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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8096 OF 2011

[Against the Final impugned judgment, order and the decree dated 30.9.2010 passed by the three Judges Special Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Other Original Suit No. 4 of 1989 (Regular Suit No 12 of 1961)]

IN THE MATTER OF:-

Maulana Mahfoozurahman ..... Appellant

VERSUS

Mahant Suresh Das and others .....Respondents

PAPER-BOOK
[FOR INDEX, PLEASE SEE INSIDE]

WITH

I.A. No 1 of 2011: An Application for stay of impugned judgment.

I.A. No 2 of 2011: An Application for permission to file lengthy Synopsis and List of Dates.

I.A. No 3 of 2011: An Application for permission to file without translation/official translation the Impugned Judgement containing extracts reproduced therein in various languages.

I.A. No 4 of 2011: An Application for exemption from filing typed copy of the Impugned Judgement and permission to file impugned judgment in Published Book Form.

I.A. No 5 of 2011: An Application for substitution of Legal Heir of Respondent No 24.

I.A. No 6 of 2011: An Application for condonation of delay in bringing on record Legal Heir of Respondent No 24.

FILED BY:-
[SYED SHAHID HUSAIN RIZVI]
ADVOCATE FOR THE APPELLANT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 8096 OF 2011

(C. A. U/S. 96 read with sec. 109 of the CPC read with

Articles 133/134-A/136 of the Constitution of India)

IN THE MATTER OF :

		Before the High Court	In this Court
	Maulana Mahfoozurahman, S/o Late Maulana Vakiluddin, Resident of Village Madarpur, Pergana & Tahsil Tanda,District Faizabad. (U.P.).	**Plaintiff No. 8/1**	**Appellant**
	Versus		
1.	Mahant Suresh Das Chela Sri Param Hans Ram Chander Das, resident of Digambar Akhara, City Ayodhaya, District Faizabad. (U.P.)	Defendant No. 2/1	Contesting Respondent
2.	Nirmohi Akhara situate in Mohalla Ramghat, through Mahant Rameshwar Das, Mahant and Sarbarakar, resident of Nirmohi Akhara, Mohalla Ram Ghat, City Ayodhaya, District Faizabad (U.P.).	Defendant No. 3	Contesting Respondent
3.	The State of Uttar Pradesh through Chief-Secretary to the State Government, Civil Secretariat, Lucknow (U.P.)	Defendant No. 5	Contesting Respondent
4.	The Collector, Faizabad Collectrate Compound, Faizabad, (U. P.)	Defendant No. 6	Contesting Respondent
5.	The City Magistrate, Faizabad. Collectrate Compound Faizabad (U. P.)	Defendant No. 7	Contesting Respondent
6.	The Superintendent of Police, S.P. Office Faizabad, District Faizabad (U. P.)	Defendant No. 8	Contesting Respondent
7.	B. Priya Dutt S/o R. B. Babu Kamlapat Ram, R/o Rakabganj Faizabad, District Faizabad (U. P.)	Defendant No. 9	Dead Respondent
8.	President, All India Hindu Maha Sabha, Read Road, New Delhi.	Defendant No. 10	Contesting Respondent

9.	President Arya Maha Pradeshik Sabha, Dewan Hall, Baldan Bhawan, Shradhanand Bazar, Delhi.	Defendant No. 11	Contesting Respondent
10.	President, All India Sanatan Dharam Sabha, Dhaula Kuan, New Delhi.	Defendant No. 12	Contesting Respondent
11.	Dharam Das alleged Chela Baba Abhiram Das, Resident of Hanuman Garhi, Ayodhya, Faizabad (U.P.).	Defendant No. 13/1	Contesting Respondent
12.	Sri Pundrik Misra, son of Raj Narain Misra, Resident of Balrampur Sarai, Rakabganj, Faizabad.	Defendant No. 14	Contesting Respondent
13.	Sri Ram Dayal Saran, Chela of late Ram Lakhan Saran, resident of town Ayodhya, District Faizabad (U.P.).	Defendant No. 15	Contesting Respondent
14.	Ramesh Chandra Tripathi,son of Sri Parsh Rama Tripathi, Resident of village Bhagwan Patti, Pargana Mujhaura, Tehsil Akbarpur, District Ambedkar Nagar (U.P.).	Defendant No. 17	Contesting Respondent
15.	Mahant Ganga Das,Chela of Mahant Sarju Dass, resident of Mandir Ladle Prasad, City Ayodhya, Faizabad (U.P.).	Defendant No. 18	Contesting Respondent
16.	Sri Swami Govindacharya, Manas Martand Putra Balbhadar Urf Jhalloo, Resident of Makan No. 735, 736, 737, Katra Ayodhya, Pargana Haveli Oudh, Tahsil and District Faizabad (U.P.).	Defendant No. 19	Contesting Respondent
17.	Madan Mohan Gupta, convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti, E-7/45, Bangla T.T. Nagar, Bhopal(M. P.)	Defendant No. 20	Contesting Respondent
18.	Umesh Chandra Pandey, son of Sri R.S. Pandey, Resident of Ranupalli, Ayodhya, District Faizabad (U.P.).	Defendant No. 22	Contesting Respondent
19.	Prince Anjum Qadar, President All India Shia Conference, Registered, Qaumi Ghar, Nadan Mahal Road, P.S. Chowk, Lucknow, (U.P)	Defendant No. 21	Proforma Respondent

20.	Sunni Central Board of Waqf, U.P.Lucknow, Old address Moti Lal Bose Road, P.S. Kaserbagh, Lucknow (U.P) New Address: 3-A, Mall Avenue, Lucknow (U.P.) through its Chief Executive Officer.	Plaintiff No. 1	Proforma Respondent
21.	Misbahuddin, son of late Ziauddin, Resident of Mohalla Angoori Bagh,Pargana Haveli Oudh, City, Tehsil & District Faizabad (U.P.).	Plaintiff No. 6/1/1	Proforma Respondent
22.	Mohd. Siddiq alias Mohammad Siddiq, son of late Haji Mohd. Ibrahim, resident of Lalbagh, Moradabad, General Secretary, Jamiatul Ulema Hind, U.P, Jamiat Building, B.N. Verma Road (Katchechry Roard), Lucknow (U.P.).	Plaintiff No. 2/1	Proforma Respondent
23.	Mohammad Hashim, S/o Late Karim Bux, resident of Mohalla Kutiya, Paanji Tola, Ajodhiya city, Pargana Haveli Oudh, District Faizabad, State of U.P.	Plaintiff No. 7	Proforma Respondent
24.	Mahmud/Ahmad sonof Ghulam Hasan, resident of Mohalla Rakabganj, City Faizabad, District Faizabad. (U.P.).Dead through its Legal Representatives	Plaintiff No. 9	Proforma Respondent
	24 A. Mr. Maulana Mufti Hasbullah alias Badshah Saheb, aged about 50 years,son of late Maulana Faizullah, R/o101, Madani Manzil, Mughalpura, Faizabad (U.P.)		
	24 B. Mr. Faiz Ahmad, Aged about 26 years, Son of late Anwar Ahmad, R/o Rakab Ganj, Faizabad (U.P.)		
25.	Farooq Ahmad, son of late Sri Zahoor Ahmad, Resident of Mohalla Naugazi Qabar, Ayodhya City, Ayodhya, District Faizabad State of (U.P.).	Plaintiff No. 10/1	Proforma Respondent

CIVIL APPEAL UNDER SECTION 96 READ WITH SECTION 109 OF THE CODE OF CIVIL PROCEDURE AND ARTICLES 133 , 134-A AND 136 OF THE CONSTITUTION OF INDIA

To

The Hon'ble Chief Justice of India

And His Companion Justices of the Hon'ble Supreme Court of India.

The humble appeal of the Appellant named above.

MOST RESPECTFULLY SHEWETH:

1. That the Appellant herein (Plaintiff No 8/1 in O.O.S. No 4 of 1989) is preferring the present Civil Appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as " CPC") read with Section 109 CPC and Articles 133, 134-A and 136 of the Constitution of India against the impugned Final Judgment, order and Preliminary decree dated 30.09.2010 passed by a Special Full Bench of three Hon'ble Judges of the High Court of Allahabad, Lucknow Bench, vide their separate judgments disposing of Other Original Suit (O.O.S) No. 4 of 1989 (alongwith other connected Suits namely O.O.S No.1 of 1989, O.O.S. 3 of 1989, O.O.S No 5 of 1989) in terms of the same common judgment. On the same day, the Special Full Bench of the High Court has also passed a separate order observing that in their opinion an Appeal is maintainable in this Hon'ble Court under Section 96 CPC.

It is material to point out that the said Special Bench of the High Court has carried out corrections in the judgment vide order dated 10.12.2010 and the said corrections have been carried out by the office

of the High Court in the certified copy of the impugned judgements issued to the Appellant's counsel.

The findings of the three Hon'ble Judges which are against the Appellant, are being challenged and impugned in the Grounds of Appeal set out hereinabelow;

(a). Copy of the Impugned Judgement dated 30.09.2010 passed by Special Full Bench of the High Court of Judicature at Allahabad, Lucnkow Bench, Lucknow, inter-alia in O.O.S. No 4 of 1989 (Regular Suit No 26 of 1961) dismissing the said Suit filed among others by the Appellant along with corrigendum dated 10.12.2010 is being filed separately in the form of Books as **VOLUME- I, II, & III.**

(b). Copy of the Impugned decree dated 30.09.2010 passed by the High Court of Judicature at Allahabad, Lucnkow Bench, Lucknow, inter-alia in O.O.S. No 4 of 1989 (Regular Suit No 26 of 1961) dismissing the said Suit filed among others by the Appellant is being filed herewith as **Impugned Decree dated 30.09.2010 in O.O.S.No 4 of 1989.**

FACTS IN BRIEF:

2. That the facts in brief leading to filing of the present Appeal are as under:

2.1. That in the year 1528 a Mosque was constructed with a courtyard surrounded by a boundary wall on the area of about 1500 sq yards in Ayodhya, presently situated in Mohallah Ramkot, Ayodhya, District Faizabad, U.P.. This mosque was popularly known as Babri Masjid where Muslim community started offering prayers since 1528 and which continued till 22.12.1949. The land adjoining the mosque on

three sides was the ancient graveyard of Muslims which was being used for burial of dead bodies of Muslims.

2.2. That in the year 1575, the renowned saint poet Goswami Tulsidas completed the famous "Ram Charitra Manas". But there is no mention of any specific birth place of Sri Ram at Ayodhya or demolition of any temple of Ramjanambhoomi or construction of any mosque thereon.

2.3. That from 1528 to 1857 there is no whisper and/or demand of any place called Sri Ram's birthplace within the precincts of Babri Masjid. For the first time in the year 1857 a Chabutra admeasuring 17 X 21 ft was illegally constructed within the boundary but outside the inner courtyard of Babri Masjid. The British rulers erected pucca wall having grill/railing to separate Hindu and Muslim worshipping areas.

2.4. That the Babri Mosque since its construction was being maintained by the grant first by the Mughal rulers and then the same was continued by the Nawabs. During the British period, this grant vide order dated 25.08.1863 was converted into rent free land in the nearby villages.

2.5. That the entire area was in possession of the Muslim and they were using it for offering namaz. When the Deputy Commissioner vide order dated 03.04.1877 passed order for opening a gate on the northern side of the mosque. The Mutawalli objected by filing appeal against the opening of a gate on the northern side of the mosque, the Commissioner vide order dated 13.12.1877 decline to interfere in view of the fact that the gate was constructed under the instructions of D.C.

2.6. That further the fact that the entire area of the Babri Masjid was in possession of the Muslims is also reflected by the fact that when Hindus wanted to paint the outside wall of the outer courtyard, the Mutawalli of

the Mosque protested and filed an Application before the Appropriate authority asserting that since the walls etc belong to the Mosque, Hindus have no right whatsoever to paint the said walls. On this Application the appropriate authority passed order dated 02.11.1883 warning Hindus not to indulge in any innovation and at the same time asked the Muslims not to lock the gates.

2.7. That even though the Chabutra in the outer courtyard was illegally constructed by the Hindus, one Mahant Raghubar Dass instituted a suit (OS No. 61/280 of 1885) on 29.01.1885 as Mahant of Janam Asthan against the Secretary of State for India in Council for permission to build a temple only on the Chabutra size, 17/21 ft. It was mentioned in the plaint that in March or April 1883 due to objections by Muslims, the Deputy Commissioner, Faizabad obstructed construction of temple whereupon the plaintiff submitted an application to the local Government but received no reply. Thereafter, a notice dated 18.8.1884 under Section 424 C.P.C was sent to the Secretary, Local Government, but thereon also no reply was received which had given a cause of action to file the suit. In the aforesaid suit Shri Mohammad Asghar, the then Mutawalli of Babari Masjid got himself impleaded as one of the defendants and contested the suit.

In the aforesaid suit a sketch map was filed along with the plaint wherein the building at the western side of Chabutra 17/21 ft was admitted to be a mosque and was shown as such. The suit was contested by the aforesaid Mutawalli clearly asserting and stating that the land on which temple is sought to be built is neither the property of Mahant nor Janam Asthan but the said land lies within the boundaries of

Babari Masjid and is the property of mosque. Therefore, the existence of mosque was admitted by the said Plaintiff.

2.8. That the aforesaid suit was dismissed by the Sub Judge, Faizabad vide order dated 24.12.1885 by a speaking order declining the permission to construct Temple on the site of Chabutra.

2.9. That aggrieved by the aforesaid dismissal, Mahant Raghubar Dass filed an appeal being Civil Appeal No. 27/1886 before the District Judge, Faizabad.

2.10. That the learned District Judge vide order dated 18/26.03.1886 dismissed the said Civil Appeal No. 27 of 1886 filed against the order dated 24.12.1885 holding inter-alia as under:-

> "The entrance to the enclosure is under a gateway which bears the superscription 'Allah' immediately on the left is the platform or chabutra of masonry occupied by the Hindus. On this is a small superstructure of wood in the form of a tent. This chabutra is said to indicate the birthplace of Ram Chandra. In front of the gateway is the entry to the masonry platform of the Masjid. A wall pierced here and there with railings divides the platform of the Masjid from the enclosure on which stands the chabutra".

2.11. Aggrieved by the aforesaid dismissal of Appeal, Mahant Raghubar Dass filed on 25.05.1886 a Second appeal being Second Appeal No. 122/1886 before the Judicial Commissioner, Oudh.

The Judicial Commissioner, Oudh vide order dated 01.11.1886 dismissed Second Civil Appeal No.122 of 1886 filed against the order dated 18/26.03.1886 in Civil Appeal No. 27 of 1886. categorically holding inter alia, as under:-

> "The matter is simply that the Hindus of Ajodhya want to

erect a new temple of marble over the supposed holy spotin Ayodhya said to be the birthplace of Shri Ram Chander. Now this spot is situated within the precincts of the grounds surrounding a mosque constructed some 350 years ago owing to the bigotry and tyranny of the Emperor Babur, who purposely chose this holy spot according to Hindu legend as the site of his mosque.

The Hindus seem to have got very limited rights of access to certain spots within the precincts adjoining the mosque and they have for a series of years been persistently tying to increase those rights and to erect buildings on two spots in the enclosure:

(1) Sita Ki Rasoi

(2) Ram Chander Ki Janam Bhumi.

The Executive authorities have persistently refused these encroachments and absolutely forbid any alteration of the 'status quo'.

I think this is a very wise and proper procedure on their part and I am further of opinion that the Civil Courts have properly dismissed the Plaintiff's claim....

There is nothing whatever on the record to show that the plaintiff is in any sense, the proprietor of the land, in question".

2.12. That, there were communal riots in Ayodhya because of alleged issue of cow slaughter in a neighbouring village in which a portion of Babari Masjid was partly damaged. However, it was renovated at the cost of the British Government through a Muslim Thekedar.

2.13. That, the U.P. Muslim Wakf Act, 1936 was enacted. Under the Act, a Wakf Survey Commissioner was appointed for making enquiries with respect to properties to be registered as Waqfs. The District Wakf Commissioner, Faizabad passed order dated 08.02.1941 declaring the Babri Masjid as Sunni Wakf. The Commissioner of Waqfs had made a

comprehensive inquiry regarding all properties including with respect to the Babri Masjid and had held that Babri Masjid was built by Emperor Babar who was a Sunni Mohammadan and that the mosque was a Sunni Waqf.

The said order was not challenged by any person on the ground that it was not a Muslim Waqf but a Hindu Temple. The report became final and unimpeachable document under the Act.

2.14. That, in the year 1941 a Regular Suit No 95/1941 was filed by Mahant Ram Charan Dass against Raghunath Dass & ors regarding properties of Nirmohi Akhara including said Ram Chabotra allegedly described as Janambhoomi Mandir.

2.15. That the said Suit was decreed on 06.07.1942 in terms of compromise categorically admitting the existence of Mosque on the western boundary of alleged Janambhoomi Mandir.

2.16. That, on an application being made on 27.09.1943 for registration of Babri Masjid under the 1936 Act was filed before the Sunni Wakf Board. Under the 1936 Act Babri Masjid was registered as Sunni Wakf. The State Government published the list of Auqaf on 26.02.1944 in the official gazette where Babri masjid was shown as Sunni Wakf.

2.17. That the Regular Suit No 29/1945 was filed on 04.07.1945 by Shia Wakf Board against Sunni Wakf Board for declaration that Babri mosque was a shia wakf. The said Regular Suit No 29/1945 was dismissed by the Civil Judge, Faizabad vide order dated 30.03.1946 confirming that the Mosque was a Sunni Wakf as registered in the Sunni Wakf Board.

2.18. That after India attained freedom from British Rule and became democratic republic and the Constitution guaranteeing fundamental rights to every citizen including the right to equality before law and equal protection of law and freedom to profess religion.

2.19. That the otherwise calm and secular atmosphere of Ayodhya started becoming polluted and as per the internal records of the State Government itself, the Superintendent of Police, Faizabad on 29.11.1949 informed the Deputy Commissioner Shri KK Nayar that "...there is a strong rumour that on puranmashi the Hindus will try to force entry into the mosque with the object of installing a diety.." Local Administration again on 30.11.1949 expressed apprehension regarding the surreptitious design of Hindus. But despite all information, no steps were taken to stop any untoward incident as apprehended. Up to 22.12.1949, the Muslims were in peaceful possession of the aforesaid mosque and were offering namaz therein. The Deputy Commissioner, Mr KK Nayar who had all the information regarding the atmosphere and the illegal plan of some Hindu miscreants feigned its ignorance and justified desecration of mosque on 23.12.1949 by calling the said act as " unpredictable and irreversible".

2.20. That on the night intervening 22.12.1949 and 23.12.1949, some Hindus miscreants in the dark of night surreptitiously and stealthily placed idols inside the mosque. This incident occurred on 23.12.1949 was reported by the Constable on duty (Mata Prasad) at Police Station, Ayodhya and the Sub-Inspector registered a report and proceeded to make inquiry on the spot.

2.21. That the City Magistrate Faizabad, on 23.12.1949 on account of the communal tension in the area, passed orders under Section 144 Cr.P.C. prohibiting one and all from carrying of arms and gathering at Ayodhya and Faizabad area.

2.22. That despite directions from none other than the then Prime Minister of India to remove the idols, the Deputy Commissioner refused to follow directions defiantly and reported to have written "... and if the government still insisted that the removal should be carried out in the face of these facts, I would request to replace me by another officer.."
It is submitted that the subsequent Intelligence Report dated 26.07.1961 records about the said D.C that " It is reliably learnt that Baba Ram Lakhan Sharan gets legal advice in this respect from Sri. K.K.Nayar (Ex- D.C, Faizabad) who is his supporter too..". It is also no coincidence that Sri K.K.Nayar who defied the then P.M's order to remove the idol from the mosque went on to become an MP of Jan Sangh, forerunner of BJP.

2.23. That the Additional City Magistrate, Faizabad cum Ayodhya vide order dated 29.12.1949 drew a preliminary order under Section 145 Cr.P.C. attaching the mosque premises and the possession was given under the receivership of one Sri Priya Dutt Ram. The Receiver took over the charge on 05.01.1950 and made inventory of the attached property.The receiver appointed pujari for performing puja and bhog etc. The proceedings under section 145 Cr.PC consigned to records only with the order dated 30.07.1953 that the same shall be taken up after the disposal of the Suits.

2.24. That from 1528 to 22nd Dec 1949 the Muslims were offering prayers at

the Babri Masjid and no other person could have nor did assert its rights over the property or the right of worship therein. For the first time after the idols were surreptitiously kept under central dome of the Babri masjid in the darkness of night, the **First Suit O.O.S No 2/1950** (which became O.O.S. No. 1 of 1989) was filed on 16.01.1950 as Regular Suit No.2 of 1950 by Gopal Singh Visharadh in the Civil Court, Faizabad in his personal capacity for declaration and injunction against the defendants from, inter-alia, interfering with the right of worship and darshan of Sri Bhagwan Ram and against removal of the idols from the disputed place. On this very day, the Civil Court, Faizabad granted interim injunction in favour of the Plaintiff against the removal of the idols from the Mosque and for carrying out puja by the Plaintiff. The said order of temporary injunction was modified on 19-1-1950 on an application moved by the District Magistrate Faizabad.

In the said suit Civil Court, Faizabad vide order dated 01.04.1950 appointed Shri Shiv Shankar Lal Vakil as the Commissioner who prepared two site plans of the building premises and of the adjascent areas, and a Map of the entire premises against which objections were filed by the Muslim side for naming Sita Rasoi, Bhandar, Hanuman Dwar etc. which have been recorded in the Order dated 20.11.1950.

2.25. That, the interim order dated 19.01.1950 was confirmed by the Civil Judge, Faizabad by directing that the interim injunction shall remain in force until the suit is disposed of. The First appeal from the order dated 03.03.1951, being F.A.F.O No. 154 of 1951, filed by Muslim parties in the High Court at Allahabad, which was dismissed vide order dated 26.04.1955 and suit was directed to be decided expeditiously.

2.26. That the **Second Suit being Regular Suit No. 25 of 1950** (numbered as O.O.S. No. 2 of 1989) was filed on 05.12.1950 by Shri Paramhans Ramchandra Das against Zahoor Ahmad and Seven others on the identical prayers as the First Suit which later on 18.09.1990 came to be dismissed as withdrawn.

2.27. That the **third Suit being Regular Suit No. 26 of 1959 (numbered as O.O.S. No. 3 of 1989)** was filed on 17.12.1959 by Nirmohi Akhara, Ayodhya through its Mahant against the receiver as defendant No 1 and 9 more defendants. The prayer in the suit was that a decree be passed in favour of the plaintiffs and against the Defendants for removal of Defendant no.1, Receiver, from the management and charge of the temple Ram Janam Bhoomi and for delivering the same to the plaintiff through its Mahant and Sarbarahkar Mahant.

2.28. That the **Fourth Suit R.S No. 12 of 1961 (O.O.S. No 4 of 1989)** was filed on 18.12.1961 as Regular Suit No. 12 of 1961 by U.P. Suni Central Board of Waqf and 9 other Muslims, the Sunni Central Board of Waqfs U.P. Vs. Gopal Singh Visharad & Ors, seeking relief of declaration as well as possession of the Mosque along with the land adjoining thereto.

2.29. That by an order dated 06.01.1964 passed by the Civil Judge, Faizabad, the four suits were consolidated and Regular Suit No 12 of 1961 (Suit No 4 of 1989) was made the leading Suit.

2.30. That the learnd Civil Judge, Faizabad vide order dated 21.04.1966 decided Issue No 17 in respect of the validity of the Notification under Sec 5(1) of the U.P.Moslims Wakf Act No XIII of 1936 against the Plaintiffs in the leading case.

2.31. That at the time when the entire record of the case was summoned by the High Court at Lucknow Bench in an appellate proceedings against the order of appointment of receiver, a total stranger to the suits, Mr Umesh Chand Pandey moved an Application on 25.01.1986 in the Court of Munsif, Sadar, Faizabad for opening of locks. On the said Application, the Court passed on 28.01.1986 the order that since the record of the case had been summoned by the High Court in F.A.F.O No 180 of 1975 against the order of appointment of Receiver by the Civil Court, therefore the said application was put up for order for fixing a date.

2.32. That against the said order of fixing the date on the application, the Applicant, Shri Umesh Chand Pandey, filed an Appeal before District Judge, Faizabad on 30.01.1986 without impleadng any Muslim or Waqf Board as a party in the said Appeal. The Learned District Judge fixed the said Appeal for the next day and summoned the District Magistrate as well as SSP, Faizabad to appear before him.

On coming to know about the pendency of this appeal before the District Judge Faizabad, on 1-2-1986 Mr. Mohd. Hashim Ansari and Mr. Farooq Ahmad, who were plaintiffs in Regular Suit No. 12 of 1961, moved applications for their impleadment. The learned District Judge not only rejected these applications of Muslims but also allowed the appeal and directed the District Magistrate and S.S.P, Faizabad to implement his order of opening of the locks (of Babri Masjid) forthwith.

Accordingly, after the pronouncement of the order on 01.2.1986 at about 4.25 P.M., the locks of the Babri Masjid were broken open at about 5.00 P.M. This order of opening of locks dated 1-2-1986 was

challenged on behalf of Mr. Mohd. Hashim before the Hon'ble High court, Lucknow Bench on 3-2-1986 as there was an apprehension to the building of the Mosque and the court had granted order to maintain status-quo of the building in suit. Another writ petition against the same order dated 1-2-1986 was filed on behalf of the Sunni Waqf Board in May 1986. Both these Writ Petitions were dismissed as infructuous on 30.09.2010 on the same day when the impugned judgement was delivered by the Special Bench of the High Court.

2.33. That, in the year 1987, the State of U.P. filed Civil Misc Case No 29 of 1987 under Section 24 of C.P.C. seeking withdrawal of the Four Suits filed, till then (Suit No 5 was not yet filed as the same was filed in 1989) which were pending before the Civil Court Faizabad, to the High Court.

2.34. That in the meantime when the said transfer application of the State of U.P. was pending consideration before the High Court, Fifth Suit Suit No 236 of 1989 was filed on 01.07.89 before the Civil Judge Faizabad in the name of Bhagwan Shri Ram Lala Virajman and another through next friend v Shri Rajendra Singh & ors praying therein for a declaration that the entire premises as given in the Annexures of the suit belong to Plaintiff deities and also permanent injunction against the defendants prohibiting them from interfering with or raising any objection to or placing any obstruction in the construction of the new Temple at Shri Ramjanambhumi, Ayodhya.

Thereafter, the Plaintiff therein filed a Civil Misc. Case No 11 of 1989 before the High Court for its transfer to the High Court.

2.35. That the High Court vide order dated 10.07.1989 disposed of both the Transfer Applications and all the Five Suits were withdrawn from the

jurisdiction of Civil Court, Faizabad and were transferred to the Allahabad High Court at its Lucknow Bench and were assigned to a Special Bench of three Hon'ble Judges for trial of the said cases.

2.36. The State Govt. moved an Application before the Full Bench seeking temporary injunction to maintain status quo over the entire property involved in the said suit and the said Application was allowed by the Court on 14.08.1989. Therefore the order of status quo continued to operate in respect of the premises.

2.37. That Shri L.K.Advani undertook the famous Rath Yatra from Somnath to Ayodhya in 1990 and in June 1991 Riding, inter-alia, on the popular wave in favour of the construction of Ram temple, BJP comes to power in the State of Uttar Pradesh where the Babri Masjid is located and forms the provincial government.

2.38. That within a few months of its formation, the State Government of U.P. vide two notifications dated 07.10.1991 and 10.10.1991 under Section 4 and 6 of the Land Acquisition Act acquired 2.77 acre land, including the outer courtyard in dispute along with some adjoining area. The acquisition was ostensibly for development of trourism and providing amenities to Pilgrims at Ayodhya.

The said acquisition was challenged by means of several Writ Petitions leading one being Writ Petition No 3540 (MB) of 1991 Mohd Hashim v State of U.P & ors and the arguments were concluded before the Full Bench in October 1992 and the case was reserved for judgment and the said judgment was however pronounced on 11-12-1992 quashing the notifications of acquisition only after the demolition of the

Mosque on 6-12-1992 inter-alia on the ground that the purpose of the notifications was primarily construction of a temple hence malafide.

2.39. That a meeting of National Integration Council was held on 02.11.1991 in which the then Chief Minister of U.P. gave a solemn undertaking inter-alia stating that the " State of U.P. hold itself for the protection of the Ram Janambhumi-Babri Masjid structures.." which he violated he was convicted for contempt of court by this Hon'ble Court in a judgment reported as Aslam Bhure v Union of India (1994) 6 SCC 442.

2.40. That the Babri Masjid was demolished and was razed to the ground on 06.12.1992 by 'kar sevaks', or those who volunteered to offer services for a religious cause and a make shift temple was allowed to be constructed thereon. On the same day in the evening the President of India issued a proclamation under Article 356 of the Constitution of India dismissing the U.P.Government consequent upon the demolition of Babri Mosque in utter violation of the solemn undertaking given to this Hon'ble Court.

2.41. That the Central Government on the next day i.e. 07.12.1992 avowed unequivocally, inter-alia, to rebuild the demolished structure and to take strong action for prosecution of the offences connected with the demolition. The Government of India set up Liberhan Commission to probe the circumstances that led to the demotion of the Babri Masjid. This Commission submitted its Report to the Prime Minister in June, 2009. Nothing so far has been done pursuant thereto.

2.42. That, the President of India on 15.12.1992 issued three proclamations under Article 356 of the Constitution of India dismissing all the three BJP run State Governments in Madhya Pradesh, Rajasthan and Himachal

Pradesh, inter-alia, for instigating the Kar Sevaks to participate in demolition of Babri Masjid and/or felicitating Karsevaks who participated in the demolition .

2.43. That the President of India issued an Ordinance on 07.01.1993, namely, Acquisition of Certain Areas at Ayodhya Ordinance, 1993 whereby the Central Government acquired 67.703 acres of land in Ram Janam Bhoomi - Babri Masjid Complex, the area in and around the disputed site. By virtue of the said Ordinance the right, title and interest in respect of certain area at Ayodhya specified in the Schedule to the Ordinance stood transferred to and vest in the Central Government.

This Ordinance was replaced by the Acquisition of Certain Areas at Ayodhya Act, 1993 (Act No 33 of 1993). Sec 4(3) of the Act provides for abatement of all the suits and legal proceedings in respect of right, title and interest relating to any property which has vested in the Central Govt under Section 3.

Simultaneously with the issuance of the said Ordinance, the President of India made a Special Reference No 1 of 1993 under Article 143 (1) of the Constitution of India to the Supreme Court of India for their Advisory Opinion on the following question, "Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janam Bhoomi - Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood? "

2.44. That a Constitution Bench of this Hon'ble Court vide its judgment dated 24.10.1994 in **Ismaeil Faruqi v Union of India (1994) 6 SCC 360**

upheld the validity of the entire Acquisition of Certain Areas at Ayodhya Act, 1993 except Section 4(3). The result of upholding the validity of the entire Statute, except section 4(3) thereof, was that the pending suits and legal proceedings wherein the dispute between the parties revived inasmuch as the disputed area (inner and outer courtyards) are concerned.

It was directed that the vesting of the disputed area described as inner and outer courtyards in the Act (in dispute in these suits) in the Central Government would be as the statutory receiver with the duty for its management and administration requiring maintenance of status quo. It was further directed that the duty of the Central Government as the Statutory receiver would be to handover the disputed area in accordance with Section 6 of the Act in terms of the adjudication made in the suits for implementation of the final decision therein as it was the purpose for which the disputed area had been so acquired. It was also clarified that disputed area (inner and outer courtyards) alone remained the subject matter of the revived suits. The claims of the parties in the Suit regarding areas other than inner and outer courtyards were therefore not left to be decided.

The Special Reference No 1 of 1993 made by the President of India was declared to be superfluous and unnecessary and was returned to the President unanswered.

2.45. That the Special Full Bench of the High Court vide order dated 18.01.2002 decided to take assistance of the Archeological Survey of India and passed orders in terms thereof by directing ASI to survey the disputed site by Ground Penetrating Survey/ Geo Radiology Survey.

2.46. That the Full Bench of the High Court directed the A.S.I. to excavate

the site and give its Report. After carrying out excavation from 12.03.03 to 07.08.03, the ASI filed its report on 22.08.03 in the High Court. The Muslims parties filed comprehensive objections against the said Report in October, 2003 in respect of procedural part and also about the merits of the finding recorded.

2.47. That the Full Bench of the High Court passed Order dated 04.12.06 on the objections inter-alia in the following terms:-

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

2.48. That after recording of evidence etc, the argument had to be restarted in Sep 2009 before the reconstituted Bench in which Hon'ble Mr.Justice Sudhir Agarwal was included after retirement of Hon'ble Mr. Justice O. P. Srivatsava. The Bench was again reconstituted in December, 2009 because Hon'ble Mr. Justice S. Rafat Alam who was hearing the matter for quite some time was transferred as Chief Justice of the M P High Court and Hon'ble Mr. justice S. U. Khan was brought in his place.

The newly constituted Special Bench started hearing the arguments in the four Suits afresh w.e.f. 11.01.2010 and completed the hearing on 26.07.2010. The judgment was reserved for pronouncement.

2.49. That the Special Bench fixed 24.09.2010 as date for pronouncement of judgment which had to be postponed because one Mr Ramesh Chandra Tripathi, who was Defendant No 17 in O.O.S. No 4/1989 filed an Application before the Special Bench under Section 89 of C.P.C to

refer the matter for mediation. The High Court vide order dated 18.09.010 rejected the said application and imposed cost of Rs 50,000/- upon the applicant. In the S.L.P © No 27466-67/2010 filed by Sri Ramesh Chandra Tripathi against the judgement of High Court dated 18.09.2010, this Hon'ble Court granted stay 23.09.2010 against the pronouncement of judgement. However, this Hon'ble Court after hearing the parties dismissed the said S.L.P on 28.09.2010.

2.50. That the Special Bench of the High Court vide three separate judgments dated 30.09.2010 decided the Suits in the following manner;

The majority (comprised of Hon'ble Mr Justice S.U.Khan and Hon'ble Mr Justice Sudhir Agarwal) decreed that the disputed site should be divided in three equal parts and be given to Muslims, Nirmohi Akhara and the party representing 'Ram Lala Virajman'.

The majority further held that the area under the Central dome of the mosque where the idols of Lord Ram were kept in the intervening night of 22/ 23 December,1949 would be given to Hindus.

The majority in the three-judge bench also ruled that status quo should be maintained at the disputed place for three months.

However, the third judge Hon'ble Mr. Justice D V Sharma ruled that that the disputed site is the birth place of Lord Ram and that the disputed building constructed by Mughal emperor Babar was built against the tenets of Islam and did not have the character of the mosque.

2.51. That the High Court vide order dated 10.12.2010 corrected their impugned judgments. The High Court vide another order of the same

date after hearing the arguments of the parties and while reserving order on the draft preliminary decree prepared by the office of the High Court, inter alia modified its directions in respect of operation of status quo for three months from 30.09.2010 in the following terms;

" Learned counsels for the parties stated that the order of status quo passed by this Court vide judgement dated 30.09.2010 is going to expire by the end of this month and the proceedings of finalization of preliminary decree is likely to take sometime. Therefore it would be in the interest of justice that the order of extension be passed.

Considering the facts and circumstances, we direct that the status quo order passed vide judgment dated 30.09.2010 shall remain in operation until 15.02.2011 unless modified, vacated or is directed otherwise earlier."

2.52. That vide another order dated 09.02.2011, the High Court was pleased to extend the status quo order till 31.05.2011.

3. That being aggrieved by the impugned, order and decree dated 30.09.2010 passed by the Special Bench of the High Court of Allahabad, Lucknow Bench, Lucknow in O.O.S. No 4 of 1989 and other connected Suits, the Appellant/Petitioner is filing the present Civil Appeal, inter-alia, on the following grounds, each of which is being raised without prejudice to the other and in the alternative;

GROUNDS

4. **BECAUSE**, all the findings of all the three Hon'ble Judges inasmuch as they are against the appellant on all the issues and/or any of the issues are perverse, contrary to evidence on record,

against well established principles of law hence unsustainable and are liable to be set aside.

5. **BECAUSE**, the impugned judgment not only erroneously deals with the fundamental rights of the members of two largest communities, namely Hindus and Muslims but also because the procedure adopted and conclusions drawn by the Hon'ble Judges are contrary to the very basic concept of rule of law, well entrenched under the Constitution of India where-under the Courts are mandated to adjudicate on the basis of legal evidence, facts and legal provisions and not on the basis of faith and belief of a section of people. The Hon'ble Judges have given precedence to the issue of faith over the issue of law and as a result whereof the impugned judgement has been delivered contrary to the basic cannons of justice delivery system in this Country.

6. **BECAUSE,** the partition of property is beyond pleadings and prayers in the Suit. It is submitted that all the four suits were suits either for injunction or for declaration of title and/or for possession and there was no prayer for partition of property in any of the suits nor was it argued by any of the parties. In fact, the Claims of the three sets of plaintiffs (Muslims, Bhagwan Sri Ram Lala Virajman, and Nirmohi Akhara) were mutually exclusive in the sense that each set of plaintiffs claimed the entire property as its own or of wakf and no one sought a decree of partition of the property. The Court on its own while granting reliefs granted one third declaration of title in favour of three parties namely Bhagwan Sri Ramlala Virajman & ors, the Muslims/Wakf Board and the Nirmohi Akhara.

The relief granted by the Impugned Judgement is, ex-facie, outside the scope of the pleadings and prayers in the suits.

7. **BECAUSE,** the Impugned Judgment suffers from an apparent error on the face of the record in as much as it treated Nirmohi Akhara as a party different from Hindus and allotted a separate 1/3rd share not withstanding the evidence on record that this Organization of Sadhus was only in possession of two small bits of land called Ram Chabutra measuring 17/21 ft and Sita ki Rasoi which is much smaller than the area covered by Ram Chabutra while the total area of the Disputed premises is about 1500 sq. yards. I.

8. **BECAUSE**, the High Court adopted different yardsticks in appreciation of evidence while deciding the ***issue of limitation*** in case of Suit No 4 of 1989 filed by Muslim parties and Suit No 5 of 1989 filed by Hindu parties.

9. **BECAUSE,** in case of Suit No 4 of 1989, the High Court failed to appreciate that the possession of the disputed premises was taken by the Hindus forcibly on 23.12.1949 itself and shortly thereafter it was attached on 29.12.1949 under Section 145 of Criminal Procedure Code by the Magistrate and handed over to the receiver who took charge on 05.01.1950. Thereafter, in the Regular Suit No. 2 of 1950 an ad-interim injunction was granted on 16.01.1950 which was clarified by order dated 19.01.1950 and the temporary injunction order had been confirmed after hearing both the parties on 03.03.51. Appeal against this interim order was dismissed by the High Court on 26.04.1955. After noticing the developments in the

suits, the Magistrate passed order in Section 145 Cr.P.C. proceedings on 30.07.1953 consigning the files to records by observing that the same shall be taken up after the disposal of the suits. These proceedings are still pending. The wrong continued and thereafter on 06.12.1992, the Babri Masjid was demolished and razed to the ground. The Hon'ble Judge ought to have held that the entire perspective has changed altogether. Subsequently a Constitution Bench in Ismaeil Faruqui (supra) expressly affirmed that "the parties to the suit would be entitled to amend their pleadings in the light of our decision..." The finding of Hon'ble Justice Aggarwal that the demolition, and the subsequent entrustment of the property in dispute to the Government of India acting as a "Statutory receiver" under the 1993 Act, would not give any benefit to the Wakf Board in the matter of limitation , is in fact against the specific directions of the Hon'ble Court. It is submitted that there was no question of any bar of limitation for the Suit filed by the Appellant herein.

10. **BECAUSE,** all the three judges are wrong in holding that Suit No 5 of 1989 was within limitation. Justice Khan erred in holding the said Suit within Limitation. Further, it is submitted that Hon'ble Mr Justice Agarwal held that *deity is a perpetual minor* and that based on the continuous belief reposed in the site by the Hindu Community, applying the Statute of Limitation would violate rights of Hindus under Article 25 of the Constitution. Further Justice Sharma erred in holding that the Suit No 5 of 1989 was within limitation based its rationale that Plaintiff No 1 and 2 in the said suit are infant juridical persons and are entitled to the benefit of Section

6 of the Limitation Act. It is submitted that on reaching such a conclusion, the learned Judges gave precedence to belief over the express Statute of limitation and the Constitution. With respect, if limitation is taken to be excluded by this reasoning, it would mean that a suit can be filed in the name of a deity even after thousands of years. It would not only make the express provisions of law nugatory but would also give an open ended opportunity to the miscreants to make claims in respect of any religious site or sites across the country at any point of time.

11. **BECAUSE,** the learned Judges ought to have dismissed the Suit No.5 of 1989 filed by Bhagwan Sri Ram Lala Virajman & another through next friend simply on the admitted fact that the said Plaintiffs at least never asserted their title to or possession over the disputed land after 1528 A.D. till 1989 for about 461 years. The Suit was thus hopelessly barred by limitation. It was by a strange logic that the High Court decreed Suit No.5 in their favor.

12. **BECAUSE,** it is submitted that this erroneous finding, if allowed to stand, in effect would result in undermining the fundamental rights of equality under Article 14 of the Constitution, a basic feature of the Constitution, in respect of other communities in India (other than Hindus) in general and the Muslims in particular inasmuch as a deity of Hindu community will be immune to the law of limitation whereas the Muslims and their religious places shall be rigorously subjected to the said law. Further, it may also result in continuous strife and misuse by mischievous section of Hindus as they may use "deity" to oust other communities from their places of worships. This finding should also be viewed in the teeth of admitted evidence

on fact that in the present case Muslims were in possession of the Mosque since 1528 till 22.12.1949 when the property became custodia legis. Their Suit No 4 filed in 1961 has been dismissed on the ground of limitation where as the Suit filed by the deity in 1989 claiming title for the first time has been held to be within limitation on the ground that deity is a perpetual minor and law of limitation would not apply.

13. **BECAUSE,** the impugned judgment is based on **divergent standards in the consideration of evidence** led by the counter-parties, and differing judicial standards in the final determination of issues.

The Appellant craves leave to place specific instances of such divergence at the time of argument.

(A). In re- burden of proof:

(i). By way of an example drawn from Justice Sudhir Agarwal's judgment, the Appellant states that while the learned Justice Sudhir Agarwal accepted, *without there being any admissible evidence,* the claim of the Hindu parties that Nirmohi Akhara is a religious denomination since 1728. However, he required the Muslim parties to lead primary evidence to prove that the Mosque was constructed in 1528 AD and that Babur, after getting it constructed, in fact dedicated it to Allah.

(ii) The learned judge required Muslim parties to show and establish their possession since 1528 AD by producing deeds or other such documents. However, in case of the Hindu parties, the burden of proof was discharged on the basis of faith and belief. Even after holding that the disputed structure is a Mosque, the learned Judge insisted on being provided with evidence to show the

wakif's express dedication of the Mosque to Allah in order to decide the issue of the continuance of the offering of Namaz.

(iii) The entire claim of the adverse possession, if any, on behalf of the Hindu parties is based upon possession of the Chabutra in the outer courtyard which was managed by Nirmohi Akhara (Plaintiff of Suit No 3) but this specific issue No 3 in their Suit (Suit No 3) has been decided against the Plaintiff. I*n view thereof, if Nirmohi Akhara did not acquire title by adverse possession, no other Hindu party could be given any right on the basis of their illegal possession or joint possession.*

(B). In re- issues relating to religion:

Similarly, divergent judicial standards have been applied in respect of issues relating to religion. While the faith of Muslim parties has been disregarded in the impugned judgment, particularly in rendering a finding on the existence and construction of the mosque, great emphasis has been placed on the faith of the Hindu community. For instance, in deciding the issue of whether the property in the suit in the site of the Janam Bhumi of Lord Rama, Justice Sudhir Agarwal renders a finding in favour of the Hindu community, stating that the birthplace of Lord Rama was confined to the area under the central dome of the three domed structure, this finding was based on "the belief of Hindues by tradition" [See Paragraph 4412 of Justice Sudhir Agarwal's Judgment]. Similarly, in deciding whether a temple existed on the site prior to the destruction of the disputed building, the purported faith in respect thereof was significant in rendering a finding to the effect that a Hindu temple was demolished whereafter the disputed structure was raised [See Paragraph 4057 of Justice Sudhir

Agarwal's judgment]. It is submitted that such selective reliance on faith in deciding a title suit is erroneous, and on this basis alone, the impugned judgment is liable to be interfered with. In fact, Justice Khan has demonstrated that faith should, in fact, have been taken into consideration while deciding the question of whether the disputed building was in the nature of a mosque, by stating that "it is for the conscience of the Muslims who in a mosque go to pray to decide as to whether it is appropriate for them to offer prayer".

(C) . In re- issue of Limitation:

(i). The learned Justice Sudhir Aggarwal while deciding the issue of applicability of Article 142 of Limitation Act, 1869 against the Muslim parties, adopted two diametrically opposite approaches. He denied the Muslims exclusive possession of the inner courtyard citing the reason that Hindus used to visit it also. However, he adopted a different yardstick with respect to the outer courtyard allowing the Hindus exclusive possession despite the fact that it was used by both the communities.

(ii). Filed within 12 years of 23 Dec 1949, (when idols were placed beneath the central dome), Suit No 4 is treated differently than Suit No 5 filed 28 years later or 461 years after Babri Masjid was built. The only suit filed by Muslims was dismissed as time barred. While dealing with the arguments of the Muslims that the wrong was continuing one, which does not attract the bar of limitation, Justice Aggarwal even after holding in paragraph 2439 that " one has to make a distinction between a continuing wrong and continuance of the effect of wrong. In case in hand, the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23 Dec, 1949, and the wrong is complete

since thereafter they were totally dispossessed from the property in dispute on the ground that they have no title. Hence, we find it difficult to treat the alleged wrong to be a continuing wrong". With this finding he ought to have held that the Suit No 4 was within limitation but he dismissed the suit on the ground of limitation by holding Art 120 would apply.

(iii). Justice Sharma clearly but erroneously holds that " in this case since the property was attached, the question of dispossession does not arise" and therefore Art 120(prescribing 6 years) and not Art 142 (prescribing 12 years) would apply and the Suit No 4 being filed on 18 Dec 1961 is clearly barred by limitation.

(iv). The Hon'ble Judges gave the aforesaid finding without correctly appreciating the legal consequences of the chain of events between 23 Dec 1949 upto 1986 and then on 6th Dec 1992. The Hon'ble Judge ought to have held that the entire perspective has changed altogether. Subsequently a Constitution Bench in Ismaeil Faruqui (supra) expressly affirmed that "the parties to the suit would be entitled to amend their pleadings in the light of our decision..." The finding of Hon'ble Justice Aggarwal that the demolition, and the subsequent entrustment of the property in dispute to the Government of India acting as a "Statutory receiver" under the 1993 Act, would not give any benefit to the Wakf Board in the matter of limitation , is in fact against the specific directions of the Hon'ble Court.

(D). In re-appreciation of evidence.

(i). The divergent evidentiary standard applied by Justice Agarwal is also apparent in his treatment of Gazetteers as evidence. On one hand, he has relied upon the Gazetteers to

establish the prior belief of the Hindu community that the disputed site is the birthplace of Lord Ram [See Paras 4263-4285] and on the other hand, the Hon'ble Judge has ignored that the Gazetteers of the province of Oudh state in two places that the Babari Mosque was built in the year 935 H corresponding with 1528 A.D, and their evidentiary value has been dismissed with the observation that a Court of law must look into whether facts reflected in a Gazetteer are reliable [Para 1676]. Pertinently, on looking into the question of whether the disputed site is, or is believed to be, the birthplace of Lord Ram, no similar inquiry into reliability has been undertaken.

(ii). The learned Judge relied on the plaint of 1885 to hold that the Hindus were in possession of the Chabootra in the outer courtyard but held the same plaint inadmissible in evidence when the Muslims relied upon it to prove the existence of the mosque, their use of the same for offering prayers as well as to establish the continuity of their possession over the area..

(iii) The finding of Hon'ble Mr. Justice Sudhir Aggarwal that there was "*abundant evidence to show that Hindus were worshipping the said Chabutra believing that it symbolizes and depicts the birth place of Lord Rama*" goes on to demolish the finding of the learned Judge that the Hindus had been worshipping the inner portion of the building in dispute as the birth place of Lord Rama. (See paragraph 1976 of the Judgement by Hon'ble Mr. Justice Aggarwal).

(iv) The learned Judge did not appreciate that the evidence led by the Hindu parties and all their witnesses stated divergent periods in relation to the birth of Lord Rama, the period mentioned in their statements varying from 10 lakh years ago to 3.5 crore years ago. If the period or the year of the birth of Lord Ram is not certain, it is not

possible to be certain about the spot where he was born. While recording the definite and positive findings on these admitted uncertain factual issues, the learned Judge adopts the theory of 'belief/ faith/astha' whereas in respect of issues relating to the Muslim parties regarding the construction, dedication etc. of the mosque, cogent evidence has been disbelieved.`

(v). There is also palpable divergence in the standards applied in the impugned judgment in considering the evidence of expert witnesses. Justice Agarwal, for instance, while considering the statements of expert witnesses in respect of the issue of construction and antiquity of the mosque, has not only disregarded such evidence based on minor technicalities, but seems to have gone to the extent of castigating such witnesses in his judgment [See finding on expert witnesses at Para 1660, where the views advocated have been called "unbelievable" and "unsubstantiable"]. However, in considering the question of whether there was a pre-existing temple dedicated to Lord Ram at the disputed site, which was demolished for the creation of the Mosque, a similar standard has not been followed in evaluating the ASI report of 2003, by examining the credentials of the historians/archaeologists on the team, assessing their expertise etc. The explanation seems to be that they are "experts of experts" [See Para 3879]

14. **BECAUSE,** the impugned judgment and decree contains ***divergent findings/ decisions both in respect of questions of fact as also questions law.*** It is respectfully submitted that the Code of Civil Procedure, 1908 does not envisage such divergent findings, as are present in the impugned judgment. At the very least unanimous decisions should have been arrived at in respect of questions of

fact which would form the basis of the ultimate decision. While Order XLI of the CPC envisages eventuality of a dissent, Order XX of the CPC does not make allowance for divergence in respect of the finding/ decision arrived at in respect of each issue. In the instant case, there is a divergence even in respect of the operative part of the judgments, and there is no unanimous decree which is capable of being formulated and which can be relied upon. Therefore, it is submitted, the impugned judgment is without basis in law.

15. **BECAUSE,** even in cases where the same finding in recorded in respect of an issue, **the rationale used to arrive at such findings are divergent,** on a comparison of the three judgments. The specific instances shall be placed at the time of hearing of the appeal. But by way of illustration, some examples of the apparant divergent and contradictory findings arrived at by the learned Judges are highlighted herein below;

(A). In re-issue of limitation:

First, in deciding the issue of limitation, divergence may be noted most particularly in respect of whether OOS No. 5/1989 is within limitation or not. Even though all three judges arrive at the finding that OOS No. 5/1989 is not barred by limitation, the rationale employed by them are divergent. For instant, while Justice Agarwal chose to decide this issue on the basis that when the corpus of a deity is involved, the law of limitation does not apply, Justice Sharma rendered his finding on this issue based on the rationale that Plaintiff Nos. 1 and 2 in the said suit are infant juridical persons and are entitled to the benefit of Section 6 of the Limitation Act.

(B). In re- Place of Birth of Lord Ram:

There is also a critical divergence in respect of the issue of whether disputed site is the exact birthplace of Lord Ram. In this regard, Justice Khan held that until the mosque was constructed by Babar, the premises was not treated as the exact birthplace of Lord Ram. However, for some time before 1949, Hindus began believing that this was the precise place of Lord Ram's birth. Justice Agarwal held that the place of birth as believed and worshipped by Hindus is the area covered under the Central dome of the three domed structure in the inner courtyard of the premises in dispute. Justice Sharma's finding is entirely different. Unlike Justice Agarwal, who proceeds on the basis of faith, Justice Sharma does not limit himself to holding that the Hindus believed the disputed site to be the birthplace of Lord Ram. He holds that the property in suit *is* the birthplace (Janm Bhumi) of Lord Ram.

(C). In re- issue of construction, nature and antiquity of building:

Divergence in respect of a fundamental questions of fact is seen in the findings rendered regarding the issues of the construction, nature and antiquity of the building in dispute, and the question of whether a Hindu temple was demolished at the site for the construction of the mosque. Justice Khan holds that the constructed portion of the premises in dispute was constructed as a mosque by or under orders of Babar during the period of Babar, and that no temple was demolished for the construction of the mosque. Justice Agarwal considers it impossible to record a finding that the building in dispute was constructed in 1528 AD by Babar.

The preponderance of probabilities, as per Justice Agarwal shows that it was constructed at a later point in time. He observed: *"The disputed structure was always treated, considered and believed to be a mosque... However, it has not been proved that it was built during the reign of Babur in 1528"*. In para 1682 he holds that it was built during Aurangzeb's time and not Babar's. He holds, however, that a Hindu temple was demolished wherefter the disputed building was constructed. Hon'ble Mr. Justice Sharma holds that the disputed structure was constructed at the site of the old Hindu Temple by Mir Baqi at the command of Babar but that it did not have the character of a mosque: *"the year is not certain but it was built against the tenets of Islam. Thus it cannot have the character of a mosque"*. Justice Sharma, and that a Hindu religious structure was demolished for the construction of the mosque.

(D). In re- possession.

Divergence on questions of fact is also apparent on the issue of possession. While Justice Khan proceeds on the basis of Joint Possession of the parties, there is a fundamental divergence between Justice Agarwal and Justice Sharma, particularly on the question of possession of the inner courtyard in the latter period till 1949. While Justice Agarwal, at least, holds that Hindus and Muslims were in joint possession till 1949, Justice Sharma proceeds on the basis that Muslims did not have possession and did not offer prayers in the disputed premises till 22.12.1949.

(E). In re-decision in the Suits;

(i). Hon'ble Mr. Justice Khan does not dismiss any of the four suits namely Suit No 1 of 1989, Suit No 3 of 1989, Suit No 4 of

1989 and Suit No 5 of 1989 and makes declaration of division of the property in three equal shares i.e. Muslims, Hindus and Nirmohi Akhara.

(ii). Hon'ble Mr Justice Agarwal dismisses the Suit No 3 of 1989 (Nirmohi Akhara & ors) and Suit No 4 of 1989 (Sunni Central Board of Wakf and others) and yet makes declarations in their favour in respect of the property in the manner indicated in the judgement.

(iii). Hon'ble Mr Justice Sharma dismisses the Suit No 1, 3 and 4 of 1989 and fully decreed the Suit No 5 of 1989 in favour of alleged deities, inter-alia, even in respect of the properties which were not the subject matter of adjudication in the Suits.

(F). In re-relief:

Finally, as stated, there is no unanimity even in respect of the effective parts of the judgments, and the relief granted. Justice Khan, on the basis of joint possession, has divided the property between the Hindus, Muslims and the Nirmohi Akhara. A similar division has been rendered by Justice Agarwal, but he specifically dismisses OOS Nos. 3 and 4 of 1989, and partly decrees Suit Nos. 1 and 5. Justice Sharma does not pass an order dividing the property at all, and instead dismisses OOS Nos. 1, 3 and 4 of 1989, and decrees OOS No. 5 of 1989, holding that the Plaintiffs in OOS No. 5 are entitled to the reliefs prayed for therein. Justice Sharma grants relief even to the land beyond inner and outer courtyard, I,e, beyond the subject matter of adjudication. This, it is submitted, is the most fundamental defect in the impugned judgment and decree.

16. **BECAUSE,** the ***impugned Judgement is perverse.*** The learned Judges omit to look into record, and draw conclusion thereon and/or render findings which are contrary to record. Some of the examples of perversity are cited below;

16.1. As per the unanimous finding of the High Court, the idols were placed under the Central dome surreptitiously in the dark of night intervening 22nd and 23rd December, 1949. A perusal of the record of the State Government produced in the court shows that the said illegal act of converting mosque into mandir in the manner it was done, was done in collusion with the then Deputy Commissioner of Faizabad. He kept religious sentiments above rule of law and despite clear directions from the State Government and even from the then Prime Minister, did not remove the said idols. In the teeth of these facts, the Hon'ble Judges ought to have held that the title Suits No 1, 3, and 5 were derived from the installation of idols, which was done in patent illegal manner and nothing said would have cured this illegality. It is submitted that the Hon'ble Judges proceeded to take the forcible installation of idols as a fait accompli and did not draw any adverse conclusion on that illegality.

16.2. It is submitted that by dividing the Babri Masjid as if it is piece of land in three parts in the manner the High Court has done and the conspicuous absence of any condemnation of the vandalism of the demolition of the Babri Masjid on December 6, 1992, the Hon'ble Judges have proceeded on the basis that both the acts namely placing of idols stealthily in the dark of night intervening 22/23 Dec,1949 and then demolishing the mosque in broad day light on 6 Dec, 1992 were fait accompli and legal. It is

submitted that the Hon'ble Judges have proceeded as if the disputed site was a vacant land.

16.3. It is submitted that the impugned judgement, therefore, absolutely overlooked the illegalities committed in 1949 and 1992 when the subject matter was sub-judice as the decree of the court proceeds on the basis that there is no Masjid on the disputed site today. It may further be noted that if the Masjid had not been demolished and had remained on site, would the Court have ordered a division and partitioning of the disputed site in the manner it has directed.

16.4. It is submitted that by not taking note of a vital event, which has changed the entire character of the Suits, and not commenting thereon, the Court has in fact committed a grave mistake resulting in miscarriage of justice. This conspicuous silence is in contrast to the strong critical observations of this Hon'ble Court in paragraph 6 of its judgement in Ismaeil Faruqui (supra). In fact glaring perversity in the judgement of Justice Sharma who actually uses the illegal demolition of the Mosque on 06.12.1992 as a factor weighing against the Muslim parties. For instance, in rendering a finding in respect of Issue No. 1-B(c), on whether the building had been used by the Muslim community for offering prayers from time immemorial, Justice D.V. Sharma observes - *"In Dr. M. Ismail Farooqui's case, the Hon'ble Apex Court decided to divide the property into outside Courtyard i.e. the open place and inner place i.e. covered place known as building. There is no evidence worth the name that Muslims used to offer Namaz in the outside courtyard. The building is also not in existence. The Hon'ble apex court has directed to decide the title of respective parties over the*

land in dispute. The disputed structure has already been demolished. Consequently, there is no building there. It is a open place." The Ld. Judge then goes on to suggest that this indicated adverse possession of the disputed land by non-Muslims and goes on to make a finding against the Muslim parties on this issue. Such perversity inherent in the impugned judgment ought to be strictly scrutinized by this Hon'ble Court, as it is repugnant to the principles of equality and secularism enshrined in the Constitution of India.

17. **BECAUSE,** The impugned Judgment has been rendered without taking into account and in fact in **dis-regard to the fundamental rights of the Muslims community.**

17.1. It is submitted that the faith of the Muslim parties has been disregarded in the impugned judgment, particularly in rendering a finding on the existence and construction of the mosque, whereas great emphasis has been placed on the faith of the Hindu community. For instance, in deciding the issue of whether the property in the suit in the site of the Janam Bhumi of Lord Rama, Justice Sudhir Agarwal renders a finding in favour of the Hindu community, stating that the birthplace of Lord Rama was confined to the area under the central dome of the three domed structure, this finding was based on "the belief of Hindues by tradition" [See Paragraph 4412 of Justice Sudhir Agarwal's Judgment]. Similarly, is deciding whether a temple existed on the site prior to the destruction of the disputed building, the faith in respect thereof weighed in rendering a finding to the effect that a Hindu temple was demolished whereafter the disputed structure was raised [See Paragraph 4057 of Justice Sudhir Agarwal's judgment]. A similar proclivity to accord greater weight to the beliefs of the Hindu

community is also discernible in the judgment of Justice D.V. Sharma and this approach is unconstitutional, rendering the impugned judgment liable to be interfered with. The Appellant shall cited more such examples at the time of hearing where the learned Judges have disregarded the faith of muslim community while deciding issues related to them. It is submitted that such selective reliance on faith in deciding a title suit is erroneous, and on this basis alone, the impugned judgment is liable to be struck by this Hon'ble Court, as violative of the Muslim community's constitutional rights, including the community's right to equality, and its rights in respect of religion as enshrined in Articles 25 and 26 of the Constitution. It is submitted that, in fact, principles forming part and parcel of the basic structure of the Constitution, such as secularism and equality, have been impacted and undermined by the impugned judgment.

18. **BECAUSE,** the Appellant is making submissions hereunder on the issues as categorised by Hon'ble Mr Justice Agarwal in his judgment. Even without admitting the said categorization to be fully correct, the appellant is for the sake of brevity, pointing out some of the defects in the impugned decisions-judge-wise on the various issues as follows;

(A). In re- Res-judicata, constructive res judicata, estopple etc.

(B). Under this category fall the following issues:-

Issue Nos. 5(a), 5(b), 5(c) and 5(d) of Suit No.1.

Issue Nos. 7(a), 7(b), 7(c), 7(d) and 8 of Suit No. 4.

Issue Nos. 23 and 29 of Suit No. 5.

18.1. **BECAUSE,** the finding of all the three Hon'ble Judges are against the Plaintiff in Suit No 4. They have unanimously albeit erroneously held that finding arrived and issues settled in the Suit No . 61/280 of 1885 filed by Mahant Raghubar Das in the Court of Civil Judge, Faizabad and in appellate proceedings can not operate as res-judicata and estoppel in the present proceedings. The Appellant submits that the findings of all the three Hon'ble judges on all the issues decided by them against the Appellant are perverse, not based on correct appreciation of facts, are based on overlooking facts on record and/or on erroneous interpretation /appreciation of law on the issues.

18.2. **BECAUSE,** the learned Judges failed to appreciate in correct perspective the legal provisions and the factual position in this respect. The entire case of the Plaintiffs in Suit No 4 was that Mahant Raghubar Das had filed the Suit as Mahant of Janamsthan, Mahant had stated certain facts, claimed ownership and possession over the Chabutra, raised certain grounds and then asked for relief which was confined only to the Chabutra. The three Courts had in fact adjudicated upon the said claim and found no legal right in favour of Mahant and therefore refused reliefs .

A bare perusal of the Plaint, documents filed therein, written Statement of Mohd Asghar and the three judgments of the Court would show that the following categorical admitted facts emerge therefrom;

(i). That the suit was in respect of the Chabutra which was/continued to be situated in the outer courtyard of the mosque, the area very much in issue in the present suits.

(ii). The Mahant was the Mahant of Janamsthan namely the Chabutra.

(iii). The very fact that he filed Suit as Mahant of Janam Asthan means that whatever Mahant Raghubar Das said was on behalf of entire Hindu Community.

(iv). The Suit was an attempt to build a temple on the Chabutra which the Plaintiff considered as Janam Asthan of Sri Ram,

(v). That the Appellate Courts have categorically held that Mahant was not the owner of Chabutra.

(vi). That the possession over Chabutra albeit illegal was admitted in the judgment,

(vii). That the entire area of the inner courtyard was mosque used for offering namaz.

(viii). That the finding of the court was that Mahant Raghubar Das did not have legal right to build the temple on the chabutra.

(ix). Further, the existence of the building of the mosque in the vicinity was the cause of prohibition of construction of temple. This shows that there was no temple in existence in the vicinity.

The learned judges failed to appreciate the ratio of the judgments in Mahant's case and the facts admitted and adjudicated findings and their combined factual and legal effects on the issues before the Court in the present round of litigation. The learned Judge failed to appreciate that the basic purport of Sec 11 CP.C is that the issues once decided can not be re-agitated by giving them a different colour.

18.3. **BECAUSE,** the learned Judges failed appreciate that the finding that the building adjoining the Chabutara was a mosque was directly and substantially in issue in refusing the relief sought in the 1885 Suit, as the refusal of such relief was based, ultimately, on the

ground of public order, the concern emerging from the consequences which might ensue from a temple and mosque being in close proximity.

18.4. BECAUSE, the learned Judges failed appreciate another critical finding in the 1885 Suit was the failure of Mahant Raghubar Dass to be able to prove ownership over the Chabutra in the outer-courtyard. Further given that it was a suit filed to benefit the Hindu community at large against the interest of the Muslim community and had been decided by a court of competent jurisdiction, makes it apparent that all the subsequent suits were barred by the doctrine of res-judicata. Therefore, it is respectfully submitted that, had the Hon'ble Judge correctly applied the doctrine of res-judicata and constructive res-judicata, it would have disentitled the Hindu parties, including Nirmohi Akhara, from getting any relief.

18.5. BECAUSE, the S.U.Khan J erred in observing that " refusal to decide the controversy is the actual decision in the said suit.." It is submitted this observation is contrary to the learned Judge's own observation a few lines above that topography of the area was decided.

18.6. BECAUSE, the learned Judge failed to appreciate that in 1885 Mahant Raghubar Das claimed to be the Mahant of Janamsthan which comprised of a Chabutra in the outer courtyeard of the mosque. He claimed that Lord Ram was born there. The Suits filed between 1950 and 1989 by the Hindus as well as in the written statements filed by the Hindus in the Suit filed by the Muslims, it was claimed that Lord Ram was born under the Central dome of Babri Masjid. It is submitted that Hon'ble Judges ought to have appreciated that nature of suit remained the same though the alleged site of birth changed. The learned Judges ought to have

appreciated this issue in the background of facts admitted by a number of witnesses of Hindu Parties that Lord Ram believed to have borne more than 9 lakh to 1.75 crores years ago. The learned Judges ought to have appreciated that if the date of birth of Lord Ram is not certain then how can the exact place of birth of Lord Ram be so certain.

18.7. **BECAUSE,** the learned Judge failed to decide the specific issue No 29 of Suit No 5 of 1989.

18.8. **BECAUSE,** that Justice D.V. Sharma's findings on the issue of Res Judicata, constructive Res Judicata and estoppel are not based on correct appreciation of facts on record and law on the issue. The foundation of Justice Sharma's reasoning, namely that Section 539 of the Code of 1883 would be applicable in deciding whether the Suit of 1885 was filed by Mahant Raghubar Dass in a representative capacity, and would therefore impact the applicability of Res Judicata and Section 11 of the CPC as it exists, is entirely flawed. Justice Sharma fails to appreciate that Section 11 does not require an adjudication on the filing of a valid representative suit as per the laws applicable at the relevant time. A perusal of Explanation VI to Section 11 clearly indicates that the trigger for Section 11 in such cases is whether someone litigates "bona fide in respect of a public right or of a private right claimed in common for themselves and others", and, once triggered, the bar under Section 11 applies to "all persons interested in such right". Therefore, Justice Sharma's emphasis of Section 539 of the Code of 1883 is entirely misplaced.

18.9. **BECAUSE,** the finding of Hon'ble Justice D.V.Sharma while deciding Issue No.7(b) in Suit No 4 stating that Mohd. Asghar was not contesting the said Civil Suit of 1885 in the capacity of

Mutawalli, is perverse. In any event, as set out in Justice Sudhir Agarwal's Judgment, the fact that in respect of an issue which was not finally disputed demonstrates Md. Asghar contested the suit as Mutawalli of the Babari Mosque was not disputed. The fact that Justice Sharma recorded a contrary finding shows the blatantly arbitrary and perverse nature of his opinion.

18.10. **BECAUSE,** the finding of Sudhir Agarwal J on Issue No 5(a) of Suit No 1 in paragraph 860 drawing a distinction between the subject matter of two suits, namely O.O.S. No. 1 of 1989 and suit No. 61 / 80 of 1885 is not correct. The learned Judge ought to have appreciated the fact that the suit of 1885 was dismissed mainly on account of the existence of the Mosque. Therefore the learned Judge ought to have appreciated that the existence of mosque, the place where muslims offer namaz was admitted and it was inter-alia on that basis that the relief was not granted. Further that the ownership of land of the mosque was admitted and on that ground also the relief was declined. Further the learned Judge in paragraph 858 erred in observing that "... the right of ownership or possessory right in respect of any part of land in dispute as is before us was not involved in Suit of 1885...". Then in the next paragraph 859 the learned Judge makes a completely contradictory observation that " in Suit-1, the plaintiff is seeking injunction against the defendants in regard to his right to worship of the idols placed under the central dome in the inner courtyard. There is no claim either about ownership or possession." It is submitted that not only the aforesaid observations are contradictory, but are also perverse and contrary to the evidence on record. It is submitted that in 1885 the Mahant had claimed the Chabuta as Janasthan of Lord Ram and on that premise he sought permission to construct a temple

thereon. The relief was declined to Mahant on two main grounds namely that the Mahant did not own the land, and secondly there existed a mosque where muslims offer namaz. The learned Judge wrongly decided the issue 5(a) of Suit No 1.

18.11. BECAUSE, the learned judge while deciding the Issue no 5(b) wrongly observed in paragraph 863 that the issue of ownership and possession of Chabutra was not decided in the Suit of 1885 and appellate proceedings. The learned Judge completely overlooked the categorical findings in the three judgements and the admissions on the part of the plaintiff therein. The appellate Court Judicial Commissioner has specficially recorded that " there is nothing to show on the record that plaintiff is in any sense the proprietor of the land in question ..". It is submitted that the findings of the learned Judge on Issue No 5(b) are contrary to record and hence unsustainable in law.

18.12. BECAUSE, the learned judge while deciding the Issue no 5(c) wrongly observed in paragraph 869-670 that no evidence was placed on record to show that Hindus in general had the knowledge of the Suit-1885 or that all Hindus were interested in the same has been placed on record..". It is submitted that the learned Judge did not appreciate the pleadings in the Suit, the observations of the Judges. The learned Judicial Commissioner has clearly and categorically observed that " The Hindus seem to have got very limited rights of access to certain spots within the precincts adjoining the mosque and they have for a series of years been persistently trying to increase their rights and to erect building over two spots in the enclosure. (1) Sita Ki Rasoi (2) Ram Chandra Ki Janam Bhumi. The executive authorities have persistently repressed these encroachments and absolutely forbid any

alteration of the "status quo"...." It is submitted that in the teeth of these observations on facts as then existing, and the admissions of the Plaintiff in the Plaint and his filing the Suit as Mahant of Janamsthan, the decision of the learned Judge on issue No 5(c) of Suit No 1 to the least is contrary to contemporary evidence on record, erroneous and is unsustainable in law.

18.13. **BECAUSE,** the Justice Agarwal has wrongly observed that there remained virtually no decision or finding on the issue pertaining to ownership of suit property in the suit of 1885 and therefore the plea of res judicata or estoppel will have no application in O.O.S. No. 1 and 5 of 1989, as the indicia for attracting the plea of res judicata were wanting. In rendering the said above-noted finding, it is respectfully submitted that the Learned Judge committed, amongst others, the following errors:

a) The Learned Judge erroneously held that the properties in the said suits were different, when it was a fact that, in essence, the dispute was over the same property. It is submitted that merely because in the first suit the property is question was limited to smaller extent and in the second suit the property was a larger property which comprised of the smaller property did not mean that the essence of the dispute, which related to the same smaller property would not be barred by Res-Judicata. In such a case, the doctrine of res-judicata would operate to dismiss any litigation in relation to the smaller property.

b) The Learned Judge's finding that the first suit was an injunction suit whereas the subsequent suits sought different relief thereby not resulting in the invocation of the doctrine of res-judicata is also erroneous. It is submitted that principles of res-judicata and constructive res-judicata operate not on the relief claimed

but on the basis of the issues which arise and/or issues which emanate from an earlier proceeding. That is the reason why the CPC makes a provision whereunder a party cannot be vexed twice with the same litigation either through clever drafting and penmanship.

c) Furthermore, it is submitted that the finding of the Court that the suit was not filed either on behalf of the Hindu community generally and/or on behalf of Nirmohi Akhara but was filed by Mahant Raghubar Dass in his individual capacity was erroneous and bereft of any evidence. It is submitted that there was no evidence to suggest that Mahant Raghubar Dass had funded the suit from his own personal funds and further that he had, despite being in the official position of a Mahant, stated in the plaint that the suit was being filed in his individual capacity.

d) Furthermore, given that the relief sought in the suit was for the construction of a temple (not for the personal use of the Mahant), is clearly indicative of the representative nature of the suit. It is necessary to bear in mind that in an injunction suit, it is incumbent upon a plaintiff to show that should the relief be granted he would have the necessary means to execute the relief. Given that 1885 suit had no pleading to even suggest that Mahant Raghubar Dass was seeking the construction of a temple for himself and out of his personal funds, makes it apparent that the suit had been filed in a representative capacity for and on behalf of the Hindu community at large. Therefore, it is evident that the finding of the Learned Judge to the contrary is erroneous;

e) This is also supported by the Learned Judge's finding at paragraph 2134 where it has been held that should an idol or

the deity seek to file a suit it can do so through the Mahant or the Shebait. Therefore, clearly, Mahant Raghubar Dass's 1885 suit was filed on behalf of the Hindu community at large.

f) That Justice Sudhir Agarwal misapplied the doctrine of merger in holding that the appellate decision, and not the trial decision, is considered in respect of Res Judicata.

18.14. BECAUSE, Hon'ble Justice Sudhir Agarwal wrongly held that there was no substance in the plea of estoppel and abandonment based on the Acquisition notification dated 7-10-1991.

18.15. BECAUSE, Hon'ble Justice Sudhir Agarwal wrongly held that the admissions made by the plaintiff of the suit of 1885 as well as observations made by the courts in the suit of 1885 / Appeals of 1886 were not binding on the parties.

18.16. BECAUSE, Hon'ble Justice Sudhir Agarwal erred in holding that there was no estoppel against any of the parties from challenging the factum of the domed structure being a Mosque. It is submitted that a plaint, expressly setting out the characteristic of a property, supported by an affidavit results in a positive affirmation of the characteristic of that property and should such a plaint be filed on behalf of or for the benefit of one particular community, the affirmation would be binding on that community, except perhaps in instances of fraud etc. Therefore, it is evident that for the Hon'ble Judge to have held that there was no estoppel regarding the affirmation of the domed structures being a Mosque is incorrect. Hon'ble Judge failed to appreciate the fact that the doctrine of cause of action estoppel was directly applicable to the facts of the case. It is submitted that under cause of action estoppel a party is estopped from espousing the same cause of action in subsequent proceedings. In the 1885 suit, there was a denial by the Court

regarding the construction of a temple on the disputed property, despite the plea having been raised that the land was the Janam Sthan of Lord Rama. However, based on the same cause of action, the defendants in the present appeal file subsequent suits, which the Court below has decreed in a manner which enables the construction of a temple on the same piece of land where relief was previously denied by a competent court.

18.17. BECAUSE, the plaint in the 1885 suit was also admissible evidence in the subsequent proceedings and for the Hon'ble Judge not to have regarded it as such was erroneous.

18.18. BECAUSE,, the learned Judge did not correctly appreciate the scope of Sec 42 and 13 of the Evidence Act, 1872.

18.19. BECAUSE,, the learned Judge did not appreciate the case law cited by the Plaintiffs in Suit No 4, evidence produced by the Plaintiffs in the form of Plaint of 1885, its annexure, Written Statement and Judgements of the three courts and other related documents and wrongly held that the necessary indicias to attract plea of resjudicata were wanting and hence issue pertaining to resjudicata and estoppel would not be attracted in O.O.S. No. 1, 4 and 5 of 1989.

18.20. BECAUSE,, the learned Judge in paragraph 1023 wrongly held that there was no substance in the submission of the plea of estoppel and abandonment based on the Acquisition notification dated 7-10-1991/10.10.91.

18.21. BECAUSE, the learned Judge in paragraphs 1063-1065 wrongly decided that Issues No 5(d) (Suit -1), 7(c) & 8 (Suit-4), and 23 and 29(Suit-5) in negative. The learned Judge ought to have held the said issues in favour of the Plaintiffs in Suit-4 and ought to have held that the Suit-1 and 5 can not be proceeded with.

19. **BECAUSE,** the findings of all the Hon'ble Judges on all the issues decided by them against the Appellant in regard to limitation and in favour of plaintiffs in Suit No 3 and 5 of 1989 are perverse, not based on correct appreciation of facts, are based on overlooking facts on record and/or on erroneous interpretation /appreciation of law on the issues.

A. In re: Limitation

Because in relation to issue on limitation, the following issues were framed by the Learned Trial Court:-

(i) Issue No. 3 (Suit No.4). "Is the suit within time?"

(ii) Issue No.10 (Suit No.1)"Is the present Suit barred by time?"

(iii) Issue No.9 (Suit No.3). "Is the Suit within time?"

(iv) Issue No.13 (Suit No.5)"Whether the Suit is barred by limitation?"

B. The Appellant is challenging all the findings and observations of the Hon'ble Judges on the issues and facts as recorded against the appellant. There is divergence among the three judges on the issues of limitation. Divergence may be noted most particularly in respect of whether OOS No. 5/1989 is within limitation or not. Even though all three judges arrive at the finding that OOS No. 5/1989 is not barred by limitation, the rationale employed by them are divergent. For instant, while Justice Agarwal chose to decide this issue on the basis that when the corpus of a deity is involved, the law of limitation does not apply, Justice Sharma rendered his finding on this issue based on the rationale that Plaintiff Nos. 1 and 2 in the said suit are infant juridical persons and are entitled to the benefit of Section 6 of the Limitation Act.

way of illustration pointing out some of the ex-facie errors in the individual judgement of each Hon'ble judges as follows;

19.1. Judgement of S.U.Khan, J

BECAUSE, the finding of the learned Judge that Suit No 3 and 5 of 1989 are within limitation is erroneous and unsustainable in law. Further, the learned Judge ought to have held that the Suit No 5 of 1989 was hopelessly barred by limitation as the same was filed 461 years after the construction of Babri Masjid. The learned judge ought to have rejected the plaint under Order 7 Rule 11 of C.P.C. for non disclosure of any cause of action

19.2. *Judgement of Sudhir Agarwal*, J

(1). BECAUSE, the finding of the learned Judge that the Suit No 4 of 1989 is barred by limitation is contrary to law and facts of the case. The learned judge has wholly misconstrued the pleading of the plaintiffs, documents on record, the scope and the significance of the orders passed in the proceedings under Section 145 Cr.P.C and the law on this aspect.

(2). BECAUSE, the learned judge did not appreciate correctly the effect and consequence of the orders passed under Section 145 Cr.P.C and further orders passed by the Civil Judge in the peculiar facts and circumstances of the present case. In paragraph 2244-2245 the Hon'ble Judge noted that on 29.12.1949 admittedly a receiver was appointed by the Magistrate in Sec 145(1) r/w (4) second proviso of Cr.P.C who took over possession on 05.01.1950. On 16.01.1950 when the first suit Suit No 1 was filed in Civil Court, on application for injunction, the Civil Court passed order of

maintaining Status Quo which was modified on 19.01.1950 and the City Magistrate who passed the said order was impleaded as one of the defendants and the defendants were directed to maintain status quo. It was further clarified that the Sewa, puja as was going on shall continue. This modified order dated 19.01.1950 was confirmed by Civil Judge as well as the High Court on 26.04.55. The Receiver appointed by City Magistrate who took possession of the property continued till it was replaced by the statutory receiver under the Act of 1993. In view of these peculiar facts and circumstances, the learned Judge ought to have held that the cause of action in so far as Suit No 4 is concerned was a continuing one and hence the Suit No 4 as filed was within limitation.

(3). BECAUSE, the learned Judge did not appreciate that the Muslims had performed their namaz on the night of 22 December, 1949 (happened to be thursday) and it was in that night that the mosque was desecrated by placing idols surreptitiously in the dark of night under the Central dome of the mosque. Immediately thereafter the property was attached. In these circumstances there was no question of any bar of limitation for the suit filed by the Appellant. The learned Judge erred in observing in paragraph 2249 that " the effect of property being attached by the Magistrate shall neither result in extension of limitation for the Plaintiffs nor in exclusion of certain period for the purpose of limitation to some extent or to the extent of the period of property remaining under attachment or in any other manner..". The learned Judge ought to have viewed the entire the entire peculiar sequence of facts and circumstances. The conclusion drawn by the learned Judge is erroneous, and unsustainable in law.

(4). BECAUSE, the learned judge misunderstood the case law

placed on this aspect and reached to the wrong conclusion that " cause of action is virtually known to the party that there exist some dispute and not the order of the Magistrate whereby he attached the property in question and placed it in the charge of the Receiver.."

(5). BECAUSE, it is evident from record that Suit No.4 was instituted on 18.12.1961, as admitted by all the parties. It is concurrent finding of all the Learned Judges that the idols were placed in the night of 22nd or 23rd December, 1949. According to the Plaintiffs in Suit No.4 Muslims used to offer Namaz till that date when the idols were placed under the Central Dome. Accordingly, the cause of action started from 23rd December, 1949 since thereafter the Muslims were stopped from offering Namaz inside the Mosque. It is also clear from the records that an order was passed by the Learned Magistrate on 29.12.1949 whereby an order of attachment was passed and receiver was appointed in terms thereof. On 05.01.1950, the Receiver had assumed the charge of the inner portion including the constructed portion of Mosque with idols placed inside. In view of the said order having been passed attaching the building of Mosque and giving its possession to the Receiver, the cause of action of the Plaintiffs in Suit No.4 started on 23rd December, 1949 continued with the passing of Order of attachment on 29.12.1949. The cause of action had continued as no final order was passed under Section 145 of CrPC and the property had remained under the custody of Receiver. The cause of action never stopped and remained continuing.

(6). BECAUSE, the Suit for declaration under normal

circumstances is filed after final order under Section 145 Cr.P.C. The present Suit No.4 was filed after attachment and during the pendency of the proceedings under Section 145 Cr.P.C. not even finalized and in view thereof terming the Suit No.4 as barred by limitation is arbitrary and without any legal basis.

(7). BECAUSE, the Learned Judge has failed to take into consideration the subsequent event of demolition of the Mosque in 1992 and addition of the relief (bb) in pursuance to the judgment and order passed by the constitution bench judgment of this Court in Dr. Ismail Farooqui's case whereby the parties were permitted to amend their pleadings in view of the subsequent events.

(8). BECAUSE, the learned Judge misunderstood the submissions of the counsel for the Plaintiffs and wrongly observed that the counsel for plaintiffs of suit No. 4 (Sri Jilani and Sri Siddiqi) had castigated the approach of the learned Magistrate in passing the order regarding consignment of the proceedings under Section 145 Cr. P.C. As a matter of fact the counsels for the Plaintiffs had relied upon the said order to show that there was no final order of attachment and hence the period of limitation could not be said to have come to an end but rather the same was continuing.

(9). BECAUSE, the Hon'ble Judge's observation that it was only Mutawalli of the waqf who could claim possession of the property in question according to Islamic Law and that plaintiff No. 1 of suit 4 (Sunni Waqf Board) had no power, on its own, to claim the possession or custody of any waqf and that worshippers or beneficiaries of a waqf also could not claim possession and it was also wrongly observed that the attachment of the property will have no effect upon limitation, is contrary to statute and well established

principles of law. The learned Judge failed to appreciate that it was a continuing wrong and the cause of action accrued de die indiem i.e. everyday. The learned Judge ought to have held that the suit was within limitation.

(10) BECAUSE, the learned Judge erred in holding that " The effect of the property being attached by the Magistrate shall neither result in extension of limitation for the plaintiffs nor in exclusion of certain period for the purpose of limitation to some extent or to the extent of the period the property remain under attachment or in any other manner..". These observations are untenable in law. It is submitted that provisions of Limitation Act, 1908 as set out in Article 144 or Article 142 both gave limitation for a period of 12 years. In the present case, Article 142 would apply where date of dispossession/ discontinuance of possession will be the starting point of limitation, and as such Suit No.4 would not be barred by limitation in view of the fact that the idols were placed on 23rd of December, 1949 and the Suit No.4 was instituted on 18th December, 1961 which is within the period of 12 years from 23.12.1949.

(11).BECAUSE, Justice Sudhir Agarwal's finding and observations on the issue of limitation are factually and legally erroneous. In particular, the Appellant states that inter-alia the following findings are erroneous:

i. That the order of attachment passed by the Magistrate did not give a cause of action (Paragraph 2244);

ii. The Muslims (Or the Mutawalli) of the Mosque was not dispossessed by the placing of the idols on 22/23 December 1949, the subsequent order of attachment and/or the

deprivation of the use of the Mosque for the purpose of offering prayers;

iii. The Appellant, Sunni Waqf Board, had no capacity to claim possession;

iv. That Article 142 and Article 144 of the Limitation Act did not apply and only Article 120 applied on the basis that it was a suit for declaration and the mere addition of relief for possession would not attract the larger period of limitation;

v. It is evident that the finding of the Hon'ble Judge was incorrect given the finding at paragraph 2283 that the plaint in Suit No. 4 never set out that the Plaintiff had been dispossessed of the property by the placing of the idols because the case set out was that placing the idols had the effect of obstructing and interfering with the plaintiff's right of worship. It is submitted that the only reason why the plaintiff's right of worship had been obstructed after the placing of the idols was because the plaintiff's no longer had access to the Mosque thereafter and this led to the Plaintiff's being dispossessed. Therefore, clearly, there was no occasion for the Hon'ble Judge to hold that the Plaintiff had not pleaded dispossession.

(12). BECAUSE, it is submitted that the Hon'ble Justice Sudhir Agarwal's finding that the claim against the outer-court yard being barred by limitation is also not correct. Firstly, it is submitted that the Hon'ble Judge ought not to have separated the claims regarding the inner and outer-court yard for the purpose of limitation. Secondly, it is submitted that the Hon'ble Judge recognized that the outer court yard was at least being used for ingress and egress to the inner court yard and this gave the

Muslims a corresponding right to use the outer court yard. That being the case, the mere possession of the outer court yard by the Hindu's (even assuming such was the case) would not deprive the Muslims from raising a title suit over the same because the question of title was never in dispute and the only occasion when such a dispute arose was after the Hindus started claiming an absolute right to the inner and outer court yard to offer prayers. Therefore, since there was no cause of action prior to 22-23 December 1949 for the Muslims to raise a claim on both the inner and outer courtyard, it could not be said to be barred by limitation because no claim had been preferred prior thereto.

(13). BECAUSE, the learned Judge ought not to have rejected the contention of the plaintiffs that the defendants have not placed any facts as to how the Suit of the Plaintiffs was barred by limitation.

(14). BECAUSE, the Hon'ble Sudhir Agarwal J after having perused the files summoned vide order dated 29.05.2009 by the High Court and the record of the State Government ought to have concluded that the entire act of placing idols surreptitiously in the darkness of night was a collusive act on the part of the officers entrusted with the job of protecting the sanctity of the mosque. After having rightly observed that " a judge must always keep in mind that every trial is a voyage of discovery in which truth is the quest..", the Hon;ble Judge ought to have held that the entire exercise was a collusive one. The learned Judge ought to have held that the truth of the matter is that the muslims were offering prayers until 22nd of Dec, 1949 and were wrongly deprived of their constitutional right to worship and place of worship. This very record which contains a diary of the then D.M. shows that Mr K.K.Nayar, the then D.M on

27.12.1949 outrightly refused to abide by the direction of the State Government to remove the idols and retorted " and that if Government still insisted that removal should be carried out in the face of these facts, I would request to replace me by another officer.." This very file also contains a report of 26th July, 1961 in the said records by Special Intelligence Officer in which it is mentioned that " It is reliably learnt that Baba Ram Lakhan Sharan gets legal advice in this respect from Sri K.K.Nayar (Ex-D.C Faizabad) who is his supporter also..". After having perused the files and the records of that time, the learned judge ought to have commented upon the state of affairs prevailing at that time and ought to have drawn adverse inference against those who had in the darkness of night desecrated the mosque.

(15) BECAUSE, the observations of learned Sudhir Agarwal J. in paragraph 2284 & 2285 of the judgment are perverse, unsustainable in law and contrary to the record of the case.

(16). BECAUSE, the learned Judge has misconstrued the scope of the evidentiary value of the statement under Or X Rule 2.

(17). BECAUSE, the specific observation of Learned Judge in paragraph 2298 to the effect that the submissions are not clear and that the arguments are new are erroneous. Because learned Sudhir Agarwal J. wrongly observed that much of the submissions in the Written Arguments filed by Sri M.A. Siddiqi, Advocate, have been taken for the first time and that the court had no occasion to seek any clarification regarding the same.

(18). BECAUSE, the contention of the Defendants that the Suit was barred by limitation because the Plaintiffs in Suit No.4 were ousted on 16.12.1949 rather than 23.12.1949 and

even for the purpose of Article 142 of Limitation Act, 1908, the Suit was barred, is erroneous and without any basis.

(19). BECAUSE, the entire evidence mentiond in Paragraphs 2347 to 2392 (Vol.X) has been mis-appreciated and quoted by giving improper meaning. Certain parts of evidence recorded in the said Paragraphs are unreliable and without any basis and hence those parts of the evidence are liable to be ignored and not to be taken into consideration for adjudication of issue of limitation in the present context.

(20). BECAUSE, the learned Judge has wrongly recorded that the counsel for plaintiffs in Suit No. 4 (Sri Jilani and Sri Siddiqi) had castigated the approach of the learned Magistrate in passing the order regarding consignment of the proceedings under Section 145 Cr. P.C. As a matter of fact the counsels for Muslims had relied upon the said order in order to show that there was no final order of attachment and hence the period of limitation could not be said to have come to an end but rather the same was continuing.

(21). BECAUSE, learned Sudhir Agarwal J. wrongly recorded that: "The reading of the entire plaint (suit-4) nowhere shows an averment that the plaintiffs were dispossessed of a property which they already possess." It was also wrongly observed by the learned judge that: "The plaintiff's cause of action and relief, therefore, are quite divergent." In this respect the learned Judge did not at all take into account the averments of paragraphs 11, 11(a), 13 and 20 of the plaint from a perusal of which it is evident that the plaintiffs had clearly mentioned that Muslims had remained to be in full possession of the Mosque till 22-12-1949 when a large crowd of Hindus had entered the

Mosque in the night of 22nd /23rd December, 1949 and desecrated the same by placing idols inside the Mosque. Again it was stated in para 11 (a) that Muslims' possession beginning from the time Mosque was built had continued right up to the time some mischievous persons had entered the Mosque and desecrated the same. In para 13 of the plaint it was mentioned that by order dated 29-12-1949 the Mosque was attached and possession was handed over to Sri Priya Dutt Ram as Receiver who still continues in possession and averment about the building in suit being in possession of Receiver was made in para 20 also. It was also wrongly observed by the learned Judge that the plaintiffs had contended that it was an assumption on the part of the defendants that the plaintiffs are dispossessed of the property in question.

(22). BECAUSE, the learned Judge has wrongly observed that the pleadings were extremely vague and that the learned counsels for the plaintiffs (Suit-4) found it difficult to bring out the requisite pleadings so as to attract Article 142 of the limitation Act in the present case. In this respect the learned Judge ignored the cumulative effect of the pleadings contained in paragraphs 11, 11 (a), 13 and 20 etc. and wrongly held that the assertions made in the aforesaid paragraphs were insufficient to constitute a case of "dispossession" or "discontinuance of possession" of the Muslims over the property in dispute. The learned Judge failed to consider the plaint in its right perspective and in the manner in which pleadings are to be interpreted.

(23). BECAUSE, the learned judge has wrongly observed that

much of the submissions in the Written Arguments filed by Sri M.A. Siddiqi, Advocate, have been taken for the first time and that the court had no occasion to seek any clarification regarding the same. As a matter of fact all these submissions had been repeatedly made before the court by Sri M.A. Siddiqi and the gist of these submissions were made by Mr. Jilani before the court specially with reference to the applicability of 12 years period of limitation and in this respect repeated querries were made by all the Hon'ble Judges during the course of arguments. On this issue Hon'ble Judge, Sudhir Agarwal J. had himself observed during the course of arguments that it was the case of discontinuance of possession at least from the date of attachment of the property in suit, if not from 23-12-1949.

(24). BECAUSE, the learned judge has wrongly reached his findings that neither Article 142 and nor Article 144 of the limitation Act, 1908 were applicable in the instant suit and that the suit was covered by Article 120 of the said Act. It has been further wrongly recorded that the prayer of restoration of possession was superfluous and "a mere suit for declaration was necessary".

(25). BECAUSE, the findings given by the learned Judge in paragraphs 2283, 2284 and 3077 that there were no averment in the plaint (Suit-4) that the plaintiffs were dispossessed from the property in question at any point of time in 1949 and similarly finding given in para 2558 that there was no occasion of dispossession of Muslims or of discontinuation of their possession, are contradictory to his own finding given in

paragraph 2439 where the learned Judge has clearly recorded that "the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23rd December, 1949..... since thereafter they are totally dispossessed from the property in dispute.....". In this respect the findings given by the learned Judge that it was difficult to treat the alleged wrong to be a continuing wrong has been given by ignoring the fact that the property in dispute has remained attached from 29-12-1949 and the attachment had continued thereafter.

(26). BECAUSE, the observation of the learned Judge that the authorities cited by Sri Siddiqi, referred in para 2442 go against the plaintiffs is misconceived and after taking into account various rulings the learned Judge wrongly held that the suit in question (Suit-4) was barred by limitation under Article 120 of the Limitation Act, 1908 and accordingly the learned judge has wrongly decided issue No. 3 (Suit-4) in negative.

(27). BECAUSE, learned Judge has incorrectly held that in respect of the outer courtyard, the claim of the plaintiffs (Suit-4) is clearly barred by the limitation and hence the suit in its entirety was to be held barred by limitation and wrongly decided Issue No. 3 (Suit-4) against Muslims.

(28). BECAUSE, learned Judge's observation that nobody had pressed Issue No. 10 (Suit-1) and that nobody advanced any argument to suggest that suit No. 1 was also barred by limitation is erroneous. In this respect the argument of the Muslim side was that the alleged right of Darshan and Puja at the site in dispute, if any, stood extinguished in 1528 itself when the building in dispute was constructed as a mosque and as such the alleged right of plaintiff of suit No. 1 was barred by limitation

as no action was taken upto 1950.

(29). BECAUSE, the learned Judge while deciding issue No. 13 (Suit-5) wrongly held that since the alleged deities themselves are plaintiffs No. 1 and 2, being akin to a perpetual minor, no limitation runs against them and in this respect it is also incorrect to observe that "laws exclusively applicable to Hindu Deities could be had and read in the light of Oudh Laws Act, 1876, could apply the Hindu Dharam Shastra Law, which contains substantive as well as provisions relating to limitation quo Hindu Deities." The finding about the so called continuance of the alleged 2 Deities over the site in question even after the erection of Babri Masjid is neither supported by any evidence nor could be said to be in consonance with the law of the land.

(30). BECAUSE, the learned judge has wrongly observed that facts summarized by him in para 2618 were the facts as pleaded by all the parties (including Muslims) whereas the fact is that at the most these facts could be said to be based upon the pleadings of mainly Hindu parties. In this respect it has been wrongly recorded that so far as the plaintiffs in the present suit (Suit-5) are concerned "their status or their worship continued to be observed and followed in one or the other manner." To say that "no action or inaction in the meantime was such whereagainst the plaintiffs could claim a grievance and right to sue" is incorrect. It is further wrongly observed by the learned Judge that the religious status of the so called deities (plaintiffs 1 and 2 of Suit-5) remained in tact.

(31). BECAUSE, learned Sudhir Agarwal J. wrongly held that suit No. 5 was not barred by limitation.

(32). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that no reliance could be placed on the extracts of Books like "Hadiqa-E- Shohda" by Mirza Jan, "Amir Ali Shaheed Aur Marka-E- Hanuman Garhi" by Sheikh Mohd. Azmat Ali Kakorvi (1987) and "Tarikh-e- Avadh" by Najmul Ghani Khan Rampuri etc. and placing reliance upon the same was totally against the settled principles of evidence as the said books could neither be said to be Books of History nor there was any information about the status and qualificatioins etc. of the authors of the same and in any case they could not be said to be Historian. Similarly the books published after 1950, when the dispute was already pending before the court, could not be relied upon as admissible piece of evidence, including the extracts of 'Encyclopaedia Brittanica' (1978 edition) and 'Ayodhya' by Hans Baker (published in 1986).

(33). BECAUSE, the learned Judge while discussing the various maps erred in holding in paragraph 2301-2302 that the area CDKL has been left for claiming any relief by the Plaintiff and can not be treated to be a part of property in dispute for the purpose of Suit No 4. The learned Judge has extracted the map(nazari naqsha) filed with the plaint where the entire area as shown is covered. Hence the finding to this effect of the learned Judge that the area CDKL has been left for claiming any relief by the Plaintiffs of Suit No 4 is perverse, and contrary to evidence.

(34). BECAUSE, Because the observation made by the learned judge in paragraph 2313 to the effect that "We have found that there is no reliable evidence to prove that the building in dispute was constructed in 1528 A.D. by Babar or at his command or instance by Mir Baqi or anyone else. The entire belief in this

regard is based on certain Gazetteers and documents available from the commencement of 19th century and they, in turn, are founded on the inscriptions, the text and the time of fixation whereof has not been found reliable" are perverse, contrary to the volumous record of the case, unsustainable and are on the basis of incorrect appreciation of record.

(35). BECAUSE, the finding of the Hon'ble Judge in paragraph 2314 to the effect that " Be that as it may, even if for the purpose of the issues in question we assume that the building in dispute was so constructed in 1528 A.D., there is no evidence whatsoever that after its construction, it was ever used as a mosque by Muslims at least till 1856-57." is perverse, unsustainable on the ground of incorrect appreciation of record. It is submitted that not only the Hon'ble Judge has not correctly appreciated the facts and record but has wrongly attributed admissions and arguments which were never made by the counsel. The learned Sudhir Agarwal J. absolutely wrongly attributed the averments to the counsel for the Board which were never made and which had been used against the Board. The learned Judge wrongly observed that "Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of Namaz in the disputed building at least till 1855." As a matter of fact neither any such admission was made by Sri Jilani and nor there was any dearth of historical and other evidence to show possession and offering of Namaz even before 1855. The learned Judge grossly misconstrued, misread and did not appreciate in correct perspective the documents and record placed before it

inter-alia the one referred from paragraph 2315 to paragraph 2383. After having misconstrued the documents, the learned Judge wrongly observed that the said documents did not support the case of the plaintiffs (Suit-4) to the effect that the Muslims were offering Namaz in the building in dispute and the same was continuing in the possession of Muslims. In this respect it was also wrongly observed that there was admission in some document which could "be treated as a sole conclusive evidence to prove that the disputed building and premises throughout has been in possession of Hindus and not of Muslims." It was also wrongly observed that: "Had the building in dispute and the inner courtyard been in possession of Muslims," a Chabutra could not have been constructed in the inner courtyard in 1858. In this respect the learned Judge failed to appreciate that the said Chabutra referred to in the complaint dated 30th November, 1858 (Ext. 20 of Suit No. 1-Page 2300) had been removed by Sheetal Dubey Thanedar as was evident from his report dated 15-12-1958 (Ext. A-69 of Suit No. 1). The Hon'ble Judge has read only one document and overlooked the other documents which are relevant to reach the correct conclusion. The learned judge not only misconstrued the said document but also overlooked the relevant evidence on record and therefore the finding is perverse.

(36). BECAUSE, learned Sudhir Agarwal J. not only misconstrued and misread several documents but also drew wrong inference from some of them. In this respect special mention may be made to Exts. 19, 20 and A-69 (of Suit-1)

(37). BECAUSE, learned Sudhir Agarwal J. wrongly treated the word "Duago" as a part of the name of "Mohammadi Shah" mentioned in Ext. 23 (Suit-1) and wrongly observed that Ext. 31

(Suit-1) dated 15-11-1860 was the first document "going to the extent that in the inner courtyard, the Moazzin used to recite Adhan (Azzan)"

(38). BECAUSE, learned Sudhir Agarwal J. has not correctly appreciated the geneology of the Mr Rajjab Ali and failed to appreciate that great grand father of Mir Rajjab Ali may not be the same Mir Baqi who had constructed the Mosque and it was not appreciated that it was not unusual that the name of one person may be adopted by several persons of the same decent and in this respect the observations made by the learned Judge in paragraph 2336 were totally untenable besides being unwarranted and uncalled for.

(39). BECAUSE, learned Judge after accepting the grant for maintaining the mosque in question, drew wrong conclusion that " but the fact remains that there is not even a whisper in any of the above documents that the Muslims visited the place in dispute and offered namaz thereat. On the contrary, continuous visit of Hindus and worship by them at the disputed site is mentioned in a number of documents as well as in the historical records." This finding is perverse and contrary to record. Admittedly the grant was made for maintaining the mosque. It is submitted that maintenance include moazzin and imam's stipend etc also who perform namaz. Therefore the conclusion drawn by the learned Judge is absolutely wrong.

The observation of the learned Judge in para 2346 to the effect that " It is really a peculiar case of its own kind where despite the fact that the building commonly known as mosque existed yet it continued to be visited by Hindus and they perform

Darshan, Puja etc. therein ignoring the apparent nature and shape of the construction as also the fact as to who made it" is absolutely wrong, based on wrong appreciation of facts on record, overlooking the material on record and perverse.

(40). BECAUSE, learned Sudhir Agarwal J. wrongly observed that Ext. A-8 (Suit-1) had not been proved while the said document was covered by Section 90 of the Evidence Act as it was more than 30 years old and it was filed in an earlier suit also and its coming from a proper custody was beyond doubt. It was also wrongly observed by the learned Judge that "Sri Jilani learned counsel for Sunni Waqf Board could not tell as to how the contents of the said document can be said to have been proved or treated to be correct in the absence of any witness having proved the same." It was also wrongly observed by the learned Judge that it was not the case of the defendants 1 to 5 (Suit-1) that any legal presumption can be drawn in respect of correctness of the contents thereof under law. As a matter of fact Sri Jilani had strenuously contended that the said document being of the period around 1299-1307 Fasli (around 1900 A.D.) it was almost impossible to produce either the scribe of the said note book or any witnesses of that period and the rule of evidence enshrined in Section 90 of the Evidence Act was fully applicable regarding proof of the said document. It was also vehemently argued by Sri Jilani Advocate, that the details of expenditure regarding lighting in the Mosque, rent of Chandni etc. and expenses of making payment of salaries to the Imam and Moazzin of the Mosque etc. fully established offering of the prayers in the said Mosque and possession of the Muslims. It was incorrect

to say that the expenses shown in the above document exfacie do not appear to have any relevance with the building in dispute.

(41). BECAUSE, learned Sudhir Agarwal J. wrongly observed that Ext. A-6 (Suit-1) of 1934 was not a 30 years old document when it was exhibited and in any case it was wrongly observed that the said document could not be held to be proved even in 2010. Similarly Ext. A-11, A-10 and A-21 (Suit-1) etc. were also not duly considered and relied upon while there was specific mention about the maintenance of Mosque and inspection of the same by the Government Officials. It was also wrongly observed that none of these documents throw any light on the fact whether the Muslim public visited the said place for offering Namaz. In this respect the learned Judge failed to appreciate that the use of Mosque by the Muslims can not be said for any other purpose except for the offering of Namaz.

(42). BECAUSE, learned Sudhir Agarwal J. wrongly observed that neither Article 142 and nor Article 144 of the limitation Act, 1908 were applicable in the instant suit and that the suit was covered by Article 120 of the said Act. It was also wrongly observed that the prayer of the restoration of possession was superfluous and "a mere suit for declaration was necessary" .

(43). BECAUSE, Because, the finding given by the learned Judge in paragraph 2439 that, " In the case in hand, the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23rd December, 1949 and the wrong is complete thereon since thereafter they are totally dispossessed from the property in dispute on the ground that they have no title. Hence, we find it difficult to treat the alleged wrong to be a

continuing wrong." This finding is based absolutely on the misconstruction of pleadings, docouments and the law on the issue.

(44). BECAUSE, the learned judge has misunderstood the legal authorities cited by the counsel for the plaintiffs in Suit No 4on this issue and has not correctly appreciated the submissions, the law declared in the judgment and hence reached on the erroneous finding that the suit was barred by limitation. The learned Judge did not appreciate that the wrong was the continuous wrong and the limitation would not apply.

(45). BECAUSE, the finding given by learned Sudhir Agarwal J. in paragraphs 2283, 2284 and 3077 that there was no averment in the plaint (Suit-4) that the plaintiffs were dispossessed from the property in question at any point of time in 1949 and similarly finding given in para 2558 that there was no occasion of dispossession of Muslims or of discontinuation of their possession, stand contradicted by his own finding given in paragraph 2439 where the learned Judge has clearly observed that "the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23rd December, 1949..... since thereafter they are totally dispossessed from the property in dispute.....". In this respect the finding given by the learned Judge that it was difficult to treat the alleged wrong to be a continuing wrong was given by ignoring the fact that the property in dispute had been attached on 29-12-1949 and the attachment had continued thereafter.

(46). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that the testimony of the witnesses of Muslims side fully proved the case of the plaintiffs (Suit-4) about the offering of regular prayers in the disputed building upto December 1949. The learned Judge

wrongly discarded the testimony of the plaintiffs witnesses. It was also wrongly observed that the evidence produced by the plaintiffs (Suit-4) was not credit worthy so as to believe what they had said. The learned Judge absolutely unjustifiably drew adverse inferences against the witnesses. The comments made by the learned Judge against these witnesses were totally unjustified and unwarranted.

(47). BECAUSE, the findings of the learned Sudhir Agarwal J. in paragraph 2551 are absolutely wrong, contrary to evidence on record and also against all cannons of appreciation of evidence. The learned Judge has not correctly appreciated inter-alia the evidence on record, the testimony of witness and specifically the contents of Ext. A-63 and A-64 (Suit-1). The learned Judge further erred in holding that " The overall situation, evidence etc. however, show that on some days, atleast weekly prayer on Friday held in the premises in dispute, and, at least, so far as 16th December, 1949 is concerned, it appears that on that date, Friday prayer was actually held in the inner courtyard but not thereafter." These findings are perverse. In fact the plaintiffs have fully established that regular prayers were being offered in the mosque including the Friday prayers till 22 Dec 1949. The learned Judge did not appreciate the documents in paragraph 2552 and reached on the wrong conclusion.

(48). BECAUSE, the finding of learned Sudhir Agarwal J. that the claim of Muslims about the daily prayers being held in the building in suit could not be believed or that the inner courtyard had "remained open for all," is not only not based on any reliable evidence but the said finding was recorded by ignoring and by misappreciating the oral and documentary evidence produced by

the Muslims and also some evidence produced by Hindus.

(49). BECAUSE, the finding of learned Sudhir Agarwal J. in paragraph 2253 to the effect that "...We, therefore, are inclined to believe that on 16th December, 1949, Friday prayer was held in the inner courtyard i.e. in the disputed building but the claim of the muslims that daily prayers used to be held therein cannot be believed. To this extent, Muslim parties have failed to prove. This does not mean that the entire premises in dispute shown by the letters 'ABCD' in the map appended with the plaint (Suit-4) was in the possession of the plaintiffs but it is only the inner Courtyard which remained open for all." This finding is absolutely perverse and the same is based on wrong appreciation of evidence and record of the case.

(50). BECAUSE, the finding of learned Sudhir Agarwal J. in paragraph 2254 to the effect that "The entire evidence however do not touch upon the area covered by the outer courtyard except of suggesting that only for entering inner Courtyard, right of passage was utilised and nothing more than that. It is evident that the plaintiffs were never in possession thereof. In the outer courtyard on the south- east side there was a Ram Chabootara which was in possession of persons other than plaintiffs and this has continued at least from earlier to 1885 as is evident from the plaint where reference has been given to suit of 1885 and the decision of the Court recognising existence of the said Chabootara in outer courtyard. On the north-west side, there is Sita Rasoi/Kaushalya Rasoi which is also being worshipped by Hindus continuously.", is perverse, contrary to record and the documentary evidence adduced by the Muslims for the period from

1858 A.D. onwards as well as the oral evidence adduced by the Muslims and also some documentary evidence adduced by the Hindu side was totally ignored.

(51). BECAUSE, the learned Judge on misconstruction of pleadings and documents reached on an absolutely erroneous conclusion that in respect of Ram Chabutra and Sita Rasoi in outer courtyard, the suit is barred by limitation.

(52). BECAUSE, learned Sudhir Agarwal J. wrongly observed in paragraph 2556 that Chabutra said to have been "constructed in the outer courtyard in 1857" was "never interfered or obstructed by Muslims at any point of time" and in this respect wrongly applied the law of limitation for giving alleged rights to the Hindus whereas on the plea of adverse possession based on Section 27 of the Limitation Act the claim of adverse possession made by the Muslims was not accepted by the learned Judge by relying upon the rulings of this Hon'ble court and by observing that since it was not pleaded that who was the real owner the plea of adverse possession could not be entertained. Regarding the alleged rights of Hindus, the findings recorded by the learned District Judge and Judicial Commissioner in 1886 were also not taken into account.

(52). BECAUSE, the learned Judge on wrong appreciation of facts and documents reached on an absolutely erroneous finding in paragraph 2558 that both the communities used to worship in the inner courtyard. The entire approach of the learned Judge and the various conclusions drawn by the Hon'ble Judge are perverse, contrary to record and are unsustainable in law.

(53). BECAUSE, the finding recorded by learned Sudhir Agarwal J. that Hindus in general had also been visiting inner courtyard for Darshan and worship according to their faith and belief and hence it

could be said that the inner courtyard was virtually used jointly by the members of both communities was based on no reliable evidence. This finding of the alleged joint possession was totally against the evidence of record.

(54). BECAUSE, learned Sudhir Agarwal J. wrongly held that in respect of the outer courtyard claim of the plaintiffs (Suit-4) was clearly barred by the limitation and hence the suit in its entirety was to be held barred by limitation and wrongly decided Issue No. 3 (Suit-4) against Muslims.

(55). BECAUSE, learned Sudhir Agarwal J. wrongly observed that nobody had pressed Issue No. 10 (Suit-1) and that nobody advanced any argument to suggest that suit No. 1 was also barred by limitation. In this respect the argument of the Muslim side was that the alleged right of Darshan and Puja at the site in dispute, if any, stood extinguished in 1528 itself when the building in dispute was constructed as a mosque and as such the alleged right of plaintiff of suit No. 1 was barred by limitation as no action was taken upto 1950.

(56). BECAUSE, learned Sudhir Agarwal J. while deciding **issue No. 13 (Suit-5)** wrongly held that since the alleged deities themselves are plaintiffs No. 1 and 2, being akin to a perpetual minor, no limitation runs against them and in this respect it was also wrongly observed that "laws exclusively applicable to Hindu Deities could be had and read in the light of Oudh Laws Act, 1876, could apply the Hindu Dharam Shastra Law, which contains substantive as well as provisions relating to limitation quo Hindu Deities." The finding about the so called continuance of the alleged 2 Deities over the site in question even after the erection of Babri Masjid was also

neither supported by any evidence and nor could be said to be in consonance with the law of the land.

(57). BECAUSE, the conclusions drawn in paragraph 2599 that Plaintiff No 1 and 2 are akin to perpetual minor, no limitation runs and any bonafide worshiper can act in thename of the deity/deities to defend its/their's rights, is absolutely untenable in law and the very basic concept of rule of law. The express provisions of law of limitation can not be ignored or made dead letters in so far as deities are concerned.

(58). BECAUSE, learned Sudhir Agarwal J. wrongly observed that despite construction of building as mosque, the Hindus visited there and offered worship continuously , but we find no mention whatsoever, that the muslims also simultaneously offered namaz at the disputed site from the date it was constructed and thereafter till 1856-57. It is further wrongly observed that at least till 1860 we find no material at all supporting the claim of the muslim parties in this regard.

(59). BECAUSE, the learned Judge erred in holding that in the Suit No 5, the burden of proving as when the right to sue arose is on the defendants. The learned Judge's observation that the Statute of Limitation would not apply in a suit filed by Plaintiff No 1 and 2 is absolutely erroneous, and unsustainable in law. By a very strange logic which is ex-facie not tenable in a democratic country governed by rule of law that if a diety claims a declaration from the Court, the plea of limitation can not be made applicable. Therefore the learned Judge held that " there is thus no question of taking recourse to Sec 6 or 7 of the Limitation Act." The interpretation placed by the Hon'ble Judge on Ismaeil Faruqui's case is also erroneous. The logic that Limitation Act like Acquisition Act would

not apply to a place of special significance is erroneous. The further observation that otherwise Limitation Act would be ultra vires Article 25 of the Constitution is also not correct. If what the learned Judge holds is correct then necessary conclusions would be that the entire acquisition is wrong because admittedly the suit filed by Plaintiff No 1 and 2 (both have been held to be deities), for a much wider area as property belonging to them and that the judgment of Ismaeil Faruqui upholding the acquisition of areas to the extent belonging to deities is wrong.

(60). BECAUSE, the learned Judge's observations on fourth and fifth angle are erroneous as the same is not based on correct appreciation of facts and law. It is submitted that at various places the learned Judge has repeatedly made wrong and perverse observations that the Hindus have been visiting the place from the time immemorial and that they have been performing puja in the inner as well as the outer courtyard. Both these observations are perverse, contrary to evidence on record and correct appreciation of facts and law.

19.3. *Judgement of* D.V.Sharma J:

(1). BECAUSE, the issue of limitation has been wrongly decided by the Learned Judge in Suit No.4 holding that the said Suit is barred by limitation. However in the finding on the issue of limitation with respect to Suit No 5 it has been held to be not barred by limitation. Appellant is aggrieved by the finding of the Learned Judge given on **Issue No.3 in Suit No.4 and Issue no 13 in Suit 5** and accordingly the appellant is challenging the said findings which are perverse and illegal.

(2).BECAUSE, the finding of Learned Judge stating that *"it is the clear contention of the defendants that the plaintiffs' suit is barred by limitation being a suit for right to worship and not a suit for immoveable property as is being made out by the plaintiff and therefore is governed by Article 120 of the Limitation Act, 1908 and not Article 144 or 142 of the Limitation Act, 1908 therefore suit can only be filed within 6 year"*, is misconceived and based on mis-appreciation and misconstruction of facts and law and hence liable to be set aside.

(3). BECAUSE, the finding of Learned Judge stating that *"In view of the discussions, referred to above, it transpires that the claim of the plaintiffs is governed by Article 120 of the Limitation Act, 1908 and not by Articles 142 and 144 of the Limitation Act, 1908. Therefore, the suit could only be filed within 6 years, therefore, the suit is barred by limitation. Issue No.3 is decided against the plaintiffs and in favour of defendants"* is similarly misconceived and without taking into consideration pleadings and evidences of the present case. The Learned Judge has misdirected himself by not considering and ignoring certain material facts in relation to the present issue and hence he has reached an erroneous conclusion and the same is liable to be set aside.

(4). BECAUSE, the Learned Judge has wrongly made the observation stating that: *"Accordingly, Article 142 and 144 of the Limitation Act have no application in this case. Moreover, Article 142 applies only where the plaintiff while in possession has been dispossessed or discontinued possession. In this case since the property was attached, the question of dispossession does not arise. The reference of dispossession by the plaintiffs*

after the attachment and to file thereafter a suit for declaration of the right to property is not a suit for possession in case of custodia legis. Article 142 and 144 do not apply where the relief of possession is not the primary relief claimed. Here in this case the primary relief is of declaration. Consequently, Article 120 of the Limitation Act would apply". This finding is flawed as the Learned Judge has applied irrelevant facts to reach the said finding by misinterpretation of law. The said findings are without taking into consideration the fact that the attachment of property was made on 29.12.1949 while the discontinuance of possession of the Plaintiffs of Suit No.4 from the said property had started on 23.12.1949. The above quoted findings are illegal and improper and are liable to be set aside.

(5). BECAUSE, it is evident from record that Suit No.4 was instituted on 18.12.1961, as admitted by all the parties. It is also findings of all the Learned Judges that the idols were placed in the night between 22nd and 23rd December, 1949. According to the Plaintiffs of Suit No.4, Muslims used to offer Namaz till that date when the idols were placed under the Central Dome. Accordingly, the cause of action accrued on 23rd December, 1949 and continued thereafter as the Muslims were stopped from offering Namaz inside the Mosque. It is also clear from the records that an order was passed by the Learned Magistrate on 29.12.1949 whereby an order of attachment was passed and receiver was appointed in terms thereof. On 05.01.1950, the Receiver had assumed the charge of the inner courtyard including the portion of Mosque with idols placed inside. In view of the said order having been passed attaching the inner

courtyard and giving its possession to the Receiver, the cause of action of the Plaintiff in Suit No.4 after having started on 23rd December, 1949 remained continuing thereafter. The cause of action never stopped and remained continued.

(6). BECAUSE, placing of idols on 23rd of December, 1949 will not make possession of the Hindu side adverse to the Plaintiffs in Suit No.4. The possession being handed over to the Receiver in terms of the order of attachment will not amount to possession of the Hindus in the said inner courtyard including the built-up structure of Mosque. The possession of defendant would have become adverse to the Plaintiff in Suit No.4 only after 12 years of their dispossession provided the Hindus would have continued possession but the same had ceased on attachment.

(7). BECAUSE, the provisions of Limitation Act, 1908 as set out in Article 144 or Article 142 both gave limitation for a period of 12 years. In the present case, Article 142 would apply where date of dispossession/ discontinuance of possession will be the starting point of limitation, and as such Suit No.4 would not be barred by limitation in view of the fact that the idols were placed on 23rd of December, 1949 and the Suit No.4 was instituted on 18th December, 1961 which is within the period of 12 years from 23.12.1949.

(8). BECAUSE, the Suit for declaration under normal circumstances is filed after final order under Section 145 Cr.P.C. The present Suit No.4 was filed after attachment and during the pendency of final decision by the Learned Magistrate, the

proceedings under Section 145 Cr.P.C. had not finalized and in view thereof terming the Suit No.4 being barred by limitation is arbitrary and without any legal basis.

(9). BECAUSE, if the proceedings under Section 145 Cr.P.C between the parties are pending, it is not at all necessary that the parties must file Suit for declaration even before passing of final order U/s 145 of Cr.P.C.

(10). BECAUSE, the Learned Judge has failed to take into consideration the subsequent addition of Relief (bb) in pursuance to the constitution bench judgment of the Supreme Court in Dr. Ismail Farooqui's case whereby the parties were given right to amend the pleadings in the light of subsequent events of 06.12.1992.

(11). BECAUSE, the judgments relied upon by Mr. Justice D.V.Sharma and Mr. Justice Sudhir Aggarwal on this issue from various High Courts, Privy Council and this Hon'ble Court, do not at all lay down the law on the basis of which Suit 4 can be said to be barred by limitation and Suit 5 can be said to be within limitation.

(12). BECAUSE, the findings on **Issue No.3 Suit No.4 and issue No.13, Suit No.5** are almost common and based on almost similar grounds in the judgments of two Learned Judges namely Sudhir Aggarwal,J and D.V.Sharma, J hence the other grounds taken by the Appellant to challenge the findings of Sudhir Aggarwal, J on this issue may also be taken to be the grounds of challenge of findings of D.V. Sharma, J on the issue of limitation in Suit Nos.4 and 5.

20. **Issues in Re- Possession/Adverse Possession.**

In this category the following issues have been classified;

(A). Issue No 7 of Suit No 1, Issue 3 and 8 of Suit 3, *Issue No. 2, 4,10, 15, & 28 of Suit No 4 & Issue No 16 of Suit No 5.*

(B). The Appellant submits that the findings of all the three Hon'ble judges on all the issues in regard to possession/adverse possession rendered by them against the Muslim parties and in favour of the Hindu parties are perverse, not based on correct appreciation of facts, are based on overlooking facts on record and/or on erroneous interpretation /appreciation of law on the issues. The Hon'ble Court erred in deciding the issues regarding possession and adverse possession against the Muslim parties, especially given that the fact that the Muslim parties had maintained possession until 1949.

That, most fundamentally, there is complete divergence in the findings regarding possession, which is central to the proper adjudication of the instant case, and such divergence renders nugatory the decree as a whole. The divergence is as follows:-

i. Justice Khan proceeds on the basis of Joint Possession of the parties.

ii. Justice Agarwal is of the view that Hindus and Muslims were in joint possession in the latter period till 1949.

iii. Justice Sharma proceeds on the basis that Muslims did not have possession and did not offer prayers in the disputed premises till 22.12.1949.

20.1 Judgement of Hon'ble Mr Justice S.U.Khan.

(1). BECAUSE, the learned Judge erred in recording the finding that much before 1855 Ram Chabura and Seeta Rasoi had come into existence and Hindus were worshipping there. This finding is not based on any evidence and is based on conjecture and surmises. He further erred in holding that inside the boundary wall and compound of the mosque, Hindu religious places were there which were actually being worshipped along with offering of Namaz by muslims in the mosque. On the strength of the aforesaid erroneous and perverse findings, the learned Judge has declared both the parties Hindus as well as Muslim to be in joint possession of the entire premise in dispute. He further erred in declaring both Hindus and Muslims as joint title holder of the said property. It is submitted that there is no basis of these findings and the same are perverse, contrary to evidence on record, produced by both the parties and well settled law on the issues.

(2). BECAUSE, the learned Judge on the basis of the perverse findings on the possession further held that the portion of the inner courtyard where the Central dome of the Babri Masjid stood before its demotion and where the makeshift temple now exists is to be given to Bhagwan Sri Ram Lala Virajman.

(3). BECAUSE, the finding that both the parties were / are joint title holders in possession of the premises in dispute is perverse, without any legal basis and illegal as the evidence on record fully established that Muslims alone were in possession of the premises in dispute since the day when the Mosque was constructed and on

accompli and did not draw any adverse conclusion on that illegality and while deciding the issues of adverse possession/possession no adverse inference was drawn on that account. Because the learned Judge ought to have held that no plea of adverse possession could be available against the Mosque because the Muslims were in continuous possession of the same upto the year 1949.

(2). BECAUSE, learned Sudhir Aggarwal J. while deciding the aforesaid issues applied divergent approaches for appreciation of evidence produced by parties. By ignoring the cogent evidence of the Muslim parties, the learned Judge wrongly held the issues in favour of the Hindu parties.

(3). BECAUSE, that Justice Agarwal's treatment of documentary evidence in deciding these issues once again exemplifies that application of a differential standard. It has been stated in Paragraph 3104 of his judgment in respect of documents evidencing possession of Muslim parties and offering of prayers at the mosque that "[m]ere filing of a document or marking as 'exhibit' does not mean that that truth of the facts mentioned therein shall be deemed to be correct unless proved otherwise." It is submitted that a similar standard has not been consistently applied in the instant case.

(4). BECAUSE, the learned Judge has sought to decide the issue of adverse possession/possession while deciding the issue of limitation in Para 2620 by inter-alia stating in respect of the Building that "...Moreover, as a matter of fact, the place in dispute continued to be visited by the Hindus for the purpose of worship, Darshan etc. The religious status of plaintiff-dieties remained intact. We do find mention of the factum that despite construction of the building as Mosque, the Hindus visited there and offered

worship continuously, but we find no mention, whatsoever, that the Muslimsalso simultaneously offered Namaz at the disputed site from the date it was constructed and thereafter till 1856-57. At least till 1860 we find no material at all supporting the claim of the Muslim parties in this regard. On the contrary, so far as the worship of Hindus in the disputed structure is concerned, there are at least two documents wherein this fact has been noticed and acknowledged. There is nothing contradictory thereto". This finding of the Learned Judge, is without basis and perverse.

(5). BECAUSE, the pleadings of the Muslim parties have been very clear and categorical stating that after the Mosque was constructed in 1528 A.D., it has been a Waqf where Muslims have been offering their Namaz continuously. The existence of any temple at that site prior to the Mosque has been clearly denied by stating that even if, though not admitted, the temple on any structure ever existed in the outer courtyard at that site that will have no consequence since Muslims have been in peaceful possession on the said area and Mosque for over 400 years and due to this Hindus will have no right of any nature to claim any right or title on the said property. The Plaintiffs in Suit No.4 and other supporting parties have placed on record the evidence to that effect. The fact of the matter is that the Mosque existed for a period of more than 400 years. The cardinal evidence to decide the issue of adverse possession would be to see the possession which has been with the Muslims.

(6). BECAUSE, learned Sudhir Aggarwal J. while deciding the aforesaid issues applied divergent approaches for appreciation of evidence produced by parties. By ignoring the cogent evidence of the Muslim parties, the learned Judge wrongly held that there was

overwhelming evidence to establish that in the outer courtyard there existed at least 3 structures since prior to 1885. The Commissioner's Map of 1885 suit did not refer to any place as "Kaushalya Rasoi" or "Chhathi Poojan Asthal" and there was no description of Bhandara also in the said Commissioner's Map (enclosed as Appendix 3 to the Judgement.).

(7). BECAUSE, the learned judge absolutely misinterpreted and wrongly appreciated the observations of the historical authorities e.g. the Accounts of Tieffenthaler referred to worship of the so called 'Bedi' (cradle) by the Hindus inside the building in dispute. The said Bedi was reported to be situated like a square box of the height of about 5 inches only with a size of about 5 X 4 ells in the otuer courtyard. This place was not described as a part of any temple but the belief mentioned about the same was that "once upon a time, here was a house where Beschan was born in the form of Ram." As such it is totally incorrect to say that Tieffenthaler had "noticed worship by Hindus" but was "conspicuously silent about worship by Muslims in the disputed building."

(8). BECAUSE, the entire claim of the adverse possession, if any, on behalf of the Hindu parties is based upon possession of the Chabutra in the outer courtyard which was managed by Nirmohi Akhara, (the Plaintiff of Suit No.3) but the issue No. 3 in Suit No.3 has been decided against the Plaintiff. In view thereof, if the said Plaintiff did not acquire title due to title by adverse possession no other Hindu Party could be given any right on the basis of their illegal possession or joint possession.

(9). BECAUSE, while appreciating evidence and arriving at conclusions different standards were adopted in case of the Muslim

parties and Hindu parties. While Muslim parties were required to prove title of a Masjid constructed in 1528 AD whereas in the case of Hindu parties, burden of proof has been discharged on the basis of belief/faith. Further, the evidence produced by the Muslim parties has been treated differently than the evidence produced by the Defendants in Suit No.4 . The interpretation of documents is also not in accordance with the settled principles of law and hence the finding given on Issue No.2, 4,10, 15 and 28 in Suit No.4 in Paras 3111 to 3115 are wrong and the same are liable to be set aside.

(10). BECAUSE, the learned Judge erred in not appreciating in proper perspective the overwhelming evidence produced by the Muslim Parties establishing possession of the Appellant .

(11). BECAUSE, the learned Judge ought to have appreciated the fact that the suit of 1885 was dismissed mainly on account of the existence of the Mosque. Therefore the learned Judge ought to have appreciated that the existence of mosque, the place where muslims offer namaz was admitted and it was inter-alia on that basis that the relief was not granted. Further that the ownership of land of the mosque was admitted and on that ground also the relief was declined. Further the learned Judge in paragraph 858 erred in observing that "... the right of ownership or possessory right in respect of any part of land in dispute as is before us was not involved in Suit of 1885...". Then in the next paragraph 859 the learned Judge makes a completely contradictory observation that " in Suit-1, the plaintiff is seeking injunction against the defendants in regard to his right to worship of the idols placed under the central dome in the inner courtyard. There is no claim either about ownership or possession." It is submitted that not only the

aforesaid observations are contradictory, but are also perverse and contrary to the evidence on record. It is submitted that in 1885 the Mahant had claimed the Chabuta as Janasthan of Lord Ram and on that premise he sought permission to construct a temple thereon. The relief was declined to Mahant on two main grounds namely that the Mahant did not own the land, and secondly there exist a mosque where muslims offer namaz.

(12). BECAUSE, the Learned Judge has ignored the voluminous documents relating to Civil Suit of 1885 to see that the possession of the mosque was with the Plaintiffs/Muslim Parties. The said documents were relied upon by the Plaintiffs in Suit No.4 and the same were exhibited in the proceedings. The said exhibited documents have not been properly considered and have been given improper meaning contrary to the plain meaning of the said documents to see as to who had possession of the said premises.

(13). BECAUSE, the learned Judge has wrongly recorded that "Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of Namaz in the disputed building at least till 1855." The factual position is that neither any such admission was made by Sri Jilani and nor there was non availability of historical and other evidence on record to show possession and offering of Namaz even before 1855. In this respect documents referred by learned Judge from paragraph 2315 to paragraph 2383 have been misconstrued, misappreciated and misread leading to wrong observation that the said documents did not support the case of the plaintiffs (Suit-4) that the Muslims were offering Namaz in the building in dispute and the same was continuing in the possession of Muslims. In this respect it has also been wrongly

observed that there was admission in some document which could "be treated as a sole conclusive evidence to prove that the disputed building and premises throughout has been in possession of Hindus and not of Muslims." It was also wrongly record that: "Had the building in dispute and the inner courtyard been in possession of Muslims," a Chabutra could not have been constructed in the inner courtyard in 1858. In this respect the learned Judge failed to appreciate that the said Chabutra referred to in the complaint dated 30th November, 1858 (Ext. 20 of Suit No. 1-Page 2300) had been removed by Sheetal Dubey Thanedar as was evident form his report dated 12-12-1958 (Ext. A-69 of Suit No. 1)

(14). BECAUSE, learned judge has wrongly observed that there was not even a whisper in any of the documents that the Muslims visited the place in dispute and offered Namaz thereat whereas continuous visit of Hindus and worship by them at the disputed site was mentioned in a number of documents as well as in the historical records. In this respect the material on record was not only ignored and the other documents have been misappreciated and misread by the learned Judge. The learned Judge wrongly recorded that Ext. A-8 (Suit-1) had not been proved while the said document was covered by Section 90 of the Evidence Act as it was more than 30 years old and it was filed in an earlier suit also and its coming from a proper custody was beyond doubt. It further been wrongly recorded by the learned Judge that "Sri Jilani learned counsel for Sunni Waqf Board could not tell as to how the contents of the said document can be said to have been proved or treated to be correct in the absence of any witness having proved the same." It was also wrongly observed by the learned Judge that it was not the case of the defendants 1 to 5 (Suit-1) that any legal

presumption can be drawn in respect of correctness of the contents thereof under law. As a matter of fact Sri Jilani had strenuously contended that the said document being of the period around 1299-1307 Fasli (around 1900 A.D.) it was almost impossible to produce either the scribe of the said note book or any witnesses of that period and the rule of evidence enshrined in Section 90 of the Evidence Act was fully applicable regarding proof of the said document. It was also vehemently argued by Sri Jilani Advocate, that the details of expenditure regarding lighting in the Mosque, rent of Chandni etc. expenses of making payment of salaries to the Imam and Moazzin of the Mosque etc. fully established offering of the prayers in the said Mosque and possession of the Muslims. It is incorrect for the court to say that the expenses shown in the above document ex facie do not appear to have any relevance with the building in dispute.

(15). BECAUSE, learned Judge has wrongly stated that the entire evidence of the Muslims did not touch upon the area covered by the outer courtyard except the use of passage and it is wrong on the part of the court to observe that the plaintiffs were never in possession thereof or never been interfered by the Muslims. In this respect the documentary evidence adduced by the Muslims as stated inter-alia in paragraph hereinbavove for the period from 1858 A.D. onwards as well as the oral evidence adduced by the Muslims and also some documentary evidence adduced by the Hindu side have been ignored.

(16). BECAUSE, the specific finding of the learned Judge that Hindus in general had also been visiting inner courtyard for Darshan and worship according to their faith and belief and hence it could be said that the inner courtyard was virtually used jointly

by the members of both communities is based on no reliable evidence and is an assumption.This finding of the alleged joint possession is absolutely against the evidence of record.

(17). BECAUSE, on absolute incorrect appreciation of documents and facts the learned recorded a specific and important finding against the Muslim parties that " at least till 1860 there was no material at all supporting the claim of the Muslim parties in this regard while there were at least 2 documents in which the worship of Hindus in the disputed structure had been noticed and acknowledged and in this respect wrongly relied upon the observations of Tieffenthaler and Edward Thornton as well as Ext. 20 of suit No. 1.

(18). BECAUSE, learned Judge wrongly observed that claim of Hindus about their alleged possession of the premises of the outer courtyard was not disputed whereas the fact is that neither any such claim was made in 1885 or subsequent thereto and nor the Muslims had ever admitted that the entire premises of the outer courtyard had ever remained in the possession of Hindus upto 22-12-1949. In this respect specific averments were there in the Written Statement of Mohd. Asghar filed in 1885 suit (Ext. A-23 of Suit-1) (Register No. 7, pages 255-261) and even in the plaint of suit No. 4 the possession of Hindus was said to be only on Chabutra. It is also incorrect to say that the Muslims had not placed any evidence to rebut the claim of Hindus regarding the outer courtyard and to show that Hindus and never remained in the possession of entire outer courtyard. It was also wrongly observed by the learned Judge that a lot of documents were on record demonstrating that the Hindus continued to enter the premises in the inner courtyard also and offered worship there and the entrance

door in the dividing grilled wall was never locked. It was also wrongly observed that there was no evidence that the Muslims were in the possession of the property in dispute "after its construction in the form of a Mosque by a Muslim Ruler before Tieffenthaler's visit but on the contrary, Hindus continued to enter the disputed premises and worship thereat....."

(19). BECAUSE, learned Sudhir Agarwal J. wrongly observed that after the riots of 1934 no order had been placed before the court to show that the premises in dispute was ever handed over to the Muslims or that they were allowed to offer Namaz in the building in dispute. In this respect the specific averments made in the order dated 12-5-1934 (Ext. A-49 of Suit-1) were misappreciated and misread. The word "religious services" used in the order dated 12th May 1934 could not be interpreted for any other service except Namaz.

(20). BECAUSE, the Hon'ble Justice Sudhir Agarwal wrongly observed that "in the entire plaint there is not even a whisper that Babar dedicated alleged Mosque for worship by Muslims in general and made a public Waqf property." On the contrary, para 1 states that it was built by Mir Baqi under the command of Emperor Babar for use of Muslims in general as a place of worship". In this respect also para 1 of the plaint was misquoted as para 1 of the plaint reads as under:-

"1. That in the town of Ajodhiya, pergana Haveli Oudh there exists an ancient historic mosque known as Babari 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."

It is thus evident that firstly the Hon'ble Judge appears to have proceeded on a wrong assumption about the requirement of any express "dedication" for creation of the Waqf and, secondly, the Hon'ble Judge has failed to appreciate that there was hardly any difference in actual construction having been done by Mir Baqi under the express or implied command of Babar as it is a matter of common knowledge that almost all the constructions are made by the subordinates of the King under an implied command / authority of the King and the same are attributed to the King / Emperor. Similarly, in the instant case actual construction having been got done under the supervision of Mir Baqi and the same having been attributed to the command of Babar could not be said to be unusual. Regarding the public Waqf or for the benefit of the Muslims in general the Hon'ble Judge ought to have relied upon the decision of this Hon'ble court reported in AIR 1956 SC 713 in order to infer implied dedication as the building in dispute was being treated and used as a Mosque by the Muslims in general, and use of the same as a Mosque was admitted by some of the witnesses of Hindu side as well as in the books relied upon by the Hindu side. It was also wrongly observed by the Hon'ble Judge that: "Even if we assume that Emperor Babur was owner, no material has been placed which may suggest or give even a faint indication that with his permission any public prayer was made in the building in dispute." The Hon'ble Judge has gone to the extent of saying that he did not find any "material to suggest that any public prayer was offered by Muslims at least till 1860."(Para3289) The Hon'ble Judge has failed to take into account the entire documentary and oral evidence on the basis of which no other inference was possible but to accept that the Mosque in question was continuing from 1528

A.D. in the use and occupation of Muslims and if a Mosque is being used by the Muslims it has to be inferred that the same is being used for prayers being offered in the said Mosque.

(21). BECAUSE, Hon'ble Justice Sudhir Agarwal wrongly observed that "so far as the identity of the place was concerned, three things, remained unchallenged upto 1950, ...(a) the disputed structure was always termed and known as "Mosque" .....(b) it was always believed and nobody ever disputed that the said building was constructed after demolishing a temple and (c) that the disputed site, as per belief of Hindus, is the birth place of Lord Rama.....". As a matter of fact, only one of the aforesaid three things, mentioned at (a), had remained unchallenged upto 22nd December, 1949, while the other two things mentioned at (b) and (c) above had remained under challenge since the very beginning of such claims. In this respect the statements mentioned in the Gazetteers were wrongly treated as "entitled to consideration" in so far as the facts mentioned therein pertained to the alleged events of 16th, 17th and 18th centuries.

(22). BECAUSE, Hon'ble Justice Sudhir Agarwal wrongly observed that issue No.1 (B) (b) (Suit-4) was irrelevant, and hence it remained unanswered, although the Hon'ble Judge had found that upto 1950 it was never doubted that the building in dispute was a Mosque. As such he ought to have held that the building in suit was dedicated to God Almighty as claimed by the plaintiffs of Suit-4 and as such the finding given by the Hon'ble Judge suffers from a gross infirmity. In this respect it was also wrongly observed that the building "was constructed as an attempt to desecrate one of the most pious, sacred and revered place of specific and peculiar

nature i.e. the birth place of Lord Rama which could not be at any other place....." (Para 3349) (

(23). BECAUSE, Hon'ble Justice Sudhir Agarwal failed to appreciate the contradictory statements of the Hindu witnesses regarding the alleged images on the Black Stone Pillars of the Mosque and wrongly held that the said pillars contained some human images and at some place there appeared to be some images of Hindu Gods and Goddesses (P.3411). It was also wrongly observed that due to the existence of certain alleged images on some of the pillars of the mosque, such a place would not be a fit place for offering Namaz. In this respect the statements of the expert witnesses of Islamic theology as well as the extracts of the Holy Quran and Hadith cited by the Hindu side were not correctly appreciated.

(24). BECAUSE, learned Sudhir Agarwal J. wrongly observed that the date of the order given in Ext. O.O.S. No. 5 – 27 (Suit-5) was not legible or that it could not be ascertained as to whom it was addressed and therefore, it could not be relied upon. The learned Judge failed to appreciate that during the course of arguments it was specifically pointed out, which was not rebutted by any one, that the said order was dated 6-12-1912 and was issued by the legal Remembrancer of the Government of U.P. regarding the Mosque built by Emperor Babar known as Babri Masjid situated in village Ramkot, Ayodhya and the description of this document mentioned in the list of documents at serial No. 43 (given in Register No. 20) specifically mentioned therein about the nature of the said document. It was also wrongly observed by the learned Judge that from the order passed u/s 92 C.P.C. it was not evident that as to how and why the said sanction was granted.

(25). BECAUSE, the learned Judge. misappreciated and misread the documents and wrongly observed that these documents "show at the best that, Namaj, only on Friday, used to be offered in the disputed structure in the inner courtyard and for rest of the period the building remain unattended by Muslim." In this respect observation made by the learned Judge that witnesses of the plaintiffs (Suit 4) have expressed their ignorance about the visit of the Waqf Inspector dated 10-12-1949 and 23-12-1949 was also uncalled for and improper as no one had claimed that the said visit was made in his presence. It was also wrongly observed that the certified copies of the said 2 reports had not been proved and the same could not be termed to be the public document or that the contents of the same were required to be proved. In this respect the learned Judge did not take into account the relevant provisions of the Waqf Act as well as the fact the author of these 2 reports (Sri Mohd. Ibrahim) had expired long back and as such he could not be produced to prove the contents of the same. It was also not noticed by the learned Judge that the said 2 reports had neither been doubted in any manner by the other side but rather the same were even relied upon by the other side during the course of arguments and otherwise also.

(26). BECAUSE, the learned Judge wrongly observed that there was no evidence of the possession of Muslims of the property in suit for the period prior to 1855 and it was also wrongly held that the Muslims did not have the possession of the premises in outer courtyard at least since 1856-1857 when the dividing wall was said to have been raised. In this respect the learned Judge failed to appreciate the large number of documents and references of Historical Books as well as of the Books relied upon by the

Hindu side which established that the Muslims were not only in full control of the inner portion of the Mosque but they had the possession and control of the outer courtyard also excluding the portion on which chabutra of 17 X 21 ft. was made around 1857 A.D. It was also not appreciated that the material like 'farsh,' 'pitchers' and the 'broom' etc. were all destroyed by the Hindus who had desecrated the Mosque in the night of 22nd / 23rd December, 1949 and had remained in possession thereof upto the date of attachment. As such there was no question of the aforesaid objects, being used in the Mosque, to have been found by the Receiver when he took over charge of the disputed premises pursuant to the Magistrate's order dated 29-12-1949. It was also not appreciated by the learned Judge that on account of the surcharged and tense atmosphere prevailing at the disputed site from the night of 22-12-1949 it could not be expected of the Muslims to have made complaint about the damage or destruction of the said articles / material which was kept in the Mosque for the use of Namazis upto 22-12-1949 and hence an absolutely unwarranted and illegal inference was drawn by the learned Judge that no such material existed there and such inferences are also in contradiction with the finding recorded by the learned judge in para 3109 that there was no abandonment by Muslims of the property in dispute and that maintenance of building by the Muslims to the extent of the disputed structure and partition wall was also evident. The finding regarding the alleged joint possession of both the communities in the inner courtyard was also a perverse finding and based on no reliable evidence. It was also wrongly observed that so far as outer courtyard was concerned, the Muslims had lost possession at least from 1856-57

and onwards. Thus the finding recorded on Issue Nos. 2, 10 and 15 (Suit- 4) and on Issue No. 7 (Suit-1) and on Issue 3 and 8 (Suit-3) were absolutely illegal and against the evidence on record.

(27). BECAUSE, learned Sudhir Agarwal J. wrongly observed that Muslims have not used the premises covered by the outer courtyard for any purposes since 1856-1857 and as such it could be said that so far as the outer courtyard is concerned, the right of prayer by Hindus had perfected having continued exclusively for more than a century. Hence the finding on Issue No. 4 (Suit-4) was also illegal and based on no reliable evidence at least to the extent of observations referred to above. The observation regarding the premises within the inner courtyard that the same has been used by both the sides may be more frequently by Hindus and occassionally or intermittently by Muslims was also illegal and against the evidence on record.

(28). BECAUSE, while dealing with Issue No. 16 (Suit-5) learned Judge wrongly observed that the question of loss of title would not arise as the premises in dispute was held to be the alleged birth place of Lord Rama and it was also wrongly observed that the idols kept in the building in the night of 22nd / 23rd December, 1949 continued to remain in possession of the property in dispute. In this respect it was not at all considered that the idols forcibly kept in the Mosque in the night of 22nd / 23rd December, 1949 could never be said to have come into possession of the property in dispute which was being treated as a Mosque till then.

(29). BECAUSE, the learned Judge wrongly observed that there was no occasion of extinction of alleged title, if any, of plaintiffs 1 and 2 (Suit-5) and the plea of adverse possession was not attracted as claimed by defendant No. 4 (Suit-5).

(30). BECAUSE, finding given by the learned Judge on issue No. 1-B (c) (Suit-4) is also against the evidence record and it was wrongly observed that "disputed structure in the inner courtyard had been continuously used by Hindus for worship pursuant to the belief that the site in dispute is the birth place of Lord Rama." It was also wrongly held that there was recorded evidence to that effect at least from Second half of 18th century. It was also wrongly observed that "regarding the user of the premises by Muslims no evidence has been placed to show anyhing till at least 1860." It was also wrongly held that "the members of both the communities i.e. Hindu and Muslim had been visiting the building in dispute in the inner courtyard and that "the premises within the inner courtyard.....was not restricted for user of any one community." As such the findings given on issue No. 1 (B) (c) (Suit-4) was against the evidence on record.

(31). BECAUSE, the learned Judge while dealing with Issue No. 1 and 2 (Suit-1), Issue No. 1 (Suit-3), Iissue No. 1 (b), 11, 13, 14, 19(b) and 27 (Suit-4) and Issue No. 14, 15, 22 and 24 (Suit-5) misappreciated and misread the pleadings as well as evidence of the parties, oral and documentary both, and the evidence produced by the parties regarding these issues was not taken into account in its correct perspective. In this respect it was also wrongly observed that Sri Jilani had placed documents mentioned on page 3488 in order to show the possession of the Muslims over the site in dispute at least from 1855 to 1885 and then from 1934 to 1949.

(32). BECAUSE, the appellant has dealt with some of the aspects of this issue while making grounds under the category " Limitation"

and "Res judicata). The same may be treated as integral part of grounds herein.

20.3 Judgement of Hon'ble Mr Justice D.V.Sharma;

(1). BECAUSE, the Learned Judge has wrongly decided Issue Nos.2,4,10,15 and 28 in Suit No.4 in perverse manner. The learned Judge proceeded on the assumption that the entire area of Ayodhya belong to Raja Dashrath and whatever built by him continued for lacs and crores of years unless proved otherwise. This belief based on conjectures is running through out the judgment of the learned Judge in arriving at and deciding the issues relating to possession and adverse possession. Whatever submissions were made by Hindu parties were accepted as correct on law and on fact and without even referring to or taking into account the arguments of the Muslim parties, the learned Judge decided the issues without analyzing the facts and law in suits where issues have been specifically framed. Further, the said issues relating to possession of the Plaintiffs and claim of the Plaintiffs over the property in suit by way of adverse possession have been decided by applying wrong facts and ignoring material documents and evidence.

(2). BECAUSE, the Learned Judge's finding that "Needless to say that Ayodhya and Ramkot belong to emperor Dashrath who was a sovereign King. Thereafter the property passed in the hands of charitable trust and remained under the control of the temple, the same was destroyed and without any formal sanction under the law by way of possession by dispossessing Hindu the plaintiff claim adverse possession. Thus to my mind the Plaintiffs have

failed to prove adverse possession"., is perverse and is not based on any evidence and contrary to the evidence on record. While recording the finding of alleged ownership of raja Dashrath, the learned judge failed to appreciate that there was no evidence to substantiate the same and specially so when the period of Raja Dashrath was said to be 9 lakh to more than 3 Crore years ago.

(3). **BECAUSE,** the Hon'ble Justice D.V. Sharma has wrongly decided Issue Nos.2,4,10,15 and 28 in Suit No.4 in an illegal and perverse manner. The said issues relating to possession of the Plaintiffs and claim of the Plaintiffs over the property in suit by way of adverse possession have been decided by applying wrong facts and ignoring material documents and evidence. The Hon'ble Judge has simply referred to and taken into account certain documents and has failed to acknowledge the arguments/submissions of Plaintiffs on these issues. However, on the other hand, the Hon'ble Judge has started by saying "following documents show that the Hindus/defendants had absolute control over the disputed property".. The Hon'ble Judge has recorded detailed submissions on these issues submitted on behalf of the Defendants and without taking into consideration the material evidence of the Plaintiffs the Hon'ble Judge has reached the finding indicating ownership of Ayodhya and Ramkot by Raja Dashrath and thereafter, the property passed on to the temple which was destroyed. Without any formal sanction in law, the Plaintiffs are claiming adverse possession which claim has failed. The Hon'ble Judge has applied the judgments of the Hon'ble Supreme Court out of context and without considering the facts as pleaded by the Plaintiffs in the present case. It is respectfully submitted that there was no evidence to

substantiate the same, especially so when the period of Raja Dashrath was said to be 9 lakh to more than 1 Crore years ago.

(4). BECAUSE, the learned Judge erred in not appreciating that the Hindu parties were making their claim and possession over the property after lacs to crores of years after Lord Ram was born. Hence, the possession of the Plaintiffs is hostile against everyone who makes any claim in relation to Lord Ram with respect to the said land.

(5). BECAUSE, the Learned Judge's observation that the "adverse possession against the deity cannot be claimed", since it is not a living person would lead to an erroneous proposition of law. The Learned Judge's observation that the shebait has not been impleaded in the present proceeding, is also misconceived.

(6). BECAUSE, the Learned Judge's observation that the revenue record shows that disputed land is Nazool land as per the revenue records and thereafter his observation that there should have been a lease deed in favour of the Plaintiffs, is erroneous and misconceived. It was not the case of any party that the land was in the ownership of Nazool and neither there was any pleading, nor any issue to that effect and the title of the land was not claimed by the State of Uttar Pradesh. The Mosque could not even be vested in the Nazool as per the Law of Nazool. The findings of the learned judge in this respect was therefore totally unfounded, illegal, erroneous and baseless.

(7). BECAUSE, the Hon'ble Justice D.V.Sharma's finding at that "the Plaintiffs have neither proved the existence of animus possidendi at commencement of their possession nor they have proved continuance of their possession in such capacity" is perverse and untenable. It is clear from the facts that the day the Mosque was constructed in year 1528 A.D the existence of animus possidendi commenced and the same continued till the time the idols were placed inside the Mosque in December, 1949. The above stand of the Plaintiffs is in alternative to the stand of the Plaintiffs that when the Mosque was constructed, the entire land in question vested in the emperor/ruler of that time and the Mosque was built on the vacant land and hence there was no question to prove dispossession of the so called real owner of that time as the Mosque had then belonged to the King.

(8). BECAUSE, the Hon'ble Justice D.V.Sharma's observation that the revenue record shows that disputed land is Nazool land and that there should have been a lease deed in favour of the Plaintiffs, is erroneous . It was not the case of any party that the land was in the ownership of Nazool and neither there was any pleading, nor any issue to that effect and the title of the land was not claimed by the State of Uttar Pradesh. The Mosque could not even be vested in the Nazool as per the Law of Nazool. The findings of the Hon'ble judge in this respect was therefore totally unfounded, illegal, erroneous and baseless. That the Hon'ble Justice D.V.Sharma has ignored the documents especially Exts. 62, 45, 89 in Suit No.5 of 1989 and, Exts.D-17, D-18, D-19 and, Exts. 19 etc. while dealing with the issue of possession and adverse possession. The Hon'ble

Judge has further ignored the statements of witnesses of the Plaintiff being PW-1 to PW-9, PW-14, PW-21, PW-23 and PW-25.

(9). BECAUSE, while deciding Issue Nos. 25 and 26 in Suit No 4, the Hon'ble Justice D.V. Sharma has ignored the Plaintiffs' pleadings, oral evidence and documents. The Hon'ble Judge has ignored the evidence of Plaintiffs to show that the outer courtyard and inner courtyard was a Mosque and was in the possession of Plaintiffs/Muslim side. Further, the Hon'ble Judge has wrongly observed that the Muslims were dispossessed from the property in suit and Hindus had adversely possessed the same. The said observation is contrary to evidence and without any basis.

(10). BECAUSE, The finding of the Learned Judge (D.V.Sharma, J) on the issue of possession/adverse possession is almost similar as the finding of the other Judges on the Bench deciding the Civil Suit. The Appellant has made detailed submissions as to how the findings of the other Judges (Sudhir Aggarwal, J and S.U.Khan, J) are not proper and legal on this issue and the same is reflected in the portion of grounds of appeal challenging the judgment of Sudhir Aggarwal, J. The said grounds and objections to the findings on adverse possession/possession may also be treated as part of the present segment since the reasons for reaching conclusion on the said issues are almost similar.

(11). BECAUSE, the appellant has dealt with some of the aspects of this issue while making grounds under the category " Limitation" and "Res judicata). The same may be treated as integral part of grounds herein.

21. IN RE-WAQF ACT NO 13 OF 1936, 16 OF 1960 AND CERTAIN INCIDENTAL ISSUES:

(A). Under this category are issues No. 5(a)-5(f), 17, 18, 23, 24 in Suit 4; 9, 9(a), 9(b) and 9(c) in Suit 1; 7(a), 7(b) and 16 in Suit 3 and 28 in Suit 5.

(B). At the outset, the Appellant submits that the findings of the Hon'ble judges on all the issues decided by them against the Appellant are perverse, not based on correct appreciation of facts, are based on overlooking facts on record and/or on erroneous interpretation /appreciation of law and fact on the issues. The Appellant is challenging all the findings and observations of the Hon'ble Judges on the issues and facts as recorded against the appellant but by way of illustration pointing out some of the ex-facie errors in the individual judgement of each Hon'ble judge as follows:

21.1. Hon'ble Mr. Justice Sudhir Agarwal deals with these issues in paragraphs 1067 to 1275 of this Judgement;

(1). BECAUSE, the learned Judge ought to have held that the findings recorded by the Civil Judge in its order dated 21-4-1966 on issues No. 17, 5 (a) and 5 (c) was not in accordance with law and the same ought to have been set aside. The same were not based on correct appreciation fo evidence on record and provisions of law.

(2). BECAUSE, the learned Judge did not appreciate the law on the issue in correct perspective and wrongly held in paragraph 1139 of his judgment that " In our view since 1936 Act does not provide or control the right of worship of Hindu or Muslims, the rival dispute between the persons who are not Muslims, in the matter of an immovable property, whether it is waqf or not would not be governed by the provisions of 1936 Act but it would be open to non

muslim party to stake his claim without being affectd in any manner by the provision of the 1936 Act.."

(3). BECAUSE, the learned Judge on incorrect appreciation of law on the issues wrongly held in paragraph 1150 that Section 5 of Waqf Act, 1936 would have no application qua rights of Hindus in general and plaintiffs of suit No. 1 in particular.

(4). BECAUSE, the learned judge has wrongly observed in para 1164 that "even the counsel for the Waqf Board do not claim that till Issue No. 17 was decided by the Civil Court Judge except of the notification dated 26-2-1944, there was any procedure or method followed by the Sunni Waqf Board to enlist or register the concerned waqf in the Register of the Waqf Board" and it was also wrongly observed that neither it was pleaded nor there was any material on record to substantiate the same. In this respect the pleadings made by the Waqf Board were mis-appreciated and the documents pertaining to the record of the Waqf Board concerning the said waqf were also not appreciated.

(5). BECAUSE, it has been wrongly observed by the learned judge that the pleadings with respect to registration of the waqf in question in the register maintained u/s 30 of the Waqf Act had no relevance and in this respect it was not appreciated that there being no denial of the said registration, there was also hardly any occasion or necessity to bring on record other documents, including the order of the Waqf Board etc. regarding the registration of the said waqf and it was also wrongly observed that the pleas taken in this respect in the Written Statement of the Board were wholly baseless and not attracted in these matters

(6). BECAUSE, the learned judge has wrongly held in para 1184 that the Waqf Act, 1936 did not apply to non-Muslims.

(7). BECAUSE, the learned Judge ought to have appreciated that Waqf is by user also. The namaz was being offered in the mosque since its construction.

(8). BECAUSE, the Learned Judge failed to appreciate the concept of waqf by user and further in appreciating the evidence on record applied two different yardsticks in case of Hindu parties and muslim parties. While dealing with the issue of construction of mosque in 1528 AD, he insisted production of direct evidence and whereas major issues relating to inter-alia place of birth of Sri Ram have been decided on the basis of belief of Hindus. It is submitted that the claim of the Muslim side that the Mosque was constructed in 1528 A.D, is supported by historical evidence as placed on record by the Plaintiffs of Suit No.4

(9). BECAUSE, the Learned Judge failed to appreciate that contents of the revenue records. The observations of the learned Judge to that effect are perverse. The insistence on production of direct evidence is also unreasonable in a case like this and further the observation of learned Judge that revenue records cannot be relied to prove the title of the parties concerned but they have to prove the same by producing relevant evidence, are perverse. The said observation of the Learned Judge is erroneous in view of the fact that innumerable properties of Waqf are set out in the revenue records only. The observation/finding of the Learned Judge, in Para 2944, stating that the Waqf Board should have based the claim of adverse possession against the particular owner of the property is not correct. The claim of Waqf Board or any of the Muslim Party's adverse possession is against all those who claim their rights and beliefs attached to the said piece of land and not the specific owner of the said land as nobody else except the Muslim party could claim

title. The Muslim Party's claim on the land is that they had the right to offer Namaz on the said land based upon their Waqf and/or continuance of possession of the premises and nobody else except Muslims could carry out their religious activities on the said land. The Learned Judge has misread and misinterpreted the stand of Muslim parties and has misdirected the entire issue and hence the observation in Paras 2944 and 2945 is improper and incorrect.

(10). BECAUSE, the learned judge first of all tried to create doubts about the identity of the person who constructed the building, then raised doubt about the time or period when it was constructed. The learned Judge then wrongly holds in paragraph 3335 that "...A presumption in respect to dedication in such a matter which involves a period of several centuries could have been raised if identity of the person, who constructed the building is not in dispute and the only question is whether there is a valid or de facto dedication or not. The doctrine of user could have been resorted to in such a case. But where the dispute of identity of alleged waqif itself is involved, such doctrine would be of no help...." The learned Judge then further goes on to observe in para 3288 that "in the entire plaint there is not even a whisper that Babar dedicated alleged Mosque for worship by Muslims in general and made a public waqf property. On the contrary para 1 says that it was built by Mir Baqi under the command of Emperor Babar for use of Muslims in general as a place of worship"

It is thus evident that firstly the learned Judge appears to have proceeded on a wrong assumption about the requirement of any express "dedication" for creation of the waqf and secondly the learned Judge has failed to appreciate that there was hardly any difference in actual construction having been done by Mir Baqi

under the express or implied command of Babar as it is a matter of common knowledge that almost all the constructions are made by the subordinates of the King under an implied command / authority of the King and the same are attributed to the King / Emperor. Similarly in the instant case actual construction having been got done under the supervision of Mir Baqi and the same having been attributed to the command of Babar could not be said to be unusual.

Regarding the public waqf or for the benefit of the Muslims in general the learned Judge ought to have relied upon the decision of this Hon'ble court reported in AIR 1956 SC. 713 in order to infer implied dedication as the building in dispute was being treated and used as a Mosque by the Muslims in general and user of the same as a Mosque was admitted by some of the witnesses of Hindu side as well as in the Books relied upon by the Hindu side. It was also wrongly observed by the learned Judge that: "Even if we assume that Emperor Babur was owner, no material has been placed which may suggest or give even a faint indication that with his permission any public prayer was made in the building in dispute." The learned Judge has gone to the extent of observing in para 3336 that he did not find any "material to suggest that any public prayer was offered by Muslims at least till 1860." The learned Judge has failed to take into account the entire documentary and oral evidence on the basis of which no other inference was possible but to accept that the Mosque in question was continuing from 1528 A.D. in the use and occupation of Muslims and if a Mosque is being used by the Muslims it has to be inferred that the same is being used for prayers being offered in the said Mosque.

(11). BECAUSE learned Sudhir Agarwal J. wrongly observed in paragraph 3337 that although dedication may be inferred from user as a waqf property but the question of long user may not be relevant when the issue was whether a particular person made the dedication or not. This observation of the learned Judge was against the settled principle of 'implied dedication' and learned Judge appears to have proceeded on an absolutely incorrect notion of law regarding dedication.

(12). BECAUSE, the learned Judge wrongly decided Issue No 6 in Suit No 3 and wrongly held that the mosque was not dedicated by Babar for worship by Muslims in general and made a public property.

(13). BECAUSE, learned Sudhir Agarwal J. wrongly observed that since in the suit of 1885 there was no issue as to whether the building was a Mosque, the judgements given in the said suit as well as in the appeals arising out of the same would make no difference. In this respect the appellant relies upon the submissions made in respect of the issues relating to res-judicata and the anslysis of the judgment and findings therein. The same may be considered as integral part of the submissions herein. It is therefore submitted that the learned Judge did not appreciate that the pleadings, evidence and judgments delivered in the Suit filed by Mahant Raghubar Dass unequivocally establish the existence of a functional mosque. The claim of Mahant was rejected inter-alia on the ground that he was not the owner of the land and because of the existence of mosque being quite adjacent to the said Chabutra of Janam Asthan. The existence of Mosque was admitted to the parties. It was also not appreciated by the learned Judge that Hindu

parties of the present suits had not disowned the stand taken by Mahant of Janam Asthan in 1885 suit and it was also not a case of the Hindu parties that the said suit of 1885 was filed by the Mahant of Janam Asthan either in a collusive manner or he had remained in any way negligent and as such the aforesaid judgements of 1885 suit and appeal were fully binding upon Hindu parties of the instant suit.

(14). BECAUSE, learned Sudhir Agarwal J. while deciding issue No 1 of Suit No 4 and issue No 9 of Suit No 5 in paragraph 3360 wrongly observed that "so far as the identity of the place was concerned, three things, remained unchallenged upto 1950,.....(a) the disputed structure was always termed and known as "Mosque" .....(b) it was always believed and nobody ever disputed that the said building was constructed after demolising a temple and (c) that the disputed site, as per belief of Hindus, is the birth place of Lord Rama.....". As a matter of fact only one of the aforesaid three things, that is mentioned at (a) had remained unchallenged upto 22nd December, 1949 while the other two things mentioned at (b) and (c) above had remained under challenge since the very beginning of such claims. In this respect the statements mentioned in the Gazetteers were wrongly treated as "entitled to consideration" in so far as the facts mentioned therein pertained to the alleged events of 16th, 17th and 18th centuries.

(15). BECAUSE, the learned Judge after having held in paragraph 3408 that the "building in dispute , thus for the last more than 2 and half centuries and atleast about 200 years before the

present dispute arose in 1950 has always been termed, called and known as a mosque" the learned Judge ought to have held that if a building was constructed as a mosque, has been used by general Muslims for offering prayers, it is sufficient to assume that there is a valid dedication of the building to the Almighty God. But the learned Judge wrongly did not appreciate the evidence on record to this effect and termed evidence unreliable and inscriptions as fictitious one in paragraph 3411.

(16). BECAUSE learned Sudhir Agarwal J. wrongly observed that issue No.1 (B) (b) (Suit-4) was irrelevant and hence it had remained unanswered although the learned Judge had found that upto 1950 it was never doubted that the building in dispute was a Mosque." As such he ought to have held that the building in suit was dedicated to God Almighty as claimed by the plaintiffs of Suit- 4 and as such the finding given by the learned Judge suffers with infirmity. In this respect it was also wrongly observed that the building "was constructed as an attempt to descerate one of the most pious, sacred and revered place of specific and peculiar nature i.e. the birth place of Lord Rama which could not be at any other place....."

(17). BECAUSE, the finding recorded by the learned judge on Issue No. 5 (e) of O.O.S. No. 4 of 1989 is vague and not in accordance with law as it was settled law that no evidence of express dedication is required if implied dedication could be inferred by the long user of the property for the religious and pious purposes like the Mosque in question in the instant case.

(18). BECAUSE, the finding recorded by the learned judge on Issue No. 9 (a) of O.O.S. No. 1 of 1989 and on Issue No. 5 (a) of O.O.S. No. 4 of 1989 is not in accordance with law and the same is liable to be set aside.

(19). BECAUSE, the finding recorded by the learned judge on Issue No. 18 of O.O.S. No. 4 of 1989 in paragraph 1176 is not in accordance with law and the same is liable to be set aside.

21.2. Judgment of Hon'ble Mr Justice D.V.Sharma

(1). BECAUSE, the findings on all the issues under this head to the extent they are almost common with Sudhir Aggarwal,J the appellant submit that the grounds taken by the Appellant to challenge the findings of Sudhir Aggarwal, J on these issue may also be taken to be the grounds of challenge of findings of D.V. Sharma, J on the issues.

(2). BECAUSE, the Learned Judge while deciding issue No.5(b) in Suit No 4 that Muslim side has not advanced any argument against the submissions of non-application of the provisions of U.P.Act No.13 of 1936 is incorrect. It is submitted that the Muslim parties argued the issue of Waqf and the said Waqf has to be determined not on the basis of submission of other side but the said issue of "Waqf" is to be determined as per the Law of waqf as applied by the courts in India. The interpretation given to the Law of Waqfs by Mr. Justice Agarwal and Mr. Justice Sharma may amount to infringement of fundamental rights of Muslims. The Learned Sharma J. stating that *"It does not affect the right of worship of Hindus. It does not deal with the right of*

Hindus about their worship. Consequently, U.P.Act No.13 of 1936 has no application to the right of Hindus about their worship. Issue No.5(b) is decided against the Plaintiff and in favour of the Defendants", is contrary to the constitutional guarantee of Muslims in relation to their Personal Laws. The very foundation of this finding is misconceived and extraneous in view of the fact that no legislative enactment of this nature requires any consideration of other religion and its implications. The said finding is also devoid of reasons and baseless and liable to be set aside.

(2). BECAUSE, the Learned Judge while deciding **issue No.5(e) & (f)** in Suit No 4 at *pages 204 & 205, Vol 1* has given a wrong findings that *"I have given my anxious thought to the facts of the case, I am of the view that since there is no valid notification under Section 5(1) of the Muslim Waqf Act, 1936 in respect of the property in dispute. The registration though is not disputed and pleadings can be looked into by this Court. It further transpires that the registration was done by adhering to the provisions of the Act and accordingly it cannot be deemed to be a valid registration. The registration does not confer any right to the Waqf Board to maintain the present suit without complying with the valid required notification. The registration can be done in accordance with law after adhering to the provisions of the Waqf Act, 1936. Thus the registration was not made in accordance with he provisions of Section 5(1) of the Muslim Waqf Act, 1936. It cannot be deemed to be a valid entry, the Board has no right to maintain the suit and the same is barred by time",* This Finding is given on the basis of erroneous considerations and on the basis of irrelevant facts inadmissible in the eyes of law. The registration

of Waqf can be sought by any member of Muslim community and registration of the said Waqf does not require a notification. A Waqf can be registered by the Board suo-moto also. In the present case, the Hindu parties have not denied that the property in question was registered under the provisions of law and in view of such pleadings of the parties, it was not open for the Learned Judge to proceed with the issue to give a finding in a perverse and misconceived manner to non-suit the plaintiff in Suit No.4 and hence the above findings are liable to be set aside.

(3). BECAUSE, the issue of Waqf and any property dedicated to Waqf by any one can only be considered as per the Islamic law unless the title of the property is proved to be otherwise than that of the person who made the Waqf. In the present case, the alleged title of the temple having not been proved at all the Learned Judge has erroneously placed onus upon the Plaintiffs in Suit No.4 to prove their title on the land. The very basis of placing the onus on the plaintiff in Suit No. 4 is incorrect and improper in view of the fact that the Mosque existed on the said land for more than 400 years and Muslims had continuously offered their Namaz in the said Mosque premises. In that view of the matter the onus of proving the title must have gone to the persons claiming it to be place of Lord Ram's birth. In that view of the matter, the above findings cannot be sustained in the eyes of law.

(4). BECAUSE, the learned Judge quoted the submissions of the Hindu parties from page 163 to 204 and in one paragraph perversely held that even though the registration is not disputed but pleadings can be looked into by this court." And on wrong

appreciation of pleadings, held that there was no valid registration and hence the suit was not maintainable. It is submitted that the findings of the learned judge on issue No 5(e) and (f) are perverse, contrary to the law and hence liable to be set aside.

(5). BECAUSE, the learned Judge the findings of the learned judge on issue No 17 & 18 are also perverse, contrary to the law and hence liable to be set aside.

(6). BECAUSE, the learned Judge on incorrect appreciation of law and fact returned erroneous findings on issue No 23 & 24, hence liable to be set aside.

(7). BECAUSE, the finding of Hon'ble Jude on the issue whether the building stood dedicated to Almighty God [1(B)] is misconceived and wrong. The Hon'ble Judge has cited various Islamic commandments to show that how Waqf can be created in consonance with the spirit of Islam and, thereafter, without giving any reason and finding as to how the claim of Hindus that the land in question allegedly belonged to Hindus was justified, has proceeded to give his finding that the said land could not have been dedicated to Mosque. The said observation of the Hon'ble Judge is and without any basis and reason. Placing the onus upon the Plaintiffs of suit No.4 to prove that the proof of acquisition of land by Babur was to be placed on record to prove the title of Mosque and Waqf is erroneous and misconceived. The Hon'ble Judge's observation about the alleged "title of the temple" itself is incorrect since there is nothing on record to show that the said land ever belonged to the alleged temple.

22. Issues relating to characteristics of Mosque:

(A). Under this Category are Issues No. 1, 1-B(b), 1-B(c), 19(d), 19(e), 19(f) in Suit 4; Issue No. 6 in Suit 3 and Issue No. 9 in Suit 5.

(B). The Appellant is challenging all the findings and observations of the Hon'ble Judges on the issues and facts as recorded against the appellant. That, most fundamentally, Justice Agarwal and Justice Sharma failed to appreciate that "it is for the conscience of the Muslims who in a mosque go to pray to decide as to whether it is appropriate for them to offer prayer", as has been correctly held by Justice Khan. In this light, it is stated that the decision on this issue demonstrates the prime importance that has been given to the faith of the Hindu community in the impugned judgment, while disregarding the faith of the Muslim community.

22.1. Judgement of Hon'ble Mr Justice S.U.Khan:

(1). BECAUSE, with respect of the characteristics of the building, the Hon'ble Judge has returned the correct findings;

(a). that the construction of the building was done under the orders of Babur and that the building was a mosque.

(b). that since its construction prayers were offered in the mosque in question and Friday prayers were being offered uptil 16.12.1949,

(c). that since public in general was offering namaz in the mosque, there is no difficulty in presuming dedication by user.

(d). That there was no minerates in the mosque is immaterial. It is not an essential condition of mosque,

(e). That absence of provision for vazoo does not effect the character of mosque,

(f). That there is no absolute prohibition that near or in a graveyard there cannot be a mosque. In any case the graveyard around the mosque came into existence much after construction of mosque,

(g). Use of material of the ruined temple in constructing the mosque does not render the mosque to be no mosque.

(h). Some carving on the pillars in the mosque cannot destruct the very character of the mosque.

It is submitted that while returning the said findings, the learned judge made observation to the effect that the land over which the mosque was built was not proved to belong to Babur or to the person under whose orders the mosque was constructed. It is submitted that the said observation is erroneous in law and is unsustainable.

22.2. Hon'ble Mr Justice Sudhir Agarwal deals with these issues in paragraphs 3124 to 3448 of his Judgement:

(1). BECAUSE, it is submitted that a bare reading of the judgment of learned Judge shows that the learned Judge has misrepresented historiography and archeology especially with relation to Indian medieval history. The wrong perceptions of the Hon'ble Judge about muslims are reflected in various paragraphs of the judgment. The judgment also betrays erroneous understanding of history particularly medieval history. In para 1563 of the judgement, the learned Judge remarks about Babur whom he views as "a completely Islamic person" who ... lacked tolerance to the idol worshippers... " Then he went on to wrongly remark in para 1611 that ". Another surprising aspect was that the Indian subcontinent

was under the attack/invasion by outsiders for almost a thousand or more years in the past and had been continuously looted by them. Massive wealth continuously was driven off from the country..." . This remarks betrays ignorance of the learned Judge about the economic history of Medieval India. It is submitted that the said remarks were not only incorrect but they are also not in good taste hence untenable. As a matter of fact there is no such history of Medieval India that India was ever governed from outside during that period and as such there was no occasion for the wealth of the country being continuously driven off from the country during that period. In fact who ever looted any part of India used to live within India except for one or two occasions during the said entire period of one thousand years.

(2). BECAUSE, the learned Judge failed to appreciate in correct perspective the voluminous literature indicating that Babri masjid was recognizably built in the Sharqi style of architecture (seen noticeably at Jaunpur) with the characteristic form given to the propylon. The domes though large are very heavy. This style became obsolete soon after and well before Aurangzeb's time, light even bulbous domes with free standing minarets became the hall mark of a mosque. Therefore a look at the mosque architecture, its design and technique of construction would have indicated the period if objectively seen. The judgement is perverse on this account.

(3). BECAUSE, the entire emphasis of the judgment of Hon'ble Judge is to prove that Babri Masjid was built not during the reign of Babur in 1528 but, only under Aurangzeb. To arrive at such a vital finding the Hon'ble Judge relies on a traveller's account of a traveler (not even well known) Fr Joseph Tieffenthaler who visited

Ayodhya between 1740 and 1765 AD and quoting from him about the memory of the mosque being built over a demolished fortress called Ramcot. On the basis of this untenable account Hon'ble Judge Aggarwal wrongly rubbished the authenticity of the inscriptions over the mosque. The learned Judge rejected the Inscriptions on the ground that Tieffenthaler did not mention about them in his account. The learned Judge not only gave undue importance to the account of Tieffenthaler and but also ignored direct evidence relating to the issues. The learned Judge did not appreciate that such a vital finding can not be arrived at by looking at the negative.

(4). BECAUSE, learned Judge rubbished these inscriptions as later forgeries made between say 1760 and 1810 despite these inscriptions having been accepted and relied upon as genuine by practically all the historians and Epigraphists. (AS Beveridge and the Epigraphia Indica, Arabic and Persian Supplement, 1965, an official publication of the ASI).

(5). BECAUSE, learned Judge did not appreciate the aforesaid incriptions and the writing thereon but uses harsh words to dismiss the official publication.

(6). BECAUSE, learned Judge failed to appreciate that the aforesaid Inscription remained in position at the entrance of the mosque until Dec 6, 1992 when the Babri Masjid was razed to ground by Kar Sevaks illegally.

(7). BECAUSE, learned Sudhir Agarwal J. has not properly appreciated the wordings of inscriptions of Babri Masjid and in this respect observations made regarding the book titled as "The Sharqi Architecture of Jaunpur" by A. Fuhrer and about the article of Maulvi Mohd. Ashraf Husain published in "Epigraphia

Indica Arabic and Persian supplement 1964-1965." were incorrect.

(8). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that virtually all the parties, except defendant No. 20 of O.O.S. No. 4 of 1989, had contended that the building in dispute was constructed in 1528 AD and all the Historian witnesses produced before the court had supported the same stand of the parties and all the books of History and Gazetteers upto 1960 (except the book of Fuhrer) had given the period of construction of Babri Masjid as 1528 AD and as such there was no justification for the learned judge to have raised any suspicion about the genuineness of the inscriptions in question as well as about the period of construction of the building in dispute and the comments made in this respect against the witnesses of the Muslims side were totally unwarranted, incorrect and unjustified and the same depicted a kind of unjustified approach against the said witnesses of Muslims side.

(9). BECAUSE, the learned Sudhir Agarwal J. had castigated and passed extremely uncharitable remarks against some of the expert witnesses of History / Archaeology produced by Muslims while no such comments were made against the so called expert witnesses produced by the Hindu side stating about the same period of construction of the disputed building and giving much more self contradictory statements.

(10). BECAUSE, the learned Sudhir Agarwal J. failed to appreciate that the inscriptions in question do not appear to have been correctly and fully quoted by A Fuhrer in his book relied upon by the learned judge.

(11). BECAUSE, the learned Sudhir Agarwal J. misappreciated the contents of the Gazetteer of Thornton also regarding the

inscription in question.

(12). BECAUSE, the learned Sudhir Agarwal J. failed to appreciate that there was absolutely no pleadings much less evidence of any expert who might have expressed any doubt or expressed any suspicion about the alleged forgery of the inscriptions in question and it was not at all appreciated that no parties had made any suggestion about the likelihood of the inscriptions having been affixed at any time between 1528 and 1889 AD when the same were published in the book of Fuhrer and in this respect it was wrongly observed that the same were subsequently implanted and it is also incorrect to say that the correct reading of the said inscriptions could in any way show that the said building was not constructed in 1528 AD.

(13). BECAUSE, it has been wrongly observed by learned Sudhir Agarwal J. that at the time of visit of Tieffenthaler the inscriptions in question were not there in the building in dispute as there was no mention of the said inscriptions in the Accounts of Tieffenthaler.

(14). BECAUSE, learned Sudhir Agarwal J. wrongly drew the inference about the non existence of inscription on the disputed building, either inside or outside, during the period of visit of Tieffenthaler, merely on account of the reason that there was no mention about the same in the Traveller Accounts of Tieffenthaler. In this respect the learned Judge failed to appreciate that from the existence of 12 black stone Pillars it was said by Tieffenthaler that the building was constructed by Babar and he had referred to the existence of 12 of these Pillars supporting the interior arcades of the Mosque. In view of this categorical assertion made by Tieffenthaler there was no occasion

for the learned Judge to have drawn the inference that there was no inscription on the disputed building at that time.

(15). BECAUSE, it has been also wrongly observed in paragraph 1646 by learned Sudhir Agarwal J. that the person who for the first time noticed the above inscription was Dr. F.C. Buchanan and it was also against his own finding given in para 1601 that Montgomery Martin "was the first person to tell us about inscriptions on the wall of the disputed building.....". This observation of the learned Judge was also totally imaginary and conjectural that as if the work of survey was not the field of expertise of Dr. Buchanan.

(16). BECAUSE, learned Sudhir Agarwal J. wrongly observed that the inscriptions must have been fixed in the building in dispute sometimes between the visit of Tieffenthaler and survey of Dr. Buchanan (i.e., 1771-1807).In this respect the learned Judge failed to appreciate that if his finding about the alleged construction of the building during the regime of Aurangzeb was accepted for the sake of arguments, what could be the reason for the inscriptions being placed thereon much after the construction of the building giving the date of construction of the period of Babar?

(17). BECAUSE, the learned Judge summarizes the things and the positions in paragraph 1650 which is incorrect and overlooked vital evidences. The learned Judge conveniently ignored the official reports. About ninety years before the Epigraphia Indica-A & P Supplement, 1965, both the gate and pulpit inscriptions of the Babri Masjid had been mentioned in the Gazetteer of the Province of Oudh, edited by W.C. Benett issued as an official publication in 1877-78 Vol I p 6-7 The said report unambiguously states that at

two places in the Babri Mosque the year in which it was built , 935 H, corresponding with 1528 AD is carved out in stone along with inscriptions dedicated to the glory of the Emperor. This Benett's Report is confirmed in H.R. Nevill's Fyzabad Gazetteer. These two reports unequivocally state that the inscriptions on the entrance and the pulpit gave the date 935 H = 1528 AD and that they belonged to the reign of Babur. It may be noted that this is much older than the Fuhrer's reading of the inscriptions but the same has been conveniently ignored by Justice Agarwal in his summary of report on the inscriptions.

(18). BECAUSE, the observations made by learned Sudhir Agarwal J. regarding inscriptions in question, in paragraphs 1648-1656 of his Judgement, were totally unjustified, unwarranted and conjectural.

(19). BECAUSE, the observations of Learned Judge stating that "We are extremely perturbed by the manner in which Ashraf Husain/Desai have tried to give an impeccable authority to the texts of the alleged inscriptions which they claim to have existed on the disputed building though repeatedly said that the original text has disappeared. The fallacy and complete misrepresentation on the part of author in trying to give colour of truth to this text is writ large from a bare reading of the write up. We are really at pains to find that such blatant fallacious kind of material has been allowed to be published in a book published under the authority of ASI, Government of India, without caring about its accuracy, correctness and genuineness of the subject". The work of the historians tracing out the inscriptions of Emperor Babur which was inscribed in 8 Persian Couplets placed in the Central entrance of the Mosque and reproduced in a photograph of the

said inscription which was brought out in the official publication of Archeological Survey of India; the Epigraphia Indica; Arabic & Persian Supplement (1964 and 1965). The said Book has reproduced a photograph of the inscription from which one can check its decipherment. The said inscription remained in situ position on the entrance of the Mosque until 6th December, 1992 when the Karsewaks, took away the same after their act of demolition. The said inscription has been demolished by the barbaric act of the Karsewaks. The proof of such inscription as published by the Archeological Survey of India has been castigated by the Learned Judge in such a manner as if the work of historians and Archeologists are worth nothing and the Court will decide as to which history is correct and which needs modification.

(20). BECAUSE, the learned Sudhir Agarwal J. was totally unjustified and non judicious in making extremely harsh and unwarranted comments about Maulvi Ashraf Husain and Dr. Z.A. Desai etc. while dealing with the question of genuineness of the inscriptions in question.

(21). BECAUSE, the Learned Judge has failed to appreciate that there was absolutely no pleadings much less evidence of any expert about any doubt suspicion about the alleged forgery of the inscriptions in question and it was not at all appreciated that no parties had made any suggestion about the likelihood of the inscriptions having been affixed at any time between 1528 and 1889 AD when the same were published in the book of Fuhrer and in this respect it was wrongly observed that the same were subsequently implanted and it is also incorrect to say that the

correct reading of the said inscriptions could in any way show that the said building was not constructed in 1528 AD.

(22). BECAUSE, on the one hand the Learned Judge has relied upon the Gazetteers to support the belief of a particular community and on the other hand the Learned Judge has ignored that the Gazetteers of the province of Oudh, states in two places that the Babri Mosque was built in the year 935 H corresponding with 1528 A.D.

(23). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that the Second Book of A. Fuhrer referred in para 1417 of the judgement also mentioned about the construction of the Mosque during the reign of Babar and as such finding given by the learned Judge about the construction of the building in dispute between 1608 and 1766 A.D. was totallyunfounded and perverse.

(24). BECAUSE, learned Sudhir Agarwal J. wrongly observed in para 1638 that the plaintiffs' counsel could not in any way co-relate "Mir Baqi" with "Baqi Shaghawal" or "Baqi Tashkandi" to show that they were the same persons . In this respect it is relevant to mention that the learned Judge failed to appreciate that it was specifically pointed out to him by the plaintiffs' counsel Sri Zarfaryab Jilani that in different translations of Babar Nama including those of Beveridge and Athar Abbas Rizvi etc. there were several descriptions to show that Mir Baqi was a historical personage and actually Babur's Commandantof Awadh (Ayodhya). These entries make it clear that while Babur was on a campaign crossing the Gomti and then the Ganga, 'Baqi Tashkandi' joined his camp coming with the Awadh (Ayodhya) troops on 13-6-1529. On 20th June, 'Baqi Shaghawal' was given leave to return along with his Awadh troops. These references

make it clear that (1) Baqi was the commandant of troops at Awadh (Ayodhya), so here the Babri Masjid inscriptions stand confirmed; and (2) he was a native of Tashkant and bore the official title of Shaghawal. The 'Shaghawal' used to be an official of rank who could not be impeded when fulfilling royal orders by anyone howsoever high. It may also be relevant to mention that an explanation regarding the said "Shaghawal" was offered by Professor Shireen Moosvi (PW 20) also but the same appears to have been ignored by the learned judge. It is thus evident that the line of reasoning of the learned Judge about the name of Mir Baqi was based on untenable assumptions and conjectures.

(25). BECAUSE, the learned judge has given undue importance to the misreading of the inscriptions by the person who had tried to read the 2 inscriptions in question in March, 1946 and who had read the words "Asaf-i-sani"as" MirBaqi Isfahani" but simultaneously he had also read the word "Mir Baqi" as is given in Exhibit 53 (suit 4) (Register 12 page 355-358). It is also relevant to mention here that neither Exhibit A-42 (Register 8, P. 431 to 452) and nor Exhibit 53 referred to above contained the exact language of any of the 2 inscriptions which is evident from the estampages of the same, reproducing the original letters of the said inscriptions, given in Epigraphia Indica-Arabic and Persian Supplement 1965 (Plate XVII, pages 58-62). Almost the same language has been given in paper No. 43-A filed by the defendant No. 20 (suit 4) which is an extract of Babur Nama by A.S. Beveridge, Volume.II, Appendix U (Register 18 P. 45-49). It is thus evident that there was no use of the word "Mir Baqi Isfahani" in any inscription of Babri Mosque and the learned Judge has misdirected himself by relying upon the said incorrect reading of inscriptions. In this respect the

argument of Mr. P.N. Mishra, Senior Advocate, was also given unduly more weigtage while the same was totally against the pleadings and evidence on record including the pleadings and evidence of Defendant No.20. It was also not appreciated by the learned Judge that there was no case of any party about the inscription placed in the outer wall of the middle dome to have been ever implanted after 1528 A.D. and as such there was no question of the language of the same being doubted for any reason whatsoever.

(26). BECAUSE, the learned judge in para 1633-1634 has failed to appreciate that the argument of Sri P.N. Mishra that the District Judge, Faizabad who had visited the spot on 18-3-1886 did not find any inscription in the Mosque, was totally unfounded and baseless as the District Judge had no where referred to his visit inside the Mosque and his observations clearly established that the construction of Masjid by Emperor Babar was not at all disputed before him.

(27). BECAUSE, the learned judge has failed to appreciate in paragraph 1636 and thereafter while drawing adverse inference on the period of construction of Babri Masjid that construction of the building in dispute in 1528 A.D.was not being disputed either in pleadings of the main contesting parties or in the evidence of Historians of either side and as such there was no justification for the learned judge to have recorded a finding against the evidence adduced from both the sides by holding that the building in dispute was not constructed in 1528 A.D. by Babur or any of his agents.

(28). BECAUSE, the learned judge has wrongly observed in paras 1657 to 1661 of his Judgement that the counsels appearing

on behalf of Muslim parties, in their rejoinder arguments, could not give any substantial reply to the arguments in "this respect," i.e., perhaps about the genuineness of inscriptions, including the arguments mentioned in paras 1633 to 1656 of the judgement.

As a matter of fact the inscriptions in question were noticed by **Edward Thornton** and by **W.C. Benett**, much earlier than Fuhrer and the dates were also correctly read by them as given in **Thornton's Gazetteer** of **1858** (P. 739) and in **The Gazetteer of the Province of Oudh** edited by W.C. Benett, published in **1877-78**, Volume-1 at pages 6-7. In the Fyzabad District Gazetteer of **H.R. Nevill** (**1905**) also these inscriptions were specifically referred with similar description. Extracts of these Gazetteers were also filed before the High Court and were referred by Sri Z. Jilani, Advocate during the course of Rejoinder Arguments, apart from submission of a Note pointing out the mistakes committed by A. Fuhrer in the reading of inscriptions in question. In this Note the correct version of the said inscriptions was also given. In this respect the learned Judge wrongly observed that all the Historians "have proceeded mechanically and without properly scrutinizing the texts of the inscriptions, as reported from time to time. The things have been taken as granted." The learned Judge further wrongly observed that the local belief about the alleged destruction and construction by Aurangzeb "was so strong that it continued thereafter for the last 50 years and around 1810 A.D. when Dr. Buchanan visited Ayodhya he also found the same." His further observations that the "subsequent writers were mostly petty employees of East India Company" and that "Nobody made any detailed investigation whatsoever. At least none tried to find out the actual events

which took place and correct historical facts" were also uncalled for and unwarranted and had no basis also. It was also wrongly observed by the learned Judge that "the view, which has prevailed for such a long time apparently, unbelievable and unsubstantialable, followed by the concerned authors and Historians without a minute Scientific investigation, we can not shut our eyes to such glaring errors and record a finding for which we ourselves are not satisfied at all." His further observation that "the doubts created otherwise are so strong and duly fortified ... . that they surpass the required test to become cogent evidence....." were also totally unjustified, unwarranted and based on no material on record. (para 1656-1662)

(29). BECAUSE, the observation of the learned judge that the missing record of Babur Nama of 935 Hijri being "only of 3 days" "non mention of anything about" the building of Babri Masjid "in Babur Nama does not sound to any reason" was also unrealistic and based on misappreciation of Babur Nama.

(30). BECAUSE, the learned judge in para 1504 has wrongly observed that the counsels for Muslims had ever stated that amongst various Books translating "Baburnama" Mrs. Beveridge's translation is the "most authentic and complete." As a matter of fact neither any such statement was given by the counsels for Muslim parties and nor any such query was made by the court during the course of arguments.

(31). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that it was fully evident and established from the Books of History that during the Moghal regime also the King was the owner of the entire land of his kingdom except houses and gardens which were

permitted to be occupied, retained, purchased or sold by his subjects. In this respect special mention was made to the books entitled as --

(i) Travels in theMoghal Empire, A.D. 1656-1668 by Francois Bernier,

(ii) "The English Factories in India" (1668-1669) by Sir William Foster.

(iii) "The History of British India" by James Mill (Volume I.)

(32). BECAUSE, learned Sudhir Agarwal J. wrongly observed that there was no recorded History for the period of 1528 to 1855 A.D. stating in black and white that the building in dispute was constructed by Babur and then dedicated to Muslims as a public waqf. in this respect the learned Judge failed to consider that once a public Mosque was constructed and Muslims in general were allowed to offer 5 times prayers in the same and if such user had continued for a long time there was no requirement of law for any express dedication or waqf deed being there to prove the said dedication to God Almighty. The learned Judge further failed to appreciate that dedication is made to God Almighty and not to the Muslims as observed by the learned Judge and the law laid down by this Hon'ble court as well as by the High Courts about the implied dedication was either ignored or misunderstood. In this respect also the Books of History as well as the Books relied upon by the Hindu side and the statements of Historian / Archaeologist witnesses of the Hindu side admitting the construction of the building as a Mosque in 1528 A.D. were ignored. Even the Gazetteers published before 1855 A.D. were not taken into account although 2 historical books were mentioned in the same sequence.

(33). BECAUSE, learned Sudhir Agarwal J. wrongly observed that "Sri Z. Jilani learned counsel appearing on behalf of Sunni Waqf Board.....also tried to highlight that Babur never entered Ayodhya and did not command Mir Baqi for construction of any Mosque." As a matter of fact no counsel of the Muslims side including Sri Z. Jilani had ever argued that Babur "did not command Mir Baqi for construction of any Mosque." This position is evident from the Written Statement of Suit-1 and pleadings of Muslim parties in the connected suits. In O.O.S. No. 1 of 1989, The Sunni Waqf Board, defendant No. 10, had stated in para 10 of the Written Statement as under:-

"10. That the property in suit is an old mosque constructed around the year 1528 A.D. during the regime of Emperor Babar under the supervision of Mir Baqi and the same has always been used as a mosque and it was never used as a temple or as a place of worship for any other community except Muslims."

Similar averments were made in para 24 of the written statement of defendant No. 4 (Sunni Waqf Board) in O.O.S. No.5 of 1989.

(34). BECAUSE, the Hon'ble Judge wrongly held that the building was not constructed by Babur or during his regime but it was being treated as a mosque for the last 200 to 250 years. It is submitted that it was amply proved that the Building was constructed by Babur or under his order and since then prayers were performed continuously in the mosque till 22.12.1949.

(35). BECAUSE, learned Sudhir Agarwal J. pervsely observed that " if the Hindus are worshipping not only in the outer courtyard but in the inner courtyard of the premises in dispute from time immemorial and several centuries which has continued even after

construction of the disputed structure, it is also there that the prayer by muslims at least in the inner courtyard have also taken place even if not in such regular and persistent manner as that of Hindus but in intermittent and disturbed manner for sufficiently long time of about 80 years and odd when the suit was filed. ..." and his observations to the same effect in paragraph 3417, 3428 are wrong, imaginary. After holding that the structure was a mosque, but curiously that it was built during Aurangzeb's time and not Babar's time Justice Aggarwal denies nonetheless that it was ever in the possession of Muslims albeit they did visit and offer namaz from 1860 onwards. Even if we assume that it was built in 1528 he observes in para 2314, "there is no evidence whatsoever that after its construction, it was ever used as a mosque by Muslims at least till 1856-1857". He perversely contrary to evidence on record kept on harping this alleged non possession of Muslims again and again at several places e.g. See para 3446, 3448. In the process the learned Judge failed to appreciate the contradictory statements of the Hindu witnesses regarding the alleged images on the Black Stone Pillars of the Mosque and wrongly held that the said pillars contained some human images and at some place there appeared to be some images of Hindu Gods and Goddesses It was also wrongly observed that due to the existence of certain alleged images on some of the pillars of the mosque, such a place would not be a fit place for offering Namaz. In this respect the statements of the expert witnesses of Islamic theology as well as the extracts of the Holi Quran and Hadith cited by the Hindu side were not correctly appreciated.

22.3. Judgement of Hon'ble Mr Justice D.V. Sharma:

(1). BECAUSE, the findings of the learned Judge that the building was constructed against the tenets of Islam and thus can not have the character of a mosque is based on wrong appreciation of evidence on record and religious documents. The learned Judge has quoted religious books out of context.

(2). BECAUSE, the finding of the learned Judge wrongly applied religious text and reached on erroneous findings that the building did not have the character of mosque because it was constructed after demolishing a religious structure which is against the basic tenets of Islam. He further held by quoting religious scriptures out of context that the building lacked the character of mosque because did not have any minarets, nor provision for vazu. Further it had carvings on the pillars which are prohibited in Isalm, he observed.

(3). BECAUSE, the appellant has dealt with some of these findings of the learned Judge while challenging his decision on Issues under the head "place of birth etc " and the same are not being repeated herein again. The Appellant craves indulgence of this Hon'ble court to treat the same as integral part of challenge herein.

(4). BECAUSE, the findings of the Hon'ble Judge "On the basis of circumstantial evidence, historical accounts, gazetteers 361 and other epigraphical documents, it is established that after demolishing the temple the disputed structure was constructed as a mosque and even pillars of the old temple were re-used which

contained the images of Hindu Gods and Goddesses against the tenets of Islam..." is perverse, contrary to evidence on record.

(5). BECAUSE, the Learned Judge's finding that *"According to the tenets, minarets are acquired to give Azan. There cannot be a public place of worship in mosque in which Provision of Azan is not available, hence the disputed structure cannot be deemed to be a mosque"*, is also wrong and erroneous. It is not necessary that minarets must be there for Azan and there is no such mandate of Islam. It is also not mandatory that provision of Azan with a separate specification is a must for any structure to be called 'Mosque'. The Learned Judge's finding that the place of Wazoo is a must, is also similarly misconceived and incorrect. The Learned Judge has wrongly held that such provisions are necessary for a mosque as per the tenets of Islam.

(6). BECAUSE, the Learned Judge's finding on Issue No. 19(e) in Suit No 4 stating that: *"Since there was no provision of water reservoir in the disputed premises, the question of performing wazu by huge crowd for Friday's prayer did not arise at all in other words the said structure could not be used as Masjid for offering congregational prayer on Friday. In view of Islamic tenets, the property cannot be deemed to be a mosque"*, is also improper, incorrect and wrong as stated in the preceding grounds. The quoted Hadis have been misconstrued and applied out of context. Wazu is necessary to offer Namaz, is one part and making a place for wazu inside the Mosque is another part. The Learned Judge's finding about the necessity of a place for wazu in a mosque is not at all in terms of the Islamic Law cited

by him. Wazu could be made at any place and wazu can also be performed at home before leaving for Mosque to offer Namaz. The Learned Judge's finding that structure having images/idols and designs cannot be termed as Mosque is also based on misappreciation and misconstruction of Islamic laws. Prohibition against placing of images and pictures on curtain etc. is quiet different from the existence of some images on pillars in a structure of Mosque which could not be detected and identified as images at least by the Muslims and hence relying upon the quoted Hadis and Quranic Injunctions are misconceived and out of place and has no relevance to decide the present issue. However, relying upon the said out of context texts, the Learned Judge has misdirected himself and has reached a wrong finding to declare that the building cannot be legally a Mosque. The said finding is liable to be set aside.

(9). **BECAUSE,** the Learned Judge's finding on **Issue No. 19(f)** in Suit No 4 is also incorrect and not based on correct appreciation of the Law of Shariat. The Learned Judge has quoted the religious law out of context. In any case, without admitting the existence of images of gods/goddesses on the said pillars it is mentioned that even, if the pillars had any image of Hindu God and Goddess it cannot convert the structure into Temple and neither on that basis the Hindus get any right to trespass inside the Mosque and start worshipping the said images. In this respect the oral evidence of Religious Experts of Islam as well as the documentary evidence and the contradictory statements of Hindu side witnesses have been totally ignored.

23. **ISSUES RELATING TO DEITIES, THEIR STATUS, RIGHTS & OTHER INCIDENTAL ISSUES ETC:**

The issues under this category in various suits are as follows;

(A). In this category fall Issue no 1,2, 3(a) to 3(d), 6 & 21 of Suit No 5 and Issue No 12 & 21 of Suit No 4:

(B). It is submitted that the Hon'ble High Court (specifically Justice Agarwal and Justice Sharma) have misappreciated Hindu Law and have selectively applied the same, at best, in arriving at the finding that Plaintiff Nos. 1 and 2 in OOS No. 5/1989 are deities, in whom property is vested. The Ld. Judges have disregard the requirements of consecration and endowment, and by virtue of purported "faith", and their own subjective interpretation of textual sources, have designated the said parties as deities. It is submitted that this Hon'ble Court would be required to scrutinize in detail the Hindu law in this regard, especially in order to analyze as to whether faith can be the basis of binding another religious community and interfering with their property rights, as also their right to worship. The question of the site being a deity does not arise, given that evidence on record does not prove that, prior to construction of the mosque, the premises in dispute was specifically treated as the birthplace of Lord Ram. In any event, it is submitted that, in law, a place can never be considered to be a deity.

23.1. **Judgement of Hon'ble Mr Justice S.U.Khan.**

(1). BECAUSE, the findings of the learned Judge on issue No 12 of Suit No 4, Issue No 2 of Suit No 1, Issue No 1 of Suit No 3 and

Issue No 3(a) & 4 of Suit No 5 are correct but the reasoning is faulty. The learned Judge erroneously reached on the finding that only the constructed portion and inner courtyard was a mosque and used by Muslims for offering Friday prayers for some time before 22/23.12.1949. It is submitted that this reasoning is perverse, and contrary to evidence on record.

(2). BECAUSE, the Hon'ble Judge has held that until the Mosque was constructed during the period of Babur, the premises in dispute was neither treated nor believed to be the birth place of Lord Rama. A very large area was considered to be birth place of Lord Rama by Hindus and they were unable to ascertain the exact place of birth. The learned Judge wrongly and perversely held as Muslims have not able to prove that the land belonged to Babur under whose orders the Mosque was constructed. The appellant has already dealt with the substantially similar issues under " In re-place of birth etc " and the same are not being repeated herein for the sake of brevity. The Appellant craves indulgence to treat those grounds in as much as they are relevant herein, as the grounds of challenge under this category.

23.2. Judgement of Hon'ble Mr Justice Sudhir Agarwal.

The Appellant is challenging all the findings and observations of the Hon'ble Judges on the issues and facts as recorded against the appellant but by way of illustration pointing out some of the ex-facie errors in the individual judgement of each Hon'ble judges as follows;

(1). BECAUSE, Hon'ble Justice Sudhir Agarwal deals with Issue No 1 and 2 of the aforesaid issues in paragraph 1683 to1949 and wrongly held that Plaintiff No 1 and 2 are juridical person because

Hindus believe the Place as birthplace of Lord Rama, and the idols being the image of Supreme Being having divine powers which may cherish their wishes, provides happiness and salvation. The Hon'ble Judge further erred in holding that "this faith and belief cannot be tested on the challenge of those who have no such belief or faith. How it was created, who created, what procedure of Shastrik law was followed are not the questions which need be gone at their instance". It is wrongly held that " we find that such faith and belief is writ large by a long standing practice of Hindus visiting the place for Darshan and worship". It is submitted that the learned Judge was dealing with the issues raised in the Civil Suits filed in the backgrounds stated in paragraph referred to above which are not being repeated herein for the sake of brevity and the same are be read as integral part herein.

(2). **BECAUSE,** The learned Judge erred in not appreciating that the Suit No 5 of 1989 was filed in July 1989 for the first time by Bhagwan Sri Rama Virajman at Sri Ram Janma Bhumi, Ayodhya also called Sri Rama Lala Virajman and the Asthan Sri Rama Janma bhumi, Ayodhya through next friend with following reliefs ,

(A) A declaration that the entire premises of Sri Ram Janma Bhumi at Ayodhya,as described and delineated in Annexures I,II and III belong to the Plaintiff Deities,

(B) A perpetual injunction against the Defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of the new Temple building at Sri Ram Janma Bhumi, Ayodhya, after demolishing and removing the existing buildings and structures etc. situate thereat , in so far as it

may be necessary or expedient to do so for the said purpose.

The averments made in the suit are to the effect that the plaintiff deities and their devotees are extremely unhappy with the prolonged delay in the hearing and disposal of the said suits, and are not satisfied with the working of the court appointed Receiver. It has been further averred that the devotees of the plaintiff's deities are desirous of having a new temple constructed, befitting of their pristine glory, after removing the old structure at Sri Ram Janma Bhumi, Ayodhya. It is submitted that the intention to demolish Babri Masjid was clearly expressed in the Suit itself but before the legal status is decided, some miscreants demolished Babri Masjid on 6th Dec 1992.

(3). BECAUSE, The learned Judge failed to appreciate that the averments made in the suit and reliefs asked for clearly show that the plaintiffs proceeded on the misconception as if the title has already been decided in their favour. In the facts and circumstances that the Receiver was already in place and the suits were being heard and except the allegations in the Plaint there was no document to establish that the idols were left in the lurch, the learned Judge ought to have dismissed the said suit as non maintainable and premature.

(4). BECAUSE, The learned Judge further failed to appreciate that only a duly consecrated Hindu idol is a legal person and in the present case there was no consecration of the idol or could not have been a consecration of such an idol which has been kept stealthily in the darkness of night intervening 22nd and 23rd dec 1949. The learned Judge ought to have held that the Plaintiff No 2, the place, is not at all a juridical person or a deity or a "Swayambhu deity" if

objectively viewed in the background of the peculiar facts in the present case. That Justice Agarwal erred gravely in holding that Plaintiffs 1 and 2 in Suit No. 5 had all the ingredients necessary for the conferment of legal personality upon them.

(5). BECAUSE, he erred in holding that the disputed site itself was a deity. It is submitted that such a precedent, based merely on contemporary faith, would open up an avenue for the mischievious usurpation of land by the majority community, merely by deposing in respect of "faith". That the crux of Justice Agarwal's reasoning is seen at Paras 1913-14 of his judgment, where he stated, inter alai - "Faith and belief cannot be judged through any juridical scrutiny." Admittedly therefore, Justice Agarwal is not using any That in particular, Justice Agarwal judicial or juridical standard in arriving at his decision, but is being swayed by faith and belief, and as such, his decision is erroneous.

(6). BECAUSE, Justice Agarwal also erred in holding that Plaintiff No. 3 could represent Plaintiffs 1 and 2 in Suit No. 5, especially given that Plaintiff No. 3 was not a Shebait or Priest vested with such a right/obligation.

(7). BECAUSE, Justice Agarwal erred gravely in glossing over the usurpation of the mosque on the night intervening 22.12.1949 and 23.12.1949. He did this on the technicality that the Plaint in Suit No. 4 did not distinguish between the inner and outer courtyards. The Hon'ble Judge erred in holding that the idol of Ram Lala was, purportedly, in the Ram Chabutara prior to 22nd and 23rd December, 2009. Therefore, it existed in the "mosque" as denoted by A,B,C and D in the map, as per Justice Agarwal, which is an erroneous conclusion.

(8). BECAUSE the Hon'ble Justice Sudhir Agarwal erred in holding that the "Janamsthan" occupies the status of a "deity" and that because allegedly when the idols were placed on 22/23 December 1949 they were consecrated, meant that the Plaintiffs 1 and 2 in Suit No. 5 became juridical persons. It is submitted that even assuming without admitting a ceremony may have been allegedly performed when the idols were placed in the dark of night stealthily, that would not give any sanctity to the ceremony and would not mean that the placement was not stealthy, surreptitious and illegal.

(9). BECAUSE, admittedly as per records the idols were placed under the Central dome surreptitiously in the darkness of night intervening 22nd and 23rd December, 1949. A perusal of the record of the District Magistrate produced in the court shows that the said illegal act of converting mosque into mandir in the manner it was done, was done in collusion with the then D.C. of Ayodhya. He kept religious sentiments above rule of law and despite clear directions from the State Government and even from the then P.M., did not remove the said idols and then followed illegal demolition of the Babri Masjid on December 6, 1992. In the teeth of these facts, the Hon'ble Judges ought to have held that the title Suits No 1, 3, and 5 were derived from the installation of idols, which was done in patently illegal manner and nothing said about the history prior to 1949 would have cured this illegality. It is submitted that the learned Judge ought to have held that where was question of consecration of such an idol which has been kept stealthily in the dark in the place of worship of Muslim community. The mosque was constructed in 1528 or assuming thereafter but was in existence there for centuries but it was a fact that the idols were kept

stealthily in the intervening night of 22nd and 23rd Dec 1949. The learned Judge ought to have held that nobody can take advantage of his own illegality. It is submitted that the Hon'ble Judges erroneously proceeded to take the forcible installation of idols and illegal demolition as a fait accompli and did not draw any adverse conclusion on those illegalities.

(10). BECAUSE, the learned Judge has wrongly diverted the issue by observing that crucial aspect about the existence of alleged idols under the central dome would be whether the idols kept therein in the night of 22nd / 23rd December, 1949 were placed in such a manner that the people who visit to worship, believe that there exists a divine spirit and that it is a deity having supreme divine powers. In this respect the learned Judge failed to appreciate that divinity / consecration of these idols was not to be decided merely on the basis of belief and specially so when the divinity was being challenged by the members of the other community who had been worshipping at the place in question as a Mosque and as such the burden to prove the alleged consecration as well as divinity was more heavy upon the persons who wanted the court to believe that the idols in question were duly consecrated. In this respect the statement of Sri D.N. Agarwal has wrongly been relied upon as admittedly he was not present at the site when the said idols were placed under the central dome of the disputed building in the night of 22nd / 23rd December, 1949 and it was also wrongly observed by the learned Judge that OPW-1 (Param Hans Ram Chandra Das) or any other witnesses had proved this fact. It has wrongly been observed by the learned Judge that it could not be

said that the idols in question placed there in the night of 22nd / 23rd December,1949 were not properly consecrated.

Further, the observation of the learned judge that the status of deity could not be assailed by those who had no belief in idol worship, is contrary to law. Accordingly the findings given by the learned Judge on Issue No. 12 (suit 4) as well as on issue No. 3 (a) and issue No. 21 (suit 5) are illegal and against the evidence on record and it is wrong that plaintiffs No. 1 and 2 of Suit No. 5 were juridical persons and enjoyed the status of deity under Hindu Law.

(11). BECAUSE, learned judge has wrognly observed that defendant No. 4 (in suit No. 5) had not proved that the idol in question was stealthily and surreptitiously kept inside the Mosque in the night of 22nd / 23rd December, 1949. The learned Judge has without taking into consideration the evidence on record observed that nothing was brought on record to prove it and the observation of the learned Judge that the same was kept after due ceremonies was also based on no cogent and reliable evidence. In this respect the facts and circumstances about the placement of the said idols as given in the First Information Report, in the Written Statements filed by the State Government and District Magistrate, Faizabad etc. as well as in the notings of the official record maintained by the District Magistrate, Faizabad included in the file of the District Magistrate, Faizabad placed in a sealed cover by the order of the court dated 29-5-2009 and in the letters dated 26th and 27th December, 1949 sent by the District Magistrate, Faizabad to Chief Secretary, Government of U.P. etc. were all ignored.

(12). BECAUSE, the learned Judge has failed to appreciate that the idols placed on the Chabutra were said to be looked after by the Nirmohi Akhara and as such if the said idols could be said to be a deity there was no justification to observe that there was nothing on record to show that any person claimed himself as shebait of plaintiff No. 1, (alleged deity). In this respect Issues Nos. 2 and 6 (suit 5) were wrongly decided and it was wrongly held that suit No. 5 could not be held as not maintainable on account of defect of pleadings with respect to the status of the next friend or Shebait.

(13). BECAUSE, learned Sudhir Agarwal J. misapplied the provisions of Oudh Laws Act, 1876 and Judicial Commissioner's Circular No. 174 of July 1860 etc. and wrongly observed that personal laws in the matter of Hindu idol or deity treating it as a person to be protected by the King like a minor were to continue.

(14). BECAUSE, learned Sudhir Agarwal J. wrongly observed that the Muslims had not placed any evidence contradicting the statement of O.P.W.1 regarding placement of idols with the alleged due ceremonies and it was also wrongly observed that since the images of Gods and Goddesses as alleged to have been carved on the black stone pillers were there in disputed building in the inner courtyard and therefore entry of plaintiffs (Suit- 3) in the inner courtyard as a mere worshipper at least, till the date of attachment, may not be doubted.

It was also wrongly observed that it could not be said that in the preceding 12 years before 1959 the said plaintiffs never had possession over the property in dispute (inner courtyard).

(15). BECAUSE, learned Sudhir Agarwal J. wrongly held that "deity," once a minor will continue to be treated as minor for all purposes and he further wrongly observed that he found no

authority to show as to how and in what circumstances and why there can be a distinction between the status of deity as minor and natural person as minor. In this respect the learned judge failed to appreciate the innumerable authorities of this Hon'ble Court, Privy council as well as of High Courts specially 2 judgements of the Bench of three Hon'ble Judges of this Hon'ble Court namely Dr. G.M. Kapoor Vs. Amar Das (AIR 1965 Supreme Court 1966) and S.P. Matam versus R. Goundar (AIR 1966 Supreme Court 1603) as well as the constitution Bench case of Dr. Ismail Farooqi (1994) approving the law laid down by the privy council in Masjid Shaheedganj case (1940 Privy council P. 116).

The learned Judge also failed to appreciate the specific observations of the courts in a catena of decisions that an Idol can not be treated to be minor for the purposes of Section 6 and 7 of limitation Act, vide.including in Naurangi Lal Versus Ram Charan Das, AIR 1930 Patna 455 (D.B.) (See page 2031 of the Judgement.)

(16). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that from Ext. 18 of suit 1 referred on pages 2067-2068 it was fully evident that Raghubar Das, the then Mahant of Janam Asthan, had no right even to make repair of any portion of the inner or outer courtyard or of gate of the Mosque and Mohd. Asghar, the then Mutawalli of the Mosque, was simply asked that he may not lock the outer door of the Mosque so as to maintain the old practice.

This document having been filed and relied upon by Hindu parties themselves it was sufficient to discredit and discard the so called theory of belief of Hindus about the place of birth of Lord Rama being worshipped in the inside portion of the Mosque.

(17). BECAUSE, the observations of learned Sudhir Agarwal J. that nothing has come on record to show as to when Sita Rasoi was actually constructed, is also not based on a correct perusal of record.

(18). BECAUSE, learned Sudhir Agarwal J. has wrongly used the word "building premises" in place of the word "outer courtyard of the building" while observing that witnesses of plaintiffs of suit No. 4 have not disputed the entry of Hindu public before December 1949.

In fact the so called admission of any Muslim side witness could be said to be only in respect of the outer courtyard and not about the inner courtyard or 3 domed structure.

(19). BECAUSE, the learned in paragraph 1904 erred in interpreting the averments made in application of Syed Mohammad dated 30.11.1858. The interpretation placed of the averments in the application and the conclusions drawn thereon in paragraph 1905 is absolutely erroneous.The sentence extracted by the learned Judge does not say that Hindus used to do puja in the inner courtyard as at all. The learned Judge, though erroneously placing reliance on a line in the application and holds it against muslim parties but refuses to take in evidence the statement of case recorded in the judgments of court of law in 1885 etc.

(20). BECAUSE, learned Judge erred in attributing statements which the witnesses from muslims did not make. Further the learned Judge has erred in interpreting the averments of Mohd Asghar in Suit of 1885. The learned Judge ought to have held that the said Chabutra was illegal and continued to be so and no inference can be drawn on the basis of an illegal construction. On the contrary the learned Judge used that illegal construction as an important place to complete the sequence that Hindus used to

worship in the structure called Babri Masjid. The learned Judge erred in paragraph 1909-1910 while discussing the concept of deity and granting status of deity and juridical personality to Plaintiff No2 in the present case is erroneous, both on facts and law. The Hon'ble Judge failed to realize that this is a civil suit where the property in dispute, a property which is a place of worship for muslims since 1528, is being deprived of them and the learned Judge records that their point of view shall not even be considered and the issue would be decided in view of the statements made in favour of the plaintiffs. This approach is against all canons of justice and contrary to the rule of law. In paragraph 1913, while applying the test propounded in paragraph 1912 on Plaintiff No 1 and 2, the learned Judge erred in stating that Sri Ramjanambhumi, the place in dispute is visited by Hindus under the faith and belief that Lord of Universe Lord Vishnu appeared in his Chaturbhuj Roop before Queen Kaushalya one of the wives of king Dashratha at a particular date and time mentioned in Balmiki Ramayan as well as Ram Charitmanas of Goswami Tulsi Das. It is submitted that neither the Balmiki Ramayan nor Ram Charistmanas of Goswami Tulsi Das state that the disputed area was the place where He had appeared. The learned Judge erred in stating that " it is with this faith and belief it is said that the Hindus are visiting the birthplace of Lord Ram at Ayodhya since time immemorial and despite of several adverse situation the belief and worship has continued unrelented..". These categorical findings are not based on any record whatsoever.

(21). BECAUSE, the learned Judge in paragraph 1915, erred in stating that the " it is almost admitted by most of the witnesses of pro mosque parties (Suit -4) that Hindus regularly visit Ayodhya for

worshipping the birthplace of Lord Rama and several fairs are also held thereat periodically wherein a large number of people across the country and even abroad come and participate. It is also admitted by some of the pro mosque parties witnesses that the disputed place used to be visited by Hindus believing it to be the birthplace of Lord Rama.." These conclusions have been drawn by extracting incomplete sentences and contrary to the rule of evidence and hence contrary to the canon of justice.

(22). BECAUSE, the learned judge wrongly rejected the contention of the muslim parties that neither the Plaintiff No 1 nor the Plaintiff No 2 (Suit -5) are juridical person by observing in paragraph 1918 that "...the faith and belief of Hindus can not be negatived on the challenge made by those who have no such belief or faith. How it was created, who created, what procedure of Shastrik Law was followed are not the questions which need be gone at their instance..". This approach of the learned Judge is contrary to the cannons of adjudicatory mechanism.

(23). BECAUSE, The learned Judge wrongly held that the Plaintiffs 1 and 2 being minor can be represented by next friend. It is submitted that the concept of minor does not apply on deity and it does not suffer any disability as contemplated under Sec 6 of the Limitation Act and that O XXXII Rule 1 CPC has no application. The learned judge in paragraph 1945 of the judgment by strange logic held " deity once a minor, will continue to be treated as minor for all purposes and we find no authority to show as to how and in what circumstances and why there can be a distinction between the status of deity as minor and natural person as minor. If by nature of thing, a deity is such kind of minor which can never attain majority, this by itself would not deprive it from protections or otherwise

which are available to a natural minor..." This logic is not only ex-facie erroneous as the disabilities contemplated under Sec 6 of the Limitation Act come to cease at a particular point of time and that is why the protection is afforded till the disability cease and it shows that the protection is not available permanently. If the intention of the Legislature was to give permanent protection to deity the Parliament could have provided so. The entire logic of the learned judge goes absolutely contrary to the rule of law as embedded in constitution of secular India. By this one stroke of pen the learned Judge has given sanctity to all the demands raised all over the country in respect of various places.

(24). BECAUSE, It is submitted that Hon'ble Mr Justice Agarwal held that *deity is a perpetual minor* and that based on the continuous belief reposed in the site by the Hindu Community, applying the Statute of Limitation would violate rights of Hindus under Article 25 of the Constitution. It is submitted that on reaching such a conclusion, the learned Judges gave precedence to belief over the express Statute of limitation and the Constitution. With respect, if limitation is taken to be excluded by this reasoning, it would mean that a suit can be filed in the name of deity even after thousands of years. It would not only make the express provisions of law nugatory but would also give an open ended opportunity to the miscreants to make claims in respect of any site or religious site or sites across the country.

(25). BECAUSE, Mr justice Agarwal ought to have dismissed the Suit No.5 of 1989 filed by Bhagwan Sri Ram Lala Virajman & another through next friend simply on the admitted fact that the said Plaintiffs at least never asserted their title to or possession over the disputed land after 1528 A.D. till 1989 for about 461 years. It was

by a strange logic that Mr Justice Agarwal partly decreed Suit No.5 in their favor.

(26). BECAUSE, that, it is submitted that this erroneous finding, if allowed to stand, in effect would result in undermining the fundamental rights of equality under Article 14 of the Constitution, a basic feature of the Constitution, in respect of other communities in India (other than Hindus) in general and the Muslims in particular inasmuch as a deity of Hindu community will be immune to the law of limitation whereas the Muslims and their religious places shall be rigorously subjected to the said law. Further, it may also result in continuous strife and misuse by mischievous section of Hindus as they may use "deity" to oust other communities from their places of worships. This finding should also be viewed in the teeth of admitted evidence on fact that in the present case Muslims were in possession of the Mosque since 1528 till 22.12.1949 when the property became custodia legis. Their Suit No 4 filed in 1961 has been dismissed on the ground of limitation where as the Suit filed by the deity in 1989 claiming title for the first time has been held to be within limitation on the ground that deity is a perpetual minor and law of limitation would not apply.

(27). BECAUSE, Further,Mr Justice Agarwal erred in dismissing the suit No 4 on the ground of limitation. He failed to appreciate that when the possession of the disputed premises was taken by the Hindus forcibly on 23.12.1949 itself and shortly thereafter it was attached on 29.12.1949 under Section 145 of Criminal Procedure Code by the Magistrate and handed over to the receiver, which arrangement was continued by the Civil Courts after the Suits were filed, there was no question of any bar of limitation for the Suit filed by the Appellant herein.

(28). BECAUSE, In paragraph 2104 to 2106 after recording the finding that the idols were kept under the central dome in the night of 22nd/23rd Dec 1949, the learned Judge ought to have held that the said Idols were surreptitiously kept at a religious place where namaz was being offered for centuries and hence the same act was illegal. The learned Judge after recording the finding of placement of idol in the darkness of night, went on to examine the issue of consecration of idol. It is submitted that learned Judge had examined the issue of consecration as if the placement of idol under the central dome was legal and is sanctimonious and permissible under the Constitution of India. The learned Judge in paragraph 2106-2107 was wrong in believing the statement of OPW-1 and Plaintiff No 3 in Suit No 5 of 1989 that the idols were duly consecrated when the entire issue was illegal placement of idol. It is incomprehensible that Idols kept in the darkness of night at a religious place where namaz was being offered regularly for centuries, got consecrated because one of the witnesses said so. It is submitted that the learned Judge wrongfully held that " it cannot be said that the idol(s) placed therein were not properly consecrated..". Further, the learned Judge wrongfully rejected the said challenge on the ground that at least the status of diety can not be assailed by those who do not believe in idol worship since it is to be seen from the angle of those who go and worship thereat. They conform the test of being a juridical person in the eyes of law..". The learned Judge further went to record an erroneous finding that the Plaintiffs (Suit No 4) have failed to prove that idols and objects of worship were placed inside the building as described in plaint by letters ABCD read with the map appended to the plaint in the night intervening 22nd/23rd Dec 1949..." This finding is perverse and

contrary to the record of the case and is also contrary to finding of the learned Judge in paragraph 2104 where the learned Judge has recorded a categorical finding that the idols were kept under the central dome in the night intervening 22nd/23rd Dec 1949.

(29). BECAUSE, the learned Judge ought to have appreciated that the settled law is that only a shebait can represent the idol. It is only if the person representing it leaves it in a lurch, then only a person interested in the worship of an idol can be clothed with an adhoc interest. It is in these restricted circumstances that a worshipper is permitted to represent the idol to recover property for the idol. In the present case admittedly, the Plaintiff No 3 has not stated that he is a worshipper of Plaintiff No 1 and 2. He is admittedly not a shebait or managing the idol. He has not stated that the idols have been left in lurch. In the admitted absence of condition precedent to represent the idol, Plaintiff No 3 can not be declared to be next friend of the Plaintiff No 1 and 2. The contention has to be viewed that the suit was filed in the year 1989 in the circumstances and political scenario mentioned in the list of dates.

(30). BECAUSE, The learned Judge after wrongly deciding the issues No 1, 2 and 12 against the muslim parties, went on to record finding in favour of plaintiffs in Suit No 5 on the issues 1, 3(a) and 21. It is submitted that these findings are pervserse, have been recorded contrary to rules of evidence known to the adjudicatory mechanism in the secular India. After recording the erroneous findings on the aforesaid issues, the learned Judge went to examine the issue as to whether the Suit No 4 is bad for non joinder of the said deity i.e. Issue No 21 in Suit No 4. The learned Judge decided the Issue No 21 in favour of Plaintiff in Suit No 4 but on a different reasoning whereas the case of the Plaintiffs was that

the Plaintiffs No 1 and 2 are not deity in accordance with recognised tenets of Hindu Law and , therefore, Suit No 5 itself is not maintainable and therefore there was no question of impleading them in the Suit No 4.

(31). BECAUSE, the learned Judge wrongly decided Issue No 2 and 6 of Suit No 5 which relate to the capacity of the plaintiff No 3 to file suit as next friend of Plaintiff No 1 and 2 and relate to the maintainability of the suit in the manner it has been filed or even if plaintiffs No 1 and 2 are held to be juridical persons, are entitle to sue or be sued in their own name. The learned Judge admits that ".. there is no averment at all in the entire plaint that Plaintiff No 3 is a worshipper of lord Ram and that of Plaintiff No 1 and 2. Besides it is also not the case that there is no shebait at all or the shebait, if any, is not managing the affairs properly..." Even in the admitted absence of mandatory condition precedents being fulfilled in the suit, the Court decided the issues in favour of the Plaintiffs in Suit No 5 on absolutely erroneous plea that the Plaintiff No 3 was appointed next friend by the Court on 01.07.89 and that this order remained unchallenged by any of the parties. It is submitted this finding is absolutely erroneous and perverse.

23.3. Judgement of Hon'ble Mr Justice D.V.Sharma:

(1). BECAUSE, the learned Judge has erroneously decided the issues No 1, 2 & 3 without appreciating the objections of the defendants that the idols were kept stealthily in the premises in the intervening night of 22nd and 23rd Dec 1949 and that the said act of a section of Hindus was illegal. The learned Judge proceeded to decide the issues by taking it as a fait accompli. Even though the learned Judge at page 53-54 recorded categorically that " the

plaintiff is not in a position to say whether Pran Pratishtha was performed or not..... But he further held that " According to Hindu faith the worship is going on for the last 61 years. Accordingly at no stretch of imagination, at this stage, it can be said that without any Pran Pratishtha or Pooja the deities were installed..". The learned Judge erred in stating that the ground of defendants was hyper technical .." Though the learned Judge himself has recorded that the plaintiff is not in a position to say whether Pran Pratishtha was performed or not.

(2). BECAUSE, the learned Judge has given the finding on the issue on the premise that for the last 61 years puja has been going on and therefore it is taken to be that the pran pratishtha was performed. The learned Judge totally and wrongly ignored the fact that just because the puja was going on because of the interim order of the court during the pendency of the suit, would not absolve the plaintiffs to prove that duly pran prathishtha was performed when the idol were stealthily placed under the central dome of the mosque, assuming though without admitting that the idol could be placed therein. That fact would not give any strength to the contention that pran prathishtha is not necessary. The learned judge erred in holding that the Plaintiff No. 1 and 2 are juridical persons.

(3). BECAUSE, the learned Judge erred in holding at pg 56 that in case of Asthanjanamabhoomi, the claim of adverse possession does not arise for the simple reason that such claim for adverse possession can be made in respect of properties dedicated to a deity and not where the property itself is the deity.." The learned Judge erred in interpreting the judgment of the Hon'ble Supreme Court in Bishwanath v Sri Thakur Radha Ballabhji (1967)

SC 1044 and holding that the ratio of the said judgement supports the view that a deity can be considered as a perpetual infant, which can only be represented by its next friend.

(4). BECAUSE, the learned Judge was wrong in holding that Plaintiff No 1 and 2 are deities. The learned Judge has given this finding only on the basis of the claim of the Hindus that there was worship and pranprathistha of the dieites and they are juristic persons and they can sue the defendants through the next friend. After having stated the procedure how the Pranprathishtha is performed, the learned Judge ought to have recorded the finding that no such procedure was admittedly followed in the present case and therefore the Plaintiff No 1 and 2 were not deities as prescribed in the shastras. Further, the learned Judge ought to have held that no such procedure was followed in the present case and even assuming it was followed, it could not give any sanctity to the illegal act of surreptitiously usurping the religious place of another community in the admitted darkness of night. But the learned judge ignored all the aforesaid facts and proceeded to examine the issue with the presumption that the idols were legally kept and more so he was highly impressed by the fact that Plaintiff No 3 was a Senior Advocate and a retired judge of the High Court. The learned Judge wrongly decided the issues No 1, 2 and 6 in favour of the plaintiff in Suit No 5. The learned Judge erred in deciding Issue No 21 in favour of the Plaintiffs and against the defendant No 4 and 5. The learned Judge has given this finding by making contradictory statements. The learned Judge records that " the plaintiff is not in a position to say whether Pran Prathishtha was performed or not.." but after having noted at page 91the categorical averments of the defendants in their written statement "that the Plaintiffs No 1 and 2

can not be treated as deities as the idols were kept inside the mosque in the night of 22/23 Dec 1949. Thus the idols were not placed in accordance with the tradition and ritual of Hindu law and that no pran prathishtha or purification of the alleged Asthan was done ...", the Hon'ble Judge made a contrary wrong statement that " it is an admitted case that deities were installed and are being worshipped. The time of installation has been seen in another issue but the factum is the same that the deities were available inside the structure ad the plaintiffs have sought the reliefas as a juristic person. The defendants are not in position to say that Pran Prathishtha was not performed...". The learned Judge further erred in holding that Svyambhu symbols of deities do not need Pran Pratishtha. The learned Judge wrongly held that the averments made in the written statements by defendant No 4 and 5, contrary to averments of the plaint, are not tenable in accordance with the provisions of the Hindu law, Hindu rituals and other Hindu sacred books.

(5). BECAUSE, the learned Judge has held that the idols were installed in the building in the intervening night of 22/23rd Dec 1949 and decided the issue No 12 of Suit No 4 in favour of the Plaintiff. But after holding so and while considering the effect thereof and deciding issue No 21 of Suit No 4 the learned Judge committed a grave mistake by holding that once the idols were placed and were being worshipped since Dec 1949 and therefore accordingly by no stretch of imagination,at this stage, it can be said that without any Pran Pratishtha or pooja the deities were installed. The learned Judge completely ignored the fact that the idols were kept surreptitiously and thereafter immediately the orders under Sec 145 Cr.P.C were passed. Thereafter Suits were filed and the pooja was

protected under the interim orders of the court during the pendency of the suit. The learned Judge did not decide the core issue as to whether the stealthily placed idol in an admitted religious place of another community, can at all be said to have been installed in the proper way as per Hindu religion. The learned Judge decided the issue No 21 against the Plaintiff in Suit No 4 on the erroneous premise that there is nothing on record to discredit the statement of Hindus that their idols are having Pranprathistha and are being worshipped, accordingly they are necessary parties and decree, if passed against the deity shall be a nullity.

(6). BECAUSE, the learned Judge has decided Issue No 3(a), 3(b), 3(c) , 3(d) and 4 in favour of the Plaintiffs and against the defendants. The learned Judge even after having come to a definite conclusions that the Idols were installed in violation of the orders of the Court dated 14.08.89, 7.11.89 and 15.11.91 did not evaluate its effect by stating that the violation was done by Kar Sevaks who were not parties in any of the proceedings and by blaming the Plaintiff in Suit No 4 that they have not filed any application for contempt against them. The learned Judge absolutely ignored the effect of an illegal act of first placing the idols stealthily in the darkness of intervening night of 22/23 Dec 1949 and then barbaric act of demolition in the broad day light of 6th Dec 1992. The learned Judge proceeded as if both the illegal acts had no effect on the sanctity of the idols and in fact by deciding the issues No 3 in favour of Plaintiffs, the learned Judge has given legal sanctity to such illegal acts.

24. In re-place of birth etc of Lord Ram

(A). In this category fall Issues No 1 of Suit No 1, Issue No 11 of Suit No 4, and Issue No 22 of Suit No 5.

(B). The Appellant submits that the findings of the Hon'ble judges on all the issues decided by them against the Appellant are perverse, not based on correct appreciation of facts, are based on overlooking facts on record and/or on erroneous interpretation /appreciation of law on the issues. That, in fact, there is divergence even in respect of deciding the issue of whether the area under the central dome is the birthplace of Lord Rama. While Justice Khan negates this view, Justice Agarwal affirms this on the basis of the existence of faith in respect of the same. Justice Sharma, however, holds that the area under the central dome of the disputed building *is in fact* the birthplace of Lord Rama. Such divergence renders nugatory the impugned judgment and decree as a whole, and, in any event, negates the view that any conclusive finding has been arrived at in this regard. The Appellant is challenging all the findings and observations of the Hon'ble Judges on the issues and facts as recorded against the appellant but way of illustration pointing out some of the ex-facie errors in the individual judgement of each Hon'ble judge as follows;

24.1. Judgement of Hon'ble Mr Justice S.U.Khan ;

(1). BECAUSE, after having held that the building was mosque and it was constructed by or under the orders of Babur, the learned Judge fell in error by holding that it is not proved by direct evidence that premises in dispute including the constructed protion belong to

Babur or the person who constructed the mosque or under whose orders it was constructed.

(2). BECAUSE, the Learned Judge has wrongly observed that Tieffenthaler had noted the existence of Ram Chabutra at the time of his visit to the area in question between 1766 to 1771 AD and the finding that Chabutra must have been there since before the visit of Tieffenthaler is against the evidence on record. The said Joseph Tieffenthaler had referred to only 'Vedi' of very small dimension and not to 'Ram Chabutra' as was existing in 1885. It is, therefore, totally incorrect to hold that the said Chabutra and Sita Rasoi had come into existence before the visit of Johseph Tieffenthaler.

(3). BECAUSE, the Learned Judge has recorded that the Counsels for Hindu parties failed to give specific reply to the query as to whether the "Janam Asthan" or "Janam Boomi" meant the exact place where Kaushalaya, the mother of Lord Rama, gave birth to him or it may be the room in which the birth took place or that meant the entire building where the mother of Lord Rama resided. It is also material that in the Plaint filed by Bhagwan Sri Ram Lala Virajman (Suit No.5) no efforts were made to identify or specify the exact place of birth. The above stand and facts itself prove that Issue No.11 (Suit No.4) which states that "is the property in suit the site of Janam Bhoomi of Sri Ram Chandra Ji" should have been decided against the Hindus who claimed the disputed building being birth place of Lord Rama.

(3). BECAUSE, the Learned Judge has observed that it was not possible that one of the favourite queens of Raja Dashrath would have resided in a mansion constructed only on an area of about 1500 Sq.Yds when the houses of even medium level people used

to be of quite large area. The Learned Judge has further observed that contemporary famous writer, Tulsi Dass (1532 to 1623 A.D) wrote Ram Charitmanas due to which the contents of Ramayana could reach to common men and had there been any such belief that Lord Rama was born on the disputed piece of land, he would have mentioned about the same in his Ram Charitmanas and he would have further mentioned about Babar making or constructing Mosque after demolishing the temple or constructing the Mosque at the Janam Asthan of Lord Rama. The said Ram Charitmanas is important piece of evidence which does not mention about the demolition of any temple or about birth place of Lord Ram on the disputed site. This is a material omission in Ram Charitmanas and even on this ground it cannot be assumed that there was any such belief of the Hindu devotees about the birth place of Lord Ram being there on the disputed land in or around 1528 or 1570 AD. However, even after giving such findings the learned Judge has wrongly and illegally accepted the alleged belief of Hindus, though for few decades before 1949 and has illegally allotted the portion of middle dome to Hindus without any basis. This is without prejudice to the stand of the Appellant that the title and interest etc. of the property in suit cannot be decided on the basis of belief and faith of any section of the people.

(4). BECAUSE, the observation of the Learned Judge is wrong, baseless and without any merit that after construction of the Mosque, Hindus started treating / believing the site thereof as the exact birth place of Lord Rama. No material or tenable evidence about any such belief/ faith of Hindus has been placed on record. The Learned Judge has further wrongly observed that in the oral

evidence of some Muslims it had come that Hindus believed that the said birth place is beneath the demolished Central dome of the Mosque. Such statements, if any, referred to the belief of post 1949 period and not of pre 1949 period.

(5). BECAUSE, the finding about the possibility of there being ruins of some Buddhist religious place on and around the land on which the Mosque was constructed was based on no admissible evidence and was simply a matter of conjecture, without any material basis and without any cogent evidence.

(6). BECAUSE, the finding of the learned Judge that since 1934 to 1949 only Friday Prayers were being offered in the premises in dispute is against the evidence on record as it was fully established from the evidence on record that regular 5 times prayers were being offered in the building in dispute upto December, 1949. In this respect not only evidence adduced by the Muslims has been ignored but some of the statements made and documents filed by the Hindu parties were also not taken into consideration.

(7). BECAUSE, the finding that since much before 1855 both the parties were using the premises in dispute as their religious place, is based upon surmises and conjectures and on no material, cogent or reliable evidence.

(8). BECAUSE, the Learned Judge has fallen into serious error by wrongly recording that in the year 1949 there was no place for Wazu or that the facility for Wazu was discontinued sometimes after 1885 while the evidence on record including the photograph taken by Sri Bashir Ahmad Khan, Advocate (Vakeel Commissioner) fully established that there was specific place for Wazu etc. on southern side Chabutra of the Mosque.

(9). BECAUSE, while deciding the aforesaid issues the learned Judge has inter-alia wrongly interpreted the statement of counsels for the Waqf Board and other Muslim parties recorded under Order X Rule 2 CPC on 22.04.2009 and has given a wrong interpretation by ignoring material part of the said statement.

(10). BECAUSE, the finding that the Muslims had not been able to prove that the land belonged to Babur under whose orders the Mosque was constructed is erroneous and uncalled for in view of the fact that it is admitted fact that the building of the mosque was in existence for more than 400 years and undisputedly the Muslims offered Namaz in the said building since its construction. Without prejudice to the said user of the land / building for religious purposes by Muslims, the said finding is incorrect even on the ground that the documentary evidence adduced by the Muslim side, including the historical evidence of the books had amply proved that the vacant land belonged to the king during the entire Mughal period, and this evidence was also ignored by the Learned Judge. It is also relevant to state that the said land has also not been proved to be owned by any temple and as such recording of such finding is erroneous, misconceived and baseless.

(11). BECAUSE, the finding that both the parties were / are joint title holders in possession of the premises in dispute is perverse, without any legal basis and illegal as the evidence on record fully established that Muslims alone were in possession of the premises in dispute since the day when the Mosque was constructed and on the basis of its long and continuous user as a mosque, its implied dedication to God Almighty was also liable to be presumed.

24.2. The Hon'ble **Mr Justice Sudhir Agarwal** decides these issues inter-alia in paragraphs 3449 to 4425 of this judgment. It is submitted that all the findings of the learned Judge on the issues which are against the appellant are wrong, perverse and contrary to evidence on record. The appellant is challenging all of them. Some of the findings of the Hon'ble Judge are being stated as follows:

(1). BECAUSE, It is submitted that during the course of writing the judgment on his own behind the back of the parties, Hon'ble Mr Justice Sudhir Aggarwal reformulated Issue No 11 in Suit No 4. The issue as framed reads " Is the property in suit the site of Janambhumi of Sri Ram Chandraji?

" If the issue requires us to answer, observes Justice Aggarwal (in paragraph 4156), where Lord Ram was actually born, it " requires us to perform an impossible task". In view of the fact that " the period of Lord Ram ranges in several thousand years to lacs and crores of years", can it be said where he was actually born and can this be decided by a court of law by collecting positive evidence on this aspect. Issues pertaining to history, the Hon'ble Judge observes in paragraph 4157 can not be decided like this and " it appears that by necessity" the issue (Issue No 11 in Suit No 4 read with Issue no 1 in Suit No 1 and Issue No 22 of Suit No 5) has to be treated " as if we are required to answer" the following common question- " whether the property in suit is the site of birth of Sri Ramchandraji according to tradition, belief and faith of Hindus in general..."

Therefore Hon'ble Mr Justice Aggarwal completely transformed the issues as originally framed into a new issue altogether different both in context and substance behind the back of the parties. It may be noted here that earlier this very prayer for

recasting Issue No 11 in Suit No 4, (in the manner now done by Justice Aggarwal behind the back of the parties) was made by Hindu parties in 1996 before the Special Bench of the High Court when the matter was directed to the heard by this Hon'ble Court after the judgment in Ismaeil Faruqi case (supra) was delivered. On vehement opposition of Muslim parties, the Special Bench had rejected the said prayer. It is submitted that the act of the Hon'ble Judge is against gross violation of natural justice as the entire complexion of the case has changed. By recasting the issue, the learned Judge converted a lis between Hindus and Muslims into a lis purely intra religious, to be adjudicated solely on the basis of Hindu tradition, belief and faith. Having changed the issue completely, Justice Aggarwal then devotes about 56 pages to establish how Hindus believe the Babri Masjid being the place of birth of Lord Ram.

(2). BECAUSE, Justice Aggarwal himself observes in paragraph 4150 that " whether Lord Rama was born and was a personality in history, as a matter of fact cannot be investigated in a Court of Law for more than one reason. According to the faith and belief of Hindu people, the period when Lord Rama was there, ranges from several thousands of years to lacs and crores of years.." Even then he hold with certainty that as per belief of Hindus he was born at the place beneath the Central dome of the Mosque.

It is submitted that in view of the aforesaid finding of Hon'ble Mr Justice Aggarwal, in regard to impossibility of determining the birth or existence of Lord Ram, the only sequittor was the rejection of the Claims of the Hindu parties and consequently dismissal of their suits.

(3). BECAUSE, Another fall out of rewriting the issue was that

the Muslim parties have been completely ousted because it is a matter of belief and faith of Hindus and it can not be tested on belief of Muslims.

(4). BECAUSE, the issues relating to the belief/ faith of Hindus have been dealt with in the background of the constitutional scheme of right to religion as contained in Part-III of Constitution of India without appreciating that the said fundamental rights are available to all the persons equally.

(5). BECAUSE, That further, Justice Agarwal and Justice Sharma failed to appreciate that:-

i. The nomenclature "Janam Asthan" / "Janam Bhoomi" does not seem to denote the exact site which was the birthplace of Lord Ram.

ii. No clear indication is given in historical sources in respect of the exact birthplace of Lord Ram.

iii. Confusion in historical accounts (like the work of Joseph Tieffenthaler) disproves the theory that a temple was demolished and that the Babari mosque was constructed in its place.

iv. The credibility of the ASI report of 2003 was doubtful, and was correctly seen by Justice Khan to conflict with the pleadings, gazetteers and history books.

v. The mosque may, at best, have been constructed using materials from surrounding Hindu and Buddhist temples.

vi. That there is no consensus among religious persons as well as historians as to when Lord Ram was born. OPW.1 Mahant Ram Chander Dass has stated that there is no mention about the period of birth of Lord Ram in Ram Charitmanas reason being that he has been considered

Anadi. The said witness has made the speculation that Lord Ram might have been born lacs of years before. (Pages 81 and 82 of the evidence). Similarly, another witness being OPW 9 Dr. T.P.Verma has stated that Lord Ram's birth should be 15-16 lacs years before and has further proceeded to say that according to his belief Lord Ram was born 17 Lacs years before (Page 98 of evidence). The other witness OPW 12 Shri Kaushal Kishore Mishra has similarly stated that Lord Ram's birth should be lacs of years before and the first birth of Lord Ram should be at least 3 Crores years before and has further stated that the era of Lord Ram Chander Ji should be 10 lacs years before from today. (See Page 51 and 101 of evidence). The OPW 16 Ramanandacharya-Rambhadracharya have stated that Ram Chander Ji was born in seventh manu era and the era of Dashrat ji was 1 crore 50 lacs 80 thousand years before. Similarly, the other witnesses DW-2/1-1, Rajinder Singh, DW-3/1 Mahant Bhaskar Dass, DW-3/5 Raghunath Prasad Pandey, DW-3/6 Sita Ram Yadav. DW-3/7 Mahant Ramji Dass, DW-3/20, Raja Ram Acharya and other witnesses have deposed on the basis of their faith and belief stating that Lord Ram's era was in different periods. These statements based on belief and faith about the birth of Lord Ram are blatantly contradictory. This aspect of the matter creates serious doubt with respect to the periodization of the birth of Lord Ram, even on the basis of the faith and belief of the followers of Lord Ram.

(6). **BECAUSE,** the Learned Judge himself has stated that the

controversy in the instant case involved historical, religious, philosophical, social and sociological aspects and thereafter has discussed about the features of Hindu religion and belief. The entire discussion made by the Learned Judge with respect to religious belief, as quoted from different parts of Vedas, Puranas, history, Hindu philosophy etc. is in one way to support the belief of a particular religion without acknowledging the belief, religion and history of the other contesting party. The entire discussion on the basis of which the finding of this issue has been given in para 4418 is contrary to constitutional guarantee given to the followers of other religions in the country.

(7). BECAUSE, the Learned Judge's finding on belief and faith is itself self-contradictory since the Learned Judge has himself raised questions with respect to belief and faith in para 4292 of the impugned judgment by raising question of an outsider as to whether Hindu religion is a museum of beliefs, medley of rites, or a geographical expression.

(8). BECAUSE, the Learned Judge has misread and misappreciated the statements of the Counsel for Muslims recorded by the Trial Court under Order X Rule 2 CPC. The statements of the Counsels are based upon the description given in the Balmiki Ramayana and is further qualified with the stand that at the site of Babri Masjid Lord Ram was not born. It is further qualified with the contention that no temple existed at the site of Babri Mosque at any time whatsoever. The Learned Judge has misappreciated the statements of the counsels and has also selectively read the said statements.

(9). BECAUSE, the findings of the learned Judge are against the elementary rule of law which prescribes that the judgment of the

court must be based on facts relevant and proved and should not be based on hearsay or belief of a section of people particularly when such a belief is challenged and put an issue in a title suit relating to a property.

(10). BECAUSE, the Learned Judge has relied upon the inadmissible and untenable evidence to prove the alleged belief of Hindus in relation to the building in dispute. The oral evidence with respect to the said belief is of no avail as the same could not prove the said belief of the followers of Lord Ram even for one hundred years while the era of Lord Ram, as stated by most of the witnesses of Hindu side was very old. The said witnesses have made the speculation that Lord Ram was born more than 9 lacs of years before. Plaintiff No. 3 of O.O.S. No. 5 of 1989 (OPW 9) Dr. T.P.Verma has stated that Lord Ram's birth should be 15- 16 lacs years before and has further proceeded to say that according to his belief Lord Ram was born 17 lakhs years ago. The Learned Judge has relied upon the unreliable and untenable evidence to prove the belief of one religion in relation to the land in dispute. The oral evidence with respect to the said belief is of very recent period. The era of the said birth of Lord Ram, as stated by various witnesses is very old, being of more than 9 lakhs years ago.

(11). BECAUSE, the entire belief as reflected in the history is with respect to Ayodhya town and not the disputed place. The Learned Judge has quoted the visit of Guru Nank Deoji of 1510-1511 AD (Para 4384) which shows that the city of Ayodhya was considered to be the place of birth of Lord Rama. In the next paragraph (4386) the learned judge has gone to the Book of Joseph Tieffenthaler of 18th Century to justify the demolition of

the alleged temple for construction of Mosque. Firstly the Learned Judge has omitted the historical part between 1511 to 1750 A.D which is very relevant in the facts and circumstances of the case. Secondly, the record of Joseph Tieffenthaler has been selectively used ignoring the other part of his account.

(12). BECAUSE, the learned Judge himself has observed that the belief existed for last more than 200 years from the date when the property was attached whereas the Mosque was constructed in the year in 1528 AD i.e 225 years (appx) before the belief started, even if the observation of the learned judge is taken to be correct.

(13). BECAUSE, the observation of the Learned Judge stating that several confrontations among Hindus and Muslims in respect to the property in dispute are not on record of history books but still making the reference of the same was uncalled for and unsubstantiated. The judicial pronouncement of the Learned Judge has on the one hand passed highly objectionable remarks against the historians for recording the history in their respective books after their research and on the other hand the Learned Judge is seeking to draw an inference that several confrontations among Hindus and Muslims took place but they have not been recorded in the history books. The said observations (Para 4404) are improper, uncalled for, and without any justification.

(14). BECAUSE, the finding of the alleged worshipping by Hindus in the inner courtyard for several hundred years, as stated by the Learned Judge in Para 4394, is completely misconceived and without any evidence. The finding of such a nature cannot be given on the basis of oral evidence of witnesses who have the life span of 80 or 90 years approximately. The search of birth

place of Lord Rama on the specified disputed place, as stated in Para 4395, is a matter of evidence and cannot be said to be a matter of belief/faith.

(15). BECAUSE, learned judge has wrongly held that Muslim parties had miserably failed to discharge the burden of proof regarding the construction of building in question in 1528 A.D. and a totally vague and incorrect finding has been recorded in this respect in para 1681 which is based on no evidence and the observations of the learned Judge that "The possibility of change, alteration or manipulation in the inscriptions can not be ruled out" was totally unfounded and based on no evidence and his further finding that the building in dispute might have been constructed probably between 1659 to 1707 A.D. was also a purely conjectural finding based on no evidence.

Thus the findings recorded on Issue No. 6 (suit 1), Issue No. 5 (suit 3) and issue No. 1 (a) (suit 4) are illegal, unsustainable and against the evidence on record.

(16). BECAUSE, the learned judge has misconstrued the application dated 30-11-1858 (Ext. 20 of suit 1) in which the word 'Janam Asthan' was used for Janam Asthan temple situated in the Northern side of the building in dispute. The learned Judge wrongly observed that from the aforesaid document it was clear that "even the Inner courtyard had some Hindu religious signs / Symbols therein and it used to be worshipped by Hindus for last several hundred years." In this respect the heresay observation of P. Carnegy was also misappreciated and it was wrongly observed that the dispute pertaining to this place was centuries old. It was also wrongly observed that several witnesses of the Muslims side had admitted that Hindus used to come to the disputed place

for worship believing it the birth place of Lord Rama. In this respect the learned Judge failed to appreciate the well settled principle of construction of a document and appreciation of evidence that the document should be read as a whole and so also the statement of a witnesses should be read as a whole and not in piecemeal.

(17). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that the so called belief / faith of Hindus regarding birth place of Lord Rama being inside the disputed structure could in no way be said to be either centuries old or continuing for even one century as the said place had been described by the Mahants of Nirmohi Akhara even upto 1941 as a Mosque and not as a place of birth of Lord Rama as was evident from the decree and Commissioner report etc. of Regular Suit No. 95 of 1941 as well as from the documents of 1885 suit.

(18). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that by applying the test laid down by the learned Judge himself in paragraphs 1898 and 1899 etc. of his judgement the site in dispute below the middle dome of the Mosque could in no way be held to be the place of birth of Lord Rama as there was no such belief / faith of Hindus coming down from times immemorial in the face of Hindus' own admissions made about the same in the Suit of 1885 as well as in Suit No. 95 of 1941 and in several other papers / documents etc. It was also wrongly observed that such an alleged faith and belief could not be scrutinized through any judicial scrutiny in order to examine as to whether such a belief / faith existed from time immemorial and could in any way be treated as a belief / faith of the entire community continuing for several centuries or even for one century.

(19). BECAUSE, the most important piece of evidence has been bypassed by the Learned Judge i.e *Ram Charitmanas* which was written by Goswamy Tulsidas in and around 1570 A.D. The said writer Tulsidas is a celebrated writer among the followers of Lord Ram. In Ram Charitmanas, there is no mention about the demolition of any temple of whatsoever nature for the purpose of construction of Mosque in or around 1528 A.D. The Learned Judge has given finding about the construction of Mosque much later than 1528 A.D probably to avoid the important piece of evidence like Ram Charitmanas which does not mention anywhere about the demolition of temple. It is relevant to mention that *Ram Charitmanas* was written by Tulsidas at Ayodhya and had there been any whisper of demolition of any temple to construct the Mosque, the same must have been recorded by Goswamy Tulsidas in his Book which was written about 40 years after construction of Mosque.

(20) BECAUSE, learned Sudhir Agarwal J. wrongly relied upon the alleged local belief said to have been referred by Buchanan about the so called demolition of temple by Aurangzeb and construction of Mosque at the site thereof. In this respect the reasoning given by the learned Judge that the period of Aurangzeb was only about 100 years back while the period of Babar was about 275 years more and therefore it was difficult to conceive that the local people were not conversant as to who was responsible for demolition or during whose reign the construction was made particularly when the matter was comparably recent. The criticism made by the learned Judge against the approach of Buchanan to ignore the alleged local belief that the building in dispute was constructed during the reign of Aurangzeb was totally

unjustified and unwarranted. It was also wrongly observed by the learned Judge that from plain reading of the text of inscriptions the period mentioned therein was found to be 935 A.H.

(21). BECAUSE, the finding of learned Sudhir Agarwal J. in paragraph 1976 that there was "abundant evidence to show that Hindus were worshiping the said Chabutra believing that it symbolizes and depicts the birth place of Lord Rama" goes to demolish the finding of the learned Judge that the Hindus had been worshiping the inner portion of the building in dispute as the birth place of Lord Rama.

(22). BECAUSE, Clearly, the Impugned judgment, is based on the faith of a section of people (not all Hindus) who believe that Lord Ram was born on the very spot, i.e. under the Central Dome of the inner courtyard of the three domed Mosque without there being any evidence whatsoever supporting their said claim.

(23). BECAUSE, the learned judge has drawn absolutely wrong and unwarranted inferences from the account of William Finch and in this respect the Board' counsel Mr. Jilani has also been misquoted. It was never argued from the Muslims' side that the account of Willam Finch "lends no credence."

As a matter of fact Muslims' counsel had contended that from the said account of William Finch it was evident that in 1608-1611 there was no place of significance known as the birth place of Lord Rama and there was no such belief of the local people that any alleged temple situated on any such alleged Janamsthan was demolished by Babar. It was also wrongly observed by the learned Judge that the plaintiffs' counsel could not suggest that in Ayodhya there was any other place than the disputed site which may be considered to be the Fort of King Dashrath or Lord

Rama in ancient times. The description of Oude (Ajodhya) as given in the relevant extract of the Travels Account of William Finch (Ext. O.O.S 5-19 on page 271 of Register 21) refers to "ruins of Ranichand(s) castle and houses which the Indians acknowled(g)e for the great God." He further says that "In these ruins remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby; which custome, they say hath continued foure lackes of yeeres (which is three hundred ninetie foure thousand and five hundred yeeres before the worlds creation). Some two miles on the further side of the river is a cave of his with a narrow entrance, but so spacious and full of turnings within that a man may well loose himself there, if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance certain graines of rice as blacke as gun-powder, which they say have beene reserved ever since. Out of the ruines of this castle is yet much gold tryed. Here is greate trade, and such abundance of Indian asse-horne that they make hereof bucklers and divers sorts of drinking cups. There are of these hornes, all the Indians affirme, some rare of great price, no jewell comparable, some esteeming them the right unicornes horne." It is thus evident from this description of William Finch that the aforesaid ruins of the castle and houses were on the river side and not at a distance of about more than 1 km. from the river where the disputed building existed. It was also evident from the aforesaid descriptions of William Finch that he had referred to Oude (Ajodhya) as the seat of Lord Rama and as such there was no occasion for him to have made any reference of any Mosque, including Babri Masjid or any other place of importance

of Muslims. The said Mosque was undoubtedly of no historical significance at that time. The said Mosque could have been of any significance had the same been constructed at the alleged place of birth of Lord Rama after the destruction of any temple and had it been so; it would have been definitely taken notice of by William Finch. It was in this light that the said extract of the Travels Account of William Finch was placed by the plaintiffs' counsel Sri Jilani, Advocate with great vehemence to substantiate his argument that no incident of the alleged demolition of any temple had taken place in 1528 AD and else the same would not have gone unnoticed by William Finch.

(24). BECAUSE, learned Sudhir Agarwal J. wrongly held that there was overwhelming evidence to establish that in the outer courtyard there existed at least 3 structures since prior to 1885. The Commissioner's Map of 1885 suit did not refer to any place as "Kaushalya Rasoi" or "Chhathi Poojan Asthal" and there was no description of Bhandara also in the said Commissioner's Map (enclosed as Appendix 3 to the Judgement.)

(25). BECAUSE, learned Sudhir Agarwal J. wrongly observed that it has not been proved that despite some orders passed by authorities of the then government for removal of the said Chabutra the same continued to exist and was not removed while sufficient documentary evidence was there to this effect which has remained unrebutted. In this respect Ext. A-13, Ext. 30 and Ext.15 (suit 1) etc. were quoted by the learned Judge himself on pages 2064-2066 but the same were not noticed while making the aforesaid observations. In any case the learned Judge should have confined his finding about the existence of Ram Chabutra and Sita Rasoi since around 1885 and should not

have made vague observations about the existence of these structures "since long."

(26). BECAUSE, learned Sudhir Agarwal J., after referring to Ext. A-13, Ext. 30, Ext. 15, Ext. 16, Ext. 34 and Ext. 17 of suit 1 wrongly observed that the aforesaid documents disprove the claim of Muslims. It is surprising that there being specific averments and proof about the Mosque in question being in the possession of Muslims in the aforesaid documents, the learned Judge has found that the said documents disprove the case of Muslims.

(27). BECAUSE, the learned judge has wrongly observed that the Accounts of Tieffenthaler referred to worship of the so called 'Bedi' (cradle) by the Hindus inside the building in dispute. The said Bedi was reported to be situated like a square box of the height of about 5 inches only with a size of about 5 X 4 ells.This place was not described as a part of any temple but the belief mentioned about the same was that "once upon a time, here was a house where Beschan was born in the form of Ram." As such it is totally incorrect to say that Tieffenthaler had "noticed worship by Hindus" but rather he was "conspicuously silent about worship by Muslims in the disputed building."

(28). BECAUSE, Because the divergent evidentiary standard applied by Justice Agarwal is apparent in his treatment of Gazetteer's as evidence. On one hand, he has relied upon the Gazetteers to establish prior belief of the Hindu community and on the other hand, the Hon'ble Judge has ignored that the Gazetteers of the province of Oudh states in two places that the Babari Mosque was built in the year 935 H corresponding with 1528 A.D.

24.3. Judgement of Hon'ble Mr Justice D.V. Sharma

(1). BECAUSE, the finding of Learned Judge (D.V.Sharma, J) on the issue as to "*whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant No.13? If so, its effect?"* [1(b)] is based on excavation report of Archeological Survey of India without properly appreciating the scientific and technical objections going to the root of the findings of the ASI report. The Learned Judge has only dealt with the issue of "bias" and "malafide" and that too not properly.

The finding of Learned Judge is perverse and without taking into consideration the real issue as argued by the Plaintiffs of Suit No.4. The objections of the Plaintiffs of Suit No. 4 with respect to ASI report running into hundreds of pages showing as to how the findings of the ASI report are contrary to the material found during excavations which have not been dealt with in a proper manner and hence the entire findings of the Learned Judge on this issue become flawed, and erroneous. The appellant has already made submissions to that effect while challenging the judgement of Hon'ble Mr Justice Sudhir Agarwal. The same may be treated as integral part herein and are not being repeated for the sake of brevity.

(2). BECAUSE, the learned Judge's finding to the effect that "Thus, the circumstantial evidence totally contradicts the assertion of Muslims. I have already referred the oral evidence, adduced by the parties in Annexure No 5. I conclude that the oral evidence led by Muslims is not trustworthy. Thus the circumstantial evidence

conclusively establish the claim of Hindus about the destruction of old temple and construction of Babri Mosque at the site of the temple which is corroborated by the expert evidence of ASI" is contrary to evidence on record and also wrong appreciation of evidence and misconceived notion of muslim law.

(3). **BECAUSE,** the findings of the learned Judge that the building was constructed against the tenets of Islam and thus can not have the character of a mosque is based on wrong appreciation of evidence on record and religious documents.

(4). **BECAUSE,** the Learned Judge's observation stating that *"from all angle on flimsy grounds not based on any scientific report to contradict the report of ASI and this Court has to rely over this scientific report. There is nothing on record to contradict the report of A.S.I. There is no request from the side of plaintiff to call any other team to substantiate the objections against A.S.I report except by producing certain witnesses to contradict the same. It has never been pointed out before this Court that the report of ASI should further be rechecked by any other agency. No request further been made to issue another commission to re-examine the whole issue and furnish the report against the report of A.S.I",* is incorrect since the report itself has no legal sanctity in view of the defects as stated in the objections of the Plaintiffs of Suit No.4. The grounds of objections taken in the plaintiff's objections are not repeated herein in the interest of brevity and the same may be treated as the grounds to assail the A.S.I report and therefore, the finding of Learned Judge is not proper in the eyes of law and is liable to be set aside.

(5). BECAUSE, the learned Judge did not appreciate the voluminous documents placed by the Muslim parties showing clearly muslims were throughout in possession of the mosque and regular namaz was being offered in the mosque. The learned Judge brushed them aside by condemning them not reliable without any justifiable reason whatsoever. The Learned Judge while deciding issue No.1-B(c) has ignored the relevant material and documents on record which show that the Muslims have been praying in the said Mosque. The said documents, inter-alia are as under:-

1. Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey, Station Officer dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.
2. Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.
3. Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1858 regarding Nishan by Nihang Faqir.
4. Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey, 18 Station Officer dated 1-12-1858 against Nihang Sikh for installing Nishan.
5. Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.
6. Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989).
7. Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.
8. Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra

as Kutiya.

9. Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.
10. Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.
11. Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.
12. Ext. 30 (Vol. 5 P. 107-116-A,B.C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).
13. Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.
14. Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.
15. Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)
16. – Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.
17. Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.
18. Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.
19. Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.
20. Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his bill regarding repair of Mosque.
21. Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the

application of Tahawwar Khan.

22. Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.
23. Exhibit A-50 (Vol.8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.
24. Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.
25. Exhibit A-53 (Vol.8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and houses.
26. Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.
27. Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D. Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.
28. Exhibit A-52 (Vol.8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque
29. Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 . CPC issued by Legal Remembrancer, U.P.
30. Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc.
31. Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 regarding Babri Masjid etc.
32. Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.
33. Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar

regarding Babri Masjid etc.

34. Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for sanction to file suit u/s 92 CPC. regarding Babri Masjid etc

35. - Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.

36. Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghaffar, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)

37. Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

38. Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf. (copy filed as Ext. 21 also in OOS 4 / 89 – Vol. 10, P. 117 - 123)

39. Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

40. Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

41. Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

42. Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf Board dated 20-11-1943 regarding management of mosque.

43. Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414)

44. Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

45. Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

46. Ext. A-63 (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

47. Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

48. Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 –49 filed before the SWB.

49. Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

50. Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949- 50 by Jawwad Husain filed before the SWB

51. Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

52. Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Plaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

53. Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgment of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115)

25. Existence of alleged temple and alleged demotion thereof:

Under this category are Issue No. 1(b) in Suit 4 and Issue 14 in Suit 5.

25.1. Judgement of Hon'ble Mr Justice S.U.Khan:

(1). BECAUSE, the learned Judge rightly held that the building was mosque and it was constructed by or under the orders of Babur. The learned Judge further rightly categorically held that no temple was demolished for constructing the mosque.

(2). BECAUSE, the appellant has already covered these issues under the heading Issues relating to birth place etc and characteristics of mosques and the same are not being repeated herein for the sake of brevity. The appellant therefore crave leave to refer to and rely upon them herein also and the same may be treated as integral part thereof to the extent relevant to the issues herein.

25.2 Hon'ble **Mr Justice Sudhir Agarwal** decides these issues inter-alia in paragraphs 33513-4059 of his judgment.

(1). BECAUSE, the learned judge did not appreciate the evidence on record in correct perspective and read the evidence selectively against the basic canons of appreciation of evidence.

(2). BECAUSE, the learned judge while dealing with the arguments of Sri P.N. Mishra, Advocate about the so called attack and damage to the alleged temple at the time of Aurangzeb and construction of the Mosque in question during that very period failed to appreciate that there was no such pleading and evidence of the defendant No. 20 also who was represented by Sri P.N. Mishra, Advocate and no such issue was also framed and as such the argument of Sri P.N. Mishra, Advocate was liable to be rejected

on this ground alone. It was also wrongly observed by the learned Judge that the Book of Niccolao Manucci (1653-1708) had made any reference to the so called Janam Asthan temple as he had not even included Ayodhya in the list of 7 places which were referred by him having principal temples. The said Book had not at all made any reference of the place of birth of Lord Rama and by such omission in the said book it was evident that there was no belief / faith of Hindus at least upto that time about any alleged place of birth of Lord Rama or about the demolition of any alleged Janam Bhoomi temple and construction of Mosque at the site thereof. Out of the so called 4 chief temples said to have been destroyed by King Aurangzeb one was said to be situated in Ayodhya, though not historically proved, it could also in no way be connected with the so called Janam Bhoomi temple.

(3). **BECAUSE,** the learned judge wrongly observed that Travellers Accounts of Father Joseph Tieffenthaler (Austrian Priest) published in 1786 "mentions about the alleged temples at the birth place as well as its demolition ..... and construction of a Mosque thereat." It is also wrongly observed by the learned Judge that the said Tieffenthaler's work written between 1740-1760 and onwards could not be seen by subsequent Historians. Both these observations of the learned Judge stand belied by the extracts of the said book of Tieffenthaler filed as paper No. 107 C-1 / 96- 107 C-1/104 (Ext. 133, Register 12, P.273-319) which was got translated by the court itself and the said translation is given in Annexure IV to the Judgement of D.V. Sharma J. The learned Judge has not fully and correctly appreciated the evidence on record.

(4). **BECAUSE,** while dealing with the issue relating to the

existence and demolition of temple, specially Issues No. 1 (b) (Suit-4) and 14 (Suit-5) learned Sudhir Agarwal J wrongly observed that the oldest document mentioning about existence of temple and demolition of the same at the site of disputed structure is Tieffenthaler's Traveller's Accounts.

(5). BECAUSE, the entire belief as reflected in the history is with respect to Ayodhya town and not the disputed place. The Learned Judge has quoted the visit of Guru Nank Deoji of 1510-1511 AD (Para 4384) which shows that the city of Ayodhya was considered to be the place of birth of Lord Rama. In the next paragraph (4386) the learned judge has gone to the Book of Joseph Tieffenthaler of 18th Century to justify the demolition of the alleged temple for construction of Mosque. Firstly the Learned Judge has omitted the historical part between 1511 to 1750 A.D which is very relevant in the facts and circumstances of the case. Secondly, the record of Joseph Tieffenthaler has been selectively used ignoring the other part of his account.

(6). BECAUSE, the most important piece of evidence has been bypassed by the Learned Judge i.e *Ram Charitmanas* which was written by Goswamy Tulsidas in and around 1570 A.D. The said writer Tulsidas is a celebrated writer among the followers of Lord Ram. In Ram Charitmanas, there is no mention about the existence and demolition of any temple of whatsoever nature on any alleged place of birth of Lord Rama in or around 1528 A.D. The Learned Judge has given finding about the construction of Mosque much later than 1528 A.D probably to avoid the important piece of evidence like Ram Charitmanas which does not mention anywhere about the demolition of temple. It is relevant

to mention that *Ram Charitmanas* was written by Tulsidas at Ayodhya and had there been any whisper of existence of any such Ramjanambhoomi temple or demolition of any such temple to construct the Mosque, the same must have been recorded by Goswamy Tulsidas in his Book which was written about 40 years after construction of Mosque.

(7). BECAUSE, learned Sudhir Agarwal J. wrongly relied upon the alleged local belief said to have been referred by Buchanan about the so called demolition of temple by Aurangzeb and construction of Mosque at the site thereof. In this respect the reasoning given by the learned Judge that the period of Aurangzeb was only about 100 years back while the period of Babar was about 275 years more and therefore it was difficult to conceive that the local people were not conversant as to who was responsible for demolition or during whose reign the construction was made particularly when the matter was comparably recent. The criticism made by the learned Judge against the approach of Buchanan to ignore the alleged local belief that the building in dispute was constructed during the reign of Aurangzeb was totally unjustified and unwarranted. It was also wrongly observed by the learned Judge that from plain reading of the text of inscriptions the period mentioned therein was found to be 935 A.H.

(8). BECAUSE, the finding of learned Sudhir Agarwal J. in paragraph 1976 that there was "abundant evidence to show that Hindus were worshiping the said Chabutra believing that it symbolizes and depicts the birth place of Lord Rama" goes to demolish the finding of the learned Judge that the Hindus had

been worshiping the inner portion of the building in dispute as the birth place of Lord Rama.

(9). BECAUSE, Justice Agarwal and Justice Sharma placed undue and excessive reliance on the Archaeological Survey of India's Report, and arrived at erroneous conclusions therefrom, regarding the existence/destruction of a pre-existing temple. The Appellant is not separately dealing with the validity of the findings of the ASI and rely upon the submissions made by other Muslim Appellants in their Appeals filed against the same impugned judgment in this aspect. In particular, it is important to mention that the High Court failed to consider and give sufficient credence to the question of the excavation being manipulated. For instant, one defect of the ASI's final Report as filed in the High Court, it is submitted, is that it manipulates periodization of the layers. It is stated that the ASI's assignment of layers to particular periods is often demonstrably wrong and made only with the object of tracing structural remains or artifacts discovered there to an earlier time in order to bolster the theory of a Hindu temple beneath the mosque. It is therefore submitted that the ASI's report, is not objective and correct and hence can not be relied upon.

(10) BECAUSE, the plaintiffs in suits No 4 of 1989 have raised a number of objections with respect to ASI report running into hundreds of pages showing as to how the findings of the ASI report are contrary to the material found during excavations which have not been dealt with in a proper manner. The Appellant rely upon them to submit that the entire findings of the Learned Judge on this issue become flawed, and erroneous.

25.3. Judgement of Hon'ble Mr Justice D.V. Sharma:

(1). BECAUSE, the finding of Learned Judge (D.V.Sharma, J) on the issue as to "*whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant No.13? If so, its effect?"* [1(b)] is based on excavation report of Archeological Survey of India without properly appreciating the scientific and technical objections going to the root of the findings of the ASI report. The Learned Judge has only dealt with the issue of "bias" and "malafide" and that too not properly and has not looked into the objections against the A.S.I Report.

The finding of Learned Judge is perverse and without taking into consideration the real issue as argued by the counsel for Plaintiffs in Suit No.4. The objections of the Plaintiffs of Suit No. 4 with respect to ASI report running into hundreds of pages showing as to how the findings of the ASI report are contrary to the material found during excavations which have not been dealt with in a proper manner and hence the entire findings of the Learned Judge on this issue become flawed, and erroneous. The appellant has already made submissions to that effect while challenging the judgement of Hon'ble Mr Justice Sudhir Agarwal. The same may be treated as integral part herein and are not being repeated for the sake of brevity.

(2). BECAUSE, the learned Judge's finding to the effect that . "Thus, the circumstantial evidence totally contradicts the assertion

of Muslims. I have already referred the oral evidence, adduced by the parties in Annexure No 5. I conclude that the oral evidence led by Muslims is not trustworthy. Thus the circumstantial evidence conclusively establish the claim of Hindus about the destruction of old temple and construction of Babri Mosque at the site of the temple which is corroborated by the expert evidence of ASI" is contrary to evidence on record and also based on wrong appreciation of evidence.

(3). BECAUSE, the findings of the learned Judge that the building was constructed against the tenets of Islam and thus can not have the character of a mosque is based on wrong appreciation of evidence on record and wrong notions of law of Shariat.

(4). BECAUSE, the Learned Judge's observation stating that *"from all angle on flimsy grounds not based on any scientific report to contradict the report of ASI and this Court has to rely over this scientific report. There is nothing on record to contradict the report of A.S.I. There is no request from the side of plaintiff to call any other team to substantiate the objections against A.S.I report except by producing certain witnesses to contradict the same. It has never been pointed out before this Court that the report of ASI should further be rechecked by any other agency. No request further been made to issue another commission to re-examine the whole issue and furnish the report against the report of A.S.I"*, is improper and incorrect since the report itself has no legal sanctity in view of the defects as stated in the objections of the Plaintiffs in Suit No.4.

26. In -Re: A.S.I. Report:

(A). *Under this category are Issue No. 1(b) in Suit 4 and Issue 14 in Suit 5.*

(B). The Appellant is challenging all the findings and observations of the Hon'ble Judges on the issues and facts as recorded against the appellant but by way of illustration pointing out some of the ex-facie errors in the individual judgement of each Hon'ble judges as follows:

26.1 Judgment of Hon'ble Mr Justice S.U.Khan;

(1). BECAUSE, the learned Judge has rightly returned the finding that no temple was demolished for constructing the mosque. The Hon'ble Judge has held that until the Mosque was constructed during the period of Babur, the premises in dispute was neither treated nor believed to be the birth place of Lord Rama. A very large area was considered to be birth place of Lord Rama by Hindus and they were unable to ascertain the exact place of birth. The learned Judge further held as Muslims have not able to prove that the land belonged to Babur under whose orders the Mosque was constructed, Hindus have also not been able to prove that there was any existing temple existing at the place where Mosque was constructed after demolishing the temple. The learned Judge has also held that it has also not been proved by the Hindus that the specific small portion i.e. the premises in dispute of 1500 sq yds was treated, believed and worshipped as birth place of Lord Ram before construction of mosque. He further held that no temple was

demolished for constructing the Mosque.

The learned Judge has rightly did not rely on the findings arrived at in the ASI Report.

But while analyzing the contentions of the parties on these issues, the learned Judge erred in interpreting the statements of the counsels for the Wakf Board and Muslims parties.

26.2. Hon'ble Mr Justice Sudhir Agarwal deals with these issues in paragraphs 3513 to 4059 of this Judgement:

(1). BECAUSE, even though the learned Judge deals with issue No 1(b) of Suit No 4 and 14 of Suit No 5 in more than 900 pages of his Judgement, but the approach of the learned Judge was highly selective. The analysis of learned Judge of the material, evidence and documents is wrong. His reflections on the scholars who testified against the ASI Report are highly improper and unreasonable. A bare reading of these pages of his judgment would show that the learned Judge has already reached a conclusion and was not ready to accept and appreciate any evidence, statement, and scientific basis contrary thereto. The learned Judge misconstrued all the documents, and evidence on record, applied wrong tests while returning the findings on the issues. Therefore all the observations, and findings of the learned Judge are based on wrong appreciating of facts and evidence on record.

(2). BECAUSE, learned Judge failed to appreciate that the ASI Report was not based on any scientific basis, principles and method of archaeology.

(3). BECAUSE, learned Judge failed to appreciate that the analysis, projections, interpretations, inferences and conclusions made and given in the ASI Report on or from the miscellaneous, unreliable, unrelated and fragmentary evidence yielded by the excavation in order to state or suggest that there existed a massive structure in the nature of a temple below the disputed structure, are all supremely imaginative and completely lacking in objectively.

(4). BECAUSE, the learned Judge failed to appreciate that the conclusions arrived at in the Report were the product of a mind or minds that were intellectually and politically predetermined to create and construct evidence of a temple beneath the disputed structure.

(5). BECAUSE, the learned Judge did not correctly appreciate the evidence and has gone to the extent of wrongly observing in paragraph 3676 that Haji Mahboob was one of the plaintiffs of Suit 4 while the fact is that he was defendant No. 6/1 in Suit-3.

(6). BECAUSE, learned Sudhir Agarwal J. wrongly condemning the objections of Sri Mohd. Hashim of 16th May, 2003 against nomenclature of various artifacts as "mischievous" and worthless.

(7). BECAUSE, learned Sudhir Agarwal J. failed to appreciate the practice prevalent at the site of excavation and wrongly laid much emphasis upon the signatures of the parties / their counsel in day to day register. The said day to day register did not give full reports of the excavation of each trench but rather the same mentioned about some items of artifacts and quantity etc. or Bones and it was also not appreciated that all the complaints

mentioning about technical details were prepared by nominees of the Muslims side who were Archaeological Experts and there was no reason for any incorrect complaints having been prepared by the said Archaeologists present at the site as the nominees of the Muslims Parties.

(8). BECAUSE, learned Sudhir Agarwal J. while analyzing the Report, lacked objectivity and acted with a biased approach against the critics of ASI's scheme of periodization and so in **Para 3879** he takes them further to task: They should know that ASI officials "are experts of expert." The approach of the learned Judge was that as if the Report prepared by ASI is infalliable. He refused to appreciate any objective objection against the report. Then enthused by his own accolade to ASI, Justice Agarwal delivers himself of this opinion in the same **Para 3879**: "The result of a work if not chewable to one or more, will not make the quality of work impure or suspicious. The self-contradictory statement, inconsistent with other experts made against ASI of same party, i.e. Muslim, extra interest, and also the fact that they are virtually hired experts, reduces trustworthiness of these experts despite of their otherwise competence." It is submitted that such a condemnation of the reputed persons is unmerited, unkind, uncalled for, unnecessary and in bad taste. These experts are undauntedly independent and objective in their approach and comments. It is therefore prayed that the same be expunged by this Hon'ble Court.

(9). BECAUSE, learned Sudhir Agarwal J. failed to appreciate That there was no case of any Hindu party that

beneath the Babri Masjid there was a Kali or Bhairava temple revelling in animal sacrifices, and, learned Judge also decides **(Para 4070)** under issue No.14 that the Hindus have been "worshipping the place in dispute as Sri Ram Janam Bhumi Janam Asthan... since times immemorial"!

(10). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that It may, by some, be regarded as a lamentable failure of the ASI's Report that it "does not answer the question framed by the Court, inasmuch as, neither it clearly says whether there was any demolition of the earlier structure, if existed and whether that structure was a temple or not." (**Para 3988**). In this respect the learned Judge wrongly observed in **Para 3990:**

"ASI, in our view, has rightly refrain from recording a categorical finding whether there was any demolition or not for the reason when a building is constructed over another and that too hundreds of years back, it may sometimes difficult to ascertain as to in what circumstances building was raised and whether the earlier building collapsed on its own or due to natural forces or for the reason attributable to some persons interested for its damage."

(11). BECAUSE, learned Sudhir Agarwal J. failed to appreciate that there was no evidence to establish that Babar or Mir Baqi had ever destroyed any temples at Ayodhya.

(12). BECAUSE, learned Judges failed to appreciate that as for the ASI's expertise, it is of interest to note that since mid-1990's it has been headed continuously as Director General by a non-

expert civil servant shifted from time to time at the whim of the Central Government, until this year (2010), when finally a professional archaeologist has been appointed to head it. When the excavations were ordered by the Allahabad High Court to be undertaken by the ASI, the latter was entirely controlled by the BJP-led Government at the Centre under the Ministry of Culture (**Para 3789**),then headed by the BJP, the author of the demolition of Babri Masjid in 1992. The BJP itself had made the slogan of Ram temple at the Babri Masjid site one of its main election slogans. On the eve of the excavations, the BJP Government changed the Director-General to install yet another non-professional civil servant, apparently in order to have a still more pliant instrument to control the ASI.

All these matters were placed before the High Court, but the learned Judges seem to attach no importance to these circumstances.

(13). BECAUSE, learned Judges failed to appreciate that from the very beginning the ASI made clear its loyalties to its political masters' beliefs and commitments.

(14). BECAUSE, the Report of ASI is wrong, on sided, not objective. It does not serve the purpose for which it was directed to be prepared.

26.3. Judgement of Hon'ble Mr. Justice D.V.Sharma ;

(1). BECAUSE, the appellant has already stated objections in respect of A.S.I Report hereinabove and reiterates the same herein. The grounds of challenge taken against the judgement of Sudhir

Agarwal J apply mutatis mutandis herein also and the same are not being repeated for the sake of brevity.

(2). BECAUSE the finding of Learned Judge (D.V.Sharma, J) on the issue as to "*whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant No.13? If so, its effect?*" **[1(b)]** has been concluded by the Learned Judge on the basis of excavation report of Archeological Survey of India without properly appreciating the scientific and technical objections going to the root of the findings of the ASI report. The Learned Judge has only dealt with the issue of "bias" and "malafide" and that too not properly.

The finding of Learned Judge is perverse and incorrect and without taking into consideration the real issue as argued by the Plaintiffs of Suit No.4. The objections of the Plaintiffs of Suit No. 4 with respect to ASI report running into hundreds of pages showing as to how the findings of the ASI report are contrary to the material found during excavations which have not been dealt with in a proper manner and hence the entire findings of the Learned Judge on this issue become flawed, erroneous, improper and biased.

(3). BECAUSE the Learned Judge's observation stating that *"from all angle on flimsy grounds not based on any scientific report to contradict the report of ASI and this Court has to rely over this scientific report. There is nothing on record to contradict the report of A.S.I. There is no request from the side of plaintiff to*

call any other team to substantiate the objections against A.S.I report except by producing certain witnesses to contradict the same. It has never been pointed out before this Court that the report of ASI should further be rechecked by any other agency. No request further been made to issue another commission to re-examine the whole issue and furnish the report against the report of A.S.I", is improper and incorrect since the report itself has no legal sanctity in view of the defects as stated in the objections of the Plaintiffs in Suit No.4. The grounds of objections taken in the plaintiff's objections are not repeated herein in the interest of brevity and the same may be treated as the grounds to assail the A.S.I report and therefore, the finding of Learned Judge is not proper in the eyes of law and is liable to be set aside.

(4). BECAUSE, the learned Judges failed to appreciate that neither the ASI Report nor any other document prove that firstly any temple was demolished for constructing the mosque and secondly until the middle of twenteith century, the premises in dispute was neither treated nor believed to be the birth place nothing but birth place and the whole birth place of Lord Ram.

(5). BECAUSE, the learned Judges treated the ASI Report as if it is an infalliable documents. It is submitted that the ASI Report has various short comings which shall be pointed out at the time of hearing. The Appellant crave inldulgence of this Hon'ble Court to refer to and rely upon the objections filed against ASI Report. The complete reliance of the learned Judge on ASI Report without application of mind and without objectively analyzing the objections of the appellant against the Report, is erroneous. Hence the judgment is bad in law.

27. MISCELLANEOUS

27.1. BECAUSE, the Court erred in holding that the Nirmohi Akhara is a Panchayati Math of Ramanandi sect of Bairagis. It is stated that the evidence on record does not satisfy the requisitie ingredients necessary for characterizing a group as a religious denomination. In any event, while granting relief, it is submitted that there was no cogent reason for treating the Nirmohi Akhara as distinct while relief was being granted to the Hindu parties.

27.2. BECAUSE, the Hon'ble Justice Sudhir Agarwal erred in his findings regarding the status of Nirmohi Akhara being a religious denomination following a faith and further that it continued to exist in Ayodhya from 1734. It is evident from the findings rendered by the Hon'ble Judge at paragraphs 781, 788 and 789 of the impugned judgment that the same are based on inadmissible hearsay evidence which is sought to be corroborated by the statements of DW 3/4, 3/24 and 3/20. However, even the statements of DW 3/4, 3/24 and 3/20 are not based on personal knowledge of the said witnesses, a fact which is evident from the finding of the Hon'ble Judge at paragraph 788 of the impugned judgment where the Hon'ble Judge has held that the witnesses "being integrally connected with Nirmohi Akhara may have occasion to possess the said information".

27.3. BECAUSE, Justice Khan has wrongly observed that Tieffenthaler had noted the existence of Ram Chabutra at the time of his visit to the area in question between 1766 to 1771 AD, and the finding that Chabutra must have been there since before the visit of Tieffenthaler is against the evidence on record. The said Joseph Tieffenthaler had referred to only 'Vedi' of very small dimension and not to 'Ram Chabutra' as existing in 1885. It is, therefore, totally

incorrect to hold that the said Chabutra and Sita Rasoi had come into existence before the visit of Johseph Tieffenthaler.

27.4. **BECAUSE,** the Hon'ble Judges ex-tenso quoted Quaranic verses and Hadit without correctly appreciation the meaning and set and context thereof. Hence mis applied them.

27.5. **BECAUSE,** the Hon'ble Justice D.V.Sharma's finding on Issue Nos. 20(a) & (b) in Suit No 4 is incorrect. The Hon'ble Judge has misdirected himself and proceeded to challenge the maintainability of the Suit on irrelevant consideration. The Hon'ble Judge's observation that as per order dated 21.04.1966 the suit cannot be maintained by Sunni Waqf Board, is incorrect. The Hon'ble Judge has not taken into consideration the fact that apart from the Sunni Waqf Board, there were many Muslims as co-plaintiffs in the Plaint. Neither Sunni Waqf Board ceased to have locus to maintain the suit, on account of the Order dated 21.04.1966 and nor other co-plaintiffs were in any way not competent to institute and prosecute the said Suit.

27.6. **BECAUSE,** the Issue No. 21 in Suit No 4 that "whether the suit is bad for non-joinder of alleged deities?", has been decided on the wrong premises and law. The Hon'ble Justice D.V.Sharma has ignored the material facts and the pleadings in Suit No.4 and decree prayed for in the said suit. The Hon'ble Judge failed to appreciate that the plaintiffs (Suit No. 4) had prayed for removal of the idols placed inside the Mosque in the intervening night of 22nd and 23rd December, 1949 in a forcible and stealthy manner without any "Pran Pratishtha". In the present set of facts and circumstances, the idols cannot be treated as Deity/ juristic person. The Hon'ble Judge has recorded his finding without

considering the material facts which support the contention of Plaintiffs in Suit No.4. The finding on this issues is also perverse and without any legal basis. It was also not appreciated that the so called deity was already before the Court in OOS No. 5 of 1989 and all the suits were consolidated and hence there could not be said to be any effect of the alleged non-joinder.

27.7. **BECAUSE,** Issue Nos. 23 and 24 in Suit No. 4 relate to competence of the Board to file the suit which has been accepted by the court. However, the Hon'ble Justice D.V.Sharma has still reached the additional finding that the suit is not maintainable for want of valid notification under Section 5(1) of the Waqf Act, 1936 and on that illegal basis has decided Issue No's 23 and 24 against the plaintiff, against his own observation made in the earlier part of the same paragraph.

27.8. **BECAUSE,** the Hon'ble Justice Sudhir Agarwal held that despite the provisions of Section 80 having not complied with by the Plaintiff's in Suit No. 3, the suit was not barred. The basis for the Hon'ble Judge's finding were essentially twofold: (a) that a private party was disentitled from raising the plea under section 80 of the CPC, inter-alia holding that such plea could only have been taken by the State authorities, and, (b) that the State had impliedly waived its objection under section 80. However, it is respectfully submitted that the Hon'ble Judge erred in rendering the said finding for, amongst others, the following reasons:

i. The Hon'ble Judge's finding that a private party could not take the plea under section 80 of the CPC pre-supposes that such a plea was not take by the State. In the present case, it is evident that the Written Statement filed by the State

raised an objection under section 80 of the CPC and the private parties, who were arrayed as co-respondents in the Suit, could support such a stand in order to non-suit the plaintiff.

ii. The Hon'ble Judge's further finding that there had been an implied waiver by the State of the objection under section 80 is was also erroneous given that it was based on the erroneous assumption drawn at paragraph 654 that a statement by the Hon'ble Additional Chief Standing Counsel that it sought an adjudication from the Court resulted in the implied waiver. It is respectfully submitted that the State had, in its written statement, on affidavit an objection under section 80 and it being a matter of record could not have simpliciter been said to be impliedly waived without an amendment to the written statement. In this case, it is evident from the finding recorded by the Hon'ble Judge that the counsel for the State also did not seek any amendment to the written statement and in fact stated that he would "abide by the stand taken in the written statement."

iii. It is evident from the above that the Hon'ble Judge erred in not dismissing Suit No. 3 and Suit No. 5 (for similar reasons) despite notice not having been issued under section 80 of the CPC.

28. That the Babri Masjid was demolished when the present suits were pending before the Special Bench of High Court. Thereafter the Parliament enacted "Acquisition of Certain Areas at Ayodhya Act, 1993 whereby the Central Government acquired 67.703 acres of land in Ram Janam Bhoomi - Babri Masjid Complex, the area in and around the disputed site. By virtue of the said Act the right, title and interest in respect of certain areas at Ayodhya specified in the Schedule to the Act stood transferred to and vest in the Central Government.

29. That a Constitution Bench of this Hon'ble Court in *Dr. Ismaeil Faruqui v Union of India (1994) 6 SCC 360* upheld the validity of the entire Acquisition of Certain Areas at Ayodhya Act, 1993 except Section 4(3). The result of upholding the validity of the entire Statute, except section 4(3) thereof, was that the pending suits and legal proceedings wherein the dispute between the parties revived inasmuch as the disputed area (inner and outer courtyards of the mosque) were concerned. In the said judgment this Hon'ble Court strongly condemned the act of demolition of the mosque by some "miscreants" who happened to be Hindus. This Hon'ble Court vide the said judgment directed status quo be maintained which was further clarified vide judgment and order dated 31.03.2003. The Special Bench of the High Court vide order dated 30.09.2010 directed status quo to be maintained for three months from 30.09.2010 which was extended vide order dated 10.12.2010 till 15.02.2011, further extended till 31.05.2011 vide order dated 09.02.2011.

30. That, the mosque was in use till 22.12.1949 and Muslims were forcibly ousted from the same w.e.f. 23.12.1949 in the facts and circumstances mentioned in this appeal and since 29.12.1949 the property is continuously in the custody of the court. The Appellants and the general public has been deprived of their religious place and their right to worship at that place for no fault of theirs.

31. That the appellant has not filed any other appeal before any other forum including this Hon'ble Court with respect to O.O.S No 4/1989 challenging the judgments impugned in the present appeal.

32. That the appellant herein craves leave to adopt, refer to and rely upon the averments made and documents filed in the Appeals filed by the Muslim Parties appealing against the same impugned judgment and decree before this Hon'ble Court.

PRAYER

33. It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(i). Call for the records of the case relating to O.O.S No.4 of 1989; titled *The Sunni Central Board of Waqfs U.P. Lucknow & ors vs Mahant Suresh Das & ors,* decided by the Special Bench of three Judges of the High Court of Allahabad (Lucknow Bench),

(ii). Allow the present Appeal by decreeing the O.O.S. No 4 of 1989 in favour of the Plaintiffs and against the Defendants herein and set aside the preliminary decree and judgment dated 30.09.2010 passed in terms of separate judgments;

(iii). A declaration to the effect that the property in question is public mosque, commonly known as "Babri Masjid",

(iv). Pass a decree of perpetual injunction against the private Respondents and Government authorities herein prohibiting them from interfering with, or raising any objection to, or

placing any obstruction in the construction of the mosque after removing the existing make shift temple,

(v). Pass a decree for delivery of possession of the mosque,

(vi). Pass a decree directing the Respondent No 5 to 8 to restitute the mosque,

vii). Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

viii) Award costs to the appellant as against the contesting respondents.

AND FOR THIS ACT OF KINDNESS THE APPLICANT/APPELLANT AS IN DUTY BOUND SHALL EVER PRAY

Drawn & Filed by:-

[SYED SHAHID HUSAIN RIZVI]
Advocate for the Appellant

SETTLED BY :
Mr. Zafaryab Jilani,Advocate

ASSISTED BY :

Mr. Nakul Dewan, Advocate
Mr. Karan Lahiri, Advocate
Mr. Mrigank Prabhakar, Advocate
Mr. Mohd Tayyab Khan, Advocate
Mr. Zaki Ahmad. Khan, Advocate

Drawn on :

Filed on: .08.2011

New Delhi

218

IN THE SUPREME COURT OF INDIA
[ORDER XVI RULE 4(1) (a)]

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Maulana Mahfoozurahman.....Appellant

Versus

Mahant Suresh Das & ors.....Respondents.

CERTIFICATE

Certified that the Appeal is confined only to the pleadings before the Hon'ble High Court whose order is challenged and the other documents relied upon in those proceedings. No additional documents or grounds have been taken therein or relied upon in the Civil Appeal. This certificate is given on the basis of the instructions given by the Appellant whose affidavit is filed in support of this Civil Appeal.

[SYED SHAHID HUSAIN RIZVI]
Advocate for the Appellant

Drawn on .08.2011

Filed on: 12.08.2011

New Delhi

4. That this Hon'ble Court had vide order dated 09.05.2011 directed stayed the operation of the impugn judgment and decree in CA No 10866-67 of 2010 and other connected Appeals filed against the same impugned judgment.

5. That the balance of convenience is in favour of the Appellant and against the contesting respondents.

6. Irreparable loss will be caused to the appellant if stay is not granted.

7. This application is filed bonafide and in the interest of justice..

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

i) Grant stay of the operation of the preliminary decree and judgment dated 30.09.2010 passed in O.O.S No. 4 of 1989 by the Special Full Bench of the High Court of Allahabad (Lucknow Bench) till the final disposal of this Appeal,

ii) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Drawn and Filed By:

[SYED SHAHID HUSAIN RIZVI]
ADVOCATE FOR THE APPELLANT

New Delhi

Drawn on: .08.2011
Filed on: 12.08.2011

222

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Maulana Mahfoozurahman.....Appellant

Versus

Mahant Suresh Das & ors.....Respondents.

AND IN THE MATTER OF:

AN APPLICATION SEEKING PERMISSION TO FILE LENGTHY SYNOPSIS AND LIST OF DATES.

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India.

The humble application of the Appellant named above.

MOST RESPECTFULLY SHOWETH:

1. That the Appellant is filing the present Appeal against the impugned judgment dated 30.09.2010 passed by the Hon'ble High Court of Judicature at Allahabad, Bench at Lucknow in O.O.S. NO. 4 of 1989. The facts in brief have been set out in the accompanying Appeal and the same are not being repeated for the sake of brevity and the same may be treated as part of this Application.

2. It is submitted that the Synopsis and List of Dates in the accompanying Appeal runs into B-ZK. The same has been prepared after going through the impugned judgment which runs into more than 8162 pages.The disputes between the parties were pending adjudication for the last many years. The issues involved in the Appeal are of vital

importance. The counsel has to state all the important events in the List of Dates. That is why the Synopsis and List of dates had become lengthy.

3. Keeping in view the entire facts and circumstances, it is prayed that the Synopsis and List of Dates as prepared and filed be taken on record.

4. This application is bonafide and in the interest of justice.

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

c) Allow the Appellant to file lengthy Synopsis and List of Dates (B-ZK); and direct them to be taken on record,

d) PASS such other order or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn and Filed By:

[SYED SHAHID HUSAIN RIZVI]
ADVOCATE FOR THE APPELLANT

New Delhi
Drawn on .08.2011
Dated: 12.08.2011

224

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Maulana Mahfoozurahman.....Appellant

Versus

Mahant Suresh Das & ors.....Respondents.

AND IN THE MATTER OF:

AN APPLICATION FOR PERMISSION TO FILE WITHOUT TRANSLATION/OFFICIAL TRANSLATION THE IMPUGNED JUDGMENT CONTAINING EXTRACTS REPRODUCED THEREIN IN VARIOUS LANGUAGES.

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India.

The humble application of the Appellant named above.

MOST RESPECTFULLY SHOWETH:

1. That the Appellant is filing the accompanyin Civil Appeal against the Judgment/Preliminary decree dated 30.09.2010 passed by the Special Full Bench of High Court of Allahabad (Lucknow Bench) in O.O.S No. 4 of 1989 (Regular Suit No 12 of 1961), titled *The Sunni Central Board of Waqfs U.P. Lucknow & ors vs Mahant Suresh Das & ors*

2. It is submitted that the impugned judgment contains extracted portions of different vernaculars like Sanskrit, Persian, Urdu, Hindi and Gurmukhi etc. Certain vernaculars are used which are not prevalent as on today. The Arabic, Sanskrit, Persian and certain parts of Urdu have been extracted from different places in which the context is set out in the larger document from where the said vernaculars have been

extracted. It is difficult to get it translated by the private translators. It is therefore requested that the said portions be got translated through official translator. The Appellant undertakes to bear the expenses towards the translation of such portions by official translator as and when this Hon'ble Court directs such translation to be filed.

3. This application is bonafide and in the interest of justice.

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

e) Permit the Appellant to file without translation/official translation the impugned judgment dated 30.09.2010 passed in O.O.S. No 4 of 1989 containing extracted reproduced therein in various languages.

f) PASS such other order or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn and Filed By:

[SYED SHAHID HUSAIN RIZVI]
ADVOCATE FOR THE APPELLANT

New Delhi
Drawn on 06.08.2011
Filed on : 12.08.2011

226

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Maulana Mahfoozurahman.....Appellant

Versus

Mahant Suresh Das & ors.....Respondents.

AND IN THE MATTER OF:

AN APPLICATION FOR EXEMPTION FROM FILING TYPED COPY OF THE IMPUGNED JUDGMENT AND PERMISSION TO FILE IMPUGNED JUDGMENT IN PUBLISHED BOOK FORM.

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India.

The humble application of the Appellant named above.

MOST RESPECTFULLY SHOWETH:

1. That the Appellant is filing the present Appeal against the impugned judgment dated 30.09.2010 passed by the Hon'ble High Court of Judicature at Allahabad, Bench at Lucknow in O.O.S. NO. 4 of 1989. The facts in brief have been set out in the accompanying Appeal and the same are not being repeated for the sake of brevity and the same may be treated as part of this Application.

2. The appellant has filed certified copy of the impugned judgment for official purpose. It is submitted that the impugned Judgment has been published in book form. The original copies of the impugned judgement are in 32 volumes and are quite bulky whereas the impugned judgement as published is in three books Volume I, II and III. They are

more convenient to handle also. It is therefore submitted that the Plain Copy of the impugned Judgement be accepted in Book form.

3. Keeping in view the entire facts and circumstances, it is prayed that the Appellant may be exempt from filing typed copy of the impugned judgment and Plain Copy of the impugned Judgement as published in three Books Volume I, II and III be allowed to be filed and the same be taken on record.

4. This application is bonafide and in the interest of justice.

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(a). Exempt the Appellant from filing typed copy of the impugned Judgement dated 30.09.2010 along with its corrigendum dated 10.12.2010 passed in O.O.S. No 4 of 1989 and allow the Appellant to file the said Impugned judgment along with corrigendum in Published Book Form in Volume I, II and III and direct them to be taken on record,

(b). PASS such other order or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn and Filed By:

[SYED SHAHID HUSAIN RIZVI]
ADVOCATE FOR THE APPELLANT

New Delhi
Drawn on 06 .08.2011
Filed on: 12.08.2011

228

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. No OF 2011

IN

CIVIL APPEAL NO. OF 2011

IN THE MATTER OF:

Maulana Mahfoozurahaman.....Appellant.

Versus

Mahant Suresh Das & ors.....Respondents.

AN APPLICATION FOR SUBSTITUTION OF LEGAL HEIRS OF RESPONDENT NO.24

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India,

The humble application of the appellant named Above

MOST RESPECTFULLY SHOWETH:

1. That the Appellant is filing the accompanying Appeal against the impugned judgment dated 30.09.2010 passed by the Hon'ble High Court of Judicature at Allahabad, Bench at Lucknow in O.O.S. NO. 4 of 1989. The facts in brief have been set out in the accompanying Appeal and the same are not being repeated for the sake of brevity and the same may be treated as part of this Application.

2. That the present Appellant along with late Mahmud Ahmad were co-Plaintiff in O.O.S. No.4 of 1989. Shri Mahmud Ahmad, Respondent No.24 in the present Appeal died on 25.08.2007, during the pendency of the proceedings before the Hon'ble High Court.

3. It is submitted that said deceased-Plaintiff No. 9 in suit no 4/1989 had a son who also died on 18.02.2011. Now Mr Faiz Ahmad is the grand son of Late Mr Mahmud Ahmad. It is material to submit that the said deceased Mr. Mahmud Ahmad being co-Plaintiff in the Civil Suit no 4/1989 has desired and wished and stated to the Appellant on many occasions during the pendency of the proceedings that if he dies during the proceedings at any stage, in that eventuality Maulana Mufti Hasbullah alias Badshah Saheb, son of late Maulana Faizullah, R/o 101, Madani Manzil, Mughalpura, Faizabad (U.P.) be substituted at his place as appropriate party to the said proceedings. After the death of Janab Mahmud Ahmad, the Appellant had conveyed the wishes of late Mahmud Ahmad to his only son Mr. Anwar Ahmad. As stated above he also died on 18.02.2011 leaving his only son Mr Faiz Ahmad aged about 26 years. Keeping in view the wishes of the deceased-plaintiff late Mahmud Ahmad to his only son Mr. Anwar Ahmad about substitution of Maulana Mufti Hasbullah in his place as his legal representative and further keeping in view the fact that the only son of the deceased- Mr. Anwar Ahmad died on 18.02.2011 his grand son Mr Faiz Ahmad is available at the place of Late Mahmud Ahmad. It is submitted that both these parties may be substituted as the legal representatives of the deceased- Plaintiff No. 9 in O.O.S No. 4 of 1989 as Respondent Nos. 24A and 24B in the present Appeal.

4. It is further submitted that the suit was contested by the said deceased in his representative capacity and the proposed legal representatives are well within their capacity to act in their representatives are well within their capacity to act in their representative capacity.

5. This Application is bonafide and in the interest of justice.

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to :-

a) Direct substitution of the following names as legal representative of Respondent No.24:-

24A. Mr. Maulana Mufti Hasbulla
alias Badshah Saheb, aged about 50 years
son of late Maulana Faizullah,
R/0 101, Madani Manzil, Mughalpura,
Faizabad. (U.P.)

24B. Mr. Faiz Ahmad,
Aged about 26 years,
Son of late Anwar Ahmad
S/o Late Mahmud Ahmad,
R/o Rakab Ganj,
Faizabad. (U.P)

b) Pass such other order or further orders(s) as the Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn & Filed by:-

Filed on: 12.08.11

[Syed Shahid Hussain Rizvi]
Advocate for the Appellant

231

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. No OF 2011

IN

CIVIL APPEAL NO. OF 2011

IN THE MATTER OF:

Maulana Mahfoozurahaman.....Appellant.

Versus

Mahant Suresh Das & ors.....Respondents.

AN APPLICATION FOR CONDONATION OF DELAY IN BRINGING ON RECORD LEGAL HEIRS OF RESPONDENT NO.24

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India,

The humble application of the appellant named above

MOST RESPECTFULLY SHOWETH:

1. That the Appellant is filing the accompanying Appeal against the impugned judgment dated 30.09.2010 passed by the Hon'ble High Court of Judicature at Allahabad, Bench at Lucknow in O.O.S. NO. 4 of 1989. The facts in brief have been set out in the accompanying Appeal and the same are not being repeated for the sake of brevity and the same may be treated as part of this Application.

2. That the present Appellant along with late Mahmud Ahmad were co-Plaintiff in O.O.S. No.4 of 1989. Shri Mahmud Ahmad, Respondent No.24 in the present Appeal died on 25.08.2007, during the pendency of the proceeding before the Hon'ble High Court. However the L.Rs of the said deceased Plaintiff were not brought on record by any of the parties and

accordingly the name of the said deceased remained on record of the High Court.

3. It is submitted that at the time of filing of the present appeal the appellant is bringing on record the legal representative and the nominee of the deceased Mahmud Ahmad. However there is considerable amount of delay in brining the said LRs on record. Since no efforts were made by any of the parties before the High Court to bring the said LRs/nominee of the deceased on record, the name of the deceased remained among Plaintiffs and deceased Plaintiff still remained on the array of parties of the High Court.

4. That in the present suit, the deceased Plaintiff contested in representative capacity and the said deceased would be required to be represented before this Hon'ble Court through the person to whom he nominated to prosecute on his behalf and the legal representative of the said deceased-Plaintiff may also be impleaded to represent him in this Hon'ble Court.

5. That there is no intentional delay on the part of the appellant to bring the said legal representatives on record and it is respectfully prayed that the delay in bringing LRs on record may kindly be condoned in the interest of justice.

6. That this application is being filed bonafide and in the interest of justice.

233

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to :-

a) condone the delay of 3157 days in filing application for substitution of legal heir(s) of Respondent No 24:-

b) pass such other order or further orders(s) as the Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn & Filed by:-

Filed on: 12.08.11

[Syed Shahid Hussain Rizvi]
Advocate for the Appellant