाठ के वक्त भी पुलिस का इन्तेजाम था । मगर तब भी कबरों को खेद दिया गया । पुलिस ने ४ आदिमयों को पकड़ा जो बाद को जमानत पर रिहा करदिये गये ख्वाजा हड्डी रहमतुल्ला का मजार जो टीले पर इस कबरस्तान के करीब में है इस मजार को खोद कर बराबर करदिया गया और वहां एक बैरागी झन्डी लगा कर मुकीम हो गया है मसजिद के दरवाजे सहन पर जो पुख्ता कबर है उसको बरा करके बैरागी पत्थर रख कर बैठे हैं । मसजिद के कुवेा के पास एक बैरागी

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~~छप्पर डाल~~ ~~पत्थर रख~~ कर ~~बैठे हैं मसजिद के कुवें के पास एक बैरागी~~ छप्पर डाल करबैठा है पाट से पेश्तर ~~की मरतफा व घोड़ा~~ कई मरतबा घेरा व लूटा तोड़ा गया ~~अब~~ मुअजिन को मारा उसके बाद मसजिद के कतबे ~~को~~ खोदने की कोशिश की फिर दो परदेशी मुसलमानों को मारा और वह काफी जखमी हुये अब मसजिद के बाहर दो खेमा है एक में पुलिस कान्सेटेबिलान और एक में बटालियन के सिपाही रहते हैं दोनों की मिल कर तादाद ८,६ है अब मसजिद में बराबर ताला बंद रहता है यानी बजुज बरोज जुमे के किसी वक्त नमाज और अजान नहीं होती मसजिद के ताला कुन्जी मुसलमानों के पास रहती है पुलिस ताला नहीं खोलने देती । ताला जुमे के रोज महज दो तीन घंटे के लिये खोला जाता है और इसी दौरान में मसजिद की सफाई वगैरह और जुमे की नमाज होती है फिर ताला बदस्तूर बंद कर दिया जाता है जुमे की नमाज होते वक्त बहुत शोर करते हैं और सीढ़ी से जब नमाजी नीचे जाते हैं तो मुत्तसिल मकानात से नमाजियों पर जूता और ढेला आता है मुसलमानान खौफ की वजह से नहीं बोलते ~~रविवास~~ राधोदास के ~~दास~~ बाद मिस्टर लोहिया भी अयोध्या आये थे और लेक्चर वगैरह दिया और कहा कि कब्रों की जगह पर फूल वगैरह के दरख्तान लगा दो ~~फिर~~ फिर हा मैं लखनऊ से कोई मिनिस्टर साहब आये थे उनसे बैरागियों ने कहा कि मसजिद जनम भूमि है दिला दो उन्होंने ज्यादती करने को मना किया इस पर बैरागी उन पर खफा हो गये और वह पुलिस की हिफाजत में फैजाबाद वापस चले गये ~~किसी~~ इसी दौरान में अयोध्या के तनक भवन के मन्दिर में महन्त बड़ा स्थान मुसम्मी रघुबर दास ,वेदान्ती जी नारायण दास , आचार्य जी अशरफी भवन के ~~व~~ इन लोगों ने मुसलमानों को बुलाना चाहा मगर बजुज जहूर अहमद के कोई नहीं गया हिन्दुओं

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जहूर से कहा कि मुसलमानों से मसजिद हमको बिला दो और तो भाई भाई वरना दुश्मन । मैं रात को अयोध्या ठहर गया सुबह को मालूम हुआ कि बैरागी मसजिद पर जबरदस्ती कब्जा कर रहे हैं आज जुमा भी है मैं मौके पर गया तो क्या देखता हूं कि दस पन्द्रह बैरागी डंडा और फरसा वगैरह लेकर मसजिद के सहन में मौजूद हैं और सब से बहुत बैरागी मसजिद के दरवाजे पर डंडा वगैरह लेकर बैठे हैं अतराफ व जवानिब से हिन्दू जमा हो रहे हैं सिटी मजिस्ट्रेट कोतवाल शहर और पुलिस वगैरह का काफी इन्तजाम है मुसलमानान जुमा की नमाज पढ़ने फैजाबाद से जरुर आवेंगे न मालूम क्या हश्र हो अबमैं दरियाबार कर के लक्कड मंडी गोडें के लिये जा रहा हूं ।

हस्ताक्षर सैयद मुहम्मद इब्राहीम । ता० २३.१२.४९ डाक अयोध्या

तारीख २३.१२.४९ १० ए० एम.।

ब नम्बर दरख्वास्त ५९ तारीख दरख्वास्त ११.३.५९ नाम सायल मिरजा अहमद बेग फैजाबाद । उजरत मजमुई फीस आफ कास्ट मामूली

तारीख तैयारी नकल मिसिल २३.३.५९ तारीख हवालगी नकल मिसिल २३.३.५९

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Correct translation
23/9/92

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In the Court of the Civil Judge, Faizabad
**O.O.S. No. 1 of 1989**
(Reg: Suit No.2 of 1950)

Shri Gopal Singh Visharad .....Plaintiff

Versus

Shri Zahur Ahmad and others .....Defendants

REPORT

Sir,

I was appointed a commissioner in the above case to prepare a site plan of the locality and building in suit on scale. Accordingly, in compliance with the order of the court, I visited the locality on 16.4.50 and again on 30.4.50 after giving due notice to the counsel of the parties, and made necessary measurements on the spot, on the first day of my visit none of the parties were present, but on the second day defendant no.1 was present with Shri Azimullah Khan and Shri Habib Ahmad Khan counsel. At about noon defendant no.1 presented an application, attached herewith, when the measurement work had already finished.

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Plan No.I represents the building in suit shown by the figure ABCDEF on a larger scale than Plan no.II, which represents the building with its locality.

A perusal of Plan no.I would show that the building has got two gates, one on the east and the other on the north, known as "Hanumatdwar" and "Singhdwar" respectively. The "Hanumatdwar" is the main entrance gate to the building. At this gate there is a stone slab fixed to the ground containing the inscription "1- Shri Janma Bhumi nitya yatra," and a big coloured picture of Shri Hanumanji is placed at the top of the gate. The arch of this entrance gate, 10' in height, rests on two black kasauti stone pillars, each 4' high, marked a and b, containing imaged of "Jai and Vijai" respectively engraved thereon. To the south of this gate on the outer wall there is engraved a stone image, 5' long, known as "Varah Bhagwan."

The northern gate, known as "singhdwar," 19'6" in height, has got at its top images of Garura in the middle and two lions one on



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each side.

On entering the main gate there is pucca floor on the eastern and northern side of the inner building, marked by letters GHJKL DGB on the north of the eastern floor there is a neem tree, and to the south of it there is the bhandara (kitcher). Further south there is a raised pucca platform, 17' x 21' and 4' high, known as "Ram Chabutra," on which stands a small temple having idols of Ram and Janki installed therein. At the south -eastern corner E there is a joint neem-pipal tree, surrounded by a semi-circular pucca platform, on which are installed marble idols of Panchmukhi mahadev, Parbati, Ganesh and nandi.

On the northern floor there is a pucca platform, 8' x 9', called "Sita Rasoi." On this platform there is a pucca chulha with chauka and belna, made of marble, affixed by its side. To the east of the chulha there are four pairs of marble foot prints of Ram, Lakshman, Bharat & Shatrunghna.

The pucca courtyard in front of the inner (main) building is enclosed by walls NHJK intercepted by iron bars with two iron bar gates at O and P as shown in the Plan no.I. At the sourthern end of this cortyard there are 14 stairs leading to the roof of the building, and to the south of the stairs there is a raised pucca platform 2' high, having a urinal marked U at its south-west corner.

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There are three arched gates, X,Y and Z leading to the main building, which is divided into three portions, having arches at Q and R. There is a chhajja (projected roof) above the arch Y. 31

The three arches, Y, Q and R are supported on 12 black kasauti stone pillars, each 6' high, marked with letters c to n in Plan no.I. The pillars e to m have carvings of kamal flowers thereon. The pillar contains the image of Shankar Bhagwan in Tandava nritya form and another disfigured image engraved thereon. The pillar J contained the carved image of Hanumanji. The pillar n has got the image of Lord Krishna engraved thereon other pillars have also got carvings of images which are effaced.

In the central portion of the building at the north-western corner, there is a pucca platform with two stairs, on which is installed



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the idol of Bal Ram (infant Ram).

At the top of the three portions of the building there are three round domes, as shown separately in Plan no.I, each on an octagonal base. There are no towers, nor is there any ghusalkhana or well in the building.

Around the building there is a pucca path known as parikrama, as shown in yellow in Plan Nos.I & II. On the west of the parikrama, the land is about 20' low, while the pucca road on the northern side is about 18' low.

Other structures found on the locality have been shown in Plan no.II at their proper places.

The land shown by letters S and T is covered by huts and dhunis of sadhus.

Adjacent to and south of the land shown by letter T, there is a raised platform, bounded by walls, 4' 6" high, with a passage towards west, known as "shankar chabutra."

The pucca well, known as "Sita koop" has got a tin shed over it, and a stone slab is fixed close to it with the inscription "3- Sita koop". To the south -west of this well there is another stone slab fixed into the ground with the inscription "4-Sumitra Bhawan". On theraised platform of Sumitra Bhawan there is a stone slab fixed to the ground, marked , carved with the image of Shesh nag.

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The names of the various samadhis and other structures as noted in Plan no.II were given by sadhus and others present on the spot.

Plans nos.I and II, which form part of this report, two notices given to parties counsel and the application presented by defendant no.1 are attached herewith.

I have the honour to be,
Sir,
Your most obedient servant,
Shiva Shankar Lal,
Pleader
Commissioner

Faizabad.
25.5.50



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Sl No. 27/1950 A 16

~~A 15~~

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नकल बतौर सनद

रूबकार कचेहरी कलेक्टरी जिला फैजाबाद बइजलास मिस्टर बाबरक कारनेगी साहब बहादुर डिप्टी कमिश्नर वाकैय तारीख ३१ माह अगस्त १८६३ चिट्ठी नम्बरी २४८२ मोर्रिखा २५ माह अगस्त सन् ६३ ई० मुरसला साहेब सिक्रेटरी चीफ कमिश्नर बहादुर जरिये डाक्ट नम्बरी ११६ मोर्रिखा २८ माह अगस्त सन् १८६३ ई० साहब कमिश्नर बहादुर बदी मज़मून मौसूल हुई कि बिलएवज़ मुबलिस ३०२रु ३आ० ६पा० जो वास्ते मस्जिद जन्म-स्थान दोआम के लिये गवर्नमेन्ट ने मन्जूर किया था। किसी ज़मीन नज़ूल करीब अजोध्या बिला अदाय महसूल सरकार बतौर माफी दोआम मुजमा आमदनी ३०२रु ३आ० ६पा० सालाना के हो, दिया जावे। साहेब डिप्टी कमिश्नर साहेब बहादुर तक नक्शा ज़मीन जो देने के वास्ते तजवीज़ किये जावें भेजे उस नक्शे में सरहद साफ-साफ दर्ज होना चाहिये और वह नक्शा बहिसाब पैमाना तैयार होना चाहिये बमैय १ रिपोर्ट साहेब कमिश्नर बहादुर के भेजा जावे। हुक्म हुआ कि बजिन्सह् यह रोबकार बइजलास मुन्शी रायरामदयाल साहब इक्सटरा असिस्टेन्ट कमिश्नर बहादुर हस्ब तामीर व कार्यवाही करने के पेश होवे। और लिखा जावे कि मुन्शी साहेब बइत्तफाक राय मिस्टर बाबरक कारंगी साहब बहादुर के कार्यवाही उसकी करें

ह० हाकिम
इजलास रायराम दयाल साहेब बहादुर
एक्सटरा असिस्टेन्ट कमिश्नर,
नं० रोजनामचा ४०८

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हुकुम हुआ कि

मुर्ल मैं मिसिल साबिका के पेश होवे । अलमरकूम तारीख ६ सितम्बर १८६३ ई० दस्तखत हाकिम ।

बाद मुलाहिजा मिसिल के दरयाफ्त हुआ कि रज्जब अली व मोहम्मद असगर हाजिर नहीं है । और उनसे दरयाफ्त इस अमर का ज़रूर है कि हस्ब मन्शा हुकुम कोई ज़मीन की ख्वाहिश है इसलिये हुकम हुआ कि आज १४ सितम्बर सन् १८६३ ई को पेश होवे १२ माह सितम्बर सन् १८६३ ई० द० हाकिम १६ सितम्बर सन् १८६३ ई० बाद आं जां के बमुकाबिले रज्जब अली व मोहम्मद असगर वास्ते तजवीज़ के पेश हुआ । नाम बुरदिगान ने कहा कि जमीन मशमूला शिवाला पुरी और बहूरन पूर जो मुतालिका नजूल के है एवज़ ३०२२-३ आ ६ पा के मिल जावे दरियाफ्त सरिश्ता से वाज़े हुआ कि जमा अदायमोज़े बहूरन पूर १९३ रूपया और जमा आराज़ी शिवाला पुरी १६२ रूपया जुमुला ३५५ रु. अदा साल तमाम है । यानी ५२-१२-६ ईज़ाद बशरते कि दिया जाना क़ताआत मज़कूरैन का साहेब असिस्टेन्ट कमिश्नर बहादुर मन्जूर फरमावें । तो जमीन जमई ५२-१२-६ के ज़मीन शोला पुरी मुन्तखिब हो सकती है और मौजा बहूरन पूर मोजा मुसल्लम बदस्तूर रहें इसलिये +

हुकुम हुआ कि ------- हमराह सुदूर हुकुम बइजलास साहेब असिस्टेन्ट बहादुर इन्चार्ज जिला पेश होवे । १६ माह सितम्बर १८६३ ई० दस्तखत हाकिम -- - - - इजलास डा० बेग साहेब असिस्टेन्ट साहेब इन्चार्ज जिला फैजाबाद ।

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हुक्म हुआ कि

मुन्शी राय दयाल साहेब एक्सटरा साहेब कमिश्नर साहेब बहादुर हस्ब तजवीज़ अपनी जमीन जमा ५२-१२-६ मुन्तखिब व मिनहां करके बकिया हर दो कतआत का नक्शा हस्ब मन्शा चिट्ठी साहेब सेक्रेटरी चीफ कमिश्नर बहादुर मुरत्तब फरमा कर इरसाल फरमायें । तब रिपोर्ट बाज़ाब्तह मेजा जावेगा --------- मुकदमें में डाकेट ताकीदें आज बराह मेहरबानी जल्द इरसाल फरमायें । २८ सितम्बर सन ६३ ई० ।

इजलास मुन्शी राय दयाल साहेब बहादुर द० हाकिम आज पेश हुआ और सायल से पूछा गया कि उजरत अमीन तुम दाखिल करोगे । बयान किया कि हम दाखिला करेंगे । इसलिए हुक्म कि हुआ कि एक अमीन उजरत पर मुकर्रर हो कि उसके मारफत नक्शा बहुरन पूर बतौर हल्का हद बस्त और नक्शा शिवाला पुरी किस्तवार साफ व तैयार कराया जाये । और जो ज़मीन जमा ५२-१२-६ सरकारी हल्का शोलापुरी में रहेगी ज़मीन अलम है रोज से उसमें वास्ते शिनारन्त नज़ूल सरकार पूर कर देवे । अलमरकूम तारीख ३० सितम्बर सन १८६३ ई० द० हाकिम लक्ष्मन प्रसाद नकलनवीस

Verified to be correct translation

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اسٹامپ ہشت آنہ　　نقل بطور سند　　صفحہ اول

روبکار کچہری کلکٹری ضلع فیض آباد بااجلاس مسٹر بابرک کارنیگی صاحب بہادر ڈپٹی کمشنر واقع تاریخ ۳۱ر اگست ۱۸۶۳ عیسوی چٹھی نمبری ۲۴۸۲ مورخہ ۲۵ر ماہ اگست ۱۸۶۳ء مرسلہ صاحب سکریٹری چیف کمشنر بہادر ذریعہ ڈاک نمبری ۱۱۰۶ مورخہ ۲۸ر ماہ اگست ۱۸۶۳ء صاحب کمشنر بہادر ہدیں مضمون موصل ہوئی کہ بعیوض مبلغ ۶/۳/۳۰۲ جو واسطے مسجد جنم استھان دوام کے لئے گورنمنٹ نے منظور کیا تھا کسی زمین نزول قریب اجودھیا بلا ادائی محصول سرکار بطور معافی دوام تجمیع آمدنی مبلغ ۶/۳/۳۰۲ سالانہ کی ہو دیا جاوے صاحب ڈپٹی کمشنر بہادر یک نقشہ زمین جو دینے کے واسطے تجویز کئے جاوی بھیجیں اُس نقشہ میں سرحد صاف صاف درج ہونا چاہے اور وہ نقشہ بحساب پیمانہ طیار ہونا چاہئے معہ ایک رپورٹ صاحب کمشنر بہادر کے بھیجا جاوے۔

حکم ہوا کہ

بجلسہ روبکار بااجلاس منشی رائے رامدیال صاحب اکسٹرا اسسٹنٹ کمشنر بہادر جہت تعمیل وکارروائی کے پیش ہووے اور لکھا جاوے کہ منشی صاحب باتفاق رائے مسٹر ڈاکٹر بیگ صاحب بہادر کے کارروائی اس کی کریں فقط۔

دستخط حاکم

اجلاس رائے رام دیال صاحب بہادر اکسٹرا اسسٹنٹ کمشنر بہادر تحریر روزنامچہ ۲۰۸

حکم ہوا کہ

معہ مسل سابقہ کے پیش ہووی المرقوم تاریخ ۹ر ستمبر ۱۸۶۳ء　　دستخط حاکم

بعد ملاحظہ مسل کے دریافت ہوا کہ رجب علی ومحمد اصغر حاضر نہیں ہیں اور ان سے دریافت اس امر کا ضرور ہے کہ حسب منشاء حکم کون زمین کی خواہش ہے اس لئے

حکم ہوا کہ

بتاریخ ۱۴ر ستمبر سن الیہ کو پیش ہووے ۱۲ر ماہ ستمبر ۱۸۶۳ء　　دستخط حاکم　　۱۶ر ستمبر ۱۸۶۳

از آنجا کہ بمقابلہ رجب علی ومحمد اصغر واسطے تجویز کے پیش ہوا امیدگان نے کہا کہ زمین مشمولہ شیوالہ پوری اور بھورن پور جو متعلق نزول کے ہیں عیوض ۶/۳/۳۰۲ کے بلاوے دریافت سررشتہ سے واضح ہوا کہ جمع ادائی ملفوضہ بھورن پور ۱۹۳/- روپیہ اور جمع آراضی شیوالہ پوری ۱۶۲ روپیہ جملہ ۳۵۵ روپیہ سال تمام ہے یعنی ۵۲/۱۲ ایزادی بشرطیکہ دیا جانا قطعات مذکورین کا صاحب اسسٹنٹ کمشنر بہادر منظور فرماویں بعد میں جمعی ۵۲/۱۲ کے زمین شیوالہ پوری سے منتخب ہوسکتی ہے اور موضع بھور نپور موضع سالم بدستور رہے اسلئے۔

حکم ہوا کہ بمراد صدور حکم بااجلاس صاحب اسسٹنٹ کمشنر بہادر انچارج ضلع پیش ہووے۔

۱۶ر ماہ ستمبر ۱۸۶۳ء　　دستخط حاکم　　اجلاس ڈاکٹر بیگ صاحب اسسٹنٹ کمشنر بہادر انچارج ضلع فیض آباد

حکم ہوا کہ

منشی رامدیال صاحب اکسٹرا اسسٹنٹ کمشنر بہادر حسب تجویز اپنی زمین جمع.....۶/۱۲/۵۲ منتخب ومنہا کر کے بقیہ ہر دو قطعات کا نقشہ حسب منشائے چٹھی صاحب سکریٹری چیف کمشنر بہادر مرتب فرما کر ارسال فرماویں تب رپورٹ باضابطہ بھیجا جاویگا.....دریں مقدمہ میں ڈاکٹ تاکید ہے آج براہ مہربانی جلد ارسال فرماویں۔ ۲۸ر ستمبر ۶۳ء　　دستخط حاکم

اجلاس منشی رام دیال صاحب بہادر

آج پیش ہوا اور سایل سے پوچھا گیا کہ اجرت امین تم داخل کروگے بیان کیا کہ ہم داخل کریں گے اس لئے۔　　حکم ہوا کہ

ایک امین اجرت پر مقرر ہو کے اوس کی معرفت نقشہ بھورن پور بطور حلقہ حد بست اور نقشہ شعلہ پوری کشتوار صاف وطیار کرایا جاوے اور جو زمین جمع ۶/۱۲/۵۲ سرکاری حلقہ شعلہ پوری میں رہے گی امین رنگ زرد سے اس میں واسطے شناخت نزولی سرکار پر کر دیوے۔ المرقوم تاریخ ۲۰ر ستمبر ۱۸۶۳ء

دستخط حاکم　　بقلم کچھن پرساد نقل نویس

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नकल बतौर सनद सफहा नुजूल

स्टाम्प मालयती 8 आना

रोबकार कचेहरी कलेकट्री जिला फैजाबाद बइजलास मिस्टर बाबरक कारलेगी साहब बहादुर डिप्टी कमिशनर वाके तारीख 31 माह अगस्त 1863ई0 चिट्ठी नम्बरी 2482 मोर्खा 25 अगस्त 1863ई0 मुर्सला साहब सिकरेट्री चीफ कमिशनर बहादुर ज़रिये डाक्ट नम्बरी 1106 मोर्खा 28 माह अगस्त 1863ई0 साहब कमिशनर बहादुर बदीं मजमून मौसूल हुई कि बइवज मुबलिग 302/3/6 जो वास्ते मस्जिद जनम स्थान दवाम के लिये गौर्नमेंट ने मंजूर किया था किसी अमीन नुजूल क़रीब अजोध्या बिला अदाई महसूल सरकार बतौर मआफी दवाम बजमीय आमदनी मुबलिग 302/3/6 सालाना की हो दिया जावे साहब डिप्टी कमिशनर बहादुर यक नकशा जमीन जो देने के वास्ते तजवीज़ किये जावे भेजें उस नकशे में सरहद साफ साफ दर्ज होना चाहिये और वह नकशा बहिसाब पैमाना तय्यार होना चाहिये व मय यक रिपोर्ट साहब कमिशनर बाहदर के भेजा जावे।

हुक्म हुआ कि

बजिंसिही ब—रोबकार बइजलास मुंशी राय राम दयाल साहब एक्स्ट्रा असिस्टंट कमिशनर बहादुर जिहत तामील व कार्रवाई के पेश होवे और लिखा जावे कि मुंशी साहब बा इत्तफाक राय मिस्टर डा0 हेग साहब बहादुर के कार्रवाई इसकी करें फकत

दस्तखत हाकिम

इजलास राय राम दयाल साहब बहादुर एक्स्ट्रा असिस्टंट कमिशनर तहरीर व रकमहु 408

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हुक्म हुआ कि

मय मिसिल साबका के पेश होवे अलमरकूम तारीख 9 सितम्बर 1863ई0

दस्तख़त हाकिम

बाद मुलाहज़ा मिसिल के दरयाफ्त हुआ कि रजब अली व मोहम्मद असगर हाजिर नहीं है और उनसे दरयाफ्त इस अम्र का जरूर है कि हस्ब मंशा हुक्म कौन ज़मीन की ख्वाहिश है इस लिये बतारीख 14 सितम्बर सन इलैह को पेश होवे 12 माह सितम्बर 1863ई0 दस्तखत हाकिम 16 सितम्बर 1863ई0

अज़ आंजा कि बमुकाबले रजब अली व मोहम्मद असगर वास्ते तजवीज़ के पेश हुआ नामबर्दगान ने कहा कि ज़मीन मशमूला शिवाला पुरी और भूरनपुर जो मुताल्लिक नुजूल की हैं इवज 302/03 आना के मिलजावे दरयाफ्त सर रिश्ता से वाजेह हुआ कि जमा अदाई मौजा भूरनपुर 193 रूपया और जमा आराजी शिवालापुरी 162 रूपया जुमला 355रूपया साल तमाम है यानी 52/012 ईरादी बशर्त यह कि दिया जाना कितात मजकूरीन का साहब असिस्टंट कमिशनर बहादुर मंजूर फरमावें बाद जमई 52/12.5 की जमीन शिवालापुरी से मुंतखब हो सकती हैं और मौजा भूरनपुर मौजा सालिम बदस्तूर रहे इस लिये

हुकम हुआ कि



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बमुराद सुदूरे हुक्म बइजलास साहब असिस्टंट कमिशनर बहादुर इंचार्ज जिला पेश होवे। 16 माह सितम्बर 1863ई0 दस्तखत हाकिम इजलास डा0 हेग साहब असिस्टंट कमिशनर बहादुर इंचार्ज जिला फैजाबाद

हुक्म हुआ कि

मुंशी राम दायाल साहब एक्स्ट्रा असिस्टंट कमिशनर बहादुर हस्ब तजवीज़ अपने अमीन जमा ..... 52/12/6 मुंतखब व मिनहा करके बकिया हर दो किताात का नकशा हस्ब मंशा चिट्ठी साहब सिकरेट्री चीफ बकिशनर बहादुर मुरत्तब फरमाकर इरसाल फरमादें तब रिपोर्ट बाज़ाब्ता भेजा जावेगा ..... दरीं मुकदमा में दाक्ट ताकीद है आज बराह महरबानी जल्द इरसाल फरमावें 28 सितम्बर सन 63ई0 दस्तखत हाकिम

इजलास मुंशी राम दयाल साहब बहादुर

आज पेश हुआ और सायल से पूछा गया कि उजरत अमीन तुम दाखिल करोगे बयान किया कि हम दाखिल करेंगे इस लिये

हुक्म हुआ कि

एक अमीन उजरत पर मुकर्रर होके उसकी मार्फत नकशा भूरनपुर बतौर हलका हद बस्त और नकशा शोलापुरी किश्तवार साफ व तय्यार कराया जावे और जो अमीन जमा 52/12/6 सरकारी हलका शोलापुरी में रहेंगी अमीन रंग जाविये उसमें वास्ते शिनाख्त नुजूल सरकार पुर करदेवे अलमरकूम तारीख 30 सितम्बर 1863ई0

दस्तखत हाकिम बकलम लक्षमन प्रसाद नकल नवीस

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***Copy as document***

Safha Nuzul
Stamp Value 8 Anna

Before the Katchehri Collectorate, District Faizabad, in the Court of Mr. Babrak Carnegi Deputy Commissioner on 31st August, 1863, Docket No. 2482, dated August 25, 1863 for Saheb Commissioner Bahadur, written by the Secretary to Chief Commissioner, received by post vide no. 116 dated August 28, 1863, with the undermentioned text. That for Rs. 302-3-6 the government had sanctioned for Masjid Janam Sthan a piece of land of Nuzul, for ever. Some land of Nuzul near Ayodhya be given, without paying Govt. revenue as Maafi for ever with all its income Rs. 302/3/6 per annum. The Deputy Commissioner was to send a map showing the land proposed to be given. In such a map contours and four corners should be clearly mentioned with correct measurement and be sent alongwith the report of the Commissioner. Order, Put up before the Court of Munshi Rai Ram Dayal Saheb Extra Assistant Commissioner Bahadur. Put up with previous file dated September 9, 1863 Sd/ officer. After perusal of the file, it was known that Rajab Ali and Mohd. Asghar are not present. It has to be enquired from them as to which land is desired to be given. Order : Put up on 16th September 1863.

Whereas before Rajab Ali and Mohd. Asghar, the proposal (Tajweez) was presented. The Naambardagaan told that land included in Shola Puri and Bhooranpur related to Nuzul may be given to us for 302/3 1/2. By inquiries from Sar Rishta it was cleared that Jama Adai Mauza Bhooranpur Rs. 193 and Jama Arazi Shivalapuri Rs. 162, total Rs. 355/- is for the whole year i.e. 52/12 1/2 Iradi with the condition that giving of the above mentioned plots of land are approved

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**by** the Assistant Commissioner Saheb Bahadur. After depositing Jamai 52/12.5, plot may be selected from Shivalapuri and total Mauza Bhooranpur may remain intact. Therefore it is ordered. Bamurad Sudoore order of the Court of Saheb Assistant Commissioner Bahadur District Incharge, be put up. Dated September 16, 1863 Sd/- Magistrate Ijlas Dr. Haque Saaheb Extra Assistant Commissioner Bahadur Incharge District Faizabzd. It is ordered that Munshi Ram Dayal Saheb Extra Assistant Commissioner Bahadur may forward a map of the two plots as per desire mentioned in the letter of the Secretary, Chief Commissioner. That as per his proposal, total land ..... 52/12/6 may be selected and after making adjustments, for both the plots as mentioned in the letter of the Secretary to the Chief Commissioner, a map may kindly be prepared and forwarded. Then a proper report will be sent ..... in the meantime it is instructed that the same may please be sent urgently today. Dated September 28, 1863. Ijlas Munshi Ram Dayal Saheb Bahadur. Presented today and the petitioner was asked whether he was ready to pay the prices of the land, he replied in affirmative. So it was ordered that an Amin on wages may be deputed, through whom a map of Bhooranpur as Halka Had Bast and map of Sholapuri Kishtwar and clear may be prepared and the land Jama 52/12/6 of the govt. will remain in Halka Sholapuri. The Amin will add yellow colours to it, for identifying Nuzul Sarkar. Dated September 30, 1863 Sd/- Magistrate. Written by Lakshman Prasad Naqal Nawees.

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۵/مارچ ۱۸۶۶ء مطابق چیت بدی چوتھ سمبت ۱۹۲۲ بروز دوشنبہ محمد اصغر.....معرفت خود یک قطعہ قیمتی ۸/آنہ مقام محلّہ اسماعیل گنج ضلع فیض آباد واسطے سوال کے فروخت کیا۔ دستخط غیر واضح

۶/مارچ ۱۸۶۶ء کو درخواست محمد اصغر نے گذاری چنانچہ ۹/کو نقل طیار ہوئی ۱۰/کو محمد اصغر حاضر آئے نقل دی گئی فقط۔
دستخط غیر واضح

بموجب حکم ۴/اکتوبر ۱۸۶۷ء کو بعد درخواست نقل کی ٹھپہ کاغذ..... دستخط غیر واضح ۳۰/اکتوبر ۱۸۶۷ء

الف نمبری ۲۹ ۱۹۴۵ء شیعہ سینٹرل بورڈ بنام سنی سنٹرل بورڈ مدخلہ وکیل مدعی بتاریخ ۱/۱۰/۴۵ء

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नं0 170
5 मार्च 1866 मुताबिक चैत बदी चौथ सम्बत 1922 रोज दोशंबा हाथ मोहम्मद असगर ..... मार्फत खुद एक किता कीमती 8 आना मकाम मुहल्ला इसमाईल गंज जिला फैजाबाद वास्ते सवाल के फरोख्त किया। ह0 अपठनीय

6 मार्च 1866 ई0 को दरख्वास्त मोहम्मद असगर ने गुजारी चुनान्चे 9 को नकल तय्यार हुई 10 को मोहम्मद असगर हाज़िर आये नकल दी गई फकत।
ह0 अपठनीय

बमौजिब हुक्म 4 अक्तूबर 1867 को बाद दरख्वास्त नकल की ठप्पा कागज़.....
ह0 अपठनीय 30 अकतूबर 1867ई0

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अलिफ नम्बरी 29 सन 1945 शिया सेन्ट्रल बोर्ड बनाम सुन्नी सेन्ट्रल बोर्ड
मुदखला वकील मुद्दई बतारीख 1/10/45 ई0


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March 5, 1866 corresponding to Chait Badi Chauth Sambat 1922 ..... sold through self to Mohammad Asghar. Mohalla ..... a stamp valued at 8 Anna Mukam Mohalla Issmail Ganj, District Faizabad for Swal. Sd/- Illegible.

March 6, 1866 Mohd. Asghar presented the application. So on 9th copy was prepared. On 10th Mohammad Asghar appeared. Copy handed over. Sd/- Illegible.

As per orders on October 4, 1867 copy issued Sd/- Illegible, October 30, 1867.

Alif No. 29, 1945 Shia Central Board Vs. Sunni Central Board filed by the Counsel of the petitioner 01.10.45.

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27 1960 ~~[illegible]~~ A 17

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नकल बतौरे सनद

रोपकार कचेहरी कलेक्टरी फैजाबाद इजलास मिस्टर बाबरिक कारनेगी साहब बहादुर डिप्टी कमिश्नर वाकैया १३ सितम्बर सन् १८६५ ई० डाक्ट नम्बरी २१०५ मोरिखा ६ सितम्बर सन् १८६५ मुर्सिला साहब फाइनेन्शियल कमिश्नर बहादुर बज़रिये डाक्ट नं० ८६७ मोरिखा ९ सितम्बरसन १८६५ ई० साहब कमिश्नर बहादुर बदीं मज़मून सादिर हुआ कि साहब डिप्टी कमिश्नर बहादुर ने जो ज़मीन वास्ते मावज़ा मस्जिद जन्म-स्थान के पसन्द किया है मन्जूर की गई लिहाजा

हुकुम हुआ कि

रोपकार हाज़ा खिदमत में मुन्शी नन्द किशोर साहब बहादुर एक्सटरा एसिस्टेन्ट कमिश्नर बई रूदाद पेश होवे कि बहुत जल्द साथ सेहत के ज़मीन हवाले याबिन्दा मुआवज़ा करें फकत दस्तखत हाकिम इजलास मुन्शी नन्द किशोर साहब बहादुर ।

हुकुम हुआ कि

जो ज़मीन मावज़ा में तहरीर की गयी है उस पर दखल दे दिया जावे । और दखल नामा लिया जावे अलमरकूम १४ सितम्बर १८६५ दस्तखते हाकिम ।

जनाबे आली दाम हश्मतहू

ज़मीन जमा ३०२ रू० साढे ३ आने हस्ब ज़ैल तजवीज़ हुई है ।

बहूरन पूर मौज़ा मुसल्लम आराज़ी शोलापुरी मगरूर सन् १२७३.

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फसली मुबलिग ७ रु० जमा मौजा बहूरन पूर ईज़ाद होकर पट्टा दिया गया है । यानी बजाय १९३ मुबलिग २०० रु० का पट्टा हुआ चुंनाचिरिपोर्ट ६ सितम्बर सन् १८६५ ई० में मुफस्सल अर्ज किया । लिहाज़ा कबल दखल देहानी के मुकर्रर अर्ज़ रसा हूं । कि बिला बेशी जमा जमीन तजवीज । तहरीर शुदा साबिका पर दखल दिलाया जावे । या जिस तरह से इरशाद हो ।

सीरूज़ा १४ सितम्बर सन् १८६५ ई० कमतरीन भोलानाथ इजलास मुंशी नन्द किशोर साहब एक्सटरा असिसटेन्ट कमिश्नर बहादुर मालूम होता है कि वक्त तजवीज़ मावजा जमा मौजा बहूरन पूर मुबलिग १९३ रु० है । कि सन् १२७१ व १२७२ में वही जमा कायम रही अब वक्ते बन्दोबस्त सन् १२७३ के जमा मसकूर में ७ रु० इज़ाफा होकर २०० रुपये का पट्टा कुबूलियत हुआ इस सूरत में अब हंगाम तजवीज़ मावजा व बन्दोबस्त हाल से सात रुपय का इजाफा है जब कि नक्शा मुआवज़ा मुरत्ब होकर वास्ते मन्जूरी मुर्सिल हुआ था तो जमा १९३ थे । तो अब तामील सूरूर मन्जूरी जो इज़फा कलील ७ रुपये के फीसदी ढाइ रुपये होता है । हो गया है चन्दा ----- लायके लिहाज़ है । मगर इत्तिला इसकी ज़ेरूरी है । इस वास्ते हुकुम हुआ कि इत्तिलान यह कागज़ बहुजूरे जनाब साहब डिप्टी कमिश्नर बहादुर ----- पेश हो जावे कि बिला लिहाज़ इज़ाफा दखल दिलाया जावे या नगद इसकी मुजराइ ज़मीन शोला पूरी से कर ली जाये । १६ सितम्बर १८६५ दस्तखत हाकिमुलक्षमन प्रसाद नकल नवीस ।

Verified to be correct transliteration
23/9/92

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اسٹامپ ہشت آنہ　　نقل بطور سند　　صفحہ نزول

روبکار کچہری کلکٹری ضلع فیض آباد بنام جناب مسٹر بابرک کارنیگی صاحب بہادر ڈپٹی کمشنر واقعہ ۱۴ر ستمبر ۱۸۶۵ء

ڈاکٹ نمبر ۲۱۰۵ مورخہ ۶ر ستمبر ۱۸۶۵ مرسلہ صاحب فنانشل کمشنر بہادر بذریعہ ڈاکٹ نمبر ۸۶۷ مورخہ ۹ر ستمبر سن الیہ صاحب کمشنر بہادر بدیں مضمون صادر ہوا کہ صاحب ڈپٹی کمشنر بہادر نے جو زمین واسطے معاوضہ مسجد جنم استھان کے پسند کیا ہے منظور کی گئی لہذا

حکم ہوا کہ

روبکار ہذا خدمت میں منشی نند کشور صاحب بہادر اکسٹرا اسسٹنٹ کمشنر بایں مراد پیش ہووے کہ بہت جلد ساتھ منتخب کی زمین.....یا بندہ معاوضہ کی کریں فقط

دستخط حاکم

اجلاس منشی نند کشور صاحب بہادر سے

حکم ہوا کہ

جو زمین معاوضہ میں تجویز کی گئی ہے اس پر دخل.....جاوے اور دخلنامہ لیا جاوے المرقوم ۱۴ر ستمبر ۱۸۶۵ء　　دستخط حاکم

جناب عالی متعالی دام حشمتہ

زمین جمع ۳۰۲/۰۳ حسب ذیل تجویز ہوئی ہے۔ بھورن پور موضع مسلم ۱۹۳/- آراضی شعلہ پوری ۱۰۹/۰۳ مگر در ۱۲۷۳ فصلی مبلغ ۷/- جمع موضع بھورن پور ایزاد ہو کے پتہ دیا دیا گیا ہے یعنی بجائے ۱۹۳/- مبلغ دوسو روپیہ کا پتہ ہوا چنانچہ رپورٹ ۶ر ستمبر ۱۸۶۵ء میں مفصل عرض رکھا لہذا قبل دخل دہانی کے مکرر عرض رساہوں کہ بالاحاظ بیشی جمع زمین تجویز شدہ سابقہ پر دخل دلایا جاوے یا جس طرح سے کہ ارشاد ہو معروضہ ۱۴ر ستمبر ۱۸۵۰ء

العبد: کمترین بھولا ناتھ

اجلاس منشی نند کشور صاحب اکسٹرا اسسٹنٹ کمشنر بہادر

معلوم ہوتا ہے کہ وقت تجویز معاوضہ جمع یہ ہے کہ موضع بھورن پور کے مبلغ ۱۹۳/- ہے کہ ۱۲۷۱ و ۱۲۷۲ میں وہی جمع قائم رہی اب وقت بندوبست ۱۲۷۳ کی جمع مذکور میں سات روپیہ اضافہ ہو کر دوسو روپیہ کا پتہ قبولیت ہوا اس صورت میں اب ہنگام تجویز معاوضہ و بندوبست حال سے سات روپیہ کا ایضافہ ہے جب کہ نقشہ معاوضہ مرتب ہو کر واسطے منظوری مرسل ہوا تھا تو جمع ۱۹۳/- تھی تو اب تعمیل صدور منظوری جو ایضافہ قلیل سات روپیہ کہ فیصدی ڈھائی روپیہ ہوتا ہے ہو گیا ہے چنداں.....لائق لحاظ نہیں مگر اطلاع اس کی ضرور ہے۔

اس واسطے حکم ہے کہ

اطلاعاً یہ کاغذ بحضور جناب صاحب ڈپٹی کمشنر بہادر.....پیش ہووے کہ بالاحاظ ایضافہ دخل دلایا جاوے یا بقدر اس کی مجرای زمین شولہ پوری سے کری جاوی ۱۶ر ستمبر ۱۸۶۵ء دستخط حاکم پچھمن پرساد نقل نویس

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नकल बतौर सनद सफहा नुजूल
स्टाम्प मालयती 8 आना

रोबकार कचेहरी कलेकट्री जिला फैजाबाद बइजलास मिस्टर बाबरक कारनेगी साहब बहादुर डिप्टी कमिशनर वाके तारीख 13 सितम्बर 1865ई0 दाक्ट म्बरी 2105 मोर्खा 6 सितम्बर 1865ई0 मुर्सला साहब फनानशल कमिशनर बहादुर बज़रिय दाक्ट नम्बर 867 मोर्खा 9 सितम्बर सन इलैह साहब कमिशनर बहादुर बर्दी मजमून सादिर हुआ कि साहब डिप्टी कमिशनर बहादुर ने जो ज़मीन वास्ते मुआवजा मस्जिद जनम स्थान के पसन्द किया है मंजूर की गई लिहाजा

हुक्म हुआ कि

रोबकार हाजा खिदमत में मुंशी नन्द किशोर साहब बहादुर एस्ट्रा अस्सिटंट कमिशनर बईं मुराद पेश होवे कि बहुत जल्द साथ मुंतख़ब की ज़मीन ..... याबिन्दा मुआवज़ा की करें फकत

दस्तखत हाकिम

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इजलास मुंशी नन्द किशोर साहब बहादुर से

हुक्म हुआ कि

जो ज़मीन मुआवजे में तजवीज की गई है उसपर दखल..... और दखलनामा लिया जावे अल—मरकूम 14 सितम्बर 1865ई0 दस्तखत हाकिम

जनाब आली दामा हशमतहु

ज़मीन जमा 302/03 हस्ब ज़ैल तजवीज हुई है भूरनपुर मौजा मुसल्लम 193 रूपया आराजी शोलापुरी 109/030 रूपया मगर दर सन 1273ई0 फसली मुबलिग 7रूपया जमा मौजा भूरनपुर ईज़ाद होके पट्टा दिया गया है यानी तामी 193 मुबलिग 200 रूपया का पट्टा हुआ चुनानचे रिपोर्ट 6 सितम्बर 1965ई0 में मुफस्सल अर्ज रखा लिहाजा कब्ल दखल दहानी के मुकर्र अर्ज रसां हूं कि बिला लिहाज़ बेशी जमा ज़मीन तजवीज़शुदा साबका पर दख़ल दिलाया जावे या जिस तरह से कि इरशाद हो मारूज़ा 14 सितम्बर 1865ई0



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अलअब्द कमतरीन भोला नाथ

इजलास मुंशी नन्द किशोर साहब एक्स्ट्रा असिस्टंट कमिशनर बहादुर

मालूम होता है कि वक्त तजवीज़ मुआवज़ा जमा यह कि मौजा भूरनपुर के मुबलिग 193/— है कि 1271 व 1272 में वही जमा कायम रही अब वक्त बन्दोबस्त 1273 की जमा मजकूर में सात रूपया इजाफा होकर दो सौ रूपया का पट्टा कुबूलियत हुआ इस सूरत में अब हंगाम तजवीज मुआवजा बन्दोबस्त हाल से सात रूपया का इजाफा है जबकि नकशा मुआवजा मुरत्तब होकर वास्ते मंजूरी मुरसल हुआ था तो जमा 193/— थी तो अब तामील सुदूर मंजूरी जो इजाफा कलील सात रूपया कि फीसदी ढाई रूपया होता हैं होगया है ..... लायक लिहाज नहीं मगर इत्तला इसकी ज़रूर है

इस वास्ते हुक्म है कि

इत्तलाअन हिबा कागज बहुजूर जनाब साहब डिप्टी कमिशनर बहादुर ..... पेश होवे कि बिला लिहाज इजाफा दखल दिलाया जावे या बकद्र इसके मुजराई जमीन शोला पूरी करी जावे 16 सितम्बर 1865ई0

दस्तखत हाकिम
लक्षमन प्रसाद नकल नवीस

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Before Kutchehary Collectorate District Faizabad, Ijlas Mr. Babrak Carnegi Saheb Bahadur, Deputy Commissioner, on September 13, 1865 letter no. 2105 through Dak No. 867, dated September 9, instant with the following text. That the piece of land which the Deputy Commissioner has selected for Masjid Janam Sthan, has been approved. Therefore it is ordered that this application, be put up before Munshi Nand Kishore Saheb Bahadur Extra Assistant Magistrate with the request that it should be presented immediately along with (map of ) the land selected as compensation Yabinda Muawza. Sd/- Magistrate. Order of the Ijlas of Munshi Nand Kishore that the land selected as compensation, be given in possession and Dakhalnama be taken. Dated September 14, 1865 Sd/- Magistrate. Janab Aali Dam-e-Hashmatahu. Land Jama 302/35 as per following proposal, has been proposed I Mauza Bhooranpur Mauza Musallam Rs. 193 Aarazi Shola Puri Rs. 109/03, 1273 Fasli with an increase of Rs. 7/- has been approved. Jama Mauza Bhooranpur after being Ezad Patta has been issued i.e. patta has been issued, for Rs. 200 in place of Rs. 193. Therefore report dated September 6, 1865 contains detailed entries. However before giving the possession, without depositing additional amount for Jama land proposed earlier, may be given in possession of the applicant as ordered dated September 12, 1865. Sd/-Bhola Nath.

Ijalam Munshi Nand Kishore Saheb Extra Assistant Commissioner. It appears that compensation has been deposited. That for Bhooranpur it was Rs. 193 which continued till now. Now at the time of bandobast 1273 F, Rs. 7/- has been

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increased. In this way the patta for Rs. 200/- has been accepted. While, the map of compensation was prepared for approval, the Jama was Rs. 193. Now by Tameel Sudoor acceptance the meager increase of Rs. 7/- which comes to 2.5 percent, is not a big amount to be mentioned but information regarding this is necessary. Therefore it is ordered that this paper be put up before the Deputy Commissioner and without considering the increase. Possession may be given and after that adjustment may be made from Shola Puri land. Sd/- Magistrate September 16, 1865. Sd/- Magistrate. Written by Lakshman Prasad, Naqal Nawees.

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۵/مارچ ۸۶۶ اُمطابق چیت بدی چوتھ سمبت ۱۹۲۲ روز دوشنبہ ..... ہاتھ محمد اصغر..... تعلقدار..... معرفت خود یک قطعہ قیمتی ۸ آنہ مقام محلّہ اسماعیل گنج ضلع فیض آباد واسطے سوال کے فروخت کیا۔ دستخط غیر واضح

بموجب حکم ۳۰/اکتوبر ۱۸۶۷ء کو بعد درخواست نقل شجہ کاغذ درست تحریر ہوئی۔ دستخط غیر واضح ۳۰/اکتوبر ۶۷ء

الف نمبری ۲۹ ـــ ۴۵ء شیعہ سینٹرل بورڈ بنام سنی سنٹرل بورڈ مدخلہ وکیل مدعی بتاریخ ۴۵/۱۰/۱ء

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5 मार्च 1866 मुताबिक चैत बदी चौथ सम्बत 1922 रोज दाशम्बा हाथ मोहम्मद असगर ..... मार्फत खुद एक किता कीमती 8 आना मकाम मुहल्ला इसमाईल गंज जिला फैजाबाद के वास्ते सवाल के फरोख्त किया।

ह0 अपठनीय

बमौजिब हुक्म 30 अक्तूबर 1867 को बाद दरख्वास्त नकल ठप्पा कागज़ के दुरूस्त तहरीर हुई।

ह0 अपठनीय

30 अकतूबर 67

अलिफ नम्बरी 29 सन 45 शिया सेन्ट्रल बोर्ड बनाम सुन्नी सेन्ट्रल बोर्ड मुदखला वकील मुद्दई बतारीख़ 1/10/45

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Today, the 5th of March, 1866 corresponding to Chait Badi Chauth Sambat 1922, Monday. Mohammad Asghar ..... through self, stamp -8/-. Place ..... Mohalla Ismail Ganj Distt. Faizabad sold for Sawaal. Sd/- illegible.

As per order dated October 30, 1867. After an application for copy of original patta, paper for writing. Sd/-illegible. October 30, 1867.

Alif Numbari 29, 45 Shia Central Board Vs. Sunni Central Board. Filed by the Counsel of the applicant dated 1.10.45.

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لقب بطور سند
صیغہ نزول

بحضور منشی بندکور صاحب بہادر اکسٹرا اسسٹنٹ کمشنر

53

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A. Sett Commr

(87)

(16)

جناب عالی معالی دام حشمتہ

بتعمیل حکم رقم ۵۵ سمبر ۱۸۶۵ء آدرباب دیجانے نقدی و زمین خطیب مسجد جسم استہان کو عرض رسانا ہوں کہ حال دیجانے زر نقدی اور ہر یہ
اب کس سال سے رائل کو ملنا چاہیے مفصل رپورٹ اکونٹ سے دریافت ہو کا لکھا ہوگا اور صورت عوضانہ یہ ہے کہ بتاریخ ۱۶ سمبر ۱۸۶۳ء
بہور بنور موضع مسلم جمعی بابت ۳۰ اور زمین جمع بابت ۳۰ حلقہ اراضی سلعہ پوری واقع صاحب گنج سے ہمگنی بیاعیا کے اراضی تحریر ہوگئے ۲۳ دسمبر ۱۸۶۴ء
رپورٹ بحضور صاحب کمشنر بہادر بھیجا گیا کہ یہ سب کارروائی مسل میں موجود ہے اور در ۱۸۶۳ء ۱۲ فصلی بابت موضع بہور بنور جمع ماد اور ہر اراضی سلعہ پوری
مطابق جمع ۱۸۶۳ء ۱۲ فصلی تقسیم ہوگئے مورخہ ۶ سمبر ۱۸۶۵ء

اجلاس منشی بندکور صاحب بہادر اکسٹرا اسسٹنٹ کمشنر

چونکہ حسب ورود روبکار علیحدہ کے حکم دخل دہانے کا دیا گیا اسلئے ——— حکم ہوا کہ ——— یہ رپورٹ شامل مسل کے رہی المرقوم ۱۲ سمبر ۱۸۶۵ء

اجلاس مسٹر بابرک کارنیکی صاحب بہادر ڈپٹی کمشنر بہادر دستخط کالج

بعد ملاحظہ حکم منشی بندکور صاحب بہادر کے ——— حکم ہوا کہ ——— بلا لحاظ اضافہ کے فی الفور باشندہ معاوضہ کو دخل دیلا جاوی بجنسہ اجلاس منشی بندکور صاحب
پیش ہو کہ براہ مہربانی بلا لحاظ رپورٹ داروغہ کے کہ شاید اب بھی کوئی رپورٹ نہ دیوین باشندہ معاوضہ کو دخل دیلا جاوے و جو
ایک سوال شامل بابت بابت نقدی جو سابق سے مقرر تھا شامل مسل کے ہے اوسکی بابت بھی ڈپٹی صاحب بہادر بابت سررشتہ خزانہ کے ایسے
فرماویں کہ جسمیں فوراً یہ مقدمہ ختم و طے ہو جاوی فی تاریخ ۱۰ اکتوبر ۱۸۶۵ء دستخط کالج نمبر روز نامچہ

اجلاس منشی بندکور صاحب بہادر

فوراً دخل دلایا جاوے اور دخلنامہ لیا جاوی اور واسطے دلوی جانے نقدی کے یہ کارروائی ہو چکی کہ دوسری دفعہ آج تحریر کیفیت مفصل بنام
اکونٹ دیا گیا بعد گذرنے رپورٹ کے حکم مناسب دیا جاویگا ۱۰ اکتوبر ۱۸۶۵ء دستخط کالج

جناب عالی معالی دام حشمتہ

کارروائی دیجانے زمین کے ختم ہوئی اور باشندہ کو دخل دلایا گیا اور دخلنامہ بھی روبروی حضور کے تصدیق ہو گیا
اب نسبت ان کاغذات کے حکم مناسب ہونا چاہیے ..... مورخہ ۱۹ اکتوبر ۱۸۶۵ء

اجلاس منشی بندکور صاحب بہادر

بعد ملاحظہ کیفیت تعمیل کے ——— حکم ہوا کہ ..... موضع بہور بنور و اراضی سلعہ پوری جو معاوضہ
میں دی گئی رجسٹر سے خارج ہو اور بعد تکمیل ..... کاغذات داخل دفتر اور اگر ضرورت جواب کے ہو تو
انگریزی میں لکھا جاوے المرقوم ۳۰ اکتوبر ۱۸۶۵ء دستخط کالج

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## नकल बतौर सनद सीगा नजूल

बहजूर मुन्शी नन्द किश्वर साहेब बहादुर एक्सटरा असिस्टेन्ट कमिश्नर जनाबे आली दामे हशमतहू ।

तामील हुकुम रकम ज़दा ५ सितम्बर सन् १८६५ ई० दरबाब दिये जाने नगद व ज़मीन खतीब मस्जिद जन्म-स्थान को अर्ज़ रसा हूं । कि हाली दिये जाने ज़रे नगद और नीग यह कि अब किस साल से सायल को मिलना चाहिये । मुफससल रिपोर्ट एकाउन्टेन्ट से दरयाफत बन्दगाने आली होगा और सूरत एकाना यह है कि बतारीख १६ सितमबर सन् १८६३ बहरन पूर मौजा मुसलम जमा १९३ और ज़मीन जमा १०९ रु० साढे आना हल्का आराज़ी शोला पुरी वाकेया साहेब गंज से हमागी के आराज़ी तजवीज हो गये । २३ दिसम्बर सन् १८२४ ई० रिपोर्ट बहूजूर साहेब कमिश्नर साहेब भेजा गया कि यह सब कार्यवाही मिस्ल में मौजूद है । और वह सन् १२७३ फ० पट्टा मौजा बहरन पूर जमा २ रु० और पट्टा आराजियात शोलापुरी ताबिक जमा १२७२ फ० तकसीम हो गयी - मारूज़ा ६ सितम्बर १८६५ कमतरीन भोलानाथ - इजलास मुन्शी नन्द किशोर साहेब एक्सटरा असिस्टेन्ट कमिश्नर चूंकि हस्बहुक इमरोज़ रोबकार अलहदा हुकम दखल देहानी का दिया गया । इसलिए - हुकुम हुआ कि यह रिपोर्ट शामिल निसिल के रहे । अलमरकूम १४ सितम्बर सन् १८६५ ई० द० हाकिम इजलास मिस्टर बाबरक कारनेगी साहेब बहादुर ।

बाद मुलाहिजा हुकुम मुन्शी नन्द किशोर साहेब बहादुर के --

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ब लिहाज़ा इज़ाफा के फिलफौर यानिन्दा मावज़ा को दखल दिया जावे । बजिन्सहू बइजलास मुन्शी नन्दकिशोर साहब पेश हो कि बराहमेहरबानी बिला लिहाज़ रिपोर्ट दारोगा के कि शायद अब भी कोई रिपोर्ट न देवे यानिन्दा मावज़ा को दखल दिला जावे जो एक सवाल सायल बाबत पाने नगदी जो साबिक से मुकर्रर था सायल मिस्ल की है उसकी बाबत भी डिप्टी साहेब बदरियाफत सरिश्ते खजाना के ऐसी तजवीज़ फरमावें कि जिसमें फौरन यह मुकदमा खत्म व तय हो जावे । तारीख १० अक्टूबर दसतखत हाकिम रोजनामचा नं० १०११ बइजलास मुन्शी नन्द किशोर साहेब बहादुर

फौरन दखल दिलाया जावे और दखल नमा लिया जावे और वास्ता दिलाये जाने नगदी के यह कार्यवाही भेजीये । कि दूसरी दफा आज तहरीर कैफियत मुफसल बनाम इकाउन्टेन्ट दिया गया है० और बाद गुज़रने रिपोर्ट के हुकुम मुनासिब दिया जायेगा १० अक्टूबर १८६५ द० हाकिम

जनाबे आली दाम हशमतहू

कार्यवाही दी जाने ज़मीन के खत्म हुई और यानिन्दा को दखल दिलाया गया और दखल नामा भी रूबरूए हुज़ूर के तस्दीक हो गया । अब निस्बत उन कागज़ात के हुकुम मुनासिब होना चाहिये - मारूज़ा १९ अक्टूबर १८६५ ई० कमतरीन भोला नाथ इजलास मुन्शी नन्द किशोर साहब बहादुर

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बाद मुलाहिज़ा कैफ़ियत तामीली के --- हुक्म हुआ कि ----
मौजा महरन पुर वार्के शोला पुरी जो मावज़ा में दी गयी
और रजिस्टर से खारिज हो और बाद तकमील - - - -
कागज़ात तामीर दाखिल दफ़्तर और ज़रूरत जवाब के हो तो अंग्रेजी में
लिखाया जाये । अलमरक़ूम ३० अक्टूबर सन १८६५ ई० दस्तख़त
हाकिम लक्ष्मन प्रसाद नक़्ल नवीस

Verified to be correct
transliteration
23/9/92

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نقل بطور سند/صفحہ زول

بحضور منشی نند کشور صاحب اکسٹرا اسسٹنٹ کمشنر بہادر

جناب عالی متعالی دام حشمتہ

تعمیل حکم رقمزدہ ۵/ستمبر ۱۸۶۵ء درباب دی جانے نقدی وزمین خطیب مسجد جنم استھان کو عرض رساہوں کہ حال دیجانی زر نقدی اور پرگنہ اب کس سال سے سائل کو ملنا چاہئے مفصل رپورٹ اکونٹ سے دریافت بندگان عالی ہوگا اور صورت عوضانہ یہ ہے کہ بتاریخ ۱۶/ ستمبر ۱۸۶۳ء بھورنپور موضع مسلم جمعی ۱۹۳/۰۳ اور زمین جمع ۱۰۹/۰۳ حلقہ آراضی شعلہ پوری واقع صاحبگنج سے ہمگین ۳۰۲/۰۳ کی آراضی تجویز ہوگی ۲۳/دسمبر ۱۸۶۴ء رپورٹ بحضور صاحب کمشنر بہادر بھیجا گیا کہ یہ سب کارروائی مسل میں موجود ہے اور در ۱۲۷۳ فصلی پٹہ موضع بھورنپور جمع ۲۰۰/ اور پٹہ آراضیات شعلہ پوری مطابق جمع ۱۲۷۲ فصلی تقسیم ہوگی۔ معروضہ ۶/ستمبر ۱۸۶۵ء العبد: کمترین بھولا ناتھ

اجلاس منشی نند کشور صاحب اکسٹرا اسسٹنٹ کمشنر بہادر

چونکہ حسب ورود روبکار علاحدہ کے حکم دخل دہانی کا دیا گیا اس لئے حکم ہوا کہ یہ رپورٹ شامل مسل کے رہے الرقوم ۱۲/ستمبر ۱۸۶۵ء دستخط حاکم

اجلاس مسٹر بابرک کانیگی صاحب بہادر ڈپٹی کمشنر بہادر

خود ملاحظہ حکم منشی نند کشور صاحب بہادر کے حکم ہوا کہ بلالحاظ اضافہ کے فی الفور یا بندہ معاوضہ کو دخل دیلا جاوے۔

تحتہ باجلاس منشی نند کشور صاحب بہادر پیش ہو کہ براہ مہربانی بلالحاظ رپورٹ داروغہ کے کہ شاید اب بھی کوئی رپورٹ نہ دیویں یا نبدہ معاوضہ کو دخل دیلایا جاوے وجوایک سوال سائل بابت پانے نقدی جو سابق سے مقرر تھا شامل مسل کے ہے اوسکی بابت بھی ڈپٹی صاحب بدریافت سرشتہ خزانہ کی ایسی فرمادیں کہ جسمیں فوراً یہ مقدمہ ختم وطے ہوجاوے بتاریخ ۱۰/اکتوبر ۱۸۶۵ء دستخط حاکم نمبر روزنامچہ ۱۰۱۱

اجلاس منشی نند کشور صاحب بہادر

فوراً دخل دلایا جاوے اور دخلنامہ لیا جاوے اور واسطہ دلائے جانے نقدی کے یہ کارروائی ہوئی ہے کہ دوسری دفعہ آج تحریر کیفیت مفصل بنام اکونٹ دیا گیا بعد گذرنے رپورٹ کے حکم مناسب دیا جائیگا ۱۰/اکتوبر ۱۸۶۵ء دستخط حاکم

جناب عالی متعالی دام حشمتہ

کارروائی دئے جانے زمین کی ختم ہوئی اور یا بندہ کو دخل دلایا گیا اور دخلنامہ بھی روبروی حضور کے تصدیق ہوگیا

اب نسبت ان کاغذات کے حکم مناسب ہونا چاہئے.....معروضہ ۱۹/اکتوبر ۱۹۶۵ء العبد کمترین بھولا ناتھ

اجلاس منشی نند کشور صاحب بہادر

بعد ملاحظہ کیفیت تعمیلی کے حکم ہوا کہ موضع بھورن پور و آراضی شعلہ پوری جو معاوضہ میں دی گئی رجسٹر سے خارج ہو اور بعد تکمیل.....کاغذات داخل دفتر اور اگر ضرورت جواب کی ہو تو انگریزی میں لکھایا جاوے الرقوم ۳۰/ اکتوبر ۱۸۶۵ء دستخط حاکم لچھمن پرساد نقل نویس

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नकल बतौर सनद

सफहा नुजूल

स्टाम्प मालयती 8 आना

बहुजूर मुंशी नन्द किशोर साहब बहादुर एक्स्ट्रा असिस्टंट कमिशनर बहादर

जनाब आली मुतआली दामा हशमतहु

बतामील हुक्म रकमज़दा 5 सितम्बर 1865ई0 दर बाब दी जानी नकदी व ज़मीन खतीब मस्जिद जमन स्थान को अर्ज रसां हूं कि हाल दी जाने जर नक्दी और परगना अब किस साल से सायल को मिलना चाहिये मुफस्सल रिपोर्ट एकोंट से दरयाफत बंदगाने आली होगा और सूरत इवज़ाना यह है कि बतारीख 16 सितम्बर 1863ई0 भूरनपुर मौजा मुसल्लम जमई 193/— और ज़मीन जमा 109/03 हलका आराजी शोलापुरी वाके साहबगंज से हमागीं 302/03 आना की अराजी तजवीज़ होगी 23 दिसम्बर 1864ई0 रपोर्ट बहुजूर साहब कमिशनर बहादुर भेजा गया कि यह सब कार्रवाई मिसिल में मौजूद है और दर 1273 फसली पट्टा मौज़ा भूरनपुर बजमा 200/— और पट्टा अराजियात शोलापुर से मुताबिक जमा 1272 फसली तकसीम होगी मय मारूज़ा6 सितम्बर 1865ई0

अलअब्द

कमतरीन भोलानाथ

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इजलास मुंशी नन्द किशोर साहब बहादुर एक्स्ट्रा असिस्टंट कमिशनर

चूंकि हस्ब वुरूद रोबकार अलाहदा के हुक्म दखलदहानी का दिया गया इस लिये

हुक्म हुआ कि

यह रपोर्ट शामिल मिसिल के रहे अल—मरकूम 12 सितम्बर 1865ई0 दस्तखत हाकिम

इजलास मिस्टर बाबरक कार नेगी साहब बहादुर डिप्टी कमिशनर बहादुर

**बाद मुलाहजा हुक्म मुंशी नन्द किशोर साहब बहादुर के ———हुक्म हुआ कि——— बिला लिहाज इज़ाफा के फिलफौर याबिन्दा मुआवजा को दख़ल दिलाजावे तहत बइजलास मुंशी नन्द किशोर साहब बहादुर पेश हो कि बराये महरबानी बिला लिहाज़ रिपोर्ट दरोगा के कि शायद अब भी कोई रिपोर्ट न देवें याबिन्दा मुआवजा को दखल दिलाया जावे व जो एक सवाल सायल बाबत पाने नक्दी जो साबिक से मुकर्रर था शामिल मिसिल के है उसकी**



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बाबत भी डिप्टी साहब बदरयाफ्त सर रिश्ता खाजाना के एसी..... फरमादें कि जिसमें फौरन यह मुकदमा खत्म व तय होजावे बतारीख़ 10 अक्तूबर 1865ई0 दस्तखत हाकिम नम्बर रोजनामचा 1011

इजलास मुंशी नन्द किशोर साहब बहादुर

फौरन दखल दिलाया जावे और दखलनामा लिया जावे और वास्ते दिलाये जाने नकदी के यह कार्रवाई हुई है कि दूसरी दफा आज तहरीर कैफियत मुफस्सल बनाम इकोंट दिया गया बाद गुजरने रिपोर्ट के हुक्म मुनासिब दिया जायेगा। 10 अकतबूर 1865ई0 दस्तखत हाकिम

जनाब आली मुतआली दामा हशमतहु

कार्रवाइ दिये जाने ज़मीन की खत्म हुई और याबिन्दा को दखल दिलाया गया और दखलनामा भी रूबरूये हुजूर के तस्दीक़ होगया अब निस्बत इन कागज़ात के हुक्म मुनासिब होनाा चाहिये ..... मारूज़ा 19 अक्तूब 1865ई0

अलअब्द कमतरीन भोलानाथ

इजलास मुंशी नन्द किशोर साहब बहादुर

बाद मुलाहज़ा कैफियत तामीली के ——— हुक्म हुआ कि ——— मौजा भूरनपुर व अराजी शोलापुरी जो मुआवजा में दी गई रजिस्टर से खारजि हो और बाद तकमील ..... कागज़ात दाखिल दफतर और अगर ज़रूरत जवाब की हो तो अंग्रेजी में लिखाया जावे अलमरकूम 30 अक्तबर 1965ई0 दस्तख्त हाकिम

लक्षमन प्रसाद नकल नवीस

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Before Munshi Nand Kishore Saheb Bahadur Extra Asstt. Commissioner Janab-e-Ali Mutaali Dam-e-Hashmatahu. In compliance of the order dated September 5, 1865. In the matter of giving cash payment and land to the Khatib Masjid Janam Sthan, I beg to know that from which year, the cash payment and Pargana would be given to the petitioner. Detailed report from Accounts may be take ..... and position of compensation is that on dated 16th September 1863. Whereas from Bhooranpur Mauza Musallam Jamai 193/- and Zameen Jama 109/3.5 Halka Araasi Sholapuri situated at Sahebganj, Hamangi 302/3.5 Anna Araazi will be proposed. Dated December 23, 1864. Report forwarded to the Commissioner Bahadur. That all this action is recorded in the file and patta 1273 Fazli Mauza Bhooranpur Bajama 200/- and patta for plots of Sholapur, Bajama 1272 Fasli will be distributed. September 6, 1865. Alabd. Yours sincerely Bhola Nath.

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Ijlas Munshi Nand Kishore Saheb Bahadur Extra Asstt. Commissioner. According to the Rubakar Alahda, orders for Dakhal Dehani were passed. So it was ordered : This report should be attached in the file. Written on September 12, 1865. Ijlas Mr. Babrak Carnegi Saheb Bahadur Deputy Commissioner. Sd/- Officer.

After perusal of the order of Munshi Nand Kishore Saheb Bahadur ---- it is ordered that without consideration of the increase, Yabinda Muawza be given possession immediately. Put up before Ijlas Munshi Nand Kishore that please, without consideration of the report of Daroga which may not be coming even now, Yabinda Muawza may be given possession. Regarding the question of the



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petitioner for getting cash payment, which was being paid to him for the past years and which is attached to the file, Deputy Saheb would inquire from the incharge Treasury, and would issue such orders so that this case is finally disposed off. Dated October 10, 1865. Signature of the Officer No. Roznamacha 1011. Ijlas Munshi Nand Kishore Saheb Bahaddur. Possession be given immediately and Dakhalnama be taken and for giving him cash, action has been taken under which for the second time detailed position has been written and given to account. After presentation of the report suitable orders will be issued. Dated October 10, 1865 Sd/-officer.

Janab-e-Aali Mutaali Dam-e-Hashmatahu. The process of giving land is completed and possession has been given to the Yabinda and Dakhalnama has also been executed before this honorable Court. Now suitable orders may kindly be issued in respect of the papers. Dated October 19, 1865.

Alabd. Yours sincerely Bhola Nath.

Ijlas Munshi Nand Kishore Saheb Bahadur. After perusal of the position of the compliance it is ordered that Araazi of Mauza Bhooranpur and Araazi Sholapur as given in compensation be taken out from the Register and after executing all the necessary documents be consigned to the office and if there arises any need of reply, it should be written in English. Dated October 30, 1965 Sd/- Officer. Lakshman Prasad Naqal Nawees.

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۵/مارچ ۱۸۶۶ءمطابق چیت بدی چوتھ سمبت ۱۹۲۲ء بروز دوشنبہ ہاتھ محمد اصغر.....تعلقدار.....معرفت خود یک قطعہ قیمتی ۸ آنہ مقام محلّہ اسماعیل گنج ضلع فیض آباد واسطے سوال کے فروخت کیا۔ دستخط غیر واضح

بموجب حکم ۳/اکتوبر ۱۸۶۷ءکو بعد درخواست نقل ٹھپہ کاغذ کے درست تحریر ہوئی۔ دستخط غیر واضح ۳۰/اکتوبر ۶۷ء

الف نمبری ۲۹ ۴۵ء شیعہ سینٹرل بورڈ بنام سنی سنٹرل بورڈ مدخلہ وکیل مدعی بتاریخ ۱/۱۰/۴۵ء

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नं0 172

5 मार्च 1866 मुताबिक चैत बदी चौथ सम्बत 1922 रोज दोशम्बा हाथ मोहम्मद असगर .....ताल्लुकेदार..... मार्फत खुद एक किता कीमती 8 आना मकाम मुहल्ला इसमाईल गंज जिला फैजाबाद के वास्ते सवाल के फरोख्त किया।

ह0 अपठनीय

बमौजिब हुक्म 3 अक्तूबर 1867 को बाद दरख्वास्त नकल असल ठप्पा कागज़ वास्ते तहरीर हुई

ह0 अपठनीय

30 अकतूबर 67

अलिफ नम्बरी 29 सन 45 शिया सेन्ट्रल बोर्ड बनाम सुन्नी सेन्ट्रल बोर्ड मुदखला वकील मुद्दई बतारीख़ 1/10/45

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Dated March 5, 1866 corresponding to Chait Badi Chauth Sambat 1922, Monday. Mohammad Asghar ..... through self. Ek qita qeemati /8/- Anna Muqam Mohalla ..... Ganj District Faizabad, sold for Sawaal. Sd/- illegible.

As per order dated October 3, 1867 after the application for the copy of original patta, sold paper for tehrir Sd/- Illegible, October 30, 67.

Alif no. 29, year 45 Shia Central Board Vs. Sunni Central Board filed by the Counsel of the petitioner 01/10/45.

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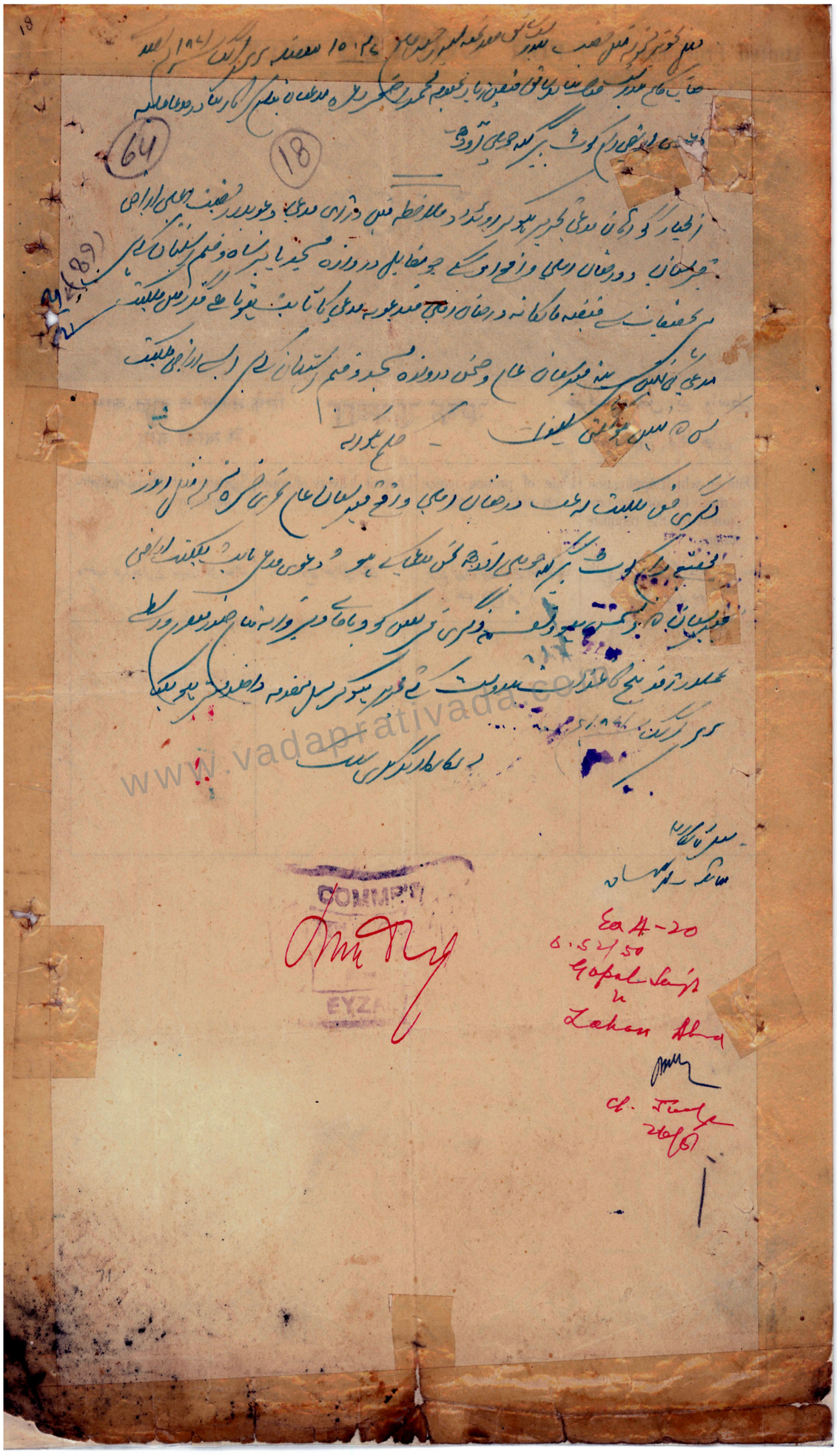

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نقل تجویز مشمولہ مسل حقیت بندوبست سابق جلد تحصہ سیر رجسٹر عام ۵۰۴۷ منفصلہ ۲۲ اگست ۱۸۷۱ء اجلاسی جناب حاکم بندو بست صاحب بہادر سابق فیض آباد بمقدمہ محمد اصغر وغیرہ مدعیان بنام سرکار بہادر مدعا علیہ.....آراضی رام کوٹ پرگنہ ہویلی اودھ

اظہار گواہان مدعی تحریر ہوکر روئداد ملاحظہ میں درآئی مدعی دعویدار حقیت اعلی آراضی قبرستان و درختان املی واقع اسکے جو مقابل دروازہ مسجد بابر شاہ وجنم استھان کے ہے بہر تحقیقات سے قبضہ مالکانہ درختان املی متدعویہ مدعی کا ثابت ہوتا ہے مگر زمین ملکیت مدعی کی نہیں ہے یہ قبرستان عام وصحن دروازہ مسجد وجنم استھان کی ہے ایسی آراضی ملکیت کسی نہیں ہوسکتی۔لہٰذا

حکم ہوا کہ

ڈگری حق ملکیت ۲۱ درختار املی واقع قبرستان عام نمبر خسرہ مشمولہ مثل اور موضع رام کوٹ پرگنہ حویلی اودھ بحق مدعی کے ہو دعویٰ مدعی ثابت ملکیت آراضی قبرستان کے ڈمس ہو ونقشہ ڈگری فریقین کو دیا جاوے وپروانہ بنام صدر منصرم واسطے عمل درآمد بیچ کاغذات بندوبست کے تحریر ہوکر مسل مقدمہ داخل دفتر ہوویگا۔

۲۲/اگست ۱۸۷۱ء

دستخط بخط انگریزی شکست

نقل کیا۔دستخط غیر واضح

مقابلہ کیا۔دستخط غیر واضح

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नकल तजवीज़ मशमूला मिसिल हक्कियत बन्दो बस्त साबिक बिला तहत सीर रजिस्टर आम 15047 मुनफसिला 22 अगस्त 1871ई0

इजलासी जनाब हाकिम बन्दोबस्त साहब बहादुर साबिक फैजाबाद

बमुकदमा मोहम्मद असगर वगैरा मुद्दइयान बनाम सरकार बहादुर मुद्दआ अलैह

.....आराजी राम कोट परगना हवेली अवध

इज़हार गवाहान मुद्दई तहरीर होकर रोयदाद मुलाहज़ा में दरआई मुद्दई दावेदार हक्कियत आला आराजी कबरिस्तान व दरख्तान इमली वाके उसके जो मुकाबिल दरवाजा मस्जिद बाबर शाह व जनम स्थान के हैं बहर तहकीकात से कब्जा मालिकाना दरख्तान इमली मुतदाविया मुद्दई का साबित होता है मगर जमीन मिलकियत मुद्दई की नहीं है यह कबरिस्तान आम व सहेन दरवाजा मस्जिद व जनम स्थान की है ऐसी आराजी मिलकियत किसी की नहीं हो सकती लिहाजा

हुक्म हुआ कि

डिग्री हक मिलकियत 21 दरख्तान इमली वाके कबरिस्तान आम नम्बरी खसरा मशमूला मिस्ल और मौजा राम कोट परगना हवेली अवध बहक़ मुद्दई के हो व दावा मुद्दई बाबत मिलकियत आराजी कबरिस्तान के डिसमिस हो व नकशा डिग्री फरीक़ैन को दिया जावे व परवाना बनाम सदर मुंसरिम वास्ते अमलदरामद बीच कागजात बन्दोबस्त के तहरीर होकर मिसल मुकदमा दाखिल दफतर होयेगा। 22 अगस्त 1871ई0

दस्तखत बखत अंग्रेजी शिकस्त

नकल किया ह0 अपठनीय मुकाबला किया किया ह0 अपठनीय

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Copy of the proposal (Tajweez) included in the file of Haqqiat Bandobast Sabid Bila Tahet Seer Register Aam 15047 decided on August 22, 1871. Ijlasi Janab Hakim Baandobast Saheb Bahadur Sabiq Faizabad. In the case of Mohammad Asghar etc. petitioners Vs. Govt. respondent ..... Arazi Ram Kot Pargana Haveli Oudh. The evidence of the petitioners after being recorded, and after the perusal of the same, the claim of Haqqiat-Aala Araazi is related to the Qabristan and trees of Imli situated in front of the door of the Masjid Babar Shah and Janam Sthan. After the inquiry it was found that the petitioner's have possession over the Imli trees, but the land is not that of the petitioners. This is a general Qabristan and the Courtyard and the door is that of Masjid and Janam Sthan. Such an Araazi could not be an individual property. It is therefore ordered: Degree for the right of possession of 21 trees of Imli, stood at Qabristan Aam no. Khasra as per file and Mauza Ram Kot, Pargana Haveli may be given to the petitioner and claim of the petitioner, regarding ownership rights over the Araazi of Qabristan be dismissed. A map of the degree be given to the parties and parwana in the name of Sadar Munsarim for compliance be issued, papers of bandobast be prepared and the file of the case be consigned to the office. Dated August 22, 1871. Sd/-in English. Copied by Sd/-Illegible, Compared by : Sd/-illegible.

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[illegible]

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9-65

श्री राम १

नकल खसरा मौजे राम कोट प्रगने हवेलीअवध

जोके फ़ैजाबाद वः सन १२७७ मुताबिक सन ७३

| लाम | बेगहा | |
|---|---|---|
| ५७ | ११।१ | [illegible] |
| १६४ | १।३ | [illegible] |
| १६५ | १।२ | जंगल |
| १५९ | १।३ | बंगला |
| १६३ | ५।४ | [illegible] |
| ५ | ७।।।३ | |

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Ex. A-21
O.S. 2/50
Gopal Singh
Zahoor Bhagat
Cl. Tbdg
28/8

22/10

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में लाया जाय

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|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] |

No. of suit 2 of 1950.
Name of parties Gopal Singh Visharad
Filed by Deft. No. 1 Zahur Ahmad & Co.
Date of filing 25.3.50
Admitted Pltf.
by
Denied Deft.
Civil Judge.

Denied
Cs copy
26-3-66

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2 of 1960 ~~A-19~~ A-21

(23) (9) 23

नकल नम्बरवारी मसमूला मिस्ल हकीकत बन्दोस्त साबिक जिल्द पुख्ता

नं० रजिस्टर ~~आम~~ खाम १५०४७ मुनफासिला २२ अगस्त सन् १८७१ ई०

~~मीज~~ इजलास जनाब हाकिम बन्दोबस्त साबिक साहब ~~बहादुर साउथ~~

फैजाबाद व मुकदमा मुहम्मद अजगर वगैरह मुद्दैयान बनाम बहादुर-

सरकार बहादुर मुद्दालय दावा आराजी रामकोट परगना हवेली अवध

श्रीराम नं० १

नकल खसरा मौजार राम कोट परगना हवेली अवध जिला फैजाबाद

बाबत १२७७ मुताबिक सन् ७३

| नं० | बीघा | |
|---|---|---|
| ५७ | १।-)१ | दरख्त इमली ~~६व~~ कब्जा मुहम्मद अजगर |
| १६४ | ।ऽ३ | बाग कब्जा |
| १६५ | ।ऽ२ | जंगल |
| १५८ | ।ऽ३ | |
| १६३ | ५ऽ४ | अराजी जुमा मस्जिद |

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दस्तखत : श्री प्रसाद पटवारी

Verified to be correct transliteration
[signature]
23/9/92

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نقل غیر ضروری مشمولہ حقیت بندوبست سابق جلد نمبر رجسٹر عام ۱۵۰۴۷ منفصلہ ۲۲ راگست ۱۸۷۱ء اجلاسی جناب حاکم بندوبست سائی صاحب بہادر ساکن فیض آباد بمقدمہ محمد اصغر وغیرہ مدعیان بنام سرکار بہادر مدعا علیہ مدیون زرزمرہ رام کوٹ پرگنہ حویلی اودھ .....(ہندی)....

نقل کیا: دستخط غیر واضح
مقابلہ کیا دستخط غیر واضح

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नकल गैर जरूरी मशमूला मिसल हक्कियत बन्दोबस्त साबिक जिल्द तहत नंबर रजिस्टर आम 15047 मुंफसिला 22 अगस्त 1871ई0 इजलासी जनाब हाकिम बन्दोबस्त साटी साहब बहादुर साकिन फैजाबाद बमुकदमा मोहम्मद असगर वगैरा मुद्दइयान बनाम सरकार बहादुर मुद्दआ अलैह जर ज़मरा राम कोट परगना हवेली अवध

.....(हिन्दी).....

नकल किया ह0 अपठनीय
मुकाबला किया ह0 अपठनीय

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Copy of the relevant numbers included in the file of Haqqiyat Bandobast Sabiq entered in the Register Aam No. 15047, decided on August 22, 1871, Ijlasi Janab Hakim Bandobast Sabiq Sahab Bahadur, resident of Faizabad, in Ram Kot Pargana Haveli Oudh. (Hindi)

Copied by : Sd/- illegible

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اسٹامپ قیمتی ایک روپیہ

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| ۲/دوسری نومبر ۳۱ء | ۴/چوتھی نومبر ۳۱ء | اکیس ۲۱/نومبر سنہ ۳۱ء | دستخط غیر واضح |

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| तारीख जिसपर नकल की दरख्वास्त मय स्टाम्प जरूरी दी गई। | तारीख आवेज़ा किये जाने इत्तला नामा के तख्ता इत्तला पर | तारीख हवालगी नकल | दस्तखत उहदेदार की जिसने नकल हवाले की |
|---|---|---|---|
| 2 नवम्बर 31ई0 | 4 नवम्बर 31ई0 | 21 नवम्बर 31 | ह0 अपठनीय |

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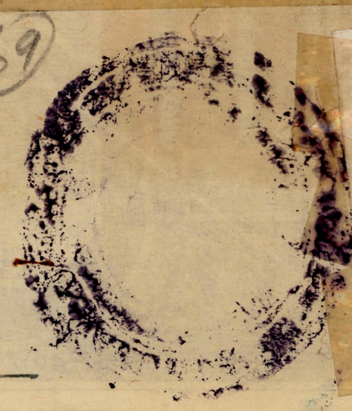

الفاظ تو بیا ۵۰

لعدالت جناب سب جج صاحب بہادر فیض آباد

(69)

نقل رپورٹ امین مدخلہ گوپال بہائے کمیشن مورخہ

۶ دسمبر ۱۸۸۵ء مشمولہ مسل مقدمہ ۶۱/۲۸۰ ۱۸۸۵ء

علامہ مہتہ اگھوہر داس بنام صاحب سکریٹری آف

اسٹیٹس منقطعہ ۲۲ دسمبر ۱۸۸۵ء

(93)

۹۳/۲

بتعمیل حکم عدالت موقع متنازعہ پر واقع اودھ میں جاکر بموجودگی فریقین نقشہ

موقع مرتب کیا گیا کہ ہمراہ رپورٹ ہذا پیش کرتا ہوں اور مبلغ ۱۰ روپیہ فی فیس

کمیشن عطا ہوئی مدخلہ مدعی مورخہ ۶ دسمبر ۱۸۸۵ء اور ہمراہ پیش کرکے ** امین

چبوترہ متنازعہ کے ہر تحریر ***

الیہ

دستخط گوپال بہائے کمیشن

** sick

نقل کیا ۔ کنھیا لال II

مقابلہ کنندہ ۔ [illegible]


मुद्र प्रतिलिपि
राम वरन तेवारी
28.2.70
[illegible]
[illegible]
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फैजाबाद।


Deemed
[illegible]
26.8.66

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| 19-2-20<br>उन्नीस फरवरी<br>सन् 20 | 28-2-20<br>अट्ठाईस फरवरी<br>सन् 20 | 26.2.20 | |

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14090

Ex. A. 24
O-S 2/50
Gopal Singh
Zahoor Ahmad

Ex. 17

Denied Defts Counsel
To be proved.

Defts Counsel admits it is true copy of a genuine original

No. of suit 2 of 1950
Name of parties Gopal Singh Vishwanath
Filed by Chhi. Lal Zahoor Ahmad
Date of filing 25-3-50
Admitted Plff
by
Denied Deft.
Civil Judge.

COURT FEE TWO ANNAS INDIA 2 As

Denied
20-8-60

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~~A25~~ A24

(34) (13) 34

व अदालत जनाब सेसन जज साहब बहादुर फैजाबाद

नकल रिपोर्ट अमीन ~~मुनफसिला~~ मुदखला गोपाल सहाय कमीशन मुवर्रिखा

६ दिसम्बर सन् १८८५ मसमूला मिस्ल मुकद्दमा ६१ बटा २४० सन्

८५ ई०

वमुकदमा महंत रघुवर दास बनाम साहेब सेक्रेट्री आफ स्टेट

मुनफसिला २४ दिसम्बर ,१८८५

आलीजाहा

तामील हुक्म अदालत मौका मुतानाजेआ पर वाकेय अवध मे जाकर

वमौजूदगी फरीकेन नक्शा मौका मुरत्तव किया गया कि हम

~~सरि~~रस्ता रिपोर्ट हाजा पेश करता हूं और मुवलिग १ रूपया

रौ फीस कमीशन अता हुई ~~मुनफसिला~~ मदखला मुद्दई मुवर्रिखा ६ दिसम्बर

सन् १८८५ ई० और पेमाइस करके .... ~~इस~~ चौवतरे मुतानाजिया

~~के है~~ ओ तहरीर हुआ।

दस्तखत गोपाल सहाय कमीशन

~~नक्शा~~

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[signature] 23/9/92

Ex A24

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इन्तखाब खेवट पटवारी मुतालिका मौजा बहूरन पूर मुहाल बहूरनपूर

इन्तेखाब खेवट पटवारी

...ली अवध, तहसील व जिला फैजाबाद बाबत ~~३३ ई०~~ १३३२ फसली

...ई खेवट बाबत सन् १३ फ०

खाने जात वाबैते तरममीम शुदा इन्द्राज कफियत

उन हिस्सों के जिनमें तबदीलात साल के अन्दर वाके हों।

| खेवट नं० | शुमार हिस्सा | तादाद हिस्सा | रकबा हिस्सा | मालगुजारी व अबवाब हिस्सा | नाम हिस्से दारान मय वल्दियत व कौमियत व सकूनत व तादाद हिस्सा मकबूजा हर एक हिस्सेदार | नाम इन्तकाल करने वाले का | नाम मुनतकिल अलेह | वजह इन्तकाल | तरमीम शुदा इन्द्राजात नाम हिस्से दारान में वल्दियत व कौमित |
|---|---|---|---|---|---|---|---|---|---|
| मीर मोहम्मद जकी नम्बरदार | १ | ०-५-४ | - | - | मोहम्मद जकी वकल्बे हसेन ब-हिस्सा मसावी पिसरान मोहम्मद रफीक कौम सय्यद साकिन सहनवा | - | - | - | - |
| | २ | ०-५-४ | - | - | अमजद अली वल्द मीर अफजल अली कौम सय्यद साकिन सहनवा | - | - | - | - |
| | ३ | ०-५-४ | - | - | मीर नाजिम अली वल्द अली नकी कौम सय्यद साकिन सहनवा | - | - | - | - |
| मीजान कुल | - | ०-१६-४ | १६४।।।४ | १६२-८-० | माफी माफी गैर वसूल हाल १७५ दीगर १७-८-० | | | | |

Verified to be correct transliteration
[signature] 23/9/92

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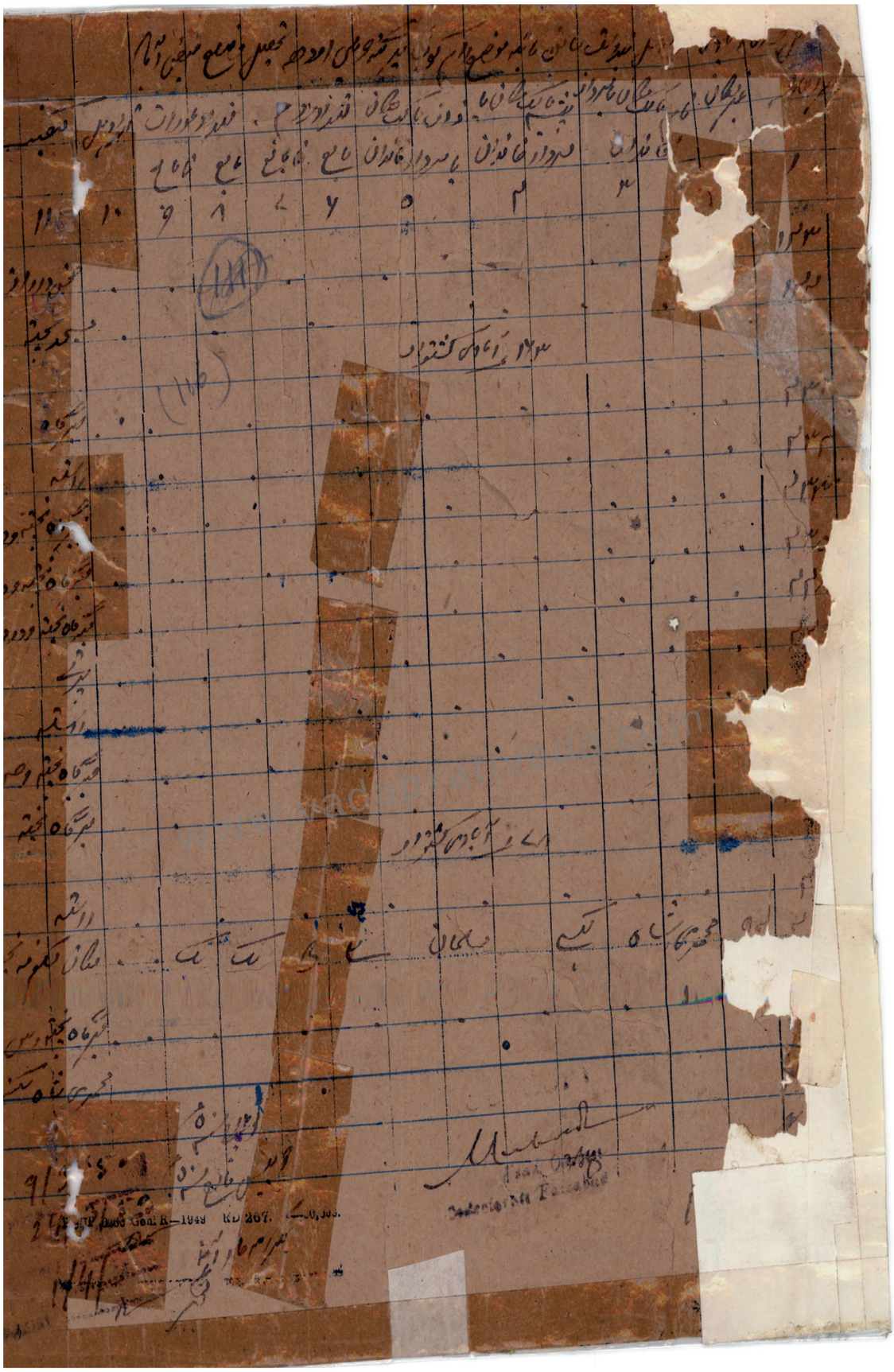



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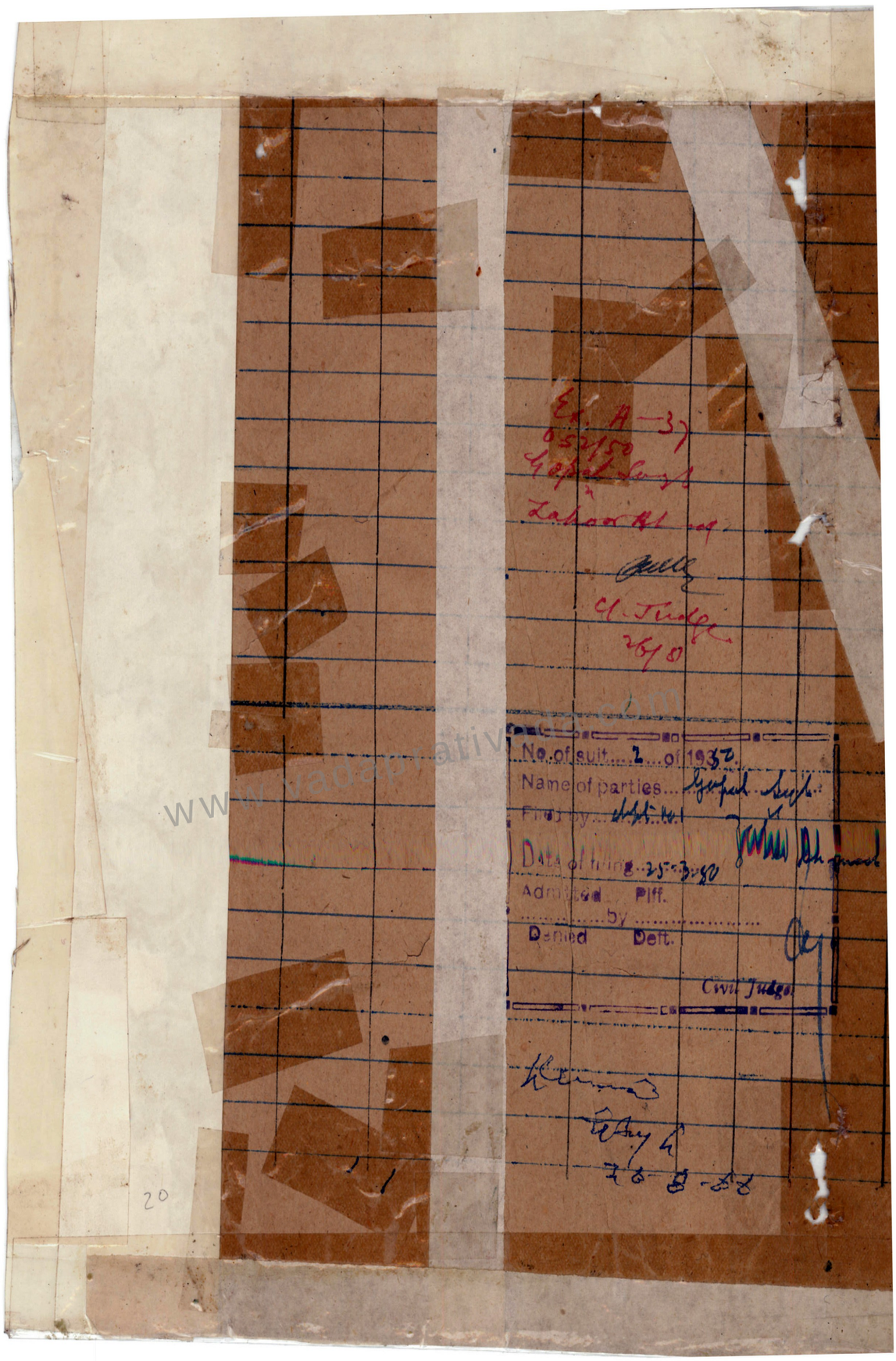


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.....नकल बन्दोबस्त साबिक मौजा राम कोट परगना हवेली अवध तहसील व जिला फैजाबाद

| | नं0 मकान | नाम मालिक मकान या सरदार खानदान | पेशा मालिक मकान या सरदार खानदान | जात मालिक मकान या सरदार खानदान | तादाद मद | | तादाद औरत | | तादाद हल | कैफियत |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | बालिग | नाबालिग | बालिग | नाबालिग | | |
| 1 | | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 143 | | | | | | | | | | सहेन दरवाजा |
| 144 | | | | | | | | | | मस्जिद पुख्ता |
| | | | 163 नं0 आबादी किशतवार | | | | | | | |
| 430 | | | | | | | | | | क़ब्रगाह |
| 432 | | | | | | | | | | रास्ता |
| 433 | | | | | | | | | | कब्रगाह पुख्ता.... |
| 4.... | | | | | | | | | | कब्रगाह पुख्ता |
| 44.. | | | | | | | | | | कब्रगाह पुख्ता व ... |
| 4.... | | | | | | | | | | परती |
| | | | | | | | | | | रास्ता |
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| | | | | | | | | | | कब्रगाह पुख्ता |
| | | | 78 नं0 आबादी किशतवार | | | | | | | |
| 4.... | | | | | | | | | | रास्ता |
| 4... | .... | मोहम्मदी शाह | खेती | मुसलमान | 3 | 2 | 1 | 1 | | मकान मसकूना |
| | | | | | | | | | | कब्रगाह पुख्ता.... |
| | | | | | | | | | | मोहम्मदी शाह..... |

9 मार्च 50 ई0
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एक रूपया चार आना

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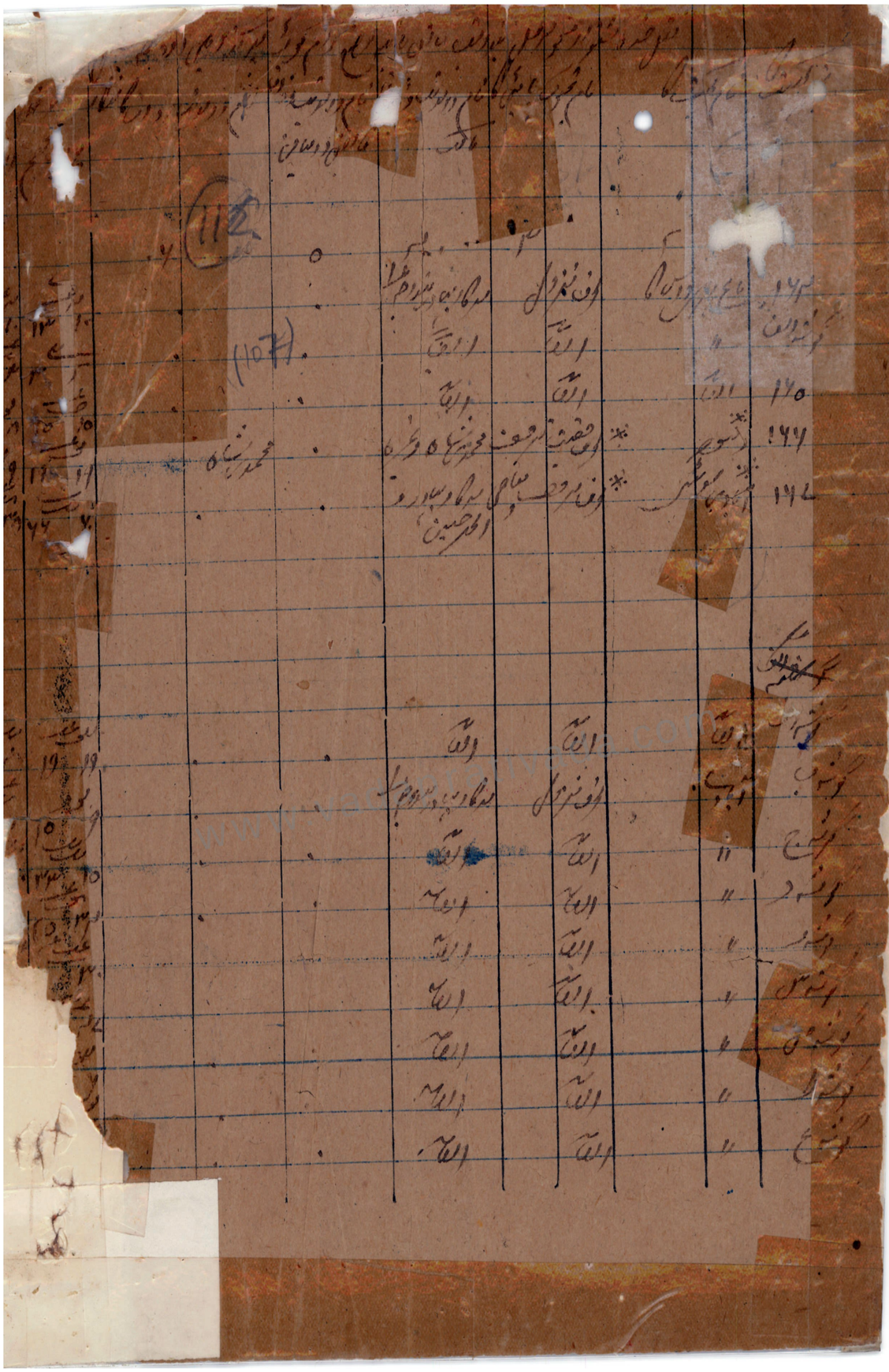

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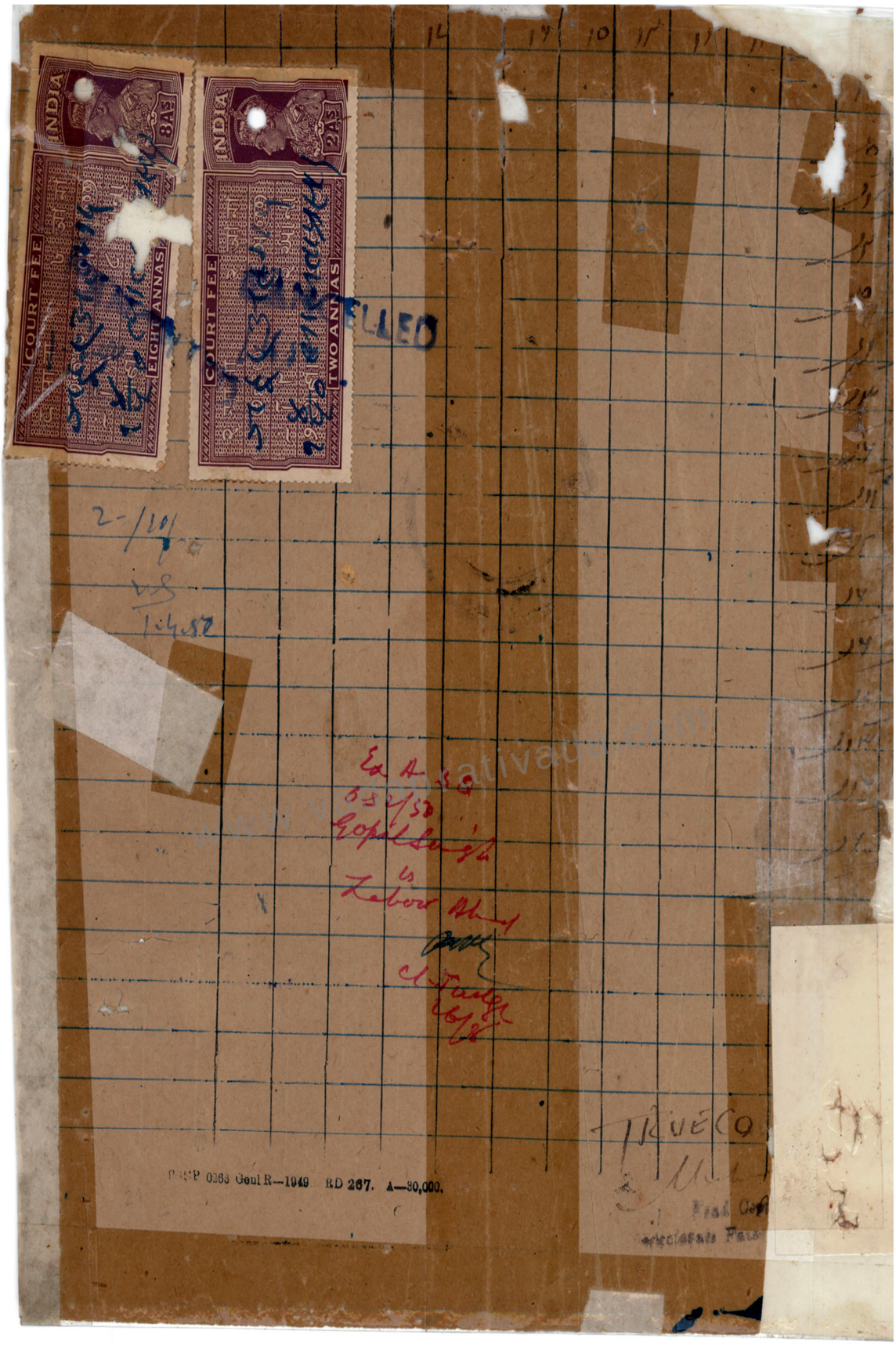




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**नकल खसरा किश्तवार मशमूला मिसिल बन्दोबस्त साबिक बाबत मौजा राम कोट परगना हवेली अवध .....**

| नं0 खेत का | नाम खेत का | नाम थोक या पट्टी का | नाम वल्दियत व ..... मालिक | नाम वल्दियत व जात काबिज़ दरमियानी | नाम व वल्दियत व जात काश्तकार | | |
|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 164 | बाग सरन दास का | तरफ नुजूल | सरकार बहादुर मुंदर्जा नं01 | | | 31<br>10 13 | ..... |
| गोशा अलिफ | '' | ऐजन | ऐजन | | | 3<br>2 3 | ..... |
| 165 | ऐजन | ऐजन | ऐजन | | | 15<br>15 15 | ..... |
| 166 | ..... | तरफ हक्कियत नुजूल | मोहम्मद .... शाह वगैरा | | मोहम्मद ....शाह | 11<br>11 11 | |
| 167 | ..... | तरफ नुजूल व माफी | सरकार बहादुर व अतहर हुसैन | | | 63<br>60 66 | |
| | | | | | | | |
| गोशा अलिफ | ऐजन | ऐजन | ऐजन | | | 19<br>19 19 | |
| गोशा बे | आबादी | तरफ नुजूल | सरकार बहादर मुंदर्जा नं01 | | | 9<br>9 9 | |
| गोशा जीम | '' | ऐजन | ऐजन | | | 33<br>15 33 | |
| गोशा दाल | '' | ऐजन | ऐजन | | | 17<br>34 25 | |
| गोशा रे | '' | ऐजन | ऐजन | | | 16<br>30 ..... | |
| गोशा सीन | '' | ऐजन | ऐजन | | | ..... | |
| गोशा स्वाद | '' | ऐजन | ऐजन | | | ..... | |
| गोशा तो | '' | ऐजन | ऐजन | | | ..... | |
| गोशा ऐन | '' | ऐजन | ऐजन | | | ..... | |

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| 5 बिसवा | | | | | | | |
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| 13 बिसवा | | | | | | | |
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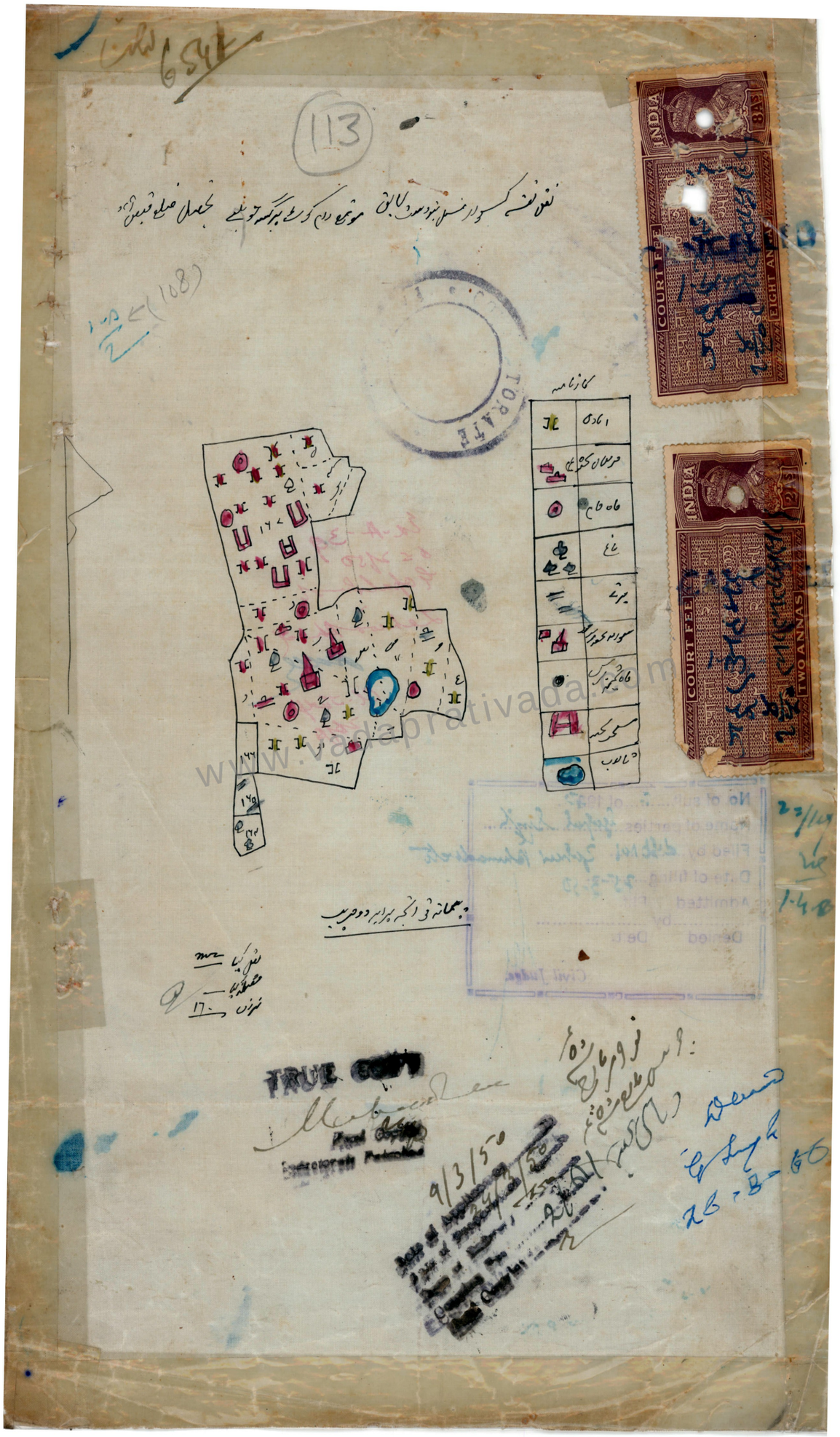




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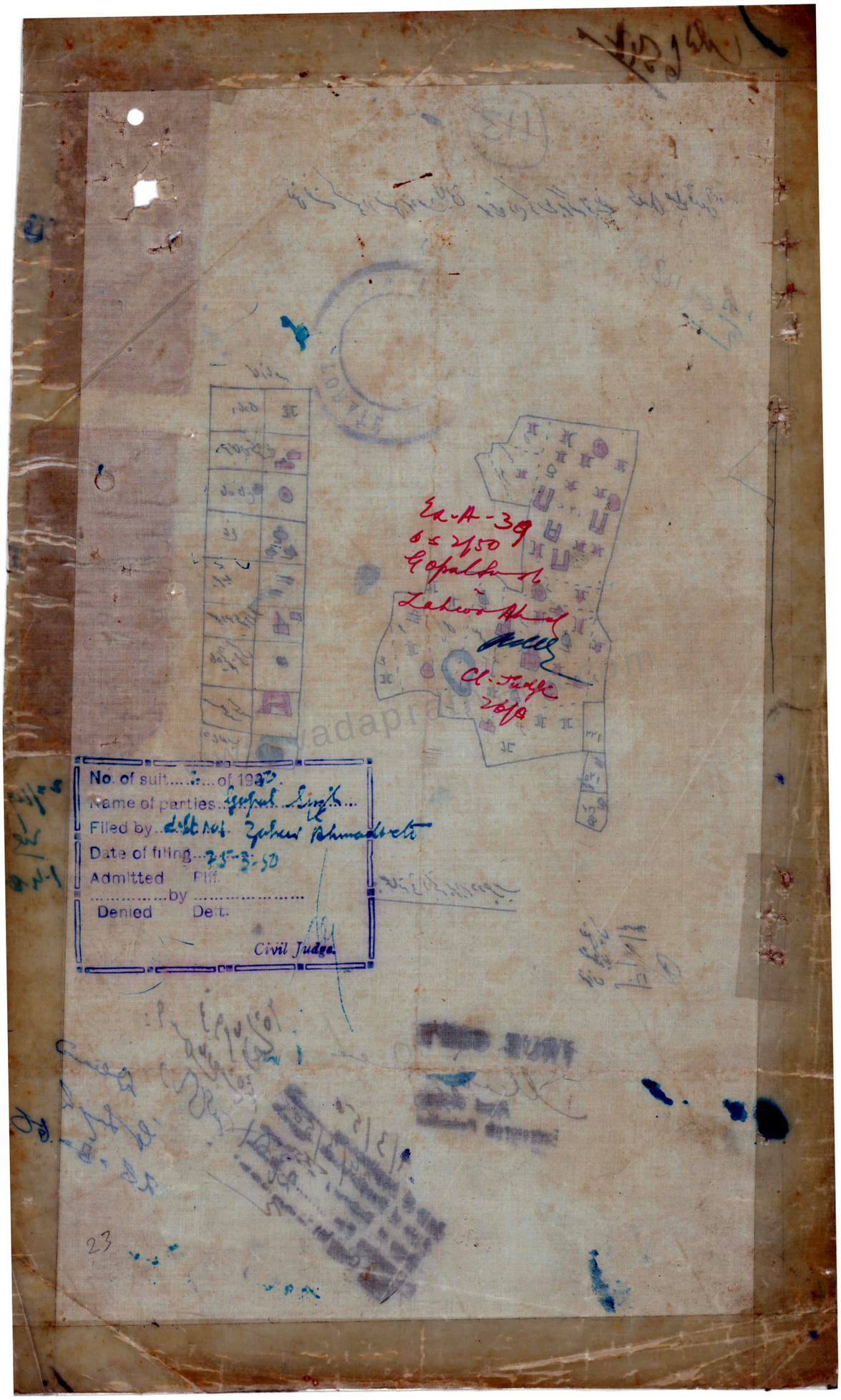


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कारनामा

| | |
|---|---|
| आबादी | |
| कबरिस्तान..... | |
| चाह खाम | |
| बाग | |
| परती | |
| शिवाला पुख्ता... | |
| चाह पुख्ता तुर्श | |
| मस्जिद पुख्ता | |
| तालाब | |

**पैमाना फी इंच बराबर दो जरीब**

**नकल किया ह0 अपठनीय**
**मुकाबला किया ह0 अपठनीय**
**नम्बरान 170**

**9 मार्च 50 ई0**
**24 मार्च 50 ई0**

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आर०एन०श्रीवास्तव,
जिला मैजिस्ट्रेट।

अति गोपनीय

अ०शा०पत्र सं० 324 /एस०टी०/राजभू/92
जिलाधिकारी आवासीय कार्यालय,
फैजाबाद: दिनाँक 24 नवम्बर, 1992

प्रिय महोदय,

आप के परम गोपनीय अर्द्धशासकीय पत्र संख्या-378/पी एस /आर० एस०/92 दिनाँक 23 अक्टूबर, 1992, जिसके द्वारा अयोध्या में मौज़ा कोट राम चन्द्र के प्रथम बन्दोबस्त की प्रविष्टियों में अनधिकृत कटिंग एवं परिवर्तन के सम्बन्ध में जाँच कर आख्या प्रेषित करने का निर्देश प्राप्त हुआ था, के अनुपालन में मैंने उक्त जाँच पूरी कर ली है। जाँच आख्या मय संलग्नकों के आप की सेवा में आवश्यक कार्यवाही हेतु प्रेषित है।

भवदीय,

॥आर०एन०श्रीवास्तव॥

श्री शम्भू नाथ,
सचिव,
राजस्व विभाग,
उत्तर प्रदेश शासन,
सचिवालय, लखनऊ
॥संलग्नक- उपरोक्तानुसार॥

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प्रिय महोदय,

मैं उपरोक्त की एक प्रति, मय संलग्नकों के, आप की सेवा में प्रेषित कर रहा हूँ।

भवदीय,

॥आर०एन०श्रीवास्तव॥

श्री पी०के० तरीन,
न्याय सचिव,
उत्तर प्रदेश शासन,
सचिवालय, लखनऊ
॥संलग्नक- उपरोक्तानुसार॥

प्रिय महोदय,

मैं उपरोक्त की एक प्रति, मय संलग्नकों के, आप के सूचनार्थ प्रेषित कर रहा हूँ।

भवदीय,

॥आर०एन०श्रीवास्तव॥

श्री सुरेन्द्र पाल गौड़,
आयुक्त,
फैजाबाद मण्डल,
फैजाबाद
॥संलग्नक- उपरोक्तानुसार॥



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अ0शा0पत्र संख्या- 324/एस0टी0/राजभ/92 दिनांक 24-11-92

प्रिय महोदय,

मैं उपरोक्त की एक प्रति, मय संलग्नकों के, आपकी सेवा में प्रेषित कर रहा हूँ ।

भवदीय,

।आर0एन0श्रीवास्तव।

श्री आलोक सिन्हा,
सचिव,
पर्यटन विभाग,
उत्तर प्रदेश शासन,
अनेक्सी सचिवालय,
लखनऊ ।

।संलग्नक-उपरोक्तानुसार।

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अयोध्या (जनपद- फैजाबाद) के मौजा कोट राम चन्द्र के राजस्व अभिलेखों की प्रविष्टियों के सम्बन्ध में शासन द्वारा आदेशित जाँच पर आख्या ।

सचिव, राजस्व विभाग, उत्तर प्रदेश शासन के परम गोपनीय अर्द्ध शासकीय पत्र संख्या-378/पी एस/आर0एस0/92 दिनाँक 23 अक्टूबर, 1992 द्वारा अयोध्या में मौजा कोट राम चन्द्र के राजस्व अभिलेखों की प्रविष्टियों के सम्बन्ध में जिलाधिकारी, फैजाबाद द्वारा जाँच किये जाने के आदेश दिये गये। उक्त पत्र में जाँच के मुख्य विषय निम्नप्रकार अंकित हैं :-

(1) अयोध्या में मौजा कोट राम चन्द्र के प्रथम बन्दोबस्त 1861 के खतरे में भूखण्ड संख्या-163 के स्तम्भ नम्बर-2 एवं 16 में कुछ अनधिकृत कटिंग व परिवर्तन हुये हैं। स्तम्भ नं0-2 में "जमा मस्जिद" बढ़ाया गया है और स्तम्भ नं0-16 के शब्द समूह "यक चाह पोख्ता वाक़े है" को काटा गया है तथा उसके स्थान पर "मय कब्रिस्तान पोख्ता तादाद दरख्तान हस्ब मुन्दर्जा खसरा आबादी" बढ़ाया गया बताया जाता है।

(2) फैजाबाद के राजस्व अभिलेखागार में 1861 का मूल आबादी नकशा न होते हुए भी उसकी नकलें जारी की गई हैं, जो उच्च न्यायालय के समक्ष दाखिल हुई हैं। इस बात की जाँच की जाय कि उक्त नकलें कब और कितने और किसने और किस नकशे के आधार पर जारी किया है तथा 1861 का मूल आबादी नकशा अभिलेखागार में उपलब्ध है अथवा नहीं ।

(3) 1861 के प्रथम बन्दोबस्त के आबादी खतरे में अनेक स्थानों पर स्तम्भ 4 एवं 5 में अनधिकृत प्रविष्टियाँ कर दी गई हैं, जिसकी जाँच अपेक्षित है।

(4) द्वितीय बन्दोबस्त 1344 फसली के खतरे व खतौनी में भूखण्ड संख्या 171 और 172 में कब्रिस्तान की प्रविष्ट की गई है तथा उसी वर्ष के मानचित्र में कब्रिस्तान के कथित चिन्ह दिखा दिये गये हैं, जबकि प्रथम बन्दोबस्त में उक्त भूखण्डों के समरूपी पुराने खसरा नम्बरान 158 एवं 161 में कब्रिस्तान का इन्द्राज नहीं है और न मानचित्र में इन भूखण्डों में कब्रिस्तान दिखाया गया है। जाँच का विषय यह है कि द्वितीय बन्दोबस्त में उक्त भूखण्डों में किस प्रकार से तथा किस आधार पर कब्रिस्तान की प्रविष्टि की गई है ।

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उक्त शासनादेश में यह भी उल्लिखित है कि सम्बन्धित अभिलेखों की जाँच के सम्बन्ध में आवश्यकतानुसार हस्तलिपि विशेषज्ञ की राय भी प्राप्त की जाय।

2- विन्दु संख्या-2 पर जाँच करने हेतु माननीय उच्च न्यायालय, इलाहाबाद लखनऊ पीठ, मण्डलायुक्त कार्यालय, फैजाबाद, मण्डलायुक्त कार्यालय, लखनऊ, मुख्य स्थाई अधिवक्ता, उच्च न्यायालय, लखनऊ पीठ आदि कार्यालयों से जाँच हेतु सम्पर्क करने और छानबीन करने की आवश्यकता पाई गई। चूँकि जिला मैजिस्ट्रेट फैजाबाद के पद पर कार्यरत रहते हुए प्रशासनिक व्यस्तताओं के कारण मेरा मुख्यालय से बार-बार बाहर जाना संभव नहीं था, अतः इस विन्दु पर जाँच हेतु मेरे द्वारा अपर जिला मैजिस्ट्रेट।नगर। श्री उमेश चन्द्र तिवारी को अधिकृत किया गया। श्री तिवारी ने अपनी जाँचरिपोर्ट दिनाँक 9.11.92 को प्रस्तुत कर दी है, जो इस रिपोर्ट के संलग्नक-दो। के रूप में अवलोकनीय है।

3- उपरोक्त वर्णित अभिलेखों की प्रविष्टियों में अनधिकृत कटिंग एवं परिवर्तन आदि की कथित शिकायत की जाँच हेतु हस्त लिपि विशेषज्ञ से जाँच कराये जाने की आवश्यकता पाई गई। तदनुसार अर्द्धशासकीय पत्र संख्या 254/ एस0टी0/राजभू/दिनाँक 27.10.92 द्वारा विशेष सचिव, गृह विभाग से इस जाँच हेतु शासकीय विशेषज्ञ की सेवायें उपलब्ध कराने का अनुरोध कियागया। विशेष सचिव, गृह विभाग के अर्द्धशासकीय पत्र संख्या-5019/पी एस-वी एस।अ।/ 92 दिनाँक 29.10.92 द्वारा पुलिस उप महा निरीक्षक, तकनीकी सेवाएँ, उत्तर प्रदेश, लखनऊ को यह निर्देश दिया गया कि वे हस्तलिपि विशेषज्ञ की तैनाती करते हुए उन्हें जिला मैजिस्ट्रेट, फैजाबाद से सम्पर्क करने हेतु निर्देशित करें। इस आदेश के अनुपालन में श्री एस0सी0 कम्बोज, सहायक निदेशक, विधि विज्ञान प्रयोग शाला, उत्तर प्रदेश, लखनऊ दिनाँक 30.10.92 को फैजाबाद आये और उन्होंने सम्बन्धित मूल अभिलेखों की प्रविष्टियों की प्रारम्भिक जाँच मेरे कार्यालय में की। उन्होंने यह व्यक्त किया कि गहन जाँच हेतु उक्त अभिलेखों की प्रविष्टियों की जाँच विधि विज्ञान प्रयोगशाला, लखनऊ में की जानी आवश्यक है। फलस्वरूप मूल अभिलेखों को एक मैजिस्ट्रेट और अभिलेखागार, फैजाबाद के कर्मचारी की

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अभिरक्षा में विधि विज्ञान प्रयोगशाला, लखनऊ भेजा गया जहाँ श्री कम्बोज द्वारा इनकी गहन जाँच विज्ञान प्रयोग शाला में की गई। विधि विज्ञान प्रयोग शाला के सहायक निदेशक के पत्र संख्या 512-डाक-92 दिनांक 16-11-92 द्वारा उक्त जाँच आख्या प्राप्त हुई, जिसकी प्रति इस रिपोर्ट के संलग्नक।एक। के रूप में अवलोकनीय है।

4- उपरोक्त आख्याओं के प्राप्त होने पर मैंने स्वयं संगतअभिलेखों का गहराई से परीक्षण किया। शासन द्वारा सन्दर्भित जाँच के प्रत्येक बिन्दु पर मेरी आख्या निम्न प्रकार है:-

बिन्दु संख्या-।

अयोध्या में मौजा कोट राम चन्द्र के प्रथम बन्दोबस्त 1861 के खसरे में भूखण्ड संख्या-163 की प्रविष्टियों की छान-बीन की गई। उक्त के स्तम्भ संख्या-2 में उर्दू में "जमा मस्जिद आबादी जन्म स्थान" लिखा हुआ है। "जमा मस्जिद" शब्द स्तम्भ-2 में आबादी शब्द के ऊपर आधे स्तम्भ में लिखा गया है। यदि लिखने का आशय "आबादी "जमा मस्जिद जन्म स्थान" होता, तब आबादी शब्द जमा मस्जिद के पहले होना चाहिए था । इस बात से यह जिज्ञासा होती है कि क्या शब्द "जमा मस्जिद" तथा शब्द "आबादी जन्म स्थान" दोनों एक ही क्रम।तिक्वेन्त। में लिखा गया है अथवा भिन्न तिक्वेन्त में लिखा गया है । इस जाँच के क्रम में जिल्द बन्दोबस्त 1861 में यह देखा गया कि किन गाटों के सम्मुख शब्द "जमा" तथा"मस्जिद" कहाँ-कहाँ लिखा गया है। सामान्यत: नामान्तरण की प्रविष्टियों को छोड़कर पूरे जिल्द बन्दोबस्त की मूल प्रविष्टियाँ एक ही व्यक्ति के द्वारा लिखी होनी चाहिए ।उपरोक्त जिल्द बन्दोबस्त में खाता खतौनी संख्या 1,2,6 के खाना कैफियत में शब्द "जमा" तथा खसरा आबादी संख्या 13 व 47 के सम्मुख अंकित शब्द "मस्जिद" के लेखों की ओर विशेषज्ञ का ध्यान आकृष्ट कराते हुए उनसे यह राय देने की अपेक्षा की गई कि उपरोक्त खाता खतौनी संख्या 1,2,6 में अंकित शब्द "जमा" तथा खसरा आबादी संख्या 13 व 47 में अंकित शब्द "मस्जिद" तथा खसरे की भूमि गाटा संख्या-163 के स्तम्भ-2 में अंकित शब्द "जमा मस्जिद" में समानता है अथवा भिन्नता । इस बिन्दु पर विशेषज्ञ की राय से यह स्पष्ट होता है कि जिस व्यक्ति / व्यक्तियों ने खाता खतौनी संख्या 1,2, 6

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एवं खतरा आबादी संख्या 13 व 47 में शब्द "जमा" एवं शब्द "मस्जिद" लिखा है, उस व्यक्ति/व्यक्तियों ने गाटा संख्या 163 के स्तम्भ- 2 में उर्दू शब्द "जमा" एवं "मस्जिद" को नहीं लिखा है । इस प्रकार जिल्द बन्दोबस्त 1861 में एक ही शब्द भिन्न- भिन्न स्थानों पर भिन्न- भिन्न व्यक्तियों द्वारा लिखा गया है।

उपरोक्त गाटा संख्या 163 के स्तम्भ- 4 की प्रविष्टि को देखने से यह लगा कि शब्द "सरकार बहादुर" व ऐज़न के बीच शब्द "व अज़हर हुसैन" बाद में बढ़ाया गया है। हस्त लिपि विशेषज्ञ ने इस बात की पुष्टि की है कि स्तम्भ- 4 में उर्दू प्रविष्टि "सरकार बहादुर" व ऐज़न के बीच शब्द " व अज़हर हुसैन" बाद में इन्टरपोलेट किया गया है ।

विशेषज्ञ ने यह भी मत व्यक्त किया है कि गाटा संख्या 163 के स्तम्भ-16 में कटा हुआ उर्दू लेख " एक चाह पोखता वाक़े है" के बाद का लेख "मय कब्रिस्तान पोखता तादाद दरख्तान" एक ही क्वेन्ट में नहीं लिखे गये हैं, तथा उक्त दोनों लेखों के नीचे लिखा उर्दू लेख "हस्ब मुन्दर्जे खतरा आबादी" उससे भिन्न क्विन्ट में लिखा गया है । उपरोक्त तीनों लेखों की लिखावट एक दूसरे से भिन्न है ।

विशेषज्ञ ने यह भी स्पष्ट रूप से अंकित किया है कि उक्त के स्तम्भ-16 में विद्यमान उर्दू लेख "आबादी" तथा उसी के स्तम्भ-2 के उर्दू लेख "आबादी" भिन्न व्यक्तियों द्वारा लिखे गये हैं ।

समग्र रूप से खतरा 1861 के गाटा संख्या-163 के सम्मुख समस्त प्रविष्टियों के विशेषज्ञ द्वारा परीक्षण से यह स्पष्ट होता है कि गाटा संख्या 163 के स्तम्भ- 16 और स्तम्भ-2 में अंकित शब्द "आबादी" के लेख में भिन्नता, इसी गाटा के स्तम्भ-4 में शब्द "अज़हर हुसैन" का इन्टरपोलेशन , तथा इसी गाटा संख्या के खाना कैफियत अर्थात् स्तम्भ- 16 में उपरोक्त तीनों लेखों की लिखावट में भिन्नता यह स्पष्ट करती है कि गाटा संख्या-163 के स्तम्भ-2, 4 तथा 16 में उपरोक्त प्रविष्टियाँ बाद में बढ़ाई गई हैं ।

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विन्दु संख्या-2

जैसा आख्या के पृष्ठ-2 के प्रस्तर-2 में अंकित किया गया है, इस विन्दु पर अपर जिला मैजिस्ट्रेट(नगर) से जाँच कराई गई, जिनकी जाँच आख्या दिनाँक 9.11.92 संलग्नक (दो) के रूप में अवलोकनीय है। अपर जिला मैजिस्ट्रेट(नगर) की उक्त जाँच आख्या इस जाँच आख्या का अंग समझी जाय। उक्त जाँच आख्या के अनुसार 1861 की सन्दर्भित आबादी नकशे की प्रतिलिपि संदिग्ध प्रतीत होती है। प्रथम बन्दोबस्त के उक्त आबादी का नकशा राजस्व अभिलेखागार, फैजाबाद में न तो उपलब्ध है और न ही उसकी नकल राजस्व अभिलेखागार, फैजाबाद से जारी की गई है। उक्त जाँच में यह भी अंकित किया गया है कि उक्त नकल किसके द्वारा बनाई गई है, इस पर मत व्यक्त करना संभव नहीं है। अपर जिला मैजिस्ट्रेट(नगर) की जाँच आख्या दिनाँक 9.11.92 से मैं सहमत हूँ।

विन्दु संख्या-3

1861 के प्रथम बन्दोबस्त आबादी खसरे में की गई कथित अनधिकृत प्रविष्टियों पर विशेषज्ञ की राय ली गई। विशेषज्ञ की राय इस विन्दु पर इस प्रकार है:-

"खसरा आबादी संख्या-1 के स्तम्भ 6,7,8 का उर्दू लेख "30 नम्बर आबादी किश्तवार", संख्या 26 व 27 के बीच स्तम्भ 5,6,7 का उर्दू लेख"167 नम्बर आबादी किश्तवार," संख्या 224, 225 के बीच स्तम्भ 6,7 का उर्दू लेख" 53 नम्बर आबादी किश्तवार", संख्या 226 या 227 के बीच स्तम्भ 6,7 का उर्दू लेख"109 नम्बर आबादी किश्तवार", संख्या 328 व 329 के बीच स्तम्भ 6,7 का उर्दू लेख "114 नम्बर आबादी किश्त वार", संख्या 347 व 348 के बीच स्तम्भ 5.6,7 का उर्दू लेख "128 नम्बर आबादी किश्तवार", संख्या 350 व 351 के बीच स्तम्भ 5,6,7 का उर्दू लेख"130 नम्बर आबादी किश्तवार", संख्या 422 व 423 के बीच स्तम्भ 5,6,7 का उर्दू लेख "102 नम्बर आबादी किश्तवार", संख्या-429 व 430 के बीच स्तम्भ 5,6 का उर्दू लेख "104 नम्बर आबादी किश्तवार", संख्या 430 व 431 के बीच स्तम्भ 5,6 का उर्दू लेख "163 नम्बर आबादी किश्तवार" अपने -अपने पृष्ठ के स्तम्भ 1 से 9 के शेष मूल प्रविष्टियों के क्रम में नहीं लिखे गये हैं।

खसरा आबादी संख्या 431 से 456 के कैफियत के खाने के समस्त लेख एक क्रम में नहीं लिखे गये हैं।

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उक्त खतरा आबादी संख्या-431 से 456 के कैफियत के स्तम्भ 431 के सामने ,434 के सामने, 449 के सामने तथा खतरा आबादी के अन्तिम पृष्ठ के मध्य "इकरार मालकान" के ऊपर मिटाये जाने के चिन्ह विद्यमान हैं।

मैंने उक्त प्रविष्टियों तथा विशेषज्ञ की राय का विश्लेषण किया। मेरे मत में बन्दोबस्त के खतरा आबादी के उक्त आबादी संख्याओं के बीच में स्तम्भ 5 से 7 तक में जो प्रविष्टियां की गई हैं वह बाद में अन्य व्यक्ति/व्यक्तियों द्वारा बढ़ाई गई प्रतीत होती हैं जो सम्बन्धित पृष्ठों के स्तम्भ 1 से 9 तक के शेष मूल प्रविष्टियों के क्रम में नहीं लिखी गई हैं। खतरा संख्या 431 से 456 के कैफियत के खाने के भी समस्त लेख एक क्रम में नहीं लिखे गये हैं। खतरा आबादी संख्या 431 से 456 के कैफियत के स्तम्भ में 431, 434 व 449 के सामने तथा खसरा आबादी के अन्तिम पृष्ठ के मध्य "इकरार मालकान" के ऊपर मिटाये जाने के चिन्ह विद्यमान हैं । इस प्रकार स्पष्ट है कि उपरोक्त प्रविष्टियां अनधिकृत रूप से आबादी खतरा 1861 में की गई प्रतीत होती हैं ।

विन्दु संख्या 4-

द्वितीय बन्दोबस्त 1344 फसली में अंकित भूखण्ड संख्या 171 , 172 कब्रिस्तान दर्ज हैं और उस वर्ष के मानचित्र में सम्बन्धित गाटों को कब्रिस्तान के चिन्ह से दिखाया गया है। प्रथम बन्दोबस्त में इन गाटों के समरूपी नम्बरान क्रमशः 158 और 161 कब्रिस्तान दर्ज नहीं हैं और न ही नकशा किश्तवार में इन भूखण्डों को कब्रिस्तान दिखाया गया है।

उक्त विषय पर सम्बन्धित राजस्व अभिलेखों का निरीक्षण तथा अध्ययन किया गया। प्रथम बन्दोबस्त 1861 की खतौनी में गाटा संख्या 158 व 161 आबादी दर्ज हैं, तथा खतरा में गाटा संख्या 158 से संबंधित स्तम्भ 16 में "मिन जुमला नौ बरखत इमली के डिगरी निस्फ हिस्सा वहक मुतम्मात बदामू खटकिन ऊपर मुतम्मत गंगादेई मुद्दालेह वाकय 17 जनवरी, 1870 ई० इजलासी मुन्शी शिव प्रसाद साहब बहादुर से सादिर हुई फक़त" अंकित है तथा इसके स्तम्भ-2 , जिसकी पेशानी " नाम खेत का " है में "भीटा" अंकित है। उक्त खतरा में गाटा संख्या 161 से सम्बन्धित स्तम्भ

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।6 में "मिनजुमला पाँच दरख्त, रीठा।, इमली 4 डिगरी निस्फ बहक मुतम्मात बदामू खटकिन ऊपर गंगादेई मुद्दालेह वाक़य ।7 जनवरी, ।870ई इजलासी मुन्शी शिव प्रसाद साहब बहादुर से सादिर हुई फ़क़त" अंकित है तथा इसके स्तम्भ-2 में "भीटा" अंकित है। उक्त दोनों नम्बरान प्रथम बन्दोबस्त में कब्रिस्तान अंकित नहीं हैं, जब कि कुछ अन्य नम्बरान का कब्रिस्तान होना अंकित है। अत: इससे यह विदित होता है कि उक्त नम्बरान ।58 व ।6। प्रथम बन्दोबस्त में "कब्रिस्तान" नहीं थे अन्यथा उस प्रकार दर्ज किये जाते ।

प्रथम बन्दोबस्त के उपरोक्त भूखण्ड संख्या ।58 व ।6। के मौजूदा नम्बरान क्रमश: ।7। व ।72 हैं। द्वितीय बन्दोबस्त इस ग्राम में वर्ष ।937 अर्थात् ।344 फसली में हुआ, जिसके अभिलेखों मेंउक्त नम्बरान ।7। व ।72 बतौर कब्रिस्तान दर्ज किये गये हैं तथा मानचित्र में भी बतौर कब्रिस्तान चिन्हित किये गये हैं, जब कि प्रथम बन्दोबस्त में यह आबादी अंकित हैं तथा उनपर स्थित दरख्तान के विषय में पारित डिगरी बहक मुतम्मात बदामू दिनाँक ।7 जनवरी, ।870ई इजलासी मुन्शी शिव प्रसाद साहब बहादुर का अमलदरामद अंकित है ।

प्रथम बन्दोबस्त की प्रविष्टि से भिन्न प्रविष्टि द्वितीय बन्दोबस्त में किए जाने के आधार एवं प्रक्रिया के सम्बन्ध में प्रभारी अधिकारी, राजस्व अभिलेखागार से आख्या माँगी गई। इस सम्बन्ध में उनकी आख्या दिनाँक 23.।।.92 प्राप्त हुई है, जो इस रिपोर्ट के संलग्नक ।तीन। के रूप में अवलोकनीय है। इस आख्या में वस्तु स्थिति इस प्रकार अंकित है:-

"दोनों जिल्द बन्दोबस्त को देखने से यह स्पष्ट नहीं होता है कि उक्त दोनों गाटों ।7। व ।72 पर कब्रिस्तान की प्रविष्टि किसके आदेश से हुई है। यद्दपि गत बन्दोबस्त में कब्रिस्तान की प्रविष्टि नहीं थी तो दूसरे बन्दोबस्त में कब्रिस्तान की प्रविष्टि करने के लिए प्रक्रिया यह है कि किसी सक्षम अधिकारी का आदेश होना चाहिए। किन्तु उक्त कब्रिस्तान से संबंधित प्रविष्टि के सम्बन्ध में कोई आदेश पत्रावली अभिलेखागार में उपलब्ध नही हैं"।

उपरोक्तिथ्यों से स्पष्ट है कि द्वितीय बन्दोबस्त में उपरोक्त गाटा संख्या ।7। व ।72 को किस प्रकार से किस आधार पर बतौर कब्रिस्तान दर्ज किया गया है इसके लिये कोई अभिलेखीय आधार उपलब्ध नहीं है।

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।आर0एन0श्रीवास्तव।,
जिलाधिकारी,
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द्वारा विशेष वाहक गोपनीय

(संलग्नक-एक)

विधि विज्ञान प्रयोगशाला, उत्तर प्रदेश,
महानगर, लखनऊ-226006

पत्रांक: 512-डाक-92 दिनांक 18/11/92

सेवा में, जिलाधिकारी,
फैजाबाद।

विषय:- विवादित प्रदर्शों/प्रलेखों की परीक्षा।
सन्दर्भ:- अप0सं0- ——— थाना- ——— धारा- ———
बिरुद्ध ——— से सम्बंधित
पत्र संख्या- अ0शा0मेमो/एसटी/राजभू/अ0जां0 जिलाधिकारी/आवासीय कार्यालय दिनांक 13-11-92
दिनांक 16-11-92 को विशेष वाहक डिप्टी कलेक्टर श्री गयाप्रसाद गुप्त डाक/बीमा/रजिस्ट्री डाक द्वारा पत्र तथा निम्नलिखित प्रदर्श प्राप्त हुए।

विवादित प्रलेख:

ग्राम कोट रामचन्द्र अयोध्या, जिला फैजाबाद के जिल्द बन्दोबस्त 1961 में भूमि गाटा संख्या-163 के स्तम्भ 2, 4 व 6 की प्रविष्ठियां विवादित हैं।

उपरोक्त ग्राम के प्रथम बन्दोबस्त आबादी के खसरा संख्या 1, 26-27, 224-225, 226-227, 328-329, 347-348, 350-351, 422-423, 429-430, 430-431, के बीच के कालम 5 से 7 की प्रविष्ठियां विवादित हैं।

उपरोक्त आबादी खसरा संख्या 431 से 456 के कैफियत के खाने के समस्त लेख तथा उस कालम में मिटाये गये लेख विवादित हैं। एवं खसरा आबादी के अन्तिम पृष्ठ के मध्य में मिटाये गये लेख विवादित हैं।

न्यायदर्श प्रलेख

उक्त जिल्द बन्दोबस्त में खाता खतौनी संख्या 1, 2, 6 एवं खसरा आबादी संख्या-13 व 47 में विद्यमान शब्द "जमा" व "मस्जिद" नमूना लेख बतौर हैं।

2- उपरोक्त सभी की परीक्षा इस प्रयोगशाला में वैज्ञानिक रीति से किया गया, परिणाम निम्न प्रकार हैं :-

क्र0 1 जिस व्यक्ति/व्यक्तियों ने खाता खतौनी संख्या- 1, 2 व 6 के कैफियत के खाने में विद्यमान उर्दू शब्द 'जमा' को लिखा है उसने गाटा संख्या-163 के स्तम्भ 2 में उर्दू शब्द 'जमा' को नहीं लिखा है।

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उपरोक्त तीनों लेखों की लिखावट एक दूसरे से भिन्न है।

ग§2§ उपरोक्त के स्तम्भ-16 में विद्यमान उर्दू लेख" आबादी" तथा उसी के स्तम्भ-2 के उर्दू लेख" आबादी" भिन्न व्यक्तियो द्वारा लिखे गये हैं।

घ-§3§ खसरा आबादी संख्या-1 के स्तम्भ-6,7,8 का उर्दू लेख" 30 नम्बर आबादी किश्तवार", संख्या-26 व 27 के बीच स्तम्भ-5,6,7 का उर्दू लेख "167 नम्बर आबादी किश्तवार", संख्या-224, 225 के बीच स्तम्भ-6,7 का उर्दू लेख" 53 नम्बर आबादी किश्तवार", संख्या-226 व 227 के बीच स्तम्भ-6,7 का उर्दू लेख" 109 नम्बर आबादी किश्तवार", संख्या-328 व 329 के बीच स्तम्भ 6,7 का उर्दू लेख " 114 नम्बर आबादी किश्तवार", संख्या-347 व 348 के बीच स्तम्भ 5,6,7 का उर्दू लेख " 128 नम्बर आबादी किश्तवार", संख्या-350 व 351 के बीच स्तम्भ 5,6,7 का उर्दू लेख" 130 नम्बर आबादी किश्तवार", संख्या-422 व 423 के बीच स्तम्भ-5,6,7 का उर्दू लेख " 102 नम्बर आबादी किश्तवार", संख्या-429 व 430 के बीच स्तम्भ 5,6 का उर्दू लेख" 104 नम्बर आबादी किश्तवार", संख्या-430 व 431 के बीच स्तम्भ 5,6 का उर्दू लेख " 163 नम्बर आबादी किश्तवार" अपने-अपने पृष्ठ के स्तम्भ 1 से 9 तक के शेष मूल प्रविष्ठियों के क्रम में नहीं लिखे गये है।

ब§3§ खसरा आबादी संख्या 431 से 456 के कैफियत के खाने के समस्त लेख एक क्रम में नहीं लिखे गये हैं।

ब§2§ उक्त खसरा आबादी संख्या-431 से 456 के कैफियत के स्तम्भ में 431 के सामने, 449 के सामने तथा खसरा आबादी के अन्तिम पृष्ठ के मध्य"इकरार मालकान"के उपर, मिटाये जाने के चिन्ह विद्यमान हैं।

संलग्नक-

1 जिल्द बन्दोबस्त 1861एक अदद

§ सहायक निदेशक §
सहायक निदेशक (प्रशिक्षण)
[illegible] विज्ञान प्रयोगशाला, उ0प्र0, लखनऊ

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परिस्थितियों में चाहे वर्ष 1909 में कमिश्नरी का मुख्यालय फैजाबाद रहा हो अथवा लखनऊ में रहा हो, 1909 के दस्तखत को पहचानने के लिए फैजाबाद कमिश्नरी तथा लखनऊ कमिश्नरी के समस्त वरिष्ठ लिपिकगण अपनी असमर्थता व्यक्त कर रहे हैं क्योंकि वर्तमान में जो भी वरिष्ठतम कर्मचारीगण दोनों कार्यालय में कार्यरत हैं अथवा कतिपय ऐसे कर्मचारीगण जो उपरोक्त कमिश्नरी से सेवा निवृत्त हो चुके हैं और जीवित हैं, उनसे भी सम्पर्क स्थापित करने पर कोई भी व्यक्ति उपरोक्त प्रतिलिपि नक्शा को जारी करने वाले व्यक्ति के हस्ताक्षर को पहचानने में असमर्थ हैं । ऐसी स्थिति में इस मामले को यह जाँच कि किस व्यक्ति द्वारा और किन परिस्थितियों में यह नक्शा मण्डलायुक्त के कार्यालय से जारी किया गया, जब कि मण्डलायुक्त के कार्यालय में कोई राजस्व अभिलेखागार नहीं होता था, संभव नहीं है । जाँच के दौरान यह भी विदित हुआ कि लखनऊ कमिश्नरी तथा फैजाबाद कमिश्नरी के अभिलेखागार में कभी भी कोई राजस्व अभिलेख नहीं रखे गये हैं, अतः 1861 प्रथम बन्दोबस्त के मूल आबादी नक्शा का होना तथा उससे नक्शे के प्रतिलिपि का जारी किया जाना अप्रासंगिक है । अतः यह नकल जो 1909 में कमिश्नरी कार्यालय से जारी किया जाना व्यक्त करती है संदिग्ध प्रतीत होती है क्योंकि कमिश्नरी अभिलेखागार में उक्त अभिलेख कभी भी उपलब्ध नहीं रहे, जिससे नकल जारी की जा सकती । मजीद जाँच से यह भी विदित हुआ कि नक्शे की नकल पर जो कमिश्नरी की मोहर लगी है, जिसका जारी किया जाना 1909 अंकित है, उस मोहर को कार्यालय का होना साक्ष्य के अभाव में सत्यापित नहीं हो पाया । इसके अतिरिक्त इस विषय पर यह भी व्यक्त करना है कि स्थानीय अभिलेखागार में मौजा कोट राम चन्दर के अभिलेखों के बस्ते में अथवा जिल्द बन्दोबस्त 1861 के अभिलेखों के साथ आबादी का कोई भी नक्शा उपलब्ध नहीं है अतः मेरे मत में नक्शा आबादी को कथित उक्त नकल संदिग्ध प्रतीत होती है । यह नकल किसके द्वारा बनाई गई इस पर मत भी व्यक्त करना सम्भव नहीं है । इस आशय के साथ आपके द्वारा प्रेषित नक्शा आबादी की प्रतिलिपि तथा अन्य सूचनाएँ जो भी आपने मुझे उपलब्ध कराई है, प्रेषित कर रहा हूँ ।

संलग्नक: उपरोक्तानुसार

9/11/92

( उमेश चन्द्र तिवारी )
अपर जिला मजिस्ट्रेट प्रशासन नगर
फैजाबाद ।
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{ संलग्नक- तीन }

जिलाधिकारी

महोदय,

आपके आदेश संख्या-मेमो/एसएटी0/रा0ज0भू0/92, दिनांक 14-11-92 के अनुपालन में आवश्यक छान-बीन की गई। छानबीन से ज्ञात हुआ कि गाटा संख्या-158 तथा 161 में गत बन्दोबस्त में कब्रिस्तान नहीं अंकित है, किन्तु नये बन्दोबस्त 1344 फसली में उक्त गाटा के नये गाटा संख्या 171 व 172 पर स्तम्भ-7 में कब्रिस्तान अंकित है।

दोनों जिल्द बन्दोबस्त को देखने से यह स्पष्ट नहीं होता है कि उक्त दोनों गाटों 171 व 172 पर कब्रिस्तान की प्रविष्टि किसके आदेश से हुई है। यदि गत बन्दोबस्त में कब्रिस्तान की प्रविष्टि नहीं थी तो दूसरे बन्दोबस्त में कब्रिस्तान की प्रविष्टि करने के लिए जो प्रक्रिया यह है कि किसी सक्षम अधिकारी का आदेश होना चाहिए। किन्तु उक्त कब्रिस्तान से संबंधित प्रविष्टि के संबंध में कोई आदेश पत्रावली अभिलेखागार में उपलब्ध नहीं है।

प्रभारी अधिकारी,
राजस्व अभिलेखागार,
फैजाबाद।
23-11-92

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जिलाधिकारी,

महोदय,

आपके आदेश संख्या-मेमो/एसएटी0/रा0ज0भू0/92, दिनांक 14-11-92 के अनुपालन में आवश्यक छान-बीन की गई। छानबीन से ज्ञात हुआ कि गाटा संख्या-158 तथा 161 में गत बन्दोबस्त में कब्रिस्तान नहीं अंकित है, किन्तु नये बन्दोबस्त 1344 फसली में उक्त गाटा के नये गाटा संख्या 171 व 172 पर स्तम्भ-7 में कब्रिस्तान अंकित है।

दोनों जिल्द बन्दोबस्त को देखने से यह स्पष्ट नहीं होता है कि उक्त दोनों गाटों 171 व 172 पर कब्रिस्तान की प्रविष्टि किसके आदेश से हुई है। यदि गत बन्दोबस्त में कब्रिस्तान की प्रविष्टि नहीं थी तो दूसरे बन्दोबस्त में कब्रिस्तान की प्रविष्टि करने के लिए जो प्रक्रिया यह है कि किसी सक्षम अधिकारी का आदेश होना चाहिए। किन्तु उक्त कब्रिस्तान से संबंधित प्रविष्टि के संबंध में कोई आदेश पत्रावली अभिलेखागार में उपलब्ध नहीं है।

प्रभारी अधिकारी,
राजस्व अभिलेखागार,
फैजाबाद।
23-11-92

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अमर बहादुर सिंह,
उप भूमि व्यवस्था आयुक्त।

अ०शा०पत्र सं०: 3218 /4-§मान०§-801/80
राजस्व परिषद्, उत्तर प्रदेश
अनुभाग-4, लखनऊ

दिनांक: नवम्बर : 20 , 1992.

प्रिय महोदय,

उपर्युक्त विषयक आपके पत्र संख्या-शून्य, दिनांक 10-11-1992 के सन्दर्भ में तरमीमी नक्शा, मौजा रामकोट, परगना हवेली अवध, तहसील व जिला फैजाबाद की सन् 1930-31 की एक प्रमाणित प्रतिलिपि भेजने की मुझसे आकांक्षा की गयी है।

भवदीय,

§ अमर बहादुर सिंह §

श्री आर०एन० श्रीवास्तव,
जिलाधिकारी,
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46
V-C

# MANUAL

FOR THE

# REVISION OF MAPS AND RECORDS

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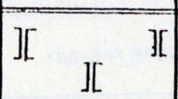
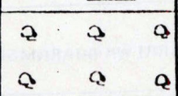
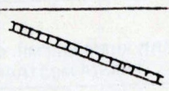
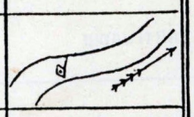
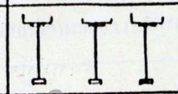
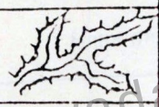
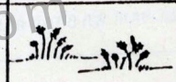
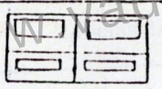
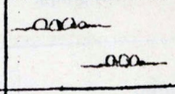
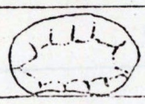
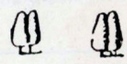
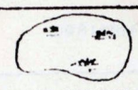
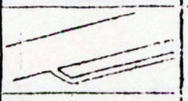
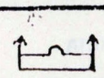
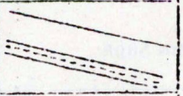
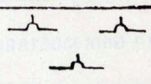
# APPENDIX II

*Conventional signs for different objects to be shown in the village maps of the United Provinces (Rule 62).*

| SERIAL No. | NAME OF OBJECT | SIGN | SERIAL No. | NAME OF OBJECT | SIGN |
|---|---|---|---|---|---|
| 1 | ABADI |  | 19 | DARAKHT KHAJUR WA TAR | |
| 2 | AERODROME | | 20 | DEVA_STHAN | |
| 3 | BAGH |  | 21 | DOHADDA | |
| 4 | BAMBA | | 22 | ENGLISH KABRISTAN | |
| 5 | BANDH |  | 23 | GHAT MAI NADI |  |
| 6 | BANJAR |  | 24 | GIRJA GHAR | |
| 7 | BANSWARI (BANSKOTI) | | 25 | HYDRO ELECTRIC POST |  |
| 8 | BEHAR |  | 26 | JANGAL DHAK |  |
| 9 | BHATTA (PAZAWA) |  | 27 | JANGAL JHARI, BABUL WA GHHOTE PER |  |
| 10 | BHEETA PAN (PANWARI) |  | 28 | JANGAL JHAU WA GHAS KALAN | |
| 11 | DAK BUNGALOW 1ST. CLASS | | 29 | JANGAL SAKHU SAL, SHISHAM WAGAIRA BARE PER |  |
| 12 | DAK BUNGALOW 2ND. CLASS | | 30 | JHIL |  |
| 13 | DAK BUNGALOW 3RD. CLASS | | 31 | KABRISTAN | |
| 14 | CANAL DISTRIBUTARY. MINOR, OR GUL |  | 32 | KARBALA |  |
| 15 | CANAL MAI SARAK |  | 33 | MANDIR | |
| 16 | CHAH KHAM | | 34 | MARGHAT |  |
| 17 | CHAH PUKHTA | | 35 | MASJID | |
| 18 | CHAH PUKHTA BEKAR CHU DA | | 36 | NADI SARHADDI | |

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| SERIAL NO. | NAME OF OBJECT | SIGN | SERIAL NO. | NAME OF OBJECT | SIGN |
|---|---|---|---|---|---|
| 37 | NAHAR YA CANAL(MAIN) | | 55 | SCHOOL | |
| 38 | NALA | | 56 | SUGAR FACTORY | |
| 39 | PAGDANDI | | 57 | SARHAD MAI SIHADDA | |
| 40 | PAHARI | | 58 | SARAI WA DHARAMSHALA | |
| 41 | PARAO | | 59 | SARAK PUKHTA MAI MIL | 10 |
| 42 | PARTI JADID | | 60 | SARAK KHAM MAI MIL YA RASTA MUSTAQIL | 15 |
| 43 | PARTI QADIM | | 61 | TELEGRAPH POST | |
| 44 | PATHRILI ZAMIN(PATHAR) | | 62 | THEODOLITE MARK | |
| 45 | PHULWARI WA BAGH QALMI | | 63 | TALAB KHAM | 75 |
| 46 | POKHAR WA GARHA | | 64 | TALAB PUKHTA | 77 |
| 47 | POUND | | 65 | TILA | |
| 48 | PUL GAIR MUSTAQIL | | 66 | TUBE WELL | |
| 49 | PUL MUSTAQIL | | 67 | TAHSIL | |
| 50 | QILA KHAM | | 68 | THANA | |
| 51 | QILA PUKHTA | | 69 | USAR | |
| 52 | RAILWAY LINE WA STATION | | 70 | ZAMIN SHOR | |
| 53 | RASTA GAIR MUSTAQIL | | | | |
| 54 | RET | | | | |

PREPARED BY ALI AZHAR S. OFFICE MAINPURI(U.P.)

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At this juncture it is pertinent to mention oral evidence adduced by the plaintiffs of OO.S. no. 4 of 1989.

Total number of witnesses examined by the plaintiffs are 32. These witnesses may be divided into three categories. The first category is of those witnesses who have deposed that Namaz was offered in the disputed building up to 22.12.1949. These witnesses can be considered under category (A). The second category of witnesses are those witnesses who have deposed about the principles of Shariat regarding nature of mosque. The 3rd category is of those witness who possesses the knowledge of history or archeology. Mohd. Hashim, PW-1, Haji Mahbood Ali, PW-2, Farooq Ahmad, PW-3, Mohd. Yaseen, PW-4, Abdul Rahma, PW-5, Mohd. Unus Siddiqui, PW-6, Hasmatullah Ansari, PW-7, Abdul Ajeej, PW-8, Saiyad Ablaq Ahmad, PW-9, Jalil Ahmad, PW-14, Dr. Mohammad Hashim Quidwai, PW-21 and Sibte Mohd. Naqvi, PW-25 can be placed under category (A).

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So far as evidence of **PW-1, Mohd. Hashim** is concerned, he has deposed that his residential house exists at a distance of three *farlong* from the disputed site. For the first time he offered Namaz in the Babri Mosque in the year 1938. People of Muslim community used to offer Namaz in this mosque. Last Namaz was offered by this witness on 22.12.1949. Idol was placed by Abhi Ram Das and others in the inner courtyard for the first time in December, 1949. He has broadly supported the plaint case in his examination in chief. In his cross examination, he has stated that a civil suit was filed by Mahant



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Raghubar Das in the year 1985 with regard to the platform which existed in the outer side of the mosque. This suit was dismissed up to the court of Judicial Commissioner. The mosque of Dorahi Kuan exists at about 200 yards from the disputed structure. This mosque existed prior to his memory. There are minarets in it, it is a very old mosque. He was cross examined about the affidavits filed in the proceedings of Section 145 Cr.P.C. On being cross examined, he has deposed that these affidavits were the result of the pressure exerted by the local people on the persons whose affidavits find place on the record of Section 145 Cr.P.C. Proceedings. The mosque which exists at the Vashista Kund is of Mughal period, two persons pressurized and assaulted the persons of Muslim community and compelled them to file affidavits in favour of Hindus. He went on to state that no pressure was applied in this regard by the District Administration and no complaint was lodged in this regard to the concerned authorities. He has also stated that the Muslim community of Ayodhya was very much annoyed with the then Deputy Commissioner K.K. Nayyer, but no complaint was made before him on the point of exerting pressure by the local people on those persons who succumbed to the pressure applied by the local people and consequently filed affidavits in favour of Hindus regarding property in suit.

He has also deposed that prior to placing of idols in the inner courtyard there was a law of *jungle* in Ayodhya and no officer was ready to entertain the complaint made by the persons of Muslim community. This jungle law persisted from one month before

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22/23.12.1949. Baba Raghav Das was exhorting the Hindus to instal idols in the inner courtyard while Akshay Brahmachari was supporting the claim of Muslims. This Akshay Brahmachari was disciple of Basudev Brahmachari and was a strong Congress man. He was a leader of provincial level. He has admitted that no complaint was made by him to the Prime Minister or Home Minister regarding the installation of idols in the inner courtyard of the disputed building. He has also stated that no riot took place in Ayodhya prior to 1949, but subsequently he admitted that riot took place in 1912 and again in 1934. The riot of 1912 is know as Idul Fitr riot case. The incident of cow slaughter allegedly took place in Shahjahanpur. The people from Ayodhya returned from Shahjahanpur and took part in this riot. Village Shahjahanpur is situated in district Faizabad. A tax was imposed on the persons of Hindu community in the years 1934. He does not know about the involment of Mahant Narottam Das of Nirmohi Akhara in the years 1912 in connection of the riot which took place in this year. He does not know about Rahim Khan son of Ahmad Khan of Mohalla Kaziana, Ayodhya. He was not born in the years 1912 and has not inspected the record of this riot. So far as the riot of 1934 is concerned, he is fully conversant about it. The King of Alwar, who was expelled from Rajasthan started residing in Ayodhya in the years 1934. He was the man who was responsible for this riot.

This witness went on to state that he never visited Sutahti Mohalla and the Babri Masjid was damaged in the riot of 1934. Two person died in this incident and Sutahti Mohalla was put on fire in this

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incident. He has also stated that Namaz can be offered in open field, but namaz cannot be offered in the temple. He do not remember as to in which month he went to offer namaz for the first time in the disputed building. Similarly, he do not remember as to how many trees were there in front of the mosque. He does not know about the age of these trees, which were at a distance of 200-300 yards from the disputed building. There was a temple known as Manas trust temple. There are so many temples in the eastern side of this building, namely Kohbar Bhawan Mandir, Anand Bhawan Mandir, Rang Mahal Mandir and Amawa Mandir. He has also stated that there are at least 4500 temples in Ayodhya.

The second witness examined from the plaintiffs' sides falls within category (A) is **PW-2, Haji Mahboob Ali**. He has deposed that disputed mosque is at a distance of three Farlong from his house. He offered last Namaz in this building on 22.12.1949. Inner courtyard was always used for offering namaz by Muslim community of Ayodhya. Friday prayers were offered at Ayodhya only in two mosques. Same position was with the offering of Taravi-prayers. His father was plaintiff in this case. He was landlord and farmer and had two hundred Bighas land in his possession. The incident of 6.12.1992 took place in his presence. He has admitted that a stone slab is installed near the mosque, but he does not know as to what is written on the slab. In his further cross examination, he has stated that Friday prayers were offered in Ayodhya only in two mosques, the first was Kewde Wali Masjid and the second mosque was the disputed mosque.

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He has admitted that there was a platform in the outer courtyard of the disputed building, which was about 21 feet long. He used to see Chulha, Chauka and Belan in the outer courtyard. People used to say that this place is Sita Rasoi.

He was not born in the year 1934 when allegedly riot took place. He does not know as to what was the reason behind this riot. He does not know whether the outer courtyard was attached in the year 1949 or not, but he has knowledge about the litigation, which took place in 1885. He has also admitted that the figures of any animal, bird or man cannot be depicted in a mosque building, but flowers and leaves can be depicted. He has denied that his statement regarding his age is false, but he has admitted that there were confusion and misconception about it. The cross examination conducted on behalf of the defendants goes to show that the age stated by this witness in his examination in chief is not reliable and the deposition made in the cross examination proves this fact. He has admitted that one fortnight before the incident on 22.12.1949, shoes, stones and pebbles were hurled on the persons, who went for offering Namaz in the disputed building, but he has clarified that no such incident took place with him. He has knowledge about the report of Waqf Inspector where it might have been mentioned that Hindus used to hurl pebbles, shoes and stones on those who went for offering namaz in the disputed building. He does not know whether any person exhorted the Hindu community with reference to disputed building. He has admitted the existence of Sita Rasoi, was existed in

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the outer lawn in the northern side of the building. Rolling pin etc. were there at Sita Rasoi. There was a thatched structure on the platform in the outer courtyard. He has admitted that Lord Rama was born in Ayodhya. He does not know about the details of the disputed property. He does not know as to when railing was constructed between the outer and inner courtyard. He does not know whether this was constructed by the Britishers or not. He has also stated that if any mosque is constructed after demolishing any temple, then no person of Muslim community would like to offer namaz in that building. He was confronted with the school certificate wherein his year of birth has been mentioned as 1944, on which he has stated that this date of birth is not correct. He has also admitted that no effort was made on his part to get this mistake corrected at any point of time.

The 3rd witness examined by the plaintiffs also falls within the category (A) and is **PW-3, Farooq Ahmad,** who has stated that he offered namaz in the Babri Masjid up to December, 1949. He is resident of Mohalla Navgazi. He has stated that his father was informed by Sub-Inspector, Ram Dev that some untoward incident was likely to happen with regard to the disputed property. On the suggestion of the Inspector, lock was put on the doors by him and he handed over the keys to his father. It was end of the month of December, 1949 when after offering namaz of *Esha* they had gone to their home. He has also stated that presence of minaret is not essential in a mosque. So far as dome is concerned it may or may not exist in a mosque. He has stated that his shop and house is near Post Office in

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Ayodhya. Sub- Inspector Ram Dev was posted in Ayodhya 4 or 5 months back of the incident of December, 1949. He does not know as to who was the Sub-Inspector prior to the posting of Ram Dev. Sub-Inspector had apprehension that some persons may install the idols in the inner courtyard. He has admitted that no lock was put in the Babri Mosque prior to 22.12.1949. He has stated that no mosque or graveyard or tomb situate in Ayodhya was demolished by any person prior to 1949. This goes to show that he has no knowledge about the incident of 1934 when allegedly the disputed mosque was partially damaged. He has stated that all the records relating to mosques and graveyards, which were kept by his father were set on fire in the year 1992. He has admitted that if any mosque is constructed on the land of a person forcibly, then this mosque will not be termed as valid mosque. He has admitted that the place where disputed mosque existed was known as Kot Ram Chander. He has admitted the existence of Janam Sthan, Sita Rasoi in the outer courtyard. He went on to state that at the entrance gate in the northern side, thatched huts existed, which were small in size. People used to sit in it. He has stated that these huts were constructed by Muslims, but he has not been able to disclose the names of those persons as to who constructed these huts. He has also admitted that prior to the incident on 22/23.12.1949 in the eastern side of the building people used to recite holy names of God. This recitation was not confined only to Hindu community even persons of Muslim community would participate in it. There was a platform in Gang-e-Shahidan where people used to

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offer sacrifice in the holy fire. He has stated that about 82 Muslims died in the incident, which took place about 100 years ago. The bodies of these persons are buried in Gang-e-Shahidan. He has also admitted that the riot of 1934 took place prior to his memory. No damage was done to the disputed mosque in this incident, but later on he has admitted that the western wall and the dome of this mosque were damaged in the incident. Few persons of Muslim community were done to death and 10-12 houses were damaged in this incident. He has denied that police suo motu lodged F.I.R. on the incident of 22/23.12.1949. Indirectly he says that this F.I.R. was lodged by any person of Muslim community. But subsequently he admitted that he does not know, who recorded the F.I.R. of this incident. Head constable, Abdul Barkat used to write reports in Ayodhya Police Station. He has stated that no police force was deployed at the disputed site in the intervening night of 22/23.12.1949. He has admitted that no property pertaining to Mosque was attached in December, 1949. No person was appointed receiver with regard to the property of mosque. He has denied the fact that affidavits were filed in the proceedings of Section 145 Cr.P.C. in favour of Hindus by the persons of Muslim community. He does not know as to whether any report was lodged on the behest of Ram Dev, Sub-Inspector or any constable of Police Station, Ayodhya. The photographs of the Album (figure no. 76) has been shown to the witness who after viewing it has deposed that images of elephant and horses are engraved along with flowers and leaves on the columns which were fixed in the disputed building. He has also recognized the head of elephant, although he has clarified that so many changes have been done in it. In photograph no. 91 he has recognized the trunk of an elephant and also recognized "*Kalash*". He has recognized statue of a girl on the column. He

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has also admitted that he did not inform to his counsel about the changes and for the first time deposing about these changes in the court. He does not know as to any Waqf Inspector, Mohd. Ibrahim would come to visit the disputed site or not. Similarly, he does not recollect that after the death of Zaki Saheb, Mohd. Ibrahim used to come to his father or not. He does not recollect as to when Zaki Saheb died. He tried to correct his earlier statement, wherein he has deposed that only one lock was put in the door of railing in the disputed building in the intervening night of 22/23.12.49. He has stated that the last prayers were offered in this mosque on 16.12.1949. He does not know as to whether the statement to this effect was given by his father is correct or not. He has also stated that after putting the lock, he did not pay any heed to inform the Moazzin of the mosque, who was sleeping beneath the hut in the disputed building. He has denied that he had seen railing, rolling pin in the outer courtyard prior to 1949. He has also stated that he had not seen any platform in the outer courtyard prior to 1949. Subsequently, he has admitted these facts and stated that he used to see rolling pin. In contrast to his earlier statement, he has stated that right since 1934 up to 5.12.1992 platform, rolling pin and platform were there in the outer courtyard and no damage was done at any point of time to these articles. He admits that he never managed this mosque and is unable to state as to what is the duration when his father managed this mosque. He has also stated that the locks which were put in the disputed building on 22.12.1949 remained there up to 1986. Indirectly he denies that the lock was put by receiver after the attachment of property in suit.

Another witness of category (A) is **Mohd. Yaseen, PW-4** who has stated in his examination in chief that he is resident of Ayodhya. He always offered Namaz on Friday in Babri Mosque. Last Namaz was offered by him 47 years

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ago. On 22/23/12.1949, idols were placed inside mosque. There was arrangement for Wazu. Urinal was also present in the mosque. Mat and badhana were there, which were used by the persons of Muslim community who used to come over there for offering namaz. The idols of Hindu Gods and Goddesses were not engraved on the Kasauti pillars. In his cross examination, he has stated that there was a platform in the southern side of the mosque, which was 2-5 feet in height from the ground level. There was a hut over it. Rolling pin was there but there was no trace of any stove. He has stated that so far as he recollects any Hindu did not offer prayer in the outer courtyard. No riot took place in the year 1949 between Hindus ad Muslims, but he had heard from his mother that in village Shahjahanpur some dispute arose regarding cow slaughter. He was informed that one or two domes of the disputed building were demolished in this riot. He has also admitted that beside entrance gate of the building, people of Hindu community used to recite holy names of God. He had noticed this fact even on the last date when he had visited the site for offering Namaz.

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He has stated that Ram Chabutra was not in existence. His house exists at a distance of 1.5 Km. from the Babri mosque. He has admitted that he is suffering from memory loss. If any person succeeds in proving that Babri Mosque was built after demolishing any temple, in that event he would not consider this mosque as a valid mosque. He has also stated that Namaz was never offered in the outer courtyard. He has also admitted the existence of black pillars of Kasauti.

**Shri Abdul Rahman has been examined as PW-5** by the plaintiffs. He is Hafiz-Quran. Quran was recited in Babri Mosque in the year 1945-46. He always offered Namaz in the disputed building whenever he visited over there



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on Friday. He is resident of Ibrahimpur, Faizabad. In his cross-examination he has stated that if figures of animals and birds or human being are engraved on the walls of a mosque, then it is against the tenets of Islam. These figures cannot be even outside of a mosque. According to holy Quran, no image or figure should be in a mosque. If figures of animals and human being are present in a mosque, it is not approved according to Islamic tenets, whoever engraves aforesaid images, he is wrong doer in the eye of Islam and offering Namaz is prohibited at such place.

Next witness of this category is **Mohd. Unus Siddiqui, PW-6** who is resident of Reedganj, Faizabad. He has stated in his examination in chief that prior to December, 1949, there was no idol in the inner courtyard. No Hindu entered in the inner courtyard prior

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to December, 1949. He is in legal profession and used to visit the site for offering namaz at the occasion of Shabe-Barat. In his cross-examination he has stated that between 1957 and 1960, he came to know as to who constructed the Babri Mosque. He does not know about its area. This mosque was named after emperor Babur as it was constructed on his command. He had heard that on the suggestion of a Muslim Saint, Musa Ashikan, Babur got the temple demolished and directed to construct mosque over there. According to the injunctions of Islam, no mosque can be constructed over a land which belongs to another person and he does not give his consent or transfer it in favour of the person who desires to construct a mosque. Offering namaz against the will of the person who is owner of that building is against Quranic injunctions. Demolishing a temple is prohibited under Islam and holy Quran does not authorize any person to construct a mosque after demolishing a temple.

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Shri **Hasmatullah Ansari** has been examined as **PW-7.** He is resident of Mohalla Kaziana, Ayodhya and was born in 1932. He offered Namaz in Babri Mosque at least 100 times. For the first time he offered namaz in the years, 1943. Prior to installing of idols in the inner courtyard he used to offer namaz in this building. In his cross examination statement he has deposed that there is no Muslim population in Mohalla Vashista Kund. No mosque can be constructed after demolishing a temple.

Shri **Abdul Ajeej has been examined as PW-8**, who is resident of Faizabad and was born in 1926. He offered namaz in the disputed



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building at least 100 times. He was ten years old when for the first time Namaz was offered in this building. At the time of recording of statement, he stated his age as 70 years. In his cross examination, he has stated that mosque cannot be constructed in another man's land without his consent. He has seen Kanati mosque in graveyard. No second mosque can be constructed in that very graveyard and only Kanati mosque can be constructed. He does not have much information about Ayodhya. He has no knowledge about the temples, Akharas and Saints of this place. From the very beginning this fact was in his knowledge that the population of Hindus is greater than the muslim population.

Shri **Syeed Akhlak Ahmad, PW-9** is transporter by profession. His house is at a distance of nearly one farlong from the Babri mosque. He offered Namaz five times in Babri Mosque. He in his cross examination has narrated about the requirements, which are essential prior to construction of a mosque. One of the requirements is that the person who executes Waqf, must be owner of the property. He does not know whether Mir Baqi was Shia or Sunni Muslim. In History books he had read that disputed building was constructed on the command of emperor Babur, but his knowledge is limited only to the inscriptions. According to the tenets of Islam, no mosque can constructed after demolishing a temple. If there is any mosque, which is constructed after demolition of a temple, in that event offering Namaz at that place is a sin in the eye of Islamic injunctions. No mosque can be constructed over a land which has been grabbed

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forcibly from the rightful owner. He has admitted that after opening of the locks, people whose number was in lakhs used to visit this site for offering prayer and performing rituals. A mosque even cannot be constructed at a place where hut of any person existed and no consent was obtained from him.

Shri **Suresh Chander Mishra, PW-13**, is aged about 38 years. He is resident of district-Basti. In his examination in chief he has stated as if he is scholar of Hindu Religion, but from his cross-examination statement, it transpires that he is a political man and has no knowledge about the building in suit.

Now only two witnesses namely Dr. M. Hashim Qidwai, PW-21, and Mohd. Qasim Ansari, PW-23 come under category (A), who have stated that Namaz was offered in the disputed building, but so far as PW-21 is concerned, he has stated that for the first time in 1939 he had offered Namaz along with his family members and had continued up to 1941. At the time of Maghrib Namaz about 100 persons assembled over there while during Friday prayers approximately 200-300 persons used to take part in offering prayers. Dr. M. Hashim Qidwai, PW-21 retired as Reader from Aligarh Muslim University. He has also proved some papers. So far as Mohd. Qasim Ansari, PW-23 is concerned, he is 74 years of age. He is motor mechanic by profession. His house situate approximately at a distance of 3 farlong from disputed building. Last prayer was offered by him on 22.12.1949. In his cross-examination he has stated about the riots of 1934. He came to know from the newspapers about it.. The cause

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behind this riot was allegedly cow slaughter, which was said to have occurred in village Shahjahanpur. He does not know about the location of this village. In this riot specially the dome of the mosque was damaged, but he does not know about its details as to what portion of the dome/domes was damaged in this incident.

**Mohd. Qasim Ansari, PW-23**, in his cross-examination has stated that Islam does not permit any person to grab the land or building of any person. Namaz cannot be offered at a place where figures of animals or human beings are depicted. He was shown figure no. 57. After viewing it he has stated that this is a platform where Hindu saints used to recite holly names of God. After viewing figure no. 72 he has recognized that rolling pin, impression of foot steps have been shown in it.

The second category of the witnesses is of those persons who have special knowledge about form or nature of a mosque. In this category PW-10, Mohd. Idris, PW-11, Mohd. Burhanuddin, PW-19, Maulana Atiq Ahmad, PW-22, Mohd. Khalid Nadvi, PW-25, Mohd. Sibte Naqvi, PW-26, Kalbe Jawad can be placed. They all have stated that they are well conversant with the Muslim religion. There is no specification for construction of a mosque. Minaret (Minar) is not essential part of a mosque. If a mosque is constructed on a vacant place, even then it would be just and proper. Even if idols are placed or pictures are depicted in a mosque, the mosque would not loose its character. In the statement of Maulana Atiq Ahmad, it is said that minaret, domes or provision for urinal is not integral part of a mosque.

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It will not loose its character even if pictures are depicted on the walls. So far as statement of Shri Kalbe Jawad is concerned, he has deposed that there is no distinction between Shia and Sunni mosque. He categorically opined that no specification is provided for construction of a mosque. He has also stated that members of Shia community are actively involved and concerned with the present issue.

I have gone through the cross-examination statement of these witnesses, although at different places they have tried to narrate that minarets, provision for urinal, domes are integral part of a mosque. But their statement is contrary to the general belief prevailing amongst Muslims that if figures of human beings or animals are depicted in a mosque or idols are placed over there, then it cannot be termed as a valid mosque and according to Islamic injunctions no prayer can be offered. As mentioned above most of the witnesses have admitted that on the columns, which were fixed in the disputed building, figures of human beings, trunk of elephant were depicted besides flowers and leaves. Therefore, according to these witnesses, no namaz can be offered at a place where human figures or figures of animals or idols are placed in a mosque.

Third category of the witnesses is of expert witnesses. In this category learned counsel for the plaintiffs has mentioned PW-13, Suresh Chandra Mishra, PW-15, Sushil Srivastava, PW-18, Professor Suvira Jaiswal, PW-20, Professor Shirin Musavi, PW-27, Dr. Shereen F. Ratnagar, PW-28, Dr. Sita Ram Roy, PW-29, Dr. Jaya Menon, PW-30, Dr. R.C. Thakran, PW-31, Dr. Ashok Datta, PW-32, Dr. Supriya

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Verma and DW 6/1, Mohd. Abid.

In his cross examination Shri **Suresh Chandra Mishra, PW-13** has not been able to say whether he is theist or atheist. He has accepted that in "Raghuvansh" there is description of Lord Rama. He has also heard about poet Valmiki. From the bare reading of Valmiki Ramayan, it transpires that at the time when it was written human population was in Ayodhya. The traditions, behaviour, festival and dress code etc of that period are mentioned in it. He has accepted that he had read the history written by P. Carnegy about Ayodhya, but he does not recollect as to when this book was written. P. Carnegy was the Commissioner of Faizabad Division. The name of the book is- "A Historical Sketch of Tehsil Faizabad District Faizabad including Pargana Haveli Oudh and west road with old capital of Ayodhya and Faizabad". He has also stated that he has knowledge about 'Skanda Puran', one of its chapter is Ayodhya Mahatmya where places of pilgrimage of old historical importance are mentioned. According to Hindu mythology, Lord Rama was born in Ayodhya. He has described different words used in 'Ayodhya Mahatmya'. He has also admitted that person who believe in dignity of Lord Rama, they have faith that he was born at Ayodhya. He has also accepted that his parent had gone there to worship, the place which was recognized as a place of birth of Lord Rama, they had not gone to worship any idol. He has accepted that whenever he visited the site, the number of devotees were comparatively in large number than other temples. At the time of main festivals 20000-25000 people assembled at the site of birth

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place of Lord Rama.

Shri **Sushil Srivastava, PW-15** has stated in his cross examination that P. Carnegy in his report has stated that there has been a temple at the place of birth of Lord Rama. Subsequently, emperor Babur got the mosque constructed. This note of P. Carnegy was published in the year 1867. He has admitted that he has no idea that the description given by the Britishers that mosque was constructed after demolishing a Hindu temple is wrong. He has also mentioned about the book written by Hans Bakker wherein it is mentioned that Babur got constructed a mosque at the place where temple existed. He has also referred Martin who states that at the place of disputed structure there existed a temple which was got constructed by King Vikramaditya. He is in full agreement with the description given in Ayodhya Mahatmya about pin pointing the birth place of Lord Rama. He accepts that he has seen a column on which "Bighneshwar" was written. He has also stated that the description prior to 1800 A.D. there is mention of worship of Hindus at the place of birth of Lord Rama which is known as Ram Kot. He also admits that disputed site comes within the area of Ram Kot. According to him even in 5th century A.D. People had belief that Lord Rama was born in Ayodhya. This belief revived in 11th century A.D. He has categorically accepted that in all the descriptions written by Britishers, the place of birth of Lord Rama is mentioned which is described as Ram Janam Bhoomi.

Shri **Prof. Suraj Bhan, PW-16** in his cross-examination has admitted that he visited a place at Ayodhya, which was believed to be

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the site of Bighneshwar Temple. The people of that locality had affirmed that this place is Bighneshwar Temple. He has categorically admitted that at so many places even in absence of any deity that place itself is worshiped. He has admitted that the institution, on behalf of which he had made investigation about the disputed site, it's Chairman was Prof. Irfan Habib. He got grant from this institute for the investigation of this site.

**Prof. Suvira Jaiswal, PW-18,** has stated that in Skanda Puran there is a chapter of Ayodhya Mahatmya. She has also admitted that if people have faith at a particular place, then it is not necessary that there should be existence of any temple even that place of belief/faith can be worshiped under Hindu religion. He has accepted that he had read an article wherein it was mentioned that according to Abul Fazal Ram Nawmi festival was celebrated on the day of birth of Lord Rama. She has also admitted that in second century A.D. Shri Ram was recognized as incarnation of "Narayan". She has stated that in Valmiki Ramayan, the date of birth and place of birth of Lord Rama are mentioned. According to general belief amongst Hindus, Lord Rama was born in Ayodhya which worshiped by Hindus.

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Next witness of the above category is **Prof. Shirin Musavi, PW-20**, who has stated that she is Professor in History Department in A.M.U. Since 1970. She had taught in Chikago University in 1984. Did Ph.D in 1980 in History from A.M.U. Was Head of the Department from 1997-99. She was also Secretary of Indian History-Congress for three year. She has been visiting Professor in foreign



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countries. She has stated that there is no evidence to suggest that disputed mosque was constructed after demolition of any temple. Muslims started residing at Ayodhya since 1206. On the basis of "Aaine Akbari", "Meerate Masoodi", Hadeeqe Sohada", Teffintheller's account, she came to the conclusion that there was no temple at the disputed site prior to construction of the mosque. In her cross-examination she has stated that since she has not visited disputed site, therefore, unable to state whether there exists image of Warah Devta or not. She has never seen the figure of pig. She has not seen the columns of black Bassalt in any mosque. She has seen the idols and images of Hindu God and Goddesses in the temple and has also seen stove, rolling pin etc. She has also seen foot prints and she has not seen these images or things in any mosque. No image or idol can be depicted or installed in any mosque. She is unable to state as to whether any Muslim would permit any Hindu to come in the mosque and make idol or figure in it or not?

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Shri **Dhaneswar Mandal, PW-24** has stated that he is retired Professor of Department of Ancient History, Culture and Archeology in Allahabad University. Although he is not Ph.D, but many persons have done their research work and got Ph.D in his supervision and guidance. He joined as Exploration Assistant in 1960 and retired in 1993. He has been teaching for 33 years and did enormous archeological work. He is also author of Ext. 63 "Archaeology after Demolition". He has further stated that there is no evidence to the effect that any temple ever existed beneath the disputed mosque. This



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witness has been examined twice. After submission of the the ASI report, he was again called as a witness from the plaintiffs' side. He has stated every aspect of excavation and supported the objection filed against the ASI report by the plaintiffs.

In his cross examination at page no. 15 he has stated that his memory regarding the dates of different events is week. This condition is continuing for two or three years. It is true that a stone slab can be carbon dated. His is holder of red card of Communist Party. He has stated that he has not seen black Bassalt columns in any mosque or temple. The reason is that he never visits any temple or mosque. After 600 A.D. And up to medieval period there was period of Rajputs. He has also stated that the bottom base of platform, which was in outer courtyard was 2.65 meter deep from upper surface of the ground.

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Next witness of above category is **Prof. Shreen F. Ratnagar, PW-27** who is Ph.D in Archaeology and fellow of British School of Archaeology. Did excavation at different sites in Iraq. She did P.G. Diploma in Archaeology and has been lecturer in J.N.U., Delhi. She is a writer of five books of archaeology. In her cross examination she has stated about the excavation conducted by Professor B.B. Lal at Ayodhya. By and large she has supported the contention of D. Mandal. In her cross-examination she has stated that knowledge of Purans is essential for understating the early first millennium A.D. At the time of recording the statement she has stated that she has not visited the disputed site till date. Valmiki Ramayan was written



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between 500 B.C. And about 300 or 200 B.C.

**Dr. Sita Ram Roy, PW-28** is Ph.D and expert in Epigraphy and Numismatics. He was closely associated with excavation up to 1988. He had been associated with excavation at twelve-sites. From his study about the site in dispute, he is of the opinion that no temple existed at disputed site prior to construction of Babri Mosque. He has also stated that there was no temple at Ayodhya during 11th and 12th century.

In his cross-examination he has stated that he has read the literature of Kalidas- Meghdootam, Abhigayan Shakuntalam and Raghuvansham. There is description of Lord Rama and Ayodhya in Raghuvansham. This book was written in Gupta's period, which comes between 4th - 5th century A.D. The period of Rig Ved has been dated by the scholars as 1500 B.C. In Rig Ved river Saryu is mentioned. According to him Puranas were written during 4th - 16th century. Literature, old books, travellers account and accounts of ambassadors, who came from abroad are the source of knowledge of ancient history. Religious scriptures also come within this category.

He has admitted that according to Parjiter, the period of Lord Rama is 1600 B.C. He has admitted that the figures engraved on the Kasauti pillars were seen by him, but presently he is unable to describe about them. He was asked whether he recognized Dr. S.P. Gupta, Dr. T.P. Verma, Professor Devendra Swaroop and Ajai Mitra Shasthri. He has answered in affirmative. Although he has stated that he visited Ayodhya at least 20 times, but he could not tell the name of

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any other temple except Hanuman Garhi. He has also admitted that he had seen the trenches excavated by Professor B.B. Lal. No defect was detected by him with reference to the trenches and report of Professor B.B. Lal. He has also stated at page no. 61 of his statement that he never tried to investigate as to whether Rama was born in Ayodhya. He does not know as to when idol of Ram Lala was installed in the disputed structure.

Next witness of above category is **Dr. Jaya Menon, PW-29**. She is a Reader in the Centre of Advanced Study, Dept. of History A.M.U. Formerly she was lecturer in Badodara, M.S. University. She did her Ph.D from J.N.U., Delhi. She remained present during the excavation conducted by ASI. She has given detailed description in support of the objection against ASI report. In her cross-examination she has stated that she stayed for about 33 days in Hotel 'Shane Oudh' at Faizabad. She has accepted that expenditures during her stay were paid by Mr. Z. Jilani, but she is not very much sure about it as to who actually paid it. She has stated that normally “ghat” which was engraved at the Kasauti pillars is not found in a mosque. She has also accepted that figurines of elephant, tortoise and crocodile made of terracota were recovered during excavation. Such figurines were recovered from trenches. She is aware that crocodile is the seat of holy river Ganga. Similarly, tortoise is the vehicle of holy river Yamuna. Snake is associated with Lord Shiv. She has also admitted that she has not seen any mosque where figures of fish would have been engraved on the entrance gate. She had seen wall no. 16 and 17.

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She admits that wall no. 16 was used as a foundation wall for the construction of the mosque and admits that she has not seen any such structure in which the foundation wall would have been raised on some other foundation wall already existing there. She has categorically admitted that wall no. 16 served as foundation to the wall of a mosque. Wall no. 17 was the foundation of wall no. 16. During excavation earlier she has not seen any wall resting on another foundation wall. There cannot be foundation walls one upon the other. In the present excavation, upper wall no. 16 was a wall which was later used as foundation. She went on to state that Garhwala rulers ruled Ayodhya from 1075 A.D. to about 1200 A.D. So many walls were recovered during excavation, such as walls no. 1, 2, 4, 8, 15, 18-a, 18-b, 18-c and 18-d, 19-b and 20. These walls were not of the disputed structure. She had not seen circular shrine at the site, as such she was not able to give her opinion about it's stratigraphy. She has admitted that a non Islamic structure was recovered during excavation. She cannot give the approximate year of it's construction. She opined that this might have been constructed during Gupta period. According to her, the oldest wall found in excavation was 1st to 3rd century A.D. During her stay she never made complaint regarding lack of supervision of trenches. She opined that circular shrine can be around 6th century A.D. She has not seen animal and human figurines of decorative stone in any mosque. She has also admitted that the pillars used in the disputed structure having floral designs and motifs and kalas were not noticed by her in any other mosque. She has stated that

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"Amlak" is a decorative stone which is normally found in the upper part of the shikhar of the temples. She has stated that there were two floors in the south other than the floor of the disputed structure. Thus, she categorically admits that these two floors were floors of a different structure. She opined that these floors should have been constructed between 1200 A.D. to 1529 A.D.

Next witness is **Dr. R.C. Thakran, P.W-30** who has stated that he is a professor in the department of History in Delhi University. He is Ph.d. in archaeology. He was present during excavation at disputed site. According to him, the report submitted by A.S.I. is full of gross omissions and one sided presentation of evidence coupled with clear falsification of facts and motivated inferences. In his cross-examination, he has stated that daily register was maintained by ASI during excavation in which complete work done by the officers was recorded. He has admitted that much time was required to A.S.I. for complete analysis of the facts discovered during excavation. His statement which falsifies the objection filed against A.S.I. report, wherein he has said that it is not possible to create artificial pillar bases during excavation if the site is videographied during excavation. In that circumstance, it is not possible to create artificial pillar bases. He has admitted that two parties representing Muslim sides used to visit the site during excavation. All the artefacts recovered during a particular day were entered in the daily register. Two judicial officers were appointed as observers to supervise the excavation being done by the archaeologists. According to him, Ram Chabutra is an important

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structural evidence about 30 pillar bases were seen by him. Different floors found during excavation represent different periods, on the basis of which it could be concluded that those might have been structure of temporary nature during different periods. Niches are also found in temples. He himself has no knowledge as to whether wall no.16 relates to any Idgah or not. His information regarding it is based on the opinion of Sri S.J.H. Zafari. He has no knowledge about the architecture of a temple of 12th century nor he has any knowledge about the temple architecture of present time. He has no knowledge about the distinctions between Mosque and Idgah. Although he admits that he had given description pertaining to it in his examination-in-chief. He went on to state that it is established that disputed structure was not constructed on virgin land. The site on which alleged Babri Mosque was constructed, constructional activities had started right from Kushan period and continued during subsequent periods also which include Gupta period, early medial period, Sultanat period and Mughal period. He could not say anything with certainty as to whether structures of different periods prior to the construction of disputed mosque would have been demolished or not. He has no knowledge about the form of mosque and tenets of Islam. Therefore, was unable to state as to whether Namaz could be offered or not at a place where images of different types were engraved. He has also admitted that he never visited the excavation site during excavation. He could not reply as to whether wall no. 5 is independent from wall nos. 16 & 17.

Next witness is **Dr. Ashok Dutta,** who has been examined as

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**PW-31**. He is a lecturer in the department of archaeology, University of Calcutta. He has also given statement about A.S.I. report and opined that this report is one sided presentation with clear distortion of the material recovered during excavation. In his cross examination he has stated that literature is the biggest source of history. He has admitted that whenever he visited the excavation site he noticed that the drafts man was preparing sections, drawing and ground plans. Still photograpy and videography of the excavation site were also done at the time of excavation. For each and every trenches, there were a technical assistants who were supervising the excavation of the individual trenches. He opined that the floor immediately below the disputed structure consisted of Lime Surkhi. But he was not able to reply as to whether the floor as seen in plate no.43 is penetrating into the pillar base or not. A.S.I. has submitted its report within a sort spam of time which goes to show their ability. He is also of the opinion that more time was required for preparing such exhaustive report. He also admits that he was not involved with the excavation of temple structure of any site.

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According to report, he has stated that during excavation 62 human and 131 animal figurines were found. He says that a copper coin relating to Gupta period might have been recovered bearing image of a king on obverse site and on reverse side of which Srichand was written. He has also admitted that decorative stones are not generally used below the foundation level of any structure. He has also stated that recovery of bones is a very common feature of all the



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archaeological sites. He has also admitted that immediately below the disputed structure there were three floors. The 4th floor was Jeli and Surkhi floor. He states that a Ghat or (Vessel) was recovered from trench G-7 which is associated with Hindu religion. Amlak Shila is generally found on top of Hindu temple. The purpose of Makar Pranal is to remove the water from inside to outside and forms part of the Hindu temple architecture. He admits that wall no.16 was approximately 32 to 35 meters. But he does not recollect the length of wall no.17. Wall No. 16 is very important than rest two walls i.e. wall no. 17 & 5. He has stated that, " I do have regards to the integrity of the archaeologists". According to him the pillar bases mentioned by the A.S.I., some of them were in section and some intrenches. He admits that he is not expert of northern Indian Temple Architecture.

Next witness is **Dr. Supriya Verma, P.W.-32**. She did Ph.D. from J.N.U. She has been associate professor of archaeology in department of history, Hyderabad University. She was present along with Dr. Jaya Menon at site during excavation. She has narrated about different aspects of stratigraphy, periodisation, artefacts, animals bones, pillar base, brick bats. According to her, brick bats were selectively removed and pillar bases were created. In her cross- examination she has stated that she was nominee of Sunni Central Board and had drafted objections along with Dr. Jaya Menon against archaeological procedures being followed during excavation which were subsequently filed by Muslims parties. She was continuously present during excavation barring few exceptions. She states that

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whether place for 'Wazoo' was found or not at disputed site, nothing could be said about it. She has not seen figure or figurines of human being in any mosque. 'Kalash' is not found in a mosque. She does not know whether the floral designs are depicted in a mosque building or not. Bones have no relation with civilization. Bones are not associated with any particular community. She was not able to reply as to whether bones could be found in a mosque or not. “Amlaka” is found on the top of a Shikhar of a temple. She was also not sure about the figures of 'Yaksha' and 'Yakshi' which were identified by the expert of iconography on the black basalt columns fixed in the disputed building. On being confronted with plate no.59 and 60, she admitted that “Shrine” is visible in these plates. So far as she recollects Gahadwala Dynasty may be dated from 1086 to 1196 A.D. She has also stated that as per findings of the ASI, it is established that there was some structure beneath the floor of disputed site. She agrees with the conclusion that there was some structure just below the disputed site. She has been all along present during excavation except for few days and states that pillar bases as described by ASI in the sections were not created in her presence. This goes to falsify that part of objection filed against ASI report, wherein it is stated that the pillar bases were created by the archaeologists of ASI. She admits that wall no. 17 is below wall no.16. The circular shrine found during excavation according to her was associated with wall nos. 19A, 19B, 20, 21 and 22. She also admits that wall no. 5 is resting on wall no.16. She categorically states that wall no.17 was used prior to the

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construction of the disputed structure. Wall 17 was of construction which existed prior to the construction of the disputed structure. Although she does not agree with the suggestion that wall no.17 was the foundation of wall no.16. She also admitted that wall no. 17 constructed earlier to wall no.16.

From the side of the defendants and plaintiffs of O.O.S. No.5/1989, many witnesses have been examined, who have deposed that worship in the disputed building was going on continuously prior to 23.12.49, both in inner and outer courtyard. The inner courtyard was being worshipped as it was believed from times immemorial that Lord Ram who is considered as incarnation of Lord Vishnu took birth at a place which lies below the central dome of the disputed structure. Whole area of inner and outer courtyard has always been worshipped continuously either as holy place of birth of Lord Ram or there were Chabutra having idols of different Gods and Goddesses, Sita Rasoi, Charan etc. including Bhandar where saints doing Puja etc. used to reside thereat. All the witnesses examined from the side of the defendants and witnesses examined on behalf of the plaintiffs in O.O.S. No.5/1989 have categorically deposed that both inner and outer courtyard was composite and integral part of the one and the same building. Inner courtyard was worshipped being the birth place of Lord Ram and outer courtyard was extension of the inner courtyard where Ram Chabutra, Sita Rasoi, Charan etc. were being worshipped from times immemorial.

First category of the witnesses who have been examined on the

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point that disputed site which included inner and outer courtyard was being worshipped from times immemorial up to the demolition of disputed structure i.e. 6.12.1992, first witness is **O.P.W. 1, Paramhans Ramchandra Das.** He was 90 years at the time of his deposition. Earlier he had filed O.O.S, No. 2/89 (Regular Suit No.25/50) which was withdrawn later on. He has stated that he came to Ayodhya 75 years ago from the date of his statement. He has given the description about the history of Ramanandeeya Sampradaya and its Akharas. On the basis of Hindu scripture and Skund Puran he has stated that disputed site is birth place of Lord Ram. He has given description of the riot which took place in 1934 in which domes of the disputed structure were damaged and a fine of Rs. 80,000/- was imposed upon the Hindus of Ayodhya. He had not seen offering prayers by the persons of Muslim community in the disputed site at least after 1934 riot. He has admitted that idols from Chabutra were placed in the inner courtyard on 22/23.12.49. He has also proved "Nyas-Patra".

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Next witness of the above category is **Hari Har Prasad Tiwari, O.P.W.-4** who is R/o Ghazipur and came to Ayodhya in 1934, remained in Ayodhya upto 1938. He has categorically stated about Hanumat Dwar, Ramchabutra, Sita Rasoi, Bhandar, Singhdwar, Charan, Parikrama. According to him, he did not see any person of Muslim community offering prayers on the disputed site.

**O.P.W.5 is Ram Nath Mishra,** who has stated that his age is 91 years at the time of statement. He is Purohit by profession and came to



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Ayodhya in 1932. He stated about Bhandar, Ram Chabutra, Sita Rasoi Gufa Mandir, Shanker Parvati Asthan etc. He has stated that from times immemorial all the persons of Hindu community consider that the place below central dome is the birth place of Lord Rama. He did not see any person of Muslim community offering Namaz in the disputed site. If any, endeavour was made by them, it was vehemently opposed by the persons of Hindu community, which included Sadhus of Ram Chabutra. They used to compel the persons trying to offer Namaz over there to run away. He has also stated that below central dome in the Niche idol of Lord Ram Chandra Ji was placed. Thus, he has stated that even between 1928 to 1949, both outer and iner courtyard was in the possession of the Hindus.

Next witness is **O.P.W.6, Haushila Prasad Tripathi,** whose age is 80 years. He is a freedom fighter. He came to Ayodhya in 1935 for the first time. He has been visiting Ayodhya since 1935 which continued upto 1945. He has described about Bhandar, Ram Chabutra, Shiv Asthan, Sita Rasoi. He never saw any person of Muslim community offering Namaz in the disputed site.

Next witness is **O.P.W.7., Ram Surat Tiwari.** He is of 73 years age, was appointed Lekhpal in 1953 and retired in 1988. He has stated about Shiv Darbar, Sita Rasoi, Gufa, Mandir, Charan, depiction of Varah Bhagwan, Parikrama, Kasauti Pillars. He had never seen any person of Muslim community offering Namaz in the disputed mosque. According to him, it was general belief amongst Hindus from times immemorial that Lord Rama took birth below central dome of the

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disputed structure. Had any person of Muslim community attempted to offer Namaz he would have been ousted and made to run away by the Sadhus residing over there at Ram Chabutra.

**O.P.W.12, Sri Kaushal Kishore Mishra,** R/o Ayodhya whose age is 75 years. He has categorically stated that after riot of 1934, no person of Muslim community ever succeeded in offering Namaz as Sadhus of Ram Chabutra by using force made them to run away.

**O.P.W. 13, Narad Saran,** whose age is 76 years and came to Ayodhya in 1946, he has described in detail about Charan, Sita Rasoi, Choolha, Gufa-Mandir. He has also stated that the place below central dome was continuously considered from times immemorial as birth place of Lord Rama.

**D.W.17/1 is Ramesh Chandra Tripathi.** He has stated that in the age of 77 years for the first time he had Darshan of disputed site. He has also stated about 1934 riot. He also states that Lord Rama took birth at the place which is just below the central dome.

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**D.W. 20/3 is Bramchari Ram Raksha Nand**. He has given statement of same effect. All the witnesses produced by the plaintiff of O.O.S. No. 3/1989 which are DW3/1 to 20, have categorically proved that all the persons of Hindu community in general and saints belonging to Nirmohi Akhara in particular always worshipped at Ram Chabutra, Charan, Sita Rasoi, Shiv Parvati etc. Although they have also tried to state that idols were also there in the inner courtyard even prior to 22/23.12.49. All the witnesses of this category have categorically stated that at least after 1934, no person belonging to



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Muslim community succeeded in offering Namaz as they were forcibly ousted and made to run away.

Many witnesses have been examined from the defendants side and plaintiffs of O.O.S No.5/89 to depose that they have special knowledge about Hindu religion and scriptures and also about place of birth of Lord Rama. The witnesses of this category is O.P.W.-16, Jagadguru Ramananda Charya Swami Ram Bhadra Charya, who is a great scholar having deep and vast knowledge of Hindu scriptures. On the basis of his thorough study on Balmiki Ramayan, Skund Puran, Kabitawali, Ram Tapneeyopanishad, Yajurved, he came to conclusion that disputed place is the birth place of Lord Rama. This place had been continuously being worshipped as the birth place of Lord Rama from times immemorial.

Next witness of this category is **Swami Avi Mukoteshwara Nand Sarswati, DW-20/2**. He is disciple of Sankara Charya Sawmi Swaroopa Nand. He has vast, deep and thorough knowledge of all the theist and atheist, philosophy of Hindu scriptures. On the basis of his thorough knowledge, he has deposed and affirmed the view that disputed place is the birth place of Lord Rama. He has given references from so many religious books of Hindu scriptures such as Balmiki Ramayan etc.

**Dr. Ram Vilas Das Vedanti**, **DW-2/1-3** who is Ex. M.P. and obtained Ph.D. on the subject, "Balmiki Ramayan – Dharm Neeti", he has categorically stated that after 1934 riot Muslims were not allowed to offer Namaz in the disputed site. On the basis of his thorough and

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deep study on Balmiki Ramayan he had got his directorate degree. He says that Lord Rama took birth at the disputed site. In support of his contention he has referred Yajurved, Skund Puran and Literature of Goswami Tulsi Das and Rudramayan. He has stated that on the basis of the shape/form of the disputed structure it could be safely concluded that it was a temple and not a mosque.

In the next category of the witnesses claiming special knowledge of history and archaeology, **Dr. S.P.Gupta, OPW-3** has been examined as first witness from the side of the plaintiffs of O.O.S. No.5/89. He is co-author of the book on Ayodhya which is Ext. O.O.S.-5-3. He retired as Director of Museum, Allahabad in 1990. He stated that 14 black pillars of disputed structure belong to the same temple of 11th - 12th century which was got demolished on the command of Emperor Babar through his minister Mir Baqi.

**O.P.W.9, Dr. T.P. Verma,** the co-author of the above book, was appointed next friend of Bhagwan Shri Ram Lala Virajman in O.O.S. No.5/89, after the death of Deoki Nandan Agarwal. He did Ph.D. on the subject, "The Palaeography of Bramhi Script in north India" from 2nd century B.C. to 3rd century A.D. was lecturer in B.H.U. from 1967 to 1993 in the Department of, "Ancient Indian History, Culture and Archaeology". He has also stated about 20 lines inscriptions (estampage paper no.203 C-1/1,2) being co-author of the above book, he has stated that in detail about all the views expressed by him with Sri S.P. Gupta in the above book and proved the plaint assertions of above suit.

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**O.P.W.10, Dr. K.B. Ramesh**, next witness of the above category got his Ph.D. degree in 1965 in History from Karnataka University, was promoted the Chief Epigraphist in 1981 and retired as Joint Director General of ASI on 30.6.1993. He deciphered the 20 lines inscription (estampage paper no. 203C-1/1, 2) translated it in English and concluded that this inscription belonged to 12th century A.D. He has also proved his report (306C-1) in para 15 of his statement. Even M.N. Katti, who has also been examined has accepted that the views expressed by Dr. K.V. Ramesh on the above inscription and his translation is more accurate in comparison of the decipherment done by him. Since statement of Dr. K.B. Ramesh has been referred at various stages of the judgment, it is not required to give detailed description of his statement at this juncture.

Next witness of above category is **O.P.W.11, Dr. Satish Chandra Mittal**. He is Ph.D. in History. He retired as professor, History Department, Kurukchetra University. He opined that temple existing on Ram Janma Bhumi was destroyed and a mosque was constructed at that place.

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Next witness is **O.P.W.15, M.N. Katti.** He is Epigraphist. He joined A.S.I. in 1964, was promoted as Director Epigraphy. On the instruction of Director General, A.S.I. he had prepared etampaper of the inscription on the stone slab which is paper no. 203C-1/1, 2. He has submitted his report to Registrar, Lucknow Bench, High Court.

**O.P.W. 17 is Dr. R. Nagaswami**. He retired as Director of Archaeology, Tamil Nadu. He served on this post for 22 years. Did his



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Ph.D. in 1974, had been Vice Chancellor of Kanchipuram University. As far as objection filed by the plaintiffs of O.O.S. No. 4/1989 and in particular on the point that the archaeologist of A.S.I. created false pillar bases during excavation was strongly denied by this scholar who stated that it was not possible for an excavator to create pillar basis or structure consisting number of courses inside a trench. He is also expert on temple architecture and supported all the findings and conclusion arrived at by ASI in their report submitted after excavation at disputed site under the orders of this Court.

**O.P.W.18, Arun Kumar Sharma,** retired from the post of Superintending Archaeologist, ASI. He was member of the Central Advisory Board of Archaeology Government of India and served in ASI from 1959 to 1992. He has fully supported the conclusions arrive at by ASI after the excavation of disputed site. From the perusal of the statement of this witness, it transpires that he has extensive, deep and thorough knowledge of all the principles of excavation and has supported the report of ASI, submitted on 22.8.2003 in this Court, on all the counts.

**O.P.W. 19 is Rakesh Dutt Trivedi,** who retired as a Director of ASI and served this institution from 1974 to 1993. He worked as Head of the Temple Survey Project Northern India from 1977 to 1984. He is also writer of a book entitled as “Temples of Pratihar Period in Central India”. He has also stated about the structural and architectural remains of a massive structure underneath and Mandapa like structure which is generally found in the northern India. He has concluded that

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the indication of a temple which was demolished prior to construction of disputed mosque was found at the site.

Next witness of the above category is **DW2/1-1, Rajendra Singh.** He got Technical Education in Miller Trade Tool and Cutter Grinding. He was of the opinion that disputed place is birth place of Lord Rama where Guru Nanak, Guru Teg Bahadur and Guru Govind Singh visited for worshipping it as the birth place of Lord Rama. He has also written a book which is part of record.

Next witness is **DW2/1-2, Ram Saran Srivastava.** He is Ex. D.M. Faizabad. He joined on 19.07.1987 as D.M., Faizabad. Shilanyas was done during his regime. He has also written a book entitled as 'Sri Ram Janma Bhumi Babri Masjid Vivad Ek Dristikon". On the basis of the study of different Gazetteers and Revenue Records, he is of the opinion that disputed place is place of birth of Lord Rama. In Nazool and in Revenue Records disputed place is recorded as Janma Sthan. Mir Baqi had constructed the mosque after demolition of Ram Temple. Encyclopaedia Britanica also supports this proposition. Muslims were not allowed to offer Namaz after riots of 1934.

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**D.W.13/1-3 is Bishan Bahadur.** He is the Head of the Department in History in Varshney P.G. College Aligarh and stated that he has been teaching History for 35 years. About 22 persons have got Ph.D. degree in his guidance and supervision. He has stated about the Gaharwal Rulers and their pedigree and aggression. He has also stated about the aggression by Salar Mahmood. According to his study, on the command of Emperor Babar his commander Mir Baqi



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got constructed a mosque over disputed site after demolishing a temple. According to custom and tradition which is coming from generation to generation and from times immemorial, disputed site is considered as birth place of Lord Rama.

**DW20/5, Jayanti Prasad Srivastava,** who remained present almost during whole period of excavation conducted by ASI at disputed site, has stated that he joined ASI in 1957 and took part in so many excavations. He had observed entire excavation work at disputed site from 12.3.2003 to 07.08.2003. He opined that excavation was done as per principles and rules and pillar mandapa like structure was there. The archaeological evidence of a massive structure was found at the spot which could be dated from 10$^{th}$ century onwards upto the construction of the disputed structure. So many decorated stones, bricks mutilated sculpture of divine couple, carved architectural members, foliage pattern, Amalaka, Kapothpali, door jams with semi circular plaster, lotus motive, circular shrine, the pillar bases are indicative of the remains of earlier temple which existed over there, prior to its demolition and construction of mosque thereat.

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On the basis of the above three category of witnesses, who have deposed on the point of worship being done continuously from times immemorial, on the disputed site, witnesses having special knowledge about Hindu Religion and deposing about the place of birth of Lord Rama on the basis of their study on Hindu religion and sculptures and witnesses having special knowledge of history/archaeology and also after critical examination of the statements given in their cross-examination.

The evidence was recorded by this Court in O.O.S. No. 4 of 1987 Sunni Central Waqf Board of Waqfs U.P. And others Vs. Gopal Singh Visharad and



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others which is leading case. Other three cases are connected with this case. In all there are 85 witnesses. In O.O.S.No. 4 of 1989 there are 28 issues ; in O.OS.No. 5 of 1989 there are 30 issues ; in O.O.S.No. 1 of 1989 there are 17 issues and in O.O.S,Bi, 3 of 1989 there are 17 issues.

**Oral Evidence adduced on behalf of the plaintiffs in O.O.S.No. 4 of 1989**

The plaintiffs have examined 32 witnesses. I have divided them into three categories. On the point of Namaz being offered up to 22.12.1949/23.12.1949 the statements of P.W.1 Mohammad Hashim, P.W.2 Haji Mahboob Ahmad, P.W.3 Farooq Ahmad, P.W.4 Mohamamd Yaseem, P.W.5 Abdul Rahman, P.W.6 Mohamamd Yunus Siddiqui, P.W.7 Hasmatullah Ansari, P.W.8 Abdul Azeez, and P.W.9 Syed Akhlaq Ahmad are on the record. Looking to their cross-examination their versions appear to be incorrect. Version given before the Court could not inspire confidence for the reasons recorded in the cross-examination. Thus, they are unreliable witnesses and they could not prove that Namaz was offered in the disputed building upto 22/23-12-1949.

Second category of witnesses are those witnesses who have deposed about the nature of the disputed structure alleging to be a mosque. These witnesses were properly examined and during the

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course of examination P.W. 10 Maulana Mohhd. Idrees, P.W.11 Maulana Mohd. Burhanuddin, P.W.19 Maulana Ateeq Ahmad, P.W.22 Maulana Mohd. Khalid Nadwi, P.W.26 Maulana Syed Kalbe Jawwad and P.W.25 Chawdhry Sibte Mohd. Naqbi have deposed before this Court. They are not the expert witnesses. They have not stated that they are authority on Mohammedan Law Accordingly when the defendants have adduced evidence on tenets of Islam, it has to be accepted ignoring their views.

**As regards the witnesses produced by the plaintiffs against the report of A.S.I. and witnesses who claim themselves as historians**

Versions of such witnesses have already been considered while giving findings on issue no. 1-B and they are also not be treated to be expert witnesses. Thus, their version against A.S.I. report is not accepted.

Hindus have produced witnesses to show that at the disputed site before the demolition regular worship was going on. Statements of OPW1, OPW 4, OPW 5, OPW7,OPW12, OPW13, OPW 12, OP W13, DW 17/1, DW 20/3 are supported by circumstantial evidence and reveal that in the outer courtyard worship was going on and in the inner courtyard the deities were placed in the intervening night of 22/12/1949 and 23/12/1949 and prior to it the Hindus worshipped the place and deities. The pillars inside and outside the building in question contained images of Hindu Gods and Goddesses including the place of birth of Lord Ram as deity.

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O.P.W 16, DW 2/1/-3. DW 3/14 and DW 20/2 have been examined from Hindu side as these witnesses have claimed special knowledge about Hindu religion and Shastras and they have deposed about the place of birth of Lord Ram. Their testimony is reliable on the ground that it is corroborated from the version of historians and gazetteers.

Third category of the witnesses examined from Hindu side are those witnesses, who have special knowledge of history and archeology . These witnesses are OPW 9, OPW 10, OPW 11, OPW 15, DW 13/1-3, DW 2/1-1, dW2/1-2, OPW 3, OPW 17, OPW 18, OPW 19 and DW 20/5.

Their statements are reliable because they are experts and they have special knowledge in the field of history and archeology. Circumstantial evidence also corroborates their assertion.

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**Reserved**

**Writ Petition No. 746 of 1986 (MB)**

Mohd. Hashim Petitioner

Versus

1. District Judge, Faizabad,
2. Umesh Chandra Pandey,
3. State of U.P. through Collector, Faizabad,
4. Deputy Commissioner, Faizabad,
5. City Magistrate, Faizabad,
6. Superintendent of Police, Faizabad,
7. Nirmohi Akhara,
8. Farooq Ahmad .....Opposite Parties

**Connected with**

**Writ Petition No. 3106 of 1986**

U.P. Sunni Central Board of Waqf, .....Plaintiff
91, Dr. Motilal Bose Road, Lucknow
through its Secretary

Versus

1. District Judge, Faizabad,
2. Umesh Chandra Pandey,
   aged about 28 years, son of Sri Ram
   Shanker Pandey, R/o Ranupali, Town Ayodhya,
   Pergana Haveli Avadh, Tahsil and
   District-Faizabad.
3. State of U.P. through Collector, Faizabad,
4. Deputy Commissioner, Faizabad,
5. City Magistrate, Faizabad,
6. Superintendent of Police, Faizabad, .....Opposite Parties

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**Hon'ble Dharam Veer Sharma,J.**

Writ Petition No. 746 of 1986 has been filed with the following reliefs;

(I) "To issue a writ, direction or order in the nature of certiorari or any other writ, order or direction quashing the orders, passed by opposite party no.1 dated 1.2.1986, contained in Annexures Nos. 5 and 6 to the writ petition;

(II) To issue a writ of mandate commanding opposite parties nos. 3 to 6 to maintain strictly the sanctity of the disputed premises and preserve the same prohibiting the opposite party no.2 and also others from disturbing the sanctity and preservation of the religious place;

(III) Any other writ, order or directions which may be deemed just and proper in the circumstances of the case may also be passed and issued in favour of the petitioner and against opposite parties; and

(IV) The writ petition be allowed with costs."

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The facts giving rise to the petitions are as under;

The petitioner heard a rumour in the city that some orders are likely to be passed regarding opening of the gates of Babri mosque from the Court of District Judge, Faizabad. Thereafter he engaged a counsel and came to know that some application was moved in Regular Suit No. 2 of 1950, which has already been transferred to this Court and the judgment is reserved. It transpires that some application was moved in the Court of Munsif, Faizabad and against the order, passed by the learned Munsif the appeal was preferred before the District Judge, which was registered as Civil Misc. Appeal No. 8 of 1986. It appears that in the night between 22/23-12-1949 idols were placed inside the disputed structure and the property was attached under Section 145 Cr.P.C. and was given in the custody of one Priya Dutt Ram. Thereafter Regular Suit No. 2 of 1950 was filed in the

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Court of Civil Judge by one Gopal Singh Visharad and against five Muslims and thereafter another suit being Suit No. 25 of 1950 was filed by one Param Hans Ram Chandra Das against the five persons along with State of U.P. In the year 1959 third suit was filed by Nirmohi Akhara, which was registered as Regular Suit No. 26 of 1959. Aforesaid suit was also contested. The matter having prolonged for the decades a suit being Regular Suit No. 12 of 1961 was filed by Sunni Central Board of Waqfs, Lucknow, which in the representative capacity is OOS No. 4 of 1989 pending in this Court. It was directed by the Court that Pooja would continue and Receiver Priya Dutt Ram will continue to hold the charge. In the meantime, Priya Dutt Ram died and therafter Sri K.K.Raam Verma was appointed as a Receiver. It further transpires that an application was moved to open the locks of the gates in the Court of Munsif,Faizabad, who passed an order. Against the order, passed by the Munsif, Faizabad, an appeal was filed before the District Judge, Faizabad. That on 1.2.1986 at about 1 p.m. The petitioner applied to remain present in the proceedings and he should be impleaded as a respondent. Thereafter the petitioner moved another application before the District Judge. In the meantime, opposite party no.1 asked the parties to appear at 4.14 p.m. The opposite party no. 1 rejected the application for impleadment and pronounced the judgement. According to the petitioner, rejection of the application is not proper. The order, passed by the District Judge, is without jurisdiction. Annexure No. 6, the order speaks that every body is free to enter into the premises. The order is bad in the eye of law for the following reason;

The application moved by opposite party no. 2 was not entertained and the appeal was not maintainable and the learned Munsif has not passed any final order. After 36 years mandatory

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injunction could not be granted altering the situation, which would cause irreparable injury to the petitioner as well as other Members of the Muslim Community. The property being custodia legis,hence position could not be altered.

On behalf of the opposite parties no. 3 to 6, a joint counter affidavit has been filed stating that premises is intact and district administration is keeping constant vigil and watch over the disputed structure. They have denied the averments of the petition.

On behalf of Param Hans Ram Chandra Das objections have been filed stating that the suit for declaration is barred by limitation and the petitioner has no lis in the matter. The petition is liable to be dismissed.

It transpires that the District Judge, Faizabad on 01.02.1986 dismissed the application for impleadment of Mohd.Hashim after considering the objections filed against the above application. It was contended on behalf of the appellants that respondents have already been arrayed as a party and the impleadment of Mohd.Hashim is not necessary in this case and he is not a necessary party and against whom the appellants are not seeking any relief against him.

It is further submitted on behalf of the appellants that even if the relief is granted it would not affect Mohd.Hashim. The learned District Judge took the view that contention appears to be correct.

After considering the pros and cons of the matter it transpires that the plaintiffs applied for interim injunction which was granted by the Court below and defendants were restrained from removing the idols in question from the site in dispute and the Pooja was allowed. It has been submitted by the appellants that the officers of the State Government are not acting in accordance with the spirit of the injunction order. In this case, Mohd. Hashim sought intervention and

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moved the application that he should also be arrayed as a party. In this context, it appears that the appellant has not sought any relief against him nor he is affected party. Accordingly, he cannot be treated as a necessary party because in his absence the case can be decided. Who is a necessary party has to be seen in the light of the decision of the Hon'ble Apex Court in the case of Re: **Udit Narain Singh Malpahoria vs. Additional Member Board of Revenue Bihar, AIR 1963, SC 786.**

Learned District Judge has relied upon the case reported in **AIR 1959 Orrisa 31, K. Raja Gopal Rao Vs. Dolgobind Sahu and Another** and referred the relevant extract of the ruling which also goes to show that in case the appeal is allowed there would not be inconsistent decree in respect of the same litigation or in respect of the same subject matter. He has further relied upon A**IR 1924 Calcutta 456, Bhupendra Nath Mookerjee Vs. Monohar Mukerjee** and **AIR 1927 Privy Council 252, V.P.R.V. Chockalingom Chetty Vs. Seethai Ache and Others.**

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Thus, on the basis of aforesaid rulings, I agree that since the appellant Mohd. Hashim is not going to be affected by the relief sought in the appeal, he is neither a necessary nor proper party and there is no occasion for the Court to presume that in his absence there would be any inconsistent order. Thus, vide order dated 1.2.1986 the impleadment application was rightly rejected by the District Judge and in the writ petition no. 746 of 1986 no interference is called for.

On behalf of U.P. Sunni Central Board of Waqfs, the order dated 1.2.1986 has been challenged by filing writ petition no. 3106 of 1986 on the ground that the District Judge has exceeded his jurisdiction and in case if the order is allowed to continue, it would be the abuse of the process of law.

I have heard the rival submissions of the parties, it transpires

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that in Suit No. 2 of 50 appellant Umesh Chand Pandey filed an application to the effect that defendants no. 6 to 9 should be directed not to impose any restriction in the Pooja and Darshan of the applicant and other members of Hindu community and the premises in question be closed by locking the entrance gate.

Defendants no. 6 to 9 are State Officers. They stated that they had no intention to interfere in the Pooja or to flout the Court's order dated 3.5.51. It has further been submitted by them that idols installed in the disputed premises is visible from outside. Inside the gate there is an enclosure made of grills and in both the gates locks have been placed by whom is not within their knowledge and no record is available on this point that who had taken a decision to put the locks at the gates 'O' and 'P' but the priest is allowed to go inside performing the Pooja and Bhog through the gate 'O'. The lock of gate 'P' was never opened. It was submitted that for the last 35 to 40 years no members of the Muslim community has offered any Namaz or prayer and they were also not allowed to enter the place. There are certain idols also. District Magistrate further stated that there are other ways to protect idols in maintaining law and order besides closing the gates 'O' and 'P'. He clearly admitted that if the locks at the gates 'O' and 'P' are opened even then there are other ways to maintain peace and to protect the idols kept inside the premises. The S.S.P., Faizabad, Sri Karam Veer Singh also stated that it is not necessary to keep the locks at the gates for maintaining the law and order.

On behalf of the appellant, it was submitted that there was no necessity to create any artificial barrier by putting the locks at gates 'O' and 'P'.

After hearing the submissions of the parties, the District Judge took the view that members of other community i.e. Muslims are not

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going to be affected even if the locks of gates 'O' and 'P' are opened as they are not entering in the premises and the premises is under the possession of Hindus for the last 35 years and they are offering prayer and worships of the idols. District Judge has also mentioned in his order that the locks were puts on the doors without any order and the district authority stated that there is no apprehension of law and order problem in case if the locks are removed.

In view of the circumstances referred to above, keeping in view the provisions of Order 39 as well as Section 151 C.P.C. the order was passed by the District Judge to this effect that there was no justification for retaining locks after the assurance given by the District Magistrate and the S.S.P. Faizabad, referred to above and he allowed the appeal. I have pointedly ascertained from the learned counsel for the appellant as to what is wrong with the order especially in the circumstances when property in dispute has already been demolished and after the demolition of the property in suit how the present writ petition no. 3106 of 1986 is maintainable and what relief can be granted even if the writ petition is allowed and on what basis the locks can be kept at gates no.'O' and 'P' as has been done prior to the order dated 1.2.1986.

It is admitted between the parties that the disputed structure is not in existence, it has already been demolished. There is no place like door 'O' and 'P' at present.

Thus, at this stage, since the subject matter is not there, no direction can be issued to State Government to maintain the earlier order. However, after going through the order passed by the learned District Judge, it transpires that without any order the locks were put on door nos. 'O' and 'P', that too after the injunction order was passed by the civil court. District Judge insisted that District Authorities should inform him as to what was the cause and reason to lock the

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doors. The S.S.P. and District Magistrate admitted that they had no objection in case the locks are opened. Thus, this is a case in which the order of the civil court was not complied with and against that order the doors were closed by putting the locks and the District Judge, by his order removed the locks for which there cannot be any grievance to anybody especially under the circumstances when the Muslims were not visiting the place for the last 35 years and they have also not disputed this fact as to how there would be any hardship to them. It is also admitted to Muslims that the property is in possession and control of the Hindu community. It has to be seen whether the possession is legal or illegal but at this stage, it is submitted that Hindus were in possession of the property. The balance of convenience is always with the person who holds the property. Accordingly, the property was kept under the control of Hindus and in whose favour injunction order was granted which was confirmed and subsequently affirmed even by this Court and it is not possible for this Court to recall any order or to pass any order inconsistent to the order passed by this Court. Consequently, the order of the District Judge is without any infirmity and requires no interference. It would not be justiciable for this Court also to pass any order in exercise of powers under Article 226 of the Constitution of India for the reason that the subject matter has already been demolished and the matter has become almost academic. Needless to say that the suit is pending between the parties and that has to be decided by this Court and in that case also the subject matter will be considered.

Vis-a-vis the sequence of the events referred to above, I am of the view that the petitioner, U.P. Sunni Central Board of Waqf is also not in a position to object the order passed by the District Judge for the reasons that they contested the case upto this Court and the order of

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injunction became final and in pursuance of that order the District Judge passed the order in appeal pending before him. Thus, the writ petition no.3106 of 1986 also lacks merit.

In the result both the writ petitions fail and are hereby dismissed with no order as to costs.

30.09.2010)
Irfan/-

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