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IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 4768-4771 OF 2011

IN THE MATTER OF:

BHAGWAN SRI RAMA VIRAJMAN
AND OTHERS. ...APPELLANTS

VERSUS

SRI RAJENDRA SINGH & ORS. ...RESPONDENTS

WITH

I.A. NO._____ OF 2018
(AN APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

PLEADINGS IN ALL SUIT

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AMENDED PLAINT:
IN THE COURT OF CIVIL JUDGE, FAIZABAD
(Reg. Suit No.12 of 1961)

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

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 Mohall 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 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.

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.~~

(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.

11. Maha Pradeshik Sabha,
President ~~All-Indi~~a 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

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.~~

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/-

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 order of court's dated 8.12.89) Sd/-

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

Claimed from declaration and recovery of possession

The plaintiff's named above beg to state as under:-

Amendment made on para 1 &
11(A) of plaint 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

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' X 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 (Civil 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."

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.

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

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.

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

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

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

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

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

(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.

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

Faizabad
Dated 18.12.1961

Plaintiff
Sd/- 16.12.1961

VERIFICATION

I Mohammad Faiq Plaintiff No.4 do hereby verify that the contents of the plaint set forth in paragraphs 1, 6, 8, 10 para 11 from the beginning of the para upto inside the mosque and paras 12, 13, 14, 15, 16, 17, 18, 19, first part of para 20 and para 21 are true to my knowledge through information received and inspection of the records and those of paras 7, last part of para 11, para 14, second part of paras 20, 22, 23, and 24, are believed by me to be true.

Singed and verified this plaint this 6th day of December 1961 at Ayodhia Distt. Faizabad.

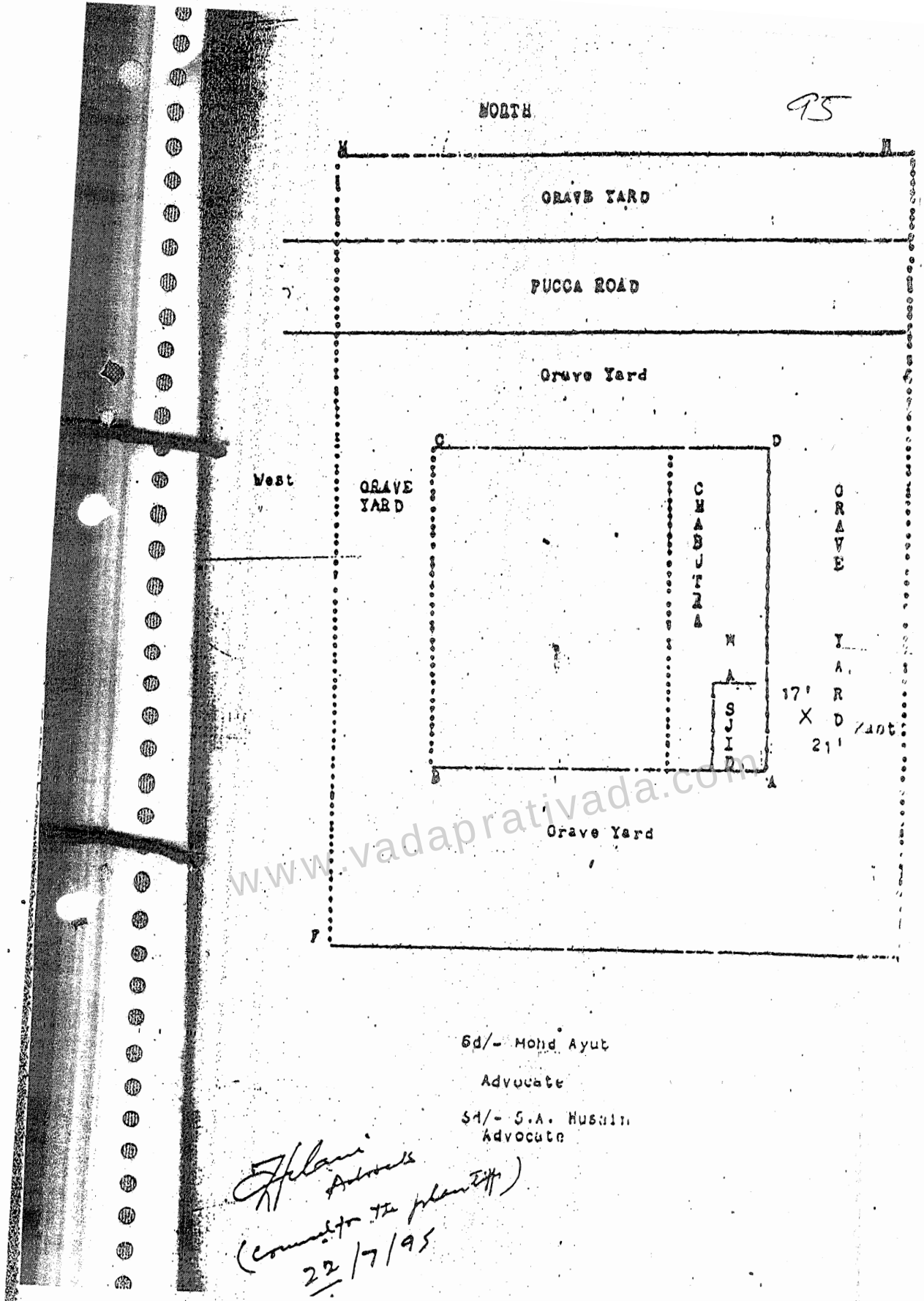
Sd/-
Plaintiff No.

Schedule "A"

Details of the Nazul Khasra numbers of the mosque and grave yard in suit are as follows:-

Nos.238, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 590, 593, 594, 595, 603, 606, 607, 610, 619, 620, 621 and 628 situate in Mohalla Kot Rama Chander also known as Ram Kot City Ayodhya (Nazool estate District Faizabad.

Corrected under the courts order dated 2.1.62 Sd/-



Sd/- Mohd Ayut

Advocate

Sd/- S.A. Husain
Advocate

Zilani
Advocate
(counsel for plaintiff)
22/7/95

96

113/1-ka

IN THE COURT OF CIVIL JUDGE, FAIZABAD

Written Statement U/order 8 Rule 1, C.P.C.

The Sunni Central Board of Wakfs & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & Ors. ... Defendants

Written statement on behalf of Ram Chander Dass and Shri Gopal Singh Visharad defendant 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 plaint 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

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.

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.

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 Visharad
Defendant No.1
12.3.1962

VERIFICATION

I, Shri Gopal Singh Visharad, defendant No.1, in the above case do hereby verify that the contents of paras 1 to 24 are true to my knowledge and the contents of paras 25 to 32 are believed to be true. Nothing has been concealed therein. So help me God. Verified this 12th day of March 1962, in the Civil Courts' compound Faizabad.

Sd/- Shri Gopal Singh Visharad
Defendant No.1
12.3.1962

IN THE COURT OF CIVIL JUDGE, FAIZABAD

The Sunni Central Board & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & Ors. ... Defendants

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. Muslims 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 remodeled.

(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.

(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 mutawallis, putting the Mutawallis 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

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.

(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.

(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

VERIFICATION

I, Shri Gopal Singh Visharad, defendant No.1, in the above case do hereby verify that the contents of paras (a) to (i) are true to my knowledge and are believed to be true. Nothing has been concealed therein. So help me God.

Defendants.
Sd/- Gopal Singh
Through:
Counsel for Defendants No.2 and 1

IN THE COURT OF THE CIVIL JUDGE, FAIZABAD 102

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

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.

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

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.

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

therefore been remoddled. 105

(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.

(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

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

Substantially in issue in the former suit and there is no resjudicata. 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 immemorial 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 resjudicata 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

VERIFICATION

I, Shri Gopal Singh Visharad, defendant No.1, in the above case do hereby verify that the contents of paras 1 to 33 are true to my knowledge and the contents of paras to are believed to be true. Nothing has been concealed therein. So help me God. Verified this 25th day of Jan. 1963, in the Court compound Faizabad.

Sd/- Shri Gopal Singh Visharad
Defendant No.1

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IN THE COURT OF CIVIL JUDGE, FAIZABAD

Written statement under Order 8 Rule 1 CPC

Sunni Central Board & Ors. Plaintiffs

Versus

Gopal Singh & Ors. .. Defendants

WRITTEN STATEMENT ON BEHALF OF GOPAL SINGH DEFENDANT No.1

1. That the contents of para 1 of the suit is denied.

ADDITIONAL OBJECTIONS

2. That the possession of the Plaintiff at the spot is wrong and denied. Plaintiffs are not in possession of the suit property nor ever claimed on the suit property on the basis of adverse possession, nor right of adverse possession arisen in their favour.

3. That in case at any time plaintiffs succeed to prove their possession in the suit property on the basis of adverse possession from any competent court, which the Defendants vehemently denied, then also their rights through possession have been proved.

Applicant
Sd/-
Gopal Singh Visharad
Defendant No.1.
Dat 29.11.63

I, Defendant No.1 do hereby verify that the contents of para 1, 2, 3, are true and correct to the best of my knowledge and belief.

Verified at Court by Surender Nath Singh, Advocate, Date 26.11.63.

IN THE COURT OF THE CIVIL JUDGE, FAIZABAD 109

119/ 1 ka 1

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.

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

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-

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

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-

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.

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

(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

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.

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

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-

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.

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:-

ADDITIONAL PLEAS

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.

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 defendam 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.

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.

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

by removing the Receiver. 117

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.

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

14B/ 1 ka 1

VERIFICATION 118

I, Mahant Raghunath Dass, defendant No.4, do hereby verify that the contents of written statement of paragraph 3, 5, 8, 11, 13, to 18, 21, 25, 30, 31, 33 and 36 are true to my knowledge, those of paragraphs 26 to 29 and 32 are true partly to my personal knowledge and partly on knowledge based on records and information, those of paragraphs 1, 2, 9, 12, 20, 22, 34 and 35 are true partly to my knowledge and party to my belief and those of paragraphs 4, 6, 7, 10, 19, 23 and 24 are true to my belief – verified this 22nd day of August 1962 at the Nirmohi Akhara, Ajodhya.

Sd/- Mahant Raghunath Dass
Defendant No.4

S-R-Srivastava

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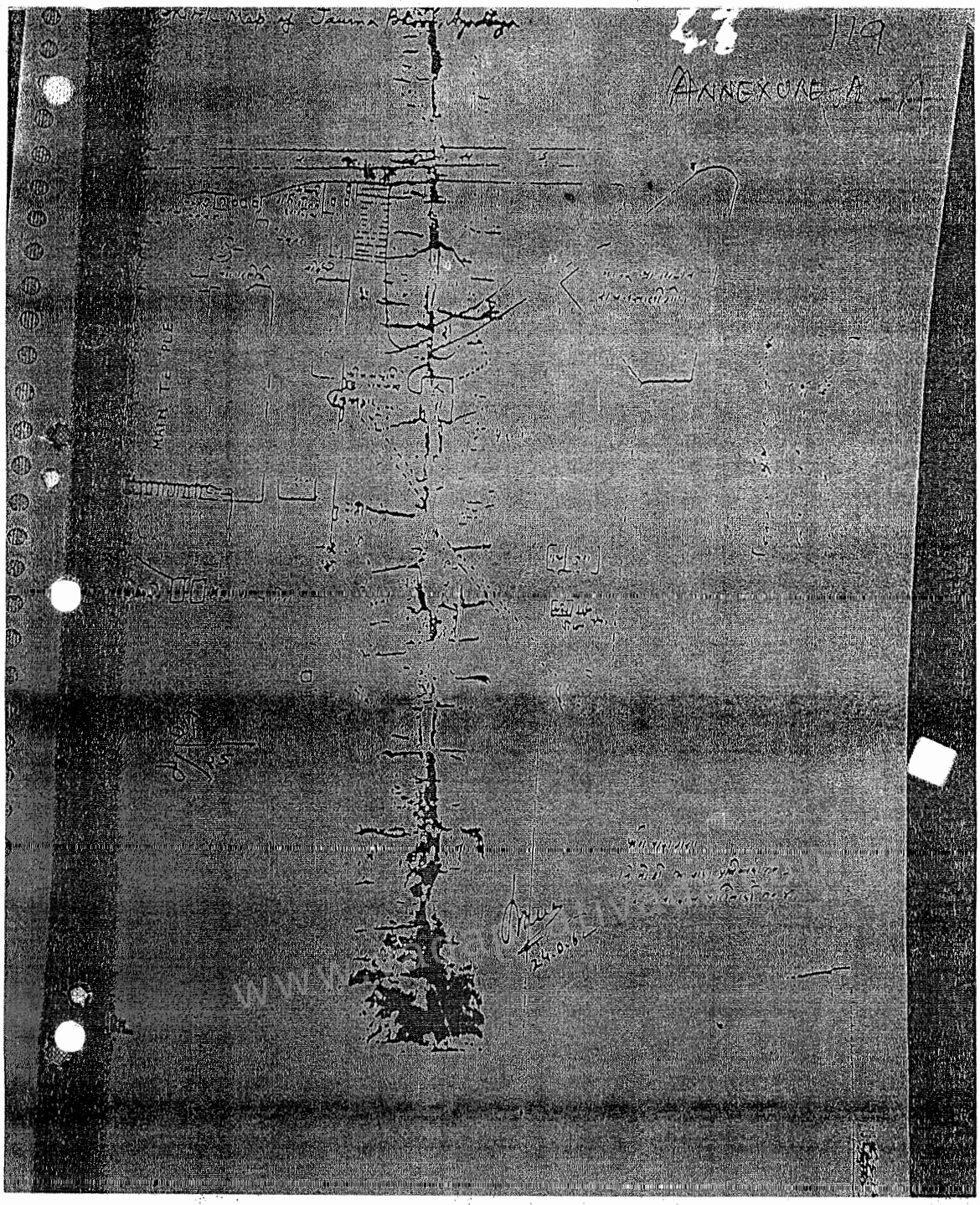


Annexure 'B'

1. Idol of Thakur ji two idols of Shri Ramlalji one small large and one large six idols of Shri Saligramji-
2. (Paper Torn) Silver Singhasan height 2 ft.
3. One idol of Hanumanji
4. One German Silver Glass
5. A One small silver glass--
   B One large silver glass
   C One Formal Ghanti (Ball)
6. One Dhoopdani
7. One Arti
8. One Deewat
9. One Khursachandan
10. Two large size photo of Ram Janki
11. Four gamalas
12. One Small size photo of Ram Janki
13. One Small size photo of Ram Janki
14. Ornaments of the deity
    Two caps of Ram Lalaji
    Two caps of Hanumanji and garments of the deity etc.
15. Three Gumbadar building with sahan and chahar Dewari mentioned below i.e. the temple in suit-
    North: Hata Chhatti, Charan of Nirmohi Akhara
    South: Parti land and Parikarma
    East: Chabootra of Temple Ramji owned by Nirmohi Akhara and Sahan of Temple and hata
    West: Parikrama
16. One Brass glass for ghee
17. One Phool katori for chandan
18. Punchapatra and brass thali
19. One small Brass Tashtari
20. One small wood Patra (plank)

Dated: 22.8.62

Nirmohi Akhara Deft. No.3
Raghunathdass Defendant No.4
24.8.62

121

In the Court of the Civil Judge Faizabad

The Sunni Central Board of Wakfs U.P. & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & Ors. ... Defendants

Additional Written statement on behalf of Nirmohi Akhara and Mahant Raghunath Dass, defendants No.3 & 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.

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 Raghubar Dass in the said suit.

Dated: 25.01.1963 Sd/- Mahant Raghunath Dass

VERIFICATION

I, Ram Lakhan Dass, General Agent of the defendant No.4 verify that the Counsel contents of paragraphs 37, 40 and 41 are true to my belief and contents of paragraphs 36 to 39 are partly true to my knowledge and partly to my belief. Verified this 25th day of January 1963 in the court compound, Faizabad.

Sd/- Ram Lakhan Dass
General Agent

Dated 25.01.1963

IN THE COURT OF THE CIVIL JUDGE FAIZABAD 122

O.O.S. No.4 of 1989
Regular Suit No - 12 of 1961

The Sunni Central Board of Wakfs U.P. & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & Ors. ... Defendants

Additional Written statement on behalf of Nirmohi Akhara and Mahant Raghunath Dass, defendants No.3 & 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.

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

VERIFICATION

I, Mahant Raghunath Dass, defendant No.4 do hereby verify that the contents of paragraphs 37 and partly 38 are true to my knowledge through information received and those of the part of paragraph 38 and 39 are true to my personal knowledge.

Signed and verified this 26th day of November 1963.

Sd/- Mahant Raghunath Dass

Dated 28/29.11.1963

123

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) LUCKNOW

Nirmohi Akhara, through its Mahant and
Sarbarahkar Ram Kewal Das ... Defendants No.3

In Re:

O.O.S. No.4 of 1989

(Reg. Suit No.12 of 1961)

The Sunni Central Board of Wakfs U.P. & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & 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 retreated 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

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

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.

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

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.

Dated: Nirmohi Adhara

Through Sd./- Mahant Bhaskar Das

Verification

I, Mahant Bhaskar Dass, do hereby verify that the contents of paras 1 to 2 and 4 to 10 of this Additional Written Statement are true to my personal knowledge and rest paras 3, 4A, & 11 are true to my belief.

Verified this 21.8.1995 at High Court Compound, Lucknow

Sd/-

(Mahant Bhaskar Dass)

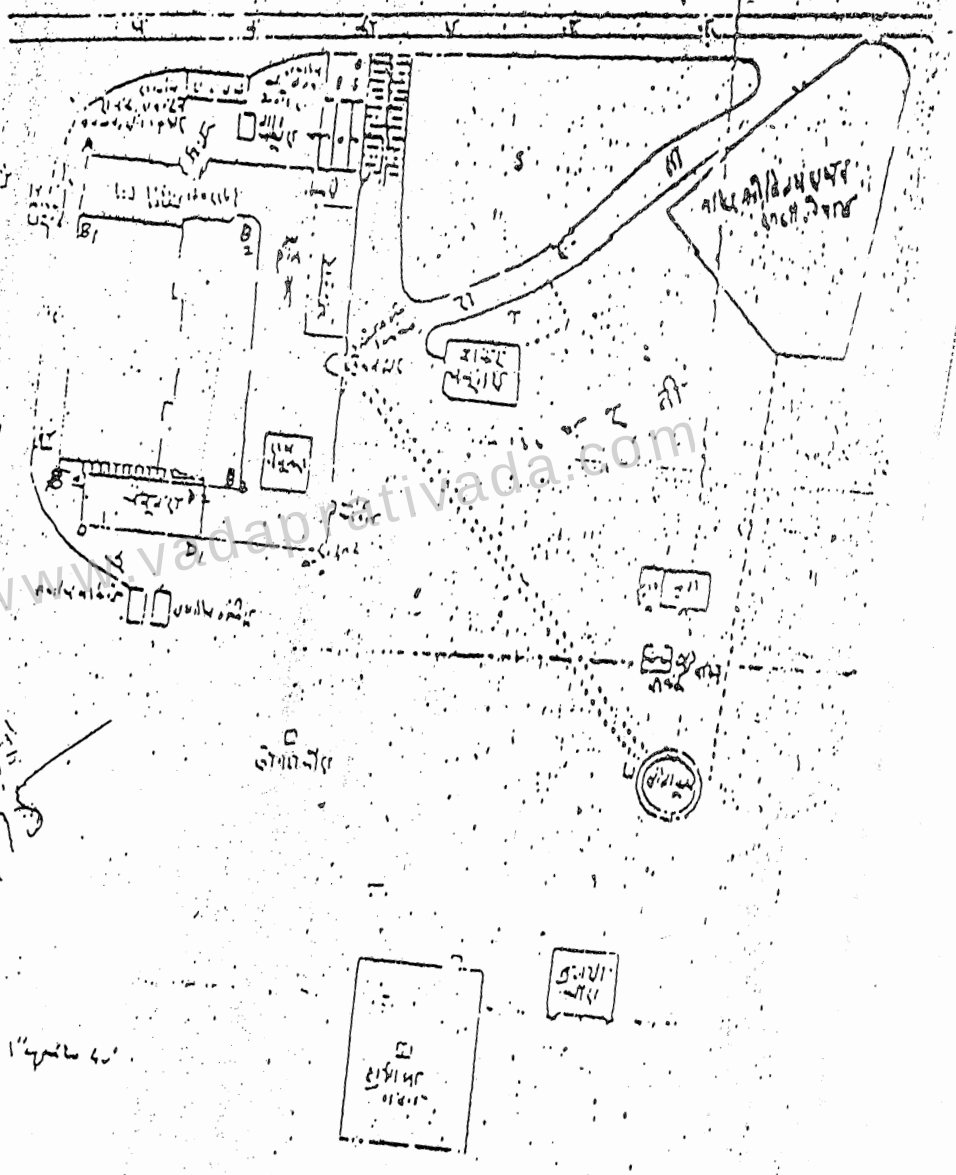
Annexure "1"

127

In the Court of the Civil Judge, Faizabad
Regular No. of 1950
Shri Gopal Singh Visharad ... Plaintiff
Versus
Zahir Ahmad and others ... Defendants

Plan No. II

Showing the buildings in suit
with its boundary



Annexure 'C'

Copy of date 5.1.50 serially No.1/3/14 in accordance Section 145 Cr.P.C. Police Station Ayodhya before City Magistrate. Markanday Singh on 30.7.53. Government Versus Janambhumi (Babri Mosque)

In listing

1. Idol of Thakur Ji
   (a) Two idols of Shri Ramlalji
   (b) One idols of Shri Saligramji-
2. (Paper Torn) Silver Singhasan height 2 ft.
3. One idol of Hanumanji
4. A One German Silver Glass
   B One small silver glass
   C One large silver glass
5. One Formal Ghanti (Ball)
6. One Dhoopdani
7. One Arti
8. One Deewat
9. One Khursachandan
10. Two large size photo of Ram Janki
11. Four gamalas
12. One Large size photo of Ramlala
13. One Small size photo of Ram Janki
14. Ornaments of the deity
    Two caps of Ram Lalaji
    Two caps of Hanumanji and garments of the deity etc.
15. Three Gumbadar building with sahan and chahar Dewari mentioned below i.e. the temple in suit-
    North: Hata Chhatti. Charan of Nirmohi Akhara
    South: Parti land and Parikarma
    East: Chabootra of Temple Ramji owned by Nirmohi Akhara and Sahan of Temple and hata
    West: Parikrama
16. One Brass glass for ghee
17. One Phool katori for chandan
18. Punchapatra and brass thali
19. One small Brass Tashtari
20. One small wooden Palta (plank)

Sd/-

Assumed charge this day of the 5th January 1950 at 1:00 P.M.

All the inventory has been found correct after verification.

Sd/-
Priyadutt Ram
Receiver
5.1.50

129

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.

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

satisfied myself by examining the deponent who has been understands its contents of this affidavit which has been read over and explained to him.

Sd/-
C.F. Mishra
Oath Commissioner
21.08.1995

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131

IN THE COURT OF THE CIVIL JUDGE, FAIZABAD

O.O. S. No.4 of 1989

Reg. Suit No.12 of 1961

The Sunni Central Board of Wakfs U.P. & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & Ors. ... Defendants

The petitioners Defendants beg to submit as follows:

1. That the Govt. is not interested 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.

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

IN THE COURT OF THE CIVIL JUDGE, FAIZABAD 132

114/ 1ka 1

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 1.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.
11. Has no knowledge.
12. Has no knowledge.
13. 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.

15 Has no knowledge.

16 Has no knowledge.

17 Admitted.

18 Has no knowledge.

19. Denied

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

VERIFICATION

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) LUCKNOW

O.O.S. No.4 of 1989

(Reg. Suit No.12 of 1961)

Central Sunni Central Wakf Board & Ors. ... Plaintiffs

Versus

Sri Gopal Singh Visharad 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 are not admitted.

6F. The contents of para 6F of the plaint are not correct and as such are

Denied.

7. 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.

8. The contents of para 8 of the plaint are false and strictly denied.

9. 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.

10. The contents of para 10 of the plaint are wrong and misconceived and as such are denied.

11. 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.

13. The contents of para 13 of the plaint are admitted so far as they concern record, the rest thereof is denied.

14. 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. 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. The contents of para 16 of the plaint are matter of record to be proved by the plaintiffs and need no reply.

17. The contents of para 17 of the plaint are matter of record to the knowledge of the plaintiff and as such not admitted.

18. 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.

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.

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.

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

Verification

I Shri Indra Sen Sharma Senior Vice President Akhil Bharat Hindu Mahasabha having been duly authorised by the president of Akhil Bharat Hindu Mahasabha to file this written statement on his behalf or any other application therefore, verify this 15th day of February, 1990 at New Delhi, that the contents of paras 1 to 32 of the written statement aforesaid are true to my knowledge belief.

Verified this 16th day of February at New Delhi

Sd/- Indra Sen Sharma
Vice President, Karyalaya Mantri, Akhil Bharat Hindu Mahsabha New Delhi

Drawn and filed by

Sd/- O.P. Tewari
Advocate Supreme Court Attorney General of Akhil Bharat Hindu Mahasabha

33. That the present 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 present 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., interview 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 authorized 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

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.

(i) 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.

(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:-

(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.

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

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.

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

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

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.

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 7.1.1991, 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

H.S. Jain, Advocate
For Defendant No.10

Amendment the paras 71 to 80 is being in compliance to his written statement vide court's order dated 23.11.1991 on Civil Misc. Application No.133(0) of 1992 in O.S. No.4 of 1989 (Reg. Suit No.12 of 1961).

Vide Separate sheet attached herewith i.e. from 4-M 4-O

H.S. Jain, Advocate
For Defendant No.10

"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.

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."

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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IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD (LUCKNOW BENCH) LUCKNOW

O.S. No.12 OF 1961
O.O.S. No. 4 of 1989

Sunni Central Board of Wakfs & Ors. ...Plaintiffs

Versus

Gopal Singh Visharad & Ors. ....Defendants

Original Suit No. 4 of 1989
Suit No. 12 of 1961

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

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

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

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

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 log 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 materials 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

Verification

I, J.P. Gupta, the Office Secretary of Hindu Mahasabha at Lucknow, having been authorized, do hereby verify that the contents of paras 1 to 14 of this Additional Written Statement are true to my personal knowledge, that no part of it is false and nothing has been concealed.

Singed and verified this 12th day of September, 1995 within High Court compound at Lucknow.

Lucknow: dated: Sept. 12, 1995 Sd/- Defendant No.10

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IN THE COURT OF THE CIVIL JUDGE, FAIZABAD

Written statement under order VIII Rule 1 C.P.C.

In Re:-

The Sunni Central Board of Wakfs & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & Ors. ... Defendants

Written statement on behalf of Baba Abhiram Dass and Pundrik Mishra Awadh, Bajrangdas & Satyanarayan Dass defendant No. is as follows:

Para 1. The contents of para 1 of the plaint is wrong and is admitted.

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 rule of Ayodhya on any grave yard 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 denied.

Para 5. It is wrong and not denied.

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 6 to P 7 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.

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.

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

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.

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

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

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.

(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.

(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 requirment of mosque.

20.7.68

Sd./
Baba Abhiram Dass
Answering defendant.

Verification

I am Pundarik Mishra, Bajrandas, Satyanarayan Das and Baba Abhiram Dass, the answering defendant do hereby verify that the contents of paras 1 to 34 are true to our knowledge and belief. Nothing has been false are concealed in it so help me god.

Verified this 20th day of July, 1968 in the Court compound, Faizabad.

Sds/-

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD (LUCKNOW BENCH) LUCKNOW

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.

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

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

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."

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.

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.

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.

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

'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

celebrated as the Prakatya Dieas; every year, at Ayodhya. At any rate, it is submitted, in the alfenative, 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.

Ameded as per courts
order dated 21.08.1995
Sd./-04.09.95

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

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 of 1950 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

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.

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

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.

19. 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.

20. 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.

Amended as per
court order dated
21.08.1995
Sd./- 04.09.95

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

order VII, Rule 11, of the Code of Civil Procedure, 1908.

21 That paragraph 21 of the plaint is denied.

22 That paragraph 22 of the plaint is denied.

23 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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24 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.

ADDITIONAL PLEAS

25 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,

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.

26. 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

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.

27. 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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28. 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

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

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. 1, 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'.

(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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29. 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.

30. 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

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.

31 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

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.

32 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

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.

33 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.

34 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

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 Navahna 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.

35. 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

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.

36. 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.

37. 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.

38. That none of the plaintiffs have any right to sue for possession over the alleged 'mosque'.

39. 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,

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.

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

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

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"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."

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----

"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

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

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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Paras 43 to 46
Amended as per Court's order dated
21.08.1995.
Sd/- Dharam Das Defendant No.13
Sd/- 04-09-1995
Counsel for the Defendant No.13

Dated Lucknow
4th December 1989

VERIFICATION

I, Dharam Das, the answering Defendant do hereby verify that the contents of parasgraphs 1 to 42 of this written statement are true to my belief. Signed and verified this 2nd day of December, 1989 at Allahabad.

Sd/-
(Dharam Das)

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD (LUCKNOW BENCH) LUCKNOW

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

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.

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

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

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

Verification

I, Dharam Das, the Defendant No.13 do hereby verify that the contents of paras 21-A excepting the bracketed portion 21-B, 21-C, 45 & 48 are true to my knowledge and the bracketed portion of para 21-A, Clause (BB), 46, 47, 48, 49, 50, 51, 52, 53 & and 54 are believed by me to be true.

Signed and verified this 29th day of August, 1995 within the High Court compound at Lucknow.

Sd/-
(Dharam Das), Defendant No.13

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) LUCKNOW

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

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,

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

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.

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.

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.

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

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

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

Verification

I, Ramesh Chandra Tripathi, defendant No.17, do hereby verify that the contents of paras 1 to 23 of this written statement are true to my personal knowledge. That no part of it is false and nothing has been concealed.

Signed and verified this 14th day of Sept., 1995 within High Court compound at Lucknow.

Sd/-
(Ramesh Chandra Tripathi),
Defendant No.17

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IN THE COURT OF CIVIL JUDGE, FAISABAD

The Sunni Central Board of Wakfs & Ors. ... Plaintiffs

Versus

Shri Gopal Singh Visharad & 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.

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 surreptitiously made without any intimation and information to the answering defendant and the same is not binding upon them.

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.

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.

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 imaginary. A correct sketch map of the property in dispute is annexed with the written statement as annexure "A" and which correctly shows the various constructions and placed in their relative positions.

Para 26. That the temple in question is known as Janambhumi. The birth place of born Ramchander situate in Ajodhya has always belong to the defendant No.3 who through its resiging Mahant & Sarbharehkar has ever since been managing it and receiving offering made there as inaform of money, sweets, flours and fruits and other articles and things.

Para 27. That the answering defendant is a Vasunu Sadhoo of this holy city of Ajodhya and belong to Nirmohi Akhara and is also perfect Bhagat of Lord Rama whose idol is installed in the said temple of Janambhumi which is ancient and antiquity and has been existing since before the sitting memory of man.

Para 28. That the suit is time barred and the plaintiffs for the Muslims or any of its members have not been in possession within the limitation over the property in suit.

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 interruption 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

Verification

I, Mahant Gangadas, do hereby verify that the contents of paras 1 to 20 and 25 to 30 are true to my personal knowledge and the contents of paras 21 to 24 are true to my belief.

Sd/-
(Mahant Gangadas)
18.07.1969/19.7.1969

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH LUCKNOW
Original Jurisdiction

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

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.

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 except that any thing contrary to the Court

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

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

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.

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

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

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:-

"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,

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....."

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

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...."

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.

(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

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).

(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

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

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.

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

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

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

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

VERIFICATION

I, Madan Mohan Gupta, verify that the contents of paragraphs 1 to 53 written statement are true to my knowledge and belief which I believe to be true.

Verified this 5th day of November, 1989 at Lucknow.

Sd/-

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH LUCKNOW

ADDITIONAL WRITTEN STATEMENT

On behalf of defendant no.20

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.

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

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.

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

VERIFICATION

I, , Defendant No.20, do hereby verify that the contents of the Additional Written Statement set forth in paras 1 to 9 are believed to be true.

Signed and verified this Additional Written Statement this 17th day of October, at Allahabad.

Sd/-
Madan Mohan Gupta,
Defendant No.20

Sd/-
Counsel for the Defendant No.20

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IN THE COURT OF THE CIVIL JUDGE FAIZABAD

The Sunni Central Board of Wakf U.P. and Others ... Plaintiffs

Versus

Sri Gopal Singh Visaradh and Others ... Defendants

Reg. Suit No.12 of 1961 Fixed for 28.9.1953

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 Muslims 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 1st Class, Faizabad.

Para 30. Denied.

Para 31. Denied.

Para 32. Denied.

Para 33. Allegations in paras 6-A to 6-I 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 of 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

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

VERIFICATION

I, Ethram Ali Plaintiff do hereby verify that the contents of the replication set forth in paragraphs 1 to 6,B to 10. para 11 from the beginning of the para upto the word "inside the mosque" and paras 12. 13. 15. 16. 17. 18.. 19. first part of para 20 and para 21, para 25, 26 and para 33 relating to contents of amended paras 6A to 6B of the plaint are true to my knowledge through information received and inspection of the records and those of paras 7. first part of para 11. para 14. second part of paras 20. 22. 23, and 24 and paras 27 to 32 and para 33 relating to amended paras 6E and 6F are believed by me to be true.

Singed and verified this 11th day of September 1963 at my residence Lucknow city.

Sd/-
Plaintiff

220

IN THE COURT OF THE CIVIL JUDGE FAIZABAD

Reg. Suit No.12 of 1961

Fixed for 28.09.1963

The Sunni Central Board of Wakf U.P. and Others ..... Plaintiffs

Versus

Sri Gopal Singh Visaradh and Others ... Defendants

Replication to the written statement of defendant No.3 & 4

Paras 1 to 24. The allegations in paras 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 is 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 Shri 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 possess 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.

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.

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

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

VERIFICATION

I, Ethram Ali Plaintiff do hereby verify that the contents of the replication set forth in paragraphs 1 to 6, 8 to 10 11 from the beginning of the para to the word "inside the mosque" and paras 12, 13, 15, 16, 17, 18, 19, first part of para 20 and para 21, para 25 to 35, 38 and last part of para 39 are true to my knowledge through information received and inspection of the records and those of paras 7, first part of para 11, para 14, second part of paras 20, 22, 23, and 24 and paras 26 and second part of para 39 of the replication are believed by me to be true.

Singed and verified this 11th day of September 1963 at my residence at Lucknow city.

Sd/-
Plaintiff

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH LUCKNOW

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 [illegible] by the leaders of the Muslim

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

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

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.

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

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

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.

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

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.

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.

VERIFICATION

We the above named plaintiffs Nos.1, 6/1, 7 & 10/1 do hereby verified at the contents of paras 1 to 9, 11 and 21 of the replication are true to our own knowledge and those of paras 10 & 12 to 22 of the instant replication are believed by us to be true on the basis of legal advised on record.

Signed and verified this 18th of November 1991 in the High Court premises at Lucknow.

Sds/-

IN THE HON'BLE HIGH COURT OF JUDICATURE AT

ALLAHABAD LUCKNOW BENCH, LUCKNOW

OOS NO.4 of 1989

(Regular suit No.12 of 1961)

Sunni Central Board of Waqf U.P& Ors Plaintiff

Versus

Gopal Singh Visharad (deceased) & Ors

Defendants

Supplementary Replication on behalf of plaintiffs to the amended written statement of defendant No.10- All India Hindu Mahasabha

The plaintiffs further submit as under:-

22. That the said ordinance No.9 of 1988 (Central) is not applicable upon the property in question as the description of the property, contained in schedule appended to the ordinance in wholly unsecured) and uncertain and does not tally to the description of the property given in the plaint of the suit. However, alternative it may be pointed out that the ordinance involving the unilateral and arbitrary acquisition of the mosque and the grave yard is also violative of Article

14, 25 and 26 of the Constitution for the following reasons:

A. That the mosque and grave yard both are the places attached to religious practice of the Muslims. Right to practice religions has been guaranteed under Article 25 and the right to administer such property is guaranteed under Article 26 of the Constitution. Thus, any such acquisition vide Ordinance No.9 of 1989 is violative of the fundamental rights guaranteed under the provisions referred to above.

B. That the ordinance No.9 is also bad for the reason that two sets of laws for acquisition, one being the Land Acquisition Act laying down the elaborate procedure for the same and then the acquisition vide ordinance No.9 through drastic measures create repugnance. Apart from repugnancy it also empowers the Union of India to adopt the policy of pick and choose and acquire arbitrarily without adopting the procedure contemplated under the Land Acquisition Act. As such the Ordinance No.9 is also violative of Article 14 of Constitution.

C. That the ordinance No.9 which provides no machinery and no remedy for the persons effected by the acquisition, is also in violation of the principles of natural justice and in the circumstances of the case, the complete lack of opportunity makes it violative of Article 14 of the Constitution also.

D. That it may also be pointed out that the Ordinance No.9 of 1989 is beyond the law making power of the Union Bank of India. Thus, it is in excess of the powers conferred upon the President under Article 123 of the Constitution, as the ordinance hits the secular character of the constitution, contemplated in the Preamble of the Constitution, thus, it is violative of the basic structure of the Constitution.

E. That the Ordinance No.9 of 1989 given un-guided and uncontrolled powers to transfer the so acquired property to anybody, without any procedure and guidelines, hence, it is also violative of Articles 14, 25 and 26 of the Constitution.

F) That in view of the law laid down in Wadhwa's case, AIR 1989, S.C. 579 the power of issuing the ordinance

can only be exercised in certain conditions, while no such situation existed which could warrant the issuance of the Ordinance No.9 of 1989 acquiring even the ownership rights again in excess of the powers conferred under Article 123 of the Constitution.

Plaintiff

Dated 27.11.1991

- Sd/-
Counsel for the plaintiff

VERIFICATION

We the above named plaintiff No.1, 7 and 10 do hereby verify that the contents of para 22 are true to our own knowledge and those of paras 22(A) & 22(F) of the instant application are believed by us to be true on the basis of legal advise and record.

Signed and verified this 27th day of November 1991 in the High Court premises at Lucknow.

Plaintiffs

//TRUE COPYY/