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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. D-5780 OF 2011

(Arising from the final judgment and order dated 30.09.2010 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow passed in O.O.S. No.5 of 1989)

IN THE MATTER OF:-

CONVENOR OF AKHIL BHARTIYA SRI  
RAM JANAM BHOOMI PUNARUDHAR SAMITI..... APPELLANT

-VERSUS-

SRI RAJENDRA SINGH AND OTHERS..... RESPONDENTS

WITH

I.A.No. .... of 2011:- Application for permission to file Civil Appeal

AND

I.A.No. .... of 2011:- Application under order XXXIX Rule 1 & 2 read  
With Section 151 CPC and further read with  
Article 132 of the Constitution of India.

AND

I.A.No. .... of 2011:- Application for exemption fro filing Official  
Translation of Impugned Judgment and final order dated 30.09.2010.

PAPER BOOK

(FOR INDEX, KINLDY SEE INSIDE)

ADVOCATE FOR THE APPELLANT:- M/S.FOX MANDAL & CO.

SECTION: XI

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B

**SYNOPSIS**

The Appellant (Akhil Bhartiya Sri Ram Janam Bhoomi Punaruddhar Samiti founded and headed by His Holiness Jagadguru Sankaracharya of Jyotishpeeth- Badarikashram- Himalaya and Sharadapeeth- Dwarka, Swami Sri Swaroopanand Saraswati ji Maharaj) prefers the present Civil Appeal against the final judgment and order dated 30.09.2010 passed by the Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow, in O.O.S. No. 1, 3, 4 and 5 of 1989 by which the O.O.S. No. 1 decreed (Hon'ble Mr. Justice Sudhir Agarwal, J.) and O.O.S. No.s 3 and 4 are dismissed with majority view and O.O.S. No.5 is decreed by Hon'ble Mr. Justice D.V. Sharma, J.

The principal question of Law in this first Civil Appeal is as to whether the judgment and final order dated 30<sup>th</sup> September, 2010 passed by Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow, passed by the Hon'ble Justice S.U. Khan and the Hon'ble Justice Sudhir Agarwal, JJ. forming majority decreeing the O.O.S.No.5 of 1989 in part and declaring the three set

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of parties i.e. Muslims, Hindus and Nirmohi Akhara joint title holder of the suit property known as Sri Ram Janma Bhumi and Babri Masjid, Ayodhya to the extent of one-third share to each of the parties for using and managing the same for worshipping, while the claims of the Nirmohi Akhara and Muslims were found time-barred in their respective suits being O.O.S.No.3 of 1989 and O.O.S.No.4 of 1989 is correct or the judgment and final order dated 30<sup>th</sup> September, 2010 passed by the Hon'ble Justice D.V. Sharma, J. forming minority decreeing the O.O.S.No.5 of 1989 declaring that the entire premises of Sri Ram Janma Bhumi at Ayodhya as described and delineated in Annexure no.1 and 2 of the plaint belonged to the plaintiff No.1 and 2, the deities and restraining the defendants permanently from interfering with or raising any objection to, or placing any obstruction in the construction of the temple at Sri Ram Janma Bhumi, Ayodhya at the site referred to in the plaint is correct in the facts and circumstances of the case mentioned in the List of dates and Grounds.

B

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## LIST OF DATE

*Treta Yuga* (2163102 B.C. - 867102 B.C.): The Holy Sacred Scripture of the Hindus *Srimad-Valmiki Ramayana* reveals that in the 'Astapadakara' i.e. octagonal like a dice-board city of Ayodhya the Lord of Universe Sri Ram appeared in the Palace of mother Sri Kausalya as also that inside said palace there was a temple and an Idol of the Lord of Universe Sri Vishnu at least at the time of pronouncement of the date of coronation of the Lord of Universe Sri Rama . The Almighty's creation Holy Sacred Code of *Sri Atharvaveda* tells that in the centre of Octagonal nine doored city of *Ayodhya* there is a Tri-domed abode of the Lord of Universe.

*Dwapar Yuga* (867102 B.C.- 3102 B.C.) :The Holy Sacred Scripture of the Hindus *Sri Skandapurana* describing about 10 prominent Temples of Ayodhya commands that the devotees to visit *Ayodhya* and after taking bath in *Sarayu* to visit Sri Ramjanambhumi, the place where Supreme

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Brahma immutable Rama who killed Ravana was borne to have its *darshan* as by doing so one get salvation and benefits which are obtained of visiting of all *Tirthas*, performance of *Rajsuya Yajnas*, *Agnihotra sacrifices* as well as gifting of thousands of tawny-coloured cows, by seeing a man observing the Holy right particularly in the place of birth he obtains the merit of the holy- men endowed with devotion to mother and father as well as preceptors. Another Holy Sacred Scripture of the Hindus *Sri Narsingh Puran* says that the systematic worship of Lord Vishnu is done in fire, sun, heart, *sthandil* (altar) and in idol. Lord Vishnu is omnipresent and His worship in altar and idols is the best. Said Scriptures says that since the age of Sage Narada i.e. Treta-yuga this tradition of having *darshan* and performing religious practices and rituals at Sri Ramjanambhumi is being followed by the devotees.

**629A.D.-645A.D.:** The Chinese Traveler *Yuan Chwang* recorded existence of Ten prominent Deva Temple of the Hindus in Ayodhya which shows that the prominent Temples described in *Sri Skandapuranam* including the Sri Ramjanamsthan Temple were still in existence during the Ayodhya visit of Yuan Chwang.

**12<sup>th</sup> Century A.D.:** From the Inscription of Ayushyachandra, the Successor of king Meghasuta who obtained the Lordship of Saketa-mandal by the grace of Superior Lord of the Earth Govindachandra, king of Gahadwal Dynasty had erected a temple of Sri Vaishnuhari at the site in dispute as said

inscription was recovered from the ruins of the disputed structure and site.

**1526A.D. - 1530A.D.** In his memoirs Babur-Nama Babar did not record any entry to show that there was fighting between him and the then Ruler of Ayodhya or to show under his order any mosque was erected in Ayodhya. In his memoirs Babur has mentioned name of the places and nature of constructions carried on at such places but he has not mentioned Ayodhya and Babri mosque. In 935 A.H. itself Babur remembered that construction works were going on in Dhulpur and Agra but did not mention construction of Baburi Mosque at Ayodhya.

**1556 A.D.- 1605A.D.:** During the reign of Akbar, the Great Princess Gul-Badan Begam, the daughter of the Emperor Babur wrote 'Humayun-Nama' wherein she has enumerated several places where constructions were carried out by Emperor Babar wherein Ayodhya and Baburi Mosque did not find place. In *A-in-I Akbari*, the Gazetteer of the Kingdom of Emperor Akbar Emperor's close confidant and an erudite scholar Abul Fazl Allami gives very minute and microscopic account of Ajodhya and records that Ajodhya is esteemed one of the holiest places of antiquity and was the residence of Ramchandra in the Treta age. He further records that near the city there were two tombs of six and seven yards in length alleged to be of Seth and the Prophet Job. He also records the presence of the tomb of Kabir at Ratanpur as well as graves of the Salar Masud and Rajab

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Salar located in Bahraich; but he did not mention existence of Babri Mosque or any other Mosque in Ayodhya. A-in-I Akbari describing Ten-incarnations of the Lord of Universe Sri Vishnu, records that Sri Rama was born in the city of Ayodhya on 9th day of bright half of Chaitra. A-in-I Akbari enumerating sacred places of pilgrimage of the Hindus records that in Ajodhya on the birth day of the Lord of Universe Sri Rama a great religious festival was held in those days. During this period the Sacred Religious book of the Hindus 'Sri Ramcharitmanas' was compiled by Sri Goswami Tulasidas wherein it has been described that for the sake of Brahmans, Cows, Gods and Saints the Lord of Universe Sri Vishnu assumed a form of Infant Sri Ram in the Palace of mother Sri Kauslya in Ayodhya City on 9th Day of the bright-half of the month of Chaitra and on this day of Sri Rama's birth the presiding spirits of all holy places flock there - so declare the Vedas - and as well as demons, nagas, birds, human beings, sages and gods come and pay their homage to the Lord and wisemen celebrate the great birthday festival and sing the sweet glory of Sri Rama.

**1605 A.D.-1627 A.D.:** William Finch who travelled India from 1608 A.D. to 1611 A.D. during the reign of Emperor Nuruddin Mohammad Jahangir and whose account has been published in the book "Early Travels in India 1583 - 1619 by William Foster p.176" has written that he saw the Hindus visiting the Birth Place of the Lord of Universe Sri Ram Chandra in Ramkot in the city of Ayodhya and also saw Brahmins noting down names of

the visitors to that sacred place which tradition was coming down for Lakhs of years . During this period in his book "Tarikh-e-Farista" English translation whereof is titled as "History Of The Rise Of The Mahomedan Power In India till the year A.D. 1612" Mahomed Kasim Ferishta enumerates the mosques which were rebuilt and repaired by the Emperor Babur where in there is no mention of Babari Mosque.

**1658 A.D. - 1707 A.D.:** During the reign Aurangzeb Niccolao Manucci who was worked as commander in the Army of the Mughal Emperor Aurangzeb and later on accompanied Raja Jai Singh during his campaign against Chhatrapati Maharajadhiraj Shivaji in between March 1664 to July 1665. After the death of Raja Jai Singh in or about 1678 he came in service of Prince Shah Alam I, who later on succeeded emperor Aurangzeb, as his physician and ultimately left Mughal dominion in 1686. In his book "Storia do Mogor" or Mogul India 1653 - 1708 Manucci records the facts that several temples including the four Chief temples of the Hindus at Ayodhya, Kashi (Varanasi), Mathura and Hardwar were demolished by the Emperor Aurangzeb but shortly thereafter Hindus thronged to their those sacred sites and started worshipping as they were doing in past.

**1770 A.D. :** In his book Description Historique Et Geographique De l' Inde, Joseph Tieffenthaler who visited Sri Ramjanmsthan in the year 1770 A.D. during the reign of Emperor Shah Alam II (1759-1806 A.D.) evidenced the performance of customary rites

by the Hindus in the central & left Halls of the Sri Ramjanmasthan Temple, Ajodhya in India. Tieffenthaler says that there was a *Vedi* i.e. *Sthandil* inside the said Temple which was being worshipped by the Devotees by prostrating and circumambulating it thrice, but he did not mention offering of prayer therein by the Muslims.

**1828 A.D.:** The East India Gazetteer of Hindustan of Walter Hamilton, 2nd Edition first published in 1828 A.D., records that the remains of the ancient city of Oudh (Ayodhya), the Capital of Great Rama was still in existence wherein reputed sites of temples dedicated to Sri Rama, Sri Sita, Lakshman and Hanuman are located and; the pilgrims who perform the pilgrimage to Ayodhya they walk round the temples and idols, bathe in holy pools, and perform the customary ceremonies.

**13.02.1856 A.D.:** Oudh was annexed to the Territories of the East India Company.

**1858 A.D. :** The Gazetteer of the Territories under the Government of East India Company and of the Native States on the continents of India by Edward Thornton, first published in 1858 records that on the right bank of the *Ghaghra*, are extensive ruins, about 2000 years old said to be those of the forts of Rama, king of *Oude*, hero of the *Ramayana*, and otherwise highly celebrated in the mythological and romantic legends of India; the ruins still bear the name of *Ramgarh*, "or of fort of Rama"; according to native tradition temples thereon were

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demolished by Aurangzeb, who built a mosque on part of the site, but an inscription on the wall of the mosque, falsify the tradition as it attributes work to the conqueror Babar. A *quadrangular* coffer of stone, whitewashed five *ells* long, 4 broad, and protruding 5 or 6 inches above ground, is pointed out as the cradle in which Rama was born as the 7th *Avatar* of *Vishnu*; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindus. The Gazetteer has recorded two sources to ascertain the person who was responsible for damaging the Temple and converting the same into a mosque firstly, tradition according to it was Aurangzeb and secondly, an inscription according to which it was Babar. The compiler recording both sources gave weightage to the information of the alleged inscription.

**1858 A.D.:** One Hindu Saint Neehang Singh occupied the alleged Janmasthan mosque and in the centre of the Baburi Mosque built an altar and installed idol. Inside the walls of the said structure he wrote "Ram Ram" by charcoal here and there and started worshipping the deity by way of offering fire sacrifices, oil lamps. Stating aforesaid facts vide application dated 30<sup>th</sup> November, 1858 one Syed Muhammad claiming to be Khatib and muazzim of the Baburi mosque prayed to the Authorities for removal of the Hindu Saint, Idols as well as washing out the names i.e. Ram Ram from the place where earlier from hundreds of years symbol of Hindu was lying down and Hindus used to worship. On being asked to leave the place

by the Officer-in-charge of local Police Station said Saint refused to vacate the place stating that the said place was of Almighty. There is nothing to suggest removal of said saint and /or removal of Idol.

**15.03.1859 A.D.:** Lord Canning issued proclamation and thereby confiscated all proprietary rights in the soil of the Oudh Province.

**1861 A.D.:** In the first settlement of 1861 plot no.163 i.e. the suit property was recorded as "*Abadi Janam Asthan*" owned by "*Sarkar Bahadur*".

**1868 - 1873 A.D.:** Alleged khatib and muezzin admitting the fact of presence of idols prayed before the Authorities for removal of idols.

**1870 A.D.:** Mr. P. Carnegie who was officiating Deputy Commissioner of Faizabad in 1817 has in his book "Historical Sketch District Faizabad with the Old Capitals of Ayodhya and Faizabad" has mentioned that upto annexation of Oudh the Hindus used to worship in the Mosque-Temple at the Janam Sthan.

**1877-78 A.D.:** Gazetteer of the Province of Oudh first published in 1877-78 records that Ajodhya is to the Hindus what Mecca is to the Mohammadans and Jerusalem to the Jews. Ajodhya its eponymous city was the capital of incarnate deity and perfect man, Rama, history is more nearly concerned with the influence which the story of his life still has on the moral and religious



beliefs of a great people, and the enthusiasm which makes his birth-place the most highly venerated of the sacred places to which its pilgrims crowd. The *Janamsthan* marks the place where *Ram Chander* was born. The Gazetteer records that *Ramkot*, the stronghold of Ram Chandar covered a large extent of ground, and, according to ancient manuscripts, it was surrounded by 20 *Bastions*, each of which was commanded by one of Ram's famous general after whom they took the names by which they are still known. In course of great rapture between the Hindus and the Muslims, possession of Sri Ramjanmsthan for few days ultimately the Hindus re-occupied their said sacred shrine suffering 11 casualties and inflicting 75 casualties on Muslim-side. The Gazetteer further records that up to that time the Hindus used to worship in the mosque-temple. Since British rule a railing had been put up to prevent the disputes. There were 8 Royal Mansions where dwelt Sri Ram, an incarnation, his father Sri Dasrath and Sri Dasarath's wives. in all India, perhaps except the *Jagannath* festival and that at *Hardwar*, there was none to equal the *Ram Naumi* celebration at Ajodhya. At the *Ram Naumi* festival 5,00,000 people assemble in honour of ancient King Ramchander.

1880 A.D.: The report of the A.F. Millett, the officiating settlement officer of the Faizabad district has recorded in his report that prior to commencement of British Rule Oudh the Hindus used to pray in the Mosque-Temple.

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**1910. A.D.:** In his book "History of Indian and Eastern Architecture" 1st published 1910 in its Chapter X 'Mughal Architecture' James Fergusson has observed that no building known to be built by Babur has yet been identified in India.

**27.03.1934:** Alleged structure was demolished in riot and later on re-erected/repared by the Muslim contractor appointed by the Government it is that contractor who fixed inscriptions on the re-built building with foot note below the restored epigraph in Urdu recording the fate of the original inscription as follows: "On 27<sup>th</sup> March, 1934 the Hindus-after demolishing *Masjid* took away the original inscription which was dexterously re-built by the contractor Tehwoor Khan."

**23.12.1949:** F.I.R. was lodged at Police Station Ayodhya alleging that in the intervening nights of 22<sup>nd</sup> and 23<sup>rd</sup> December, 1949 in the Disputed Structure Idol of Sri Ramchandraji was placed.

**29.12.1949:** Disputed Structure was attached by the Additional City Magistrate Faizabad. That vide his order dated 29-12-1949 in a proceeding drawn under Section 145 Criminal Procedure code, 1898 and appointed Priya Dutta as the Receiver.

**05.01.1950:** The Receiver Priya Dutta appointed assumed the charge of the disputed structure.

**16.01.1950:** Regular Suit No. 2 of 1950/O.O. S. No.1 of 1989 was filed in the Court of Civil Judge Faizabad by one Gopal

Singh Visharad against Zahoor Ahamad and 10 (ten) others inter alia praying for a Decree of declaration to the effect that the plaintiff was entitled to perform Puja and Darshan by going near Bhagwan Sri Ramchandra etc. installed at Asthan Janam Bhumi without any hindrance from the Defendants. In the said suit a prayer for permanent injunction restraining the State of Uttar Pradesh, Deputy Commissioner Faizabad, Superintendent of Police Faizabad as well as Sunni Central Waqfs Board Uttar Pradesh from removing the Idols of Bhagwan Sri Ram Chandra from the suit property. And by vide order dated 16<sup>th</sup> of January, 1950 as modified by order dated 19<sup>th</sup> January, 1950 the Ld. Court was pleased to restrain the parties by means of temporary injunction from removing the Idols in question from the site in dispute and from interfering with Puja etc.. An interim injunction in the meanwhile, as prayed, was granted.

**19.01.1950:** The Civil Judge modified the injunction order dated 16.1.1950, on an application filed on behalf of defendants no. 7 to 9, in the following manner: "The opposite parties are hereby restrained by means of a temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with "Puja" etc. as at present carried on. The order dated 16.01.1950 stands modified accordingly."

**25.05.1950:** On 25.05.1950 Shri Shiv Shanker Lal, Commissioner submitted his report and map in Regular Suit No.1 of 1950 / O.O.S. No 1 of 1989.

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**05.12.1950:** Regular Suit No. 26 of 1950/O.O. S. No.2 of 1989 was filed in the Court of Civil Judge Faizabad by one Param Hans Ram Chandra Das against Zahoor Ahamad and 10(ten) others inter alia praying for a Decree of declaration to the effect that the plaintiff was entitled to perform Puja and Darshan according to customary rights without any check, obstruction or interference by going near Bhagwan Sri Ramchandra, etc. installed at Asthan Janam Bhumi. In the said suit a prayer for permanent injunction restraining the defendants from removing the Idols of Bhagwan Sri Ram Chandra from the suit property but the aforesaid suit was withdrawn by the plaintiff in the year 1992.

**03.03.1951:** The Interim Injunction Order dated 16.01.1950 as modified vide order dated 19.01.1950 passed in Regular Suit No. 26 of 1950/O.O. S. No.2 of 1989 was extended till disposal of the said suit.

**17.12.1959:** Nirmohi Akhara and its Mahant filed Regular Suit No. 26 of 1959/O.O.S. No.3 of 1989 against the then Receiver Babu Priya Dutt Ram and 10(ten) others seeking a decree of removal of the said Receiver and delivering the charge and management of Temple with articles to the Plaintiffs. In this suit no prayer for interim relief was made.

**18.12.1961:** Sunni Central Wakfs of Board, U.P. and (Nine) others filed Regular Suit No. 12 of 1961/O.O.S. No. 4 of 1989

against Sri Gopal Singh Visharad and 12(Twelve)others inter alia praying for a decree of declaration that the suit property is public mosque commonly known as 'Babari Masjid' as also for a decree for delivery of possession of the mosque by removal of the Idols and other articles placed therein by the Hindus as objects of their worship. In this suit it has also been prayed that the Statutory Receiver be commanded to hand over the property in dispute to the plaintiffs by removing the unauthorized structure erected there on.

**23.04.1962/28.05.1962:** The Government of Uttar Pradesh through its officials being the defendant nos. 6 to 8 in Regular Suit No. 12 of 1961 filed an application inter alia stating that the Government is not interested in the properties in dispute and as such do not propose to contest the suit.

**06.01.1964:** That On 06.01.1964 all the parties in Regular Suit Nos. 1 of 1950, 25 of 1950, 26 of 1959 and 12 of 1961 re-registered as O.O.S. Nos. 1, 2, 3 and 4 of 1989 filed joint application requesting the trial court to consolidate the aforesaid suits and hear those matters collectively and jointly. The trial court allowed the application with the consent of learned counsels for the parties on the same date consolidating all the suits and to treat Regular Suit No. 12 of 1961 as leading case.

**05.03.1964:** That the Learned Civil Judge framed 16 issues .

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**17.07.1965:** That the Learned Civil Judge framed an additional issue being issue no.17.

**21.04.1966:** As agreed by learned counsels for the parties, issue No. 17 i.e. "Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?" was taken up as a "primary preliminary issue" and vide judgment dated 21.04.1966 the Civil Judge, decided the same against plaintiffs (Suit 4) and in favour of the defendants therein. The Civil Judge, after reading the definition of 'Waqf' and 'Waqif' as contained in Section 3(1) of 1936 Act, held that whenever the word 'waqf' is conveyed to any person, it must necessarily convey simultaneously the idea or description or a tangible connotation about the existence of "any property" covered or included in the 'Waqf'. Meaning thereby, if someone wants another to know that a particular property is waqf, it would be necessary for him to mention simultaneously the description of at least tangible connotation about the identity of the property of the waqf. After perusing the alleged notification dated 26.2.1944 said to have been published under Section 5 of 1936 Act, the Court found that Item 26, at which the alleged Waqf of Waqif Badshah Babar was mentioned, was blank in its last column and consequently it did not give any idea of the property of which Waqf was created. It held that the alleged Government notification at Item no. 26 was meaningless.

**01.02.1986:** The then Ld. District Judge of Faizabad vide his order directed to open locks of the building in dispute which was

complied with and the Hindus sta

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to the deities.

**01.07.1989:** Regular Suit No.

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was filed by Sri Deoki Nande

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of Bhagwan Sri Ramlala V

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Rajendra Singh and 26

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perpetual injunction

against the Defendants

in interfering with, or

raising any objection to, or placing any obstruction in the

construction of new Temple building at Sri Rama Janma Bhumi,

Ayodhya.

**10.07.1989:** The Hon'ble High Court of Judicature at Allahabad,

Lucknow Bench, Lucknow on application dated 16<sup>th</sup>

December, 1987 of the State of Uttar Pradesh made under

Section 24 read with Section 151 of the Code of Civil

Procedure, 1908 passed Order and thereby withdrew all the suits

to the said Hon'ble High Court with a direction that the said

suits be heard by a Special Bench of Three Hon'ble Judges.

21.07.1989: The Hon'ble Chief justice of the Allahabad High

Court constituted a Special Bench consisting of three Hon'ble

Judges.

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**23.10.1989:** Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti founded by His Holiness Jagadguru Shankaracharya of Shardamath-Dwarka and Jyotirmath-Badarikashram through its Convener Madan Mohan Gupta was added as defendant no.20 in O.O.S. No.4 of 1989.

**05.11.1989:** The Appellant here in and defendant no. 20 in aforesaid suit O.O.S. No. 4 of 1989, filed Written Statement in O.O.S. No. 4 of 1989 in the High Court *inter alia* denying all the allegations contained in the Plaint of the said Suit and taking additional pleas that the birthplace of Sri Ram in Ayodhya is being worshipped for the last many thousand years and Hindus believe divine presence at Ram Janma Bhoomi and believe in receiving bounties and blessing of the Deity the temple was not demolished by the Babur but was desecrated by the Aurangzeb but the Hindus continue to worship therein, the building having images and other objects of worships of Hindus is not a mosque.

15.04.1992: The High Court allowed the defendants nos. 4, 5, 6, 22, 24, 25, 26 and 27 to defend O.O.S. No. 5 as representatives of Muslim Community.

**06.12.1992:** The disputed structure was demolished and temporary structure was created wherein the worship and puja of infant Lord Sri Ram and other deities continue to be worshipped by the Hindus.



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**03.04.1993:** The Acquisition of Certain Area of Ayodhya Act, 1993 was published in Gazette of India whereby 112 Bigha 02 Biswa 13 Biswansi land corresponding to 70.08281 Acres in area including the Suit premises comprised in Najul Plot No. 583 corresponding to Revenue Plot Nos. 163 of the first settlement of 1861 was acquired by the Central Government inter alia with aim and object to maintain public order and to promote communal harmony between different communities and the spirit of brotherhood amongst the people of India and to facilitate erection of a temple, a mosque, amenities for pilgrims, establishment of library etc. The immediate result of the said enactment was that all the four suits pending before this Court, by operation of law, stood abated.

**07.01.1993:** The President of India in the meantime also made a special reference to the Apex Court under Article 143(1) of the Constitution of India on the following question. "Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi--Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood."

**24.10.1994:** Writ Petitions challenging Vires of said Ayodhya Act of 1993 were decided by the Hon'ble Apex Court collectively along with the reference made under Article 143 (1) of the Constitution vide its judgment dated 24.10.1994, passed in M. Ismail Faruqui Dr. and others versus Union of India and others

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etc. etc. reported in AIR 1995 SC 605. The Hon'ble Supreme Court vide its said Judgment upheld the aforesaid acquisition excluding the area of Inner and Outer Courtyard of RJB i.e. a piece of land measuring 130' x 80' = 10,400 Sq. ft. which includes inner courtyard of 80'x40' = 3200 Sq.ft. only interalia laying down principle of law that "The protection under Arts. 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right." The Hon'ble Apex Court interalia concluding that "Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the

subject matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits. The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on adjudication of the dispute, must be restored to the undisputed owners." The Apex Court also allowed the parties to seek amendment in their pleadings, a number of applications were filed seeking amendments in the pleadings and also for impleadment of Union of India etc. This Court, by various orders, after hearing the parties, allowed necessary amendments as found fit and rejected the rest.

**24.07.1996**: Consolidated hearing of the Suit nos. O.O.S. 1 of 1989, O.O.S. No. 3 of 1989, O.O.S. No. 4 of 1989 and O.O.S. No. 5 of 1989 was started.

**01.08.2002**: The High Court took a view that Archaeological Evidence will be of importance to decide the issue as to whether there was any temple / structure which was demolished and mosque was constructed on the disputed site and directed the Archeological Survey of India to get the disputed site surveyed by

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Ground Penetrating Radar and Geo-radiology and to submit report.

**17.02.2003:** The ASI submitted GPR Survey Report which was carried out by Tojo-Vikas International (Pvt.) Ltd. from 30.12.2002 to 17.01.2003 wherefrom it was reflected that a variety of anomalies ranging from 0.50 to 5.5 metres in depth could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site.

**05.03.2003:** The High Court directed ASI to excavate the disputed site.

**12.03.2003-07.08.2003:** The ASI carried out excavation at the disputed site of Rama Janmabhumi – Babri Masjid as per direction of the High Court.

**22.08.2003:** The ASI submitted Excavation Report along with several records before the High Court inter alia containing its conclusive finding that viewing in totality and taking into account the archeological evidence of a massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure along

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with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having pranala (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India.'

**23.03.2007**: during Consolidated hearing of the Suit nos. O.O.S. 1 of 1989, O.O.S. No. 3 of 1989, O.O.S. No. 4 of 1989 and O.O.S. No. 5 of 1989 from 24.07.1996 to 23.03.2007 in total 94 Witnesses gave their respective statements and were Cross-Examined by the Counsels of the contesting parties at length which have been recorded in about 13991 pages.

**27.04.2007-27.08.2009**: That after conclusion of the evidences final arguments were started on and from 27<sup>th</sup> April 2007 before the Special Full Bench comprising the Hon'ble Justice Rafat Alam, the Hon'ble Justice Dharam Veer Sharma and the Hon'ble Justice Om Prakash Srivastava JJ. The said Hon'ble Bench heard the arguments of the Ld. Advocates from 27.04.2007 to 27.08.2009 but due to retirement of the Hon'ble

Justice O.P. Srivastava J. as then His Lordship was as also due to elevation of the Hon'ble Justice Rafat Alam J. as Hon'ble Chief Justice of the Hon'ble Madhya Pradesh High Court the said bench became non-existent.

**11.01.2010-26.07.2010:** That During this period the re-constituted Special Full Bench comprising of the Hon'ble Justice Sibghat Ulla Khan J, the Hon'ble Justice Sudhir Agarwal and the Hon'ble Justice Dharma Veer Sharma, JJ. heard arguments of the Ld. Counsels & Advocates for 90 working days. During this period Ld. Counsel of the appellant herein Mr. P.N. Mishra, and by Susree Ranjana Agnihotri, Ld. Counsel argued for 24 working days citing/referring about 300 judgments and reference books as well as Statutes and also submitted his written argument in two volumes of 516 pages.

**30.09.2010:** The High Court delivered the Judgment wherein the Hon'ble Justice S.U.Khan J. and The Hon'ble Justice Sudhir Agarwal, J. forming majority Decreed the O.O.S. No. 1 of 1989 in part while the Hon'ble Justice D.V.Sharma, J. forming minority dismissed said O.O.S. No. 1 of 1989. The Hon'ble Justice Sudhir Agarwal, J. and the Hon'ble Justice D.V. Sharma, J. forming

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majority dismissed O.O.S. No.3 of 1989 and O.O.S.No.4 of 1989 while the Hon'ble Justice S.U.Khan, J. forming minority decreed the aforesaid suit in part. The Hon'ble Justice S.U.Khan J. and the Hon'ble Justice Sudhir Agarwal, J. forming majority Decreed the O.O.S. No. 5 of 1989 in part while the Hon'ble Justice

D.V.Sharma forming minority Decreed said O.O.S. No. 5 of 1989 in full.

19.02.2011: Hence the Civil Appeal

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IN THE HON'BLE SUPREME COURT OF INDIA  
 CIVIL APPELLATE JURISDICTION  
 ( UNDER ARTICLE 132, 133, 134A OF CONSTITUTION  
 OF INDIA READ WITH ORDER XV OF SUPREME COURT  
 RULES AND READ WITH SECTION 96 OF CIVIL  
 PROCEDURE CODE 1908)  
CIVIL APPEAL NO. 6965 OF 2011

(Arising from the Judgment and Final Order dated  
 30.09.2010 of the High Court of Uttar Pradesh,  
 Judicature at Lucknow passed in O.O.S.No 4 of 1989)  
 WITH A PRAYER FOR INTERIM RELIEF

**IN THE MATTER OF:-**

**BETWEEN**

**POSITION OF THE PARTIES**

Convener of Akhil  
 Bhartiya Sri  
 RamJanam Bhoomi  
 Punarudhar Samti, E-  
 7/45 Bangla T.T.  
 Nagar, Bhopal.

In the High Court      In this Court

Defendant      Appellant  
 no.20in  
 O.O.S. No. 4  
 of 1989

**VERSUS**

(1) Sri Rajendra  
 Singh, adult, S/o  
 Late Sri Gopal  
 Singh Visharad,  
 at present  
 residing at  
 Gonda, care of  
 State bank of  
 India, Gonda  
 branch, gonad.

Defendant      Respondent  
 No.1      No.1

(2) Param Hans  
Mahantram  
Chandra Das of  
Digambar akhara,  
Ayodhya. Expired  
on 31-7-03

Defendant  
no.2

(2/1) Mahant Suresh  
Das, aged about 55  
years, Chela Late  
Param Hans Ram  
Chandra Das of  
Digambar Akhara.  
(Amended vide Court's  
order 21-1-04)

Defendant  
no.2/1

Contesting  
Respondent  
no.2/1.

(3) Nirmohi Akhara,  
Mahalla Ram Ghat,  
Ayodhya, through its  
present  
Mahant Jagan Nath  
Das, aged about 54  
years, Chela Vaishnav  
Das Nirmohi r/o  
Mohalla Ram Ghat  
Bazar Pargana Haveli  
Awadh, Ayodhya, Distt.  
Faizabad. (Substituted  
with permission of  
court's order dated 1-  
9-95)

Defendant  
no.3

Contesting  
Respondent  
no.3

(4) Sunni Central  
Board of Waqfs, U.P.,  
having its office at Moti  
Lal Bose Road,  
Lucknow.

Defendant  
no.4

Contesting  
Respondent  
no.4

(5) Sri Mohammad Hashin, adult, S/o karim Bux r/o Mohalla Sutahti, Ayodha.	Defendant no.5	Contesting Resopndent no.5
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(6) Sri MAHMUD Ahmed, adult S/o Sri Ghalam Hasan r/o Mohalla Rakabganj, Distt. Faizabad. (Amended vide Court's Order dated 29-11-96)	Defendant no.6	Contesting Resopndent no.6
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(7) State of Uttar Pradesh, through the Secretary, Home Department, Civil Secretariat, Lucknow.	Defendant no.7	Contesting Resopndent no.7
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(8) The Collector and District Magistrate, Faizabad.	Defendant no.8	Contesting Resopndent no.8
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(9) The City Magistrate, Faizabad.	Defendant no.9	Contesting Resopndent no.9
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(10) The Senior Superintendent of Police, Faizabad.	Defendant no.10	Contesting Resopndent no.10
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(11) The President, All India Hindu Mahasabha, New Delhi.	Defendant no.11	Contesting Resopndent no.11
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(12) The President, All India Arya Samaj, Dewan Hall, Delhi.	Defendant no.12	Contesting Resopndent no.12
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(13) The President, All India Sanatan Dharam Sabha, Delhi.	Defendant no.13	Contesting Resopndent no.13
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(14) Sri Dharam Das, adult, Chela Baba Abhiram Das r/o Hanuman Garhi, Ayodhya.	Defendant no.14	Contesting Resopndent no.14
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(15) Sri Pundarik Misra, adult, S/o Sri Raj Naraim Misra, r/o Bahampur Sarai, Rakabganj, Faizabad.	Defendant no.15	Contesting Resopndent no.15
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(16) Sri Ram Dayal Saran, adult, Chela Ram Lakhan Saran r/o Ram Charit Manas Bhawan, Mohalla Ramkot, Ayodhya.	Defendant no.16	Contesting Resopndent no.16
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(17) Sri Ramesh Chandra Tripathi, adult, S/o Sri Paresh Ram Tripathi r/o village Bhagwas Patti, Pergna Minihara Tahsil Akbarpur Distt. Faizabad.	Defendant no.17	Contesting Resopndent no.17
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(18) Sri Umesh Chandra Pandey, adult, S/o Sri Uma Shanker Pandey, Advocate, r/o Ranopali, Ayodhya.	Defendant no.20	Contesting Resopndent no.18
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(19) Sri Ram Janam Bhumi Nyas, a Trust having its office at Sankat Mochan	Defendant no.21	Contesting Resopndent no.19
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Ashram, Sri hanuman  
Mandir, Rama Krishan  
Puram, Sector VI, New  
Delhi, through Sri  
Ashok Singhal –  
Managing Trustee.

(20) Shia Central Board of Waqfs, U.P., Lucknow.	Defendant no.22	Contesting Resopndent no.20
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(21) Prince Anjum Quder, Prestrect, All India Shia Conference, Qaomi Ghar, Nadan Mahal Road, Lucknow. (Delated and struck off vide court's order dated 10-11-97)	Defendant no.24	Contesting Resopndent no.21
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(22) All India Shia Conference through Sri S. Mohammad Hasnain Abidi, Honorary General Secretary, Qaomi-Ghar, Nadan Mohal Road, Lucknow.	Defendant no.25	Contesting Resopndent no.22
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(23) Hafiz Mohammad Siddiqui, aged about 46 years, S/o Late Haji Mohd. Ibrahim r/o Lalbagh, Moradabad, General Secretary, Jamaitul ulema Hind, U.P., Jamait Building, B.N. Verma Road, Kutchery Road, Lucknow.	Defendant no.26	Contesting Resopndent no.23
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(24) Vakeeladdin, aged about 55 years, S/o Ismail r/o Madarpur, Pergana & Tahsil Tanda, Distt. Faizabad. (Amended vide Court's order dated 15-4-92 and struck of under court's order dated 29-	Defendant no.27	Contesting Resopndent no.24
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11-96)

(25) Bhagwan Sri Ram  
 Virajman at Ram  
 Janma Bhumi,  
 Ayodhya also called  
 Bhagwan Sri Ram Lala  
 Virajman, respected by  
 next friend, Sri Deoki  
 Nandan Agarwala,  
 Senior Advocate,  
 Retired Judge, High  
 Court, 56, Dilkusha,  
 New Katra, Allahabad.  
 -Expired on 8-4-02  
 and in his place Sri  
 Triloki Nath Pandey,  
 aged about 65 years,  
 S/o Late Sri Askrut  
 Pandey r/o Karsewak  
 Puram, Ayodhya, Distt.  
 Faizabad is substituted  
 as next friend of  
 plaintiff nos.1 & 2.

Plaintiff  
 no.1

Proforma  
 respondent  
 no.28

(26) Asthan Sri Ram  
 Janma Bhumi,  
 Ayodhya, respected by  
 next friend, Sri Deoki  
 Nandan Agarwal,  
 Senior Advocate,  
 Retired Judge, High  
 Court, 56, Dilkusha,  
 New Katra, Allahabad.  
 -Expired on 8-4-02  
 and in his place Sri  
 Triloki Nath Pandey,  
 aged about 65 years,  
 S/o Late Sri Askrut  
 Pandey r/o Karsewak  
 Puram, Ayodhya,  
 Distt.fazabad

Plaintiff  
 no.2

Proforma  
 respondent  
 no.29

(27) Sri Deoki Nandan  
Agarwala, aged about  
68 years s/o Late Sri  
M.L.Agarwala, Senior  
Advocate, Retired  
Judge, High Court, 56,  
Dilkusha, New Katra,  
Allahabad. and in his  
place Sri Triloki Nath  
Pandey, aged about 65  
years, S/o Late Sri  
Askrut Pandey r/o  
Karsewak Puram,  
Ayodhya, Distt.faizabad

Plaintiff  
no.3

Proforma  
respondent  
no.29

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TO,

The Hon'ble chief justice of India and his Hon'ble  
Companion judges of the Hon'ble Supreme  
Court of India at New Delhi

The humble First Appeal of the  
Appellant above named

**MOST RESPECTFULLY SHEWETH:-**

1. That the Appellant above named respectfully submits

that the Appellant is seeking the First Appeal being  
aggrieved by the judgment and final order dated  
30.09.2010 passed in O.O.S. No. 5 of 1989 by the  
High Court of Judicature at Allahabad Lucknow  
Bench, Lucknow (hereinafter referred to as 'the High  
Court') vide which the High court by majority  
disposed of the said O.O.S. No. 5 of 1989 along with  
O.O.S. No. 1 of 1989, O.O.S. No. 3 of 1989 and O.O.S.  
No. 4 of 1989 decreeing the said O.O.S. No. 5 of 1989  
inter alia declaring all the three sets of parties i.e.  
Muslims, Hindus and Nirmohi Akhara joint title  
holders of the property / premises in dispute as  
described by letters ABCDEF in the map Plan I  
prepared by Sri Shiv Shanker Lal, Pleader /  
Commissioner appointed by Court in O.O.S. No. 1 of  
1989 to the extent of one third share each for using  
and managing the same for worshipping; and a  
preliminary decree to that effect, with further



declaration that the portion below the Central Dome where at present the Idol is kept in makeshift temple will be allotted to Hindus in final decree, with a further direction that Nirmohi Akhara will be allotted share including that part which is shown by the words Ram Chabutara and Sita Rasoi in the said map, with further clarification that even though all the three parties are declared to have one third share each, ~~however~~ if while allotting exact portions some minor adjustment in the share is to be made then the same will be made and the adversely affected party may be compensated by allotting some portion of the adjoining land which has been acquired by the Central Government; the Appellant begs to prefer this Memorandum of Appeal under Order XLI read with Section 96 read with 109 of the Code of Civil Procedure 1908 as well as Article 132 of the Constitution of India.

### **FACTS IN BRIEF**

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

2.1. That in *Treta Yuga* (2163102 B.C. - 867102 B.C.): The Holy Sacred Scripture of the Hindus *Srimad-Valmiki Ramayana* reveals that in the '*Astapadakara*' i.e. octagonal like a dice-board city of Ayodhya the Lord of Universe Sri Ram appeared in the Palace of mother Sri Kausalya as also that inside said palace there was a temple and an Idol of

the Lord of Universe Sri Vishnu at least at the time of pronouncement of the date of coronation of the Lord of Universe Sri Rama . The Almighty's creation Holy Sacred Code of *Sri Atharvaveda* tells that in the centre of Octagonal nine doored city of *Ayodhya* there is a Tri-domed abode of the Lord of Universe.

2.2. That in *Dwapar Yuga* (867102 B.C.- 3102 B.C.) :The Holy Sacred Scripture of the Hindus *Sri Skandapuram* describing about 10 prominent Temples of *Ayodhya* commands that the devotees to visit *Ayodhya* and after taking bath in *Sarayu* to visit Sri Rama janambhumi, the place where Supreme Brahma immutable Rama who killed Ravana was borne to have its *darshan* as by doing so one get salvation and benefits which are obtained of visiting of all *Tirthas*, performance of *Rajsuya Yajnas*, *Agnihotra sacrifices* as well as gifting of thousands of tawny-coloured cows, by seeing a man observing the Holy right particularly in the place of birth he obtains the merit of the holy- men endowed with devotion to mother and father as well as preceptors. Another Holy Sacred Scripture of the Hindus *Sri Narsingh Puran* says that the systematic worship of Lord Vishnu is done in fire, sun, heart, *sthandil* (altar) and in idol. Lord Vishnu is omnipresent and His worship in altar and idols is the best. Said Scriptures says that since the age of Sage Narada i.e. *Treta-yuga* this tradition of having *darshan* and performing religious practices and rituals at

Sri Ramjanambhumi is being followed by the devotees.

2.3. That in 629A.D.-645A.D.: The Chinese Traveler *Yuan Chwang* recorded existence of Ten prominent Deva Temple of the Hindus in Ayodhya which shows that the prominent Temples described in *Sri Skandapuram* including the Sri Ramjanamsthan Temple were still in existence during the Ayodhya visit of Yuan Chwang.

2.4. That in 12<sup>th</sup> Century A.D.: From the Inscription of Ayushyachandra, the Successor of king Meghasuta who obtained the Lordship of Saketa-mandal by the grace of Superior Lord of the Earth Govindachandra, king of Gahadwal Dynasty had erected a temple of Sri Vaishnuhari at the site in dispute as said inscription was recovered from the ruins of the disputed structure and site.

2.5. That in 1526A.D. - 1530A.D. In his memoirs Babur-Nama Babar did not record any entry to show that there was fighting between him and the then Ruler of Ayodhya or to show under his order any mosque was erected in Ayodhya. In his memoirs Babur has mentioned name of the places and nature of constructions carried on at such places but he has not mentioned Ayodhya and Babri mosque. In 935 A.H. itself Babur remembered that construction works were going on in Dhulpur and Agra but did not mention construction of Baburi Mosque at

Ayodhya.

2.6. That in 1556 A.D.- 1605A.D., During the reign of Akbar, the Great Princess Gul-Badan Begam, the daughter of the Emperor Babur wrote 'Humayun-Nama' wherein she has enumerated several places where constructions were carried out by Emperor Babar wherein Ayodhya and Baburi Mosque did not find place. In *A-in-I Akbari*, the Gazetteer of the Kingdom of Emperor Akbar Emperor's close confident and an erudite scholar Abul Fazl Allami gives very minute and microscopic account of Ajodhya and records that Ajodhya is esteemed one of the holiest places of antiquity and was the residence of Ramchandra in the *Treta* age. He further records that near the city there were two tombs of six and seven yards in length alleged to be of Seth and the Prophet Job. He also records the presence of the tomb of Kabir at Ratanpur as well as graves of the Salar Masud and Rajab Salar located in Bahraich; but he did not mention existence of Babri Mosque or any other Mosque in Ayodhya. *A-in-I Akbari* describing Ten-incarnations of the Lord of Universe Sri Vishnu, records that Sri Rama was born in the city of Ayodhya on 9th day of bright half of Chaitra. *A-in-I Akbari* enumerating sacred places of pilgrimage of the Hindus records that in Ajodhya on the birth day of the Lord of Universe Sri Rama a great religious festival was held in those days. During this period the Sacred Religious book of the Hindus '*Sri Ramcharitmanas*'

was compiled by Sri Goswami Tulasidas wherein it has been described that for the sake of Brahmans, Cows, Gods and Saints the Lord of Universe Sri Vishnu assumed a form of Infant Sri Ram in the Palace of mother Sri Kauslya in Ayodhya City on 9<sup>th</sup> Day of the bright-half of the month of Chaitra and on this day of Sri Rama's birth the presiding spirits of all holy places flock there – so declare the Vedas – and as well as demons, nagas, birds, human beings, sages and gods come and pay their homage to the Lord and wisemen celebrate the great birthday festival and sing the sweet glory of Sri Rama.

2.7. That in 1605 A.D.-1627 A.D.: William Finch who travelled India from 1608 A.D. to 1611 A.D. during the reign of Emperor Nuruddin Mohammad Jahangir and whose account has been published in the book "Early Travels in India 1583 – 1619 by William Foster p.176" has written that he saw the Hindus visiting the Birth Place of the Lord of Universe Sri Ram Chandra in Ramkot in the city of Ayodhya and also saw Brahmins noting down names of the visitors to that sacred place which tradition was coming down for Lakhs of years . During this period in his book " Tarikh-e-Farista" English translation whereof is titled as "History Of The Rise Of The Mahomedan Power In India till the year A.D. 1612" Mahomed Kasim Ferishta enumerates the mosques which were rebuilt and repaired by the Emperor Babur where in there is no mention of

Babari Mosque.

2.8. That in 1658 A.D. – 1707 A.D.: During the reign Aurangzeb Niccolao Manucci who was worked as commander in the Army of the Mughal Emperor Aurangzeb and later on accompanied Raja Jai Singh during his campaign against Chhatrapati Maharajadhiraj Shivaji in between March 1664 to July 1665. After the death of Raja Jai Singh in or about 1678 he came in service of Prince Shah Alam I, who later on succeeded emperor Aurangzeb, as his physician and ultimately left Mughal dominion in 1686. In his book "Storia do Mogor" or Mogul India 1653 – 1708 Manucci records the facts that several temples including the four Chief temples of the Hindus at Ayodhya, Kashi (Varanasi), Mathura and Hardwar were demolished by the Emperor Aurangzeb but shortly thereafter Hindus thronged to their those sacred sites and started worshipping as they were doing in past.

2.9. That in 1770 A.D. In his book Description Historique Et Geographique De l' Inde, Joseph Tieffenthaler who visited Sri Ramjanmsthan in the year 1770 A.D. during the reign of Emperor Shah Alam II (1759-1806 A.D.) evidenced the performance of customary rites by the Hindus in the central & left Halls of the Sri Ramjanmsthan Temple, Ajodhya in India. Tieffenthaler says that there was a Vedi

i.e. *Sthandil* inside the said Temple which was being worshipped by the Devotees by prostrating and circumambulating it thrice, but he did not mention offering of prayer therein by the Muslims.

2.10. That in 1828 A.D. The East India Gazetteer of Hindustan of Walter Hamilton, 2nd Edition first published in 1828 A.D., records that the remains of the ancient city of Oudh (Ayodhya), the Capital of Great Rama was still in existence wherein reputed sites of temples dedicated to Sri Rama, Sri Sita, Lakshman and Hanuman are located and; the pilgrims who perform the pilgrimage to Ayodhya they walk round the temples and idols, bathe in holy pools, and perform the customary ceremonies.

2.11. That in 13.02.1856 A.D., Oudh was annexed to the Territories of the East India Company.

2.12. That in 1858 A.D., The Gazetteer of the Territories under the Government of East India Company and of the Native States on the continents of India by Edward Thornton, first published in 1858 records that on the right bank of the *Ghaghra*, are extensive ruins, about 2000 years old said to be those of the forts of Rama, king of *Oude*, hero of the *Ramayana*, and otherwise highly celebrated in the mythological and romantic legends of India; the ruins still bear the name of *Ramgarh*, "or of fort of Rama"; according

to native tradition temples thereon were demolished by Aurangzeb, who built a mosque on part of the site, but an inscription on the wall of the mosque, falsify the tradition as it attributes work to the conqueror Babar. A *quadrangular* coffer of stone, whitewashed five *ells* long, 4 broad, and protruding 5 or 6 inches above ground, is pointed out as the cradle in which Rama was born as the 7th *Avatar* of *Vishnu*; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindus. The Gazetteer has recorded two sources to ascertain the person who was responsible for damaging the Temple and converting the same into a mosque firstly, tradition according to it was Aurangzeb and secondly, an inscription according to which it was Babar. The compiler recording both sources gave weightage to the information of the alleged inscription.

2.13. That in 1858 A.D., One Hindu Saint Neehang Singh occupied the alleged Janmasthan mosque and in the centre of the Baburi Mosque built an altar and installed idol. Inside the walls of the said structure he wrote "Ram Ram" by charcoal here and there and started worshipping the deity by way of offering fire sacrifices, oil lamps. Stating aforesaid facts vide application dated 30<sup>th</sup> November, 1858 one Syed Muhammad claiming to be Khatib and muazzim of the Baburi mosque prayed to the Authorities for removal of the Hindu Saint, Idols as well as washing out the names



i.e. Ram Ram from the place where earlier from hundreds of years symbol of Hindu was lying down and Hindus used to worship. On being asked to leave the place by the Officer-in-charge of local Police Station said Saint refused to vacate the place stating that the said place was of Almighty. There is nothing to suggest removal of said saint and /or removal of Idol.

2.14. That in 15.03.1859 A.D., Lord Canning issued proclamation and thereby confiscated all proprietary rights in the soil of the Oudh Province.

2.15. That in 1861 A.D., in the first settlement of 1861 plot no.163 i.e. the suit property was recorded as "*Abadi Janam Asthan*" owned by "*Sarkar Bahadur*".

2.16. That in 1868 – 1873 A.D., Alleged khatib and muezzin admitting the fact of presence of idols prayed before the Authorities for removal of idols.

2.17. That in 1870 A.D., Mr. P. Carnegie who was officiating Deputy Commissioner of Faizabad in 1817 has in his book "*Historical Sketch District Faizabad with the Old Capitals of Ayodhya and Faizabad*" has mentioned that upto annexation of Oudh the Hindus used to worship in the Mosque-Temple at the Janam Sthan.

2.18. That in 1877-78 A.D., Gazetteer of the Province of Oudh first published in 1877-78 records that Ajodhya is to the Hindus what Mecca is to the Mohammadans and Jerusalem to the Jews. Ajodhya its eponymous city was the capital of incarnate deity and perfect man, Rama, history is more nearly concerned with the influence which the story of his life still has on the moral and religious beliefs of a great people, and the enthusiasm which makes his birth-place the most highly venerated of the sacred places to which its pilgrims crowd. The *Janamsthan* marks the place where *Ram Chander* was born. The Gazetteer records that *Ramkot*, the stronghold of Ram Chandar covered a large extent of ground, and, according to ancient manuscripts, it was surrounded by 20 *Bastions*, each of which was commanded by one of Ram's famous general after whom they took the names by which they are still known. In course of great rapture between the Hindus and the Muslims, possession of Sri Ramjanmsthan for few days ultimately the Hindus re-occupied their said sacred shrine suffering 11 casualties and inflicting 75 casualties on Muslim-side. The Gazetteer further records that up to that time the Hindus used to worship in the mosque-temple. Since British rule a railing had been put up to prevent the disputes. There were 8 Royal Mansions where dwelt Sri Ram, an incarnation, his father Sri Dasrath and Sri Dasarath's wives. in all India, perhaps except the *Jagannath* festival and that at *Hardwar*, there was none to equal the

*Ram Naumi* celebration at Ajodhya. At the *Ram Naumi* festival 5,00,000 people assemble in honour of ancient King Ramchander.

2.19. That on 1880 A.D., The report of the A.F. Millett, the officiating settlement officer of the Faizabad district has recorded in his report that prior to commencement of British Rule Oudh the Hindus used to pray in the Mosque-Temple.

2.20. That on 1910 A.D., in his book "History of Indian and Eastern Architecture" 1st published 1910 in its Chapter X 'Mughal Architecture' James Fergusson has observed that no building known to be built by Babur has yet been identified in India.

2.21. That on 27.03.1934, Alleged structure was demolished in riot and later on re-erected/repared by the Muslim contractor appointed by the Government it is that contractor who fixed inscriptions on the re-built building with foot note below the restored epigraph in Urdu recording the fate of the original inscription as follows: "On 27<sup>th</sup> March, 1934 the Hindus-after demolishing *Masjid* took away the original inscription which was dexterously re-built by the contractor Tehwoor Khan."

2.22. That on 23.12.1949, F.I.R. was lodged at Police

Station Ayodhya alleging that in the intervening nights of 22<sup>nd</sup> and 23<sup>rd</sup> December, 1949 in the Disputed Structure Idol of Sri Ramchandrajī was placed.

2.23. That on 29.12.1949, disputed Structure was attached by the Additional City Magistrate Faizabad. That vide his order dated 29-12-1949 in a proceeding drawn under Section 145 Criminal Procedure code, 1898 and appointed Priya Dutta as the Receiver.

2.24. That on 05.01.1950, the Receiver Priya Dutta appointed and assumed the charge of the disputed structure.

2.25. That on 16.01.1950, Regular Suit No. 2 of 1950/O.O. S. No.1 of 1989 was filed in the Court of Civil Judge Faizabad by one Gopal Singh Visharad against Zahoor Ahamad and 10 (ten) others inter alia praying for a Decree of declaration to the effect that the plaintiff was entitled to perform Puja and Darshan by going near Bhagwan Sri Ramchandra etc. installed at Asthan Janam Bhumi without any hindrance from the Defendants. In the said suit a prayer for permanent injunction restraining the State of Uttar Pradesh, Deputy Commissioner Faizabad, Superintendent of Police Faizabad as well as Sunni Central Waqfs Board Uttar Pradesh from removing the Idols of Bhagwan Sri Ram Chandra from the suit property. And by

vide order dated 16<sup>th</sup> of January, 1950 as modified by order dated 19<sup>th</sup> January, 1950 the Ld. Court was pleased to restrain the parties by means of temporary injunction from removing the Idols in question from the site in dispute and from interfering with Puja etc.. An interim injunction in the meanwhile, as prayed, was granted.

2.26. That on 19.01.1950, the Civil Judge modified the injunction order dated 16.1.1950, on an application filed on behalf of defendants no. 7 to 9, in the following manner:  
"The opposite parties are hereby restrained by means of a temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with "Puja" etc. as at present carried on. The order dated 16.01.1950 stands modified accordingly."

2.27. That on 25.05.1950 Shri Shiv Shanker Lal, Commissioner submitted his report and map in Regular Suit No.1 of 1950 / O.O.S. No 1 of 1989.

2.28. That on 05.12.1950, Regular Suit No. 26 of 1950/O.O. S. No.2 of 1989 was filed in the Court of Civil Judge Faizabad by one Param Hans Ram Chandra Das against Zahoor Ahamad and 10(ten) others inter alia praying for a Decree of declaration to the effect that the plaintiff was entitled to perform Puja and Darshan according to customary rights without any check,

obstruction or interference by going near Bhagwan Sri Ramchandra, etc. installed at Asthan Janam Bhumi. In the said suit a prayer for permanent injunction restraining the defendants from removing the Idols of Bhagwan Sri Ram Chandra from the suit property but the aforesaid suit was withdrawn by the plaintiff in the year 1992.

2.29. That on 03.03.1951, the Interim Injunction Order dated 16.01.1950 as modified vide order dated 19.01.1950 passed in Regular Suit No. 26 of 1950/O.O. S. No.2 of 1989 was extended till disposal of the said suit.

2.30. That on 17.12.1959, Nirmohi Akhara and its Mahant filed Regular Suit No. 26 of 1959/O.O.S. No.3 of 1989 against the then Receiver Babu Priya Dutt Ram and 10(ten) others seeking a decree of removal of the said Receiver and delivering the charge and management of Temple with articles to the Plaintiffs. In this suit no prayer for interim relief was made.

2.31. That on 18.12.1961, Sunni Central Wakfs of Board, U.P. and (Nine) others filed Regular Suit No. 12 of 1961/O.O.S. No. 4 of 1989 against Sri Gopal Singh Visharad and 12(Twelve) others inter alia praying for a decree of declaration that the suit property is public mosque commonly known as 'Babari Masjid' as also for a decree for delivery of possession of the mosque by removal

of the Idols and other articles placed therein by the Hindus as objects of their worship. In this suit it has also been prayed that the Statutory Receiver be commanded to hand over the property in dispute to the plaintiffs by removing the unauthorized structure erected there on.

2.32. That on 23.04.1962/28.05.1962, the Government of Uttar Pradesh through its officials being the defendant nos. 6 to 8 in Regular Suit No. 12 of 1961 filed an application inter alia stating that the Government is not interested in the properties in dispute and as such do not propose to contest the suit.

2.33. That on 06.01.1964, all the parties in Regular Suit Nos. 1 of 1950, 25 of 1950, 26 of 1959 and 12 of 1961 re-registered as O.O.S. Nos. 1, 2, 3 and 4 of 1989 filed joint application requesting the trial court to consolidate the aforesaid suits and hear those matters collectively and jointly. The trial court allowed the application with the consent of learned counsels for the parties on the same date consolidating all the suits and to treat Regular Suit No. 12 of 1961 as leading case.

2.34. That on 05.03.1964, the Learned Civil Judge framed 16 issues and on 17.07.1965, the Learned Civil Judge framed an additional issue being issue no.17.

2.35. That on 21.04.1966, as agreed by learned counsels for the parties, issue No. 17 i.e. "Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?" was taken up as a "primary preliminary issue" and vide judgment dated 21.04.1966 the Civil Judge, decided the same against plaintiffs (Suit 4) and in favour of the defendants therein. The Civil Judge, after reading the definition of 'Waqf' and 'Waqif' as contained in Section 3(1) of 1936 Act, held that whenever the word 'waqf' is conveyed to any person, it must necessarily convey simultaneously the idea or description or a tangible connotation about the existence of "any property" covered or included in the 'Waqf'. Meaning thereby, if someone wants another to know that a particular property is waqf, it would be necessary for him to mention simultaneously the description of at least tangible connotation about the identity of the property of the waqf. After perusing the alleged notification dated 26.2.1944 said to have been published under Section 5 of 1936 Act, the Court found that Item 26, at which the alleged Waqf of Waqif Badshah Babar was mentioned, was blank in its last column and consequently it did not give any idea of the property of which Waqf was created. It held that the alleged Government notification at Item no. 26 was meaningless.

2.36. That on 01.02.1986, the then Ld. District Judge of



Faizabad vide his order directed to open locks of the building in dispute which was complied with and the Hindus started worshipping by going near to the deities.

2.37. That on 01.07.1989, Regular Suit No. 236 of 1989/ O.O.S. No. 5 of 1989 was filed by Sri Deoki Nandan Agarwal for self and as next friend of Bhagwan Sri Ramlala Virajman at Sri Ram Janam Bhoomi as well as of Asthan Sri Ram Janam Bhoomi, Ayodhya against Sri Rajendra Singh and 26 others including Nirmohi Akhara as Defendant no.3, Sunni Central Wakfs Board of Uttar Pradesh as defendant no.4 and Sri Ramesh Chandra Tripathi as defendant no. 17 inter alia praying for a decree of declaration that the entire premises of Sri Rama Janma Bhumi at Ayodhya belong to the plaintiff Deities with a further prayer for perpetual injunction against the Defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of new Temple building at Sri Rama Janma Bhumi, Ayodhya.

2.38. That on 10.07.1989, the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow on application dated 16<sup>th</sup> December, 1987 of the State of Uttar Pradesh made under Section 24 read with Section 151 of the Code of Civil Procedure, 1908 passed Order and thereby withdrew all the suits to the said Hon'ble High Court with a

direction that the said suits be heard by a Special Bench of three Hon'ble Judges.

2.39. That on 21.07.1989, the Hon'ble Chief justice of the Allahabad High Court constituted a Special Bench consisting of three Hon'ble Judges.

2.40. That on 23.10.1989, Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti founded by His Holiness Jagadguru Shankaracharya of Shardamath-Dwarka and Jyotirmath-Badarikashram through its Convener Madan Mohan Gupta was added as defendant no.20 in O.O.S. No.4 of 1989.

2.41. That on 05.11.1989, the Appellant here in and defendant no. 20 in aforesaid suit O.O.S. No. 4 of 1989, filed Written Statement in O.O.S. No. 4 of 1989 in the High Court *inter alia* denying all the allegations contained in the Plaint of the said Suit and taking additional pleas that the birthplace of Sri Ram in Ayodhya is being worshipped for the last many thousand years and Hindus believe divine presence at Ram Janma Bhoomi and believe in receiving bounties and blessing of the Deity the temple was not demolished by the Babur but was desecrated by the Aurangzeb but the Hindus continue to worship therein, the building having images and other objects of worships of

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Hindus is not a mosque.

2.42. That on 15.04.1992, the High Court allowed the defendants nos. 4, 5, 6, 22, 24, 25, 26 and 27 to defend O.O.S. No. 5 as representatives of Muslim Community.

2.43. That on 06.12.1992, the disputed structure was demolished and temporary structure was created wherein the worship and puja of infant Lord Sri Ram and other deities continue to be worshipped by the Hindus.

2.44. That on 03.04.1993, the Acquisition of Certain Area of Ayodhya Act, 1993 was published in Gazette of India whereby 112 Bigha 02 Biswa 13 Biswansi land corresponding to 70.08281 Acres in area including the Suit premises comprised in Najul Plot No. 583 corresponding to Revenue Plot Nos. 163 of the first settlement of 1861 was acquired by the Central Government inter alia with aim and object to maintain public order and to promote communal harmony between different communities and the spirit of brotherhood amongst the people of India and to facilitate erection of a temple, a mosque, amenities for pilgrims, establishment of library etc. The immediate result of the said enactment was that all the four suits pending before this Court, by operation of law, stood abated.

2.45. That on 07.01.1993, the President of India in the

meantime also made a special reference to the Apex Court under Article 143(1) of the Constitution of India on the following question. "Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi--Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood."

2.46. That on 24.10.1994, writ Petitions challenging Vires of said Ayodhya Act of 1993 were decided by the Hon'ble Apex Court collectively along with the reference made under Article 143 (1) of the Constitution vide its judgment dated 24.10.1994, passed in M. Ismail Faruqui Dr. and others versus Union of India and others etc. etc. reported in AIR 1995 SC 605. The Hon'ble Supreme Court vide its said Judgment upheld the aforesaid acquisition excluding the area of Inner and Outer Courtyard of RJB i.e. a piece of land measuring  $130' \times 80' = 10,400$  Sq. ft. which includes inner courtyard of  $80' \times 40' = 3200$  Sq.ft. only interalia laying down principle of law that "The protection under Arts. 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. While offer of prayer or worship is a religious practice, its offering at every location where

such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially. The right to worship is not at any and every place; so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right." The Hon'ble Apex Court interalia concluding that "Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits. The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on

adjudication of the dispute, must be restored to the undisputed owners." The Apex Court also allowed the parties to seek amendment in their pleadings, a number of applications were filed seeking amendments in the pleadings and also for impleadment of Union of India etc. This Court, by various orders, after hearing the parties, allowed necessary amendments as found fit and rejected the rest.

2.47. That on 24.07.1996, Consolidated hearing of the Suit nos. O.O.S. 1 of 1989, O.O.S. No. 3 of 1989, O.O.S. No. 4 of 1989 and O.O.S. No. 5 of 1989 was started.

2.48. That on 01.08.2002, the Hon'ble High Court took a view that Archaeological Evidence will be of importance to decide the issue as to whether there was any temple / structure which was demolished and mosque was constructed on the disputed site and directed the Archeological Survey of India to get the disputed site surveyed by Ground Penetrating Radar and Geo-radiology and to submit report.

2.49. That on 17.02.2003, the ASI submitted GPR Survey Report which was carried out by Tojo-Vikas International (Pvt.) Ltd. from 30.12.2002 to 17.01.2003 wherefrom it was

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contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site.

2.50. That on 05.03.2003, the Hon'ble High Court directed ASI to excavate the disputed site.

2.51. That on 12.03.2003-07.08.2003, the ASI carried out excavation at the disputed site of Rama Janmabhumi - Babri Masjid as per direction of the High Court.

2.52. That on 22.08.2003, the ASI submitted Excavation Report along with several records before the High Court inter alia containing its conclusive finding that 'viewing in totality and taking into account the archeological evidence of a massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure along with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus

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found associated with the temples of north India.'

2.53. That on 23.03.2007, during Consolidated hearing of the Suit nos. O.O.S. 1 of 1989, O.O.S. No. 3 of 1989, O.O.S. No. 4 of 1989 and O.O.S. No. 5 of 1989 from 24.07.1996 to 23.03.2007 in total 94 Witnesses gave their respective statements and were Cross-Examined by the Counsels of the contesting parties at length which have been recorded in about 13991 pages.

2.54. That on 27.04.2007-27.08.2009, that after conclusion of the evidences final arguments were started on and from 27<sup>th</sup> April 2007 before the Special Full Bench comprising the Hon'ble Justice Rafat Alam, the Hon'ble Justice Dharam Veer Sharma and the Hon'ble Justice Om Prakash Srivastava JJ. The said Hon'ble Bench heard the arguments of the Ld. Advocates from 27.04.2007 to 27.08.2009 but due to retirement of the Hon'ble Justice O.P. Srivastava J. as then His Lordship was as also due to elevation of the Hon'ble Justice Rafat Alam J. as Hon'ble Chief Justice of the Hon'ble Madhya Pradesh High Court the said bench became non-existent.



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Sudhir Agarwal and the Hon'ble Justice Dharma Veer  
Sharma, JJ. heard arguments of the Ld. Counsels &

Advocates for 90 working days.

2.56. That on 30.09.2010, the Hon'ble High Court delivered the Judgment wherein the Hon'ble Justice S.U.Khan J. and The Hon'ble Justice Sudhir Agarwal, J. forming majority Decreed the O.O.S. No. 1 of 1989 in part while the Hon'ble Justice D.V.Sharma, J. forming minority dismissed said O.O.S. No. 1 of 1989. The Hon'ble Justice Sudhir Agarwal, J. and the Hon'ble Justice D.V. Sharma. J. forming majority dismissed O.O.S. No.3 of 1989 and O.O.S.No.4 of 1989 while the Hon'ble Justice S.U.Khan, J. forming minority decreed the aforesaid suit in part. The Hon'ble Justice S.U.Khan J. and the Hon'ble Justice Sudhir Agarwal, J. forming majority Decreed the O.O.S. No. 5 of 1989 in part while the Hon'ble Justice D.V.Sharma forming minority Decreed said O.O.S. No. 5 of 1989 in full.

3. That being aggrieved by the impugned order and preliminary decree dated 30.09.2010 passed by the

Special Bench of the High Court of Allahabad. Lucknow Bench, Lucknow in O.O.S. No. 5 of 1989 and other connected Suits, the

Appellant is filing the present Civil Appeal. inter-alia, on the

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**4. GROUNDS:**

I. FOR THAT the impugned order of the High Court has been passed in clear violation of the ratio of law as laid down by the Hon'ble Supreme Court in M. Ismile Faruqui, Dr. - Vs.- Union of India reported in AIR 1995 SC 605 wherein the Hon'ble Apex Court has quoted with approval the principle of law as laid down by the Privy Council in AIR 1940 PC 116 that the sympathy with the religious sentiment cannot override the provisions of Limitation Act, as such when the claims of the defendant Nos.3 to 6 of O.O.S. No.5 of 1989 i.e. the plaintiffs in O.O.S. Nos.3 and 4 of 1989 were found barred by limitation, the High Court had no judicial propriety to override the precedence which was binding upon it.

II. FOR THAT the High Court in passing the impugned judgment erred in law in ignoring the dictum of the Hon'ble Supreme Court passed in M. Ismile Faruqui, Dr. - Vs.- Union of India reported in AIR 1995 SC 605 wherein quoting with approval the ratio of law as laid down in Acharya Maharajshi Narendra Prasadji Ananda Prasadji Maharaj -Vs.- State of Gujarat

practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Place of worship of any religion having particular significance for that religion to make it an essential and integral part of the religion stand on a different footing and have to be treated differently and more reverentially.

III. FOR THAT The High Court failed to consider that Shri Ramjanmabhumi is a place of worship of Hindus having particular significance for their religion as having *darshan* of Shri Ramjanmabhumi has been told an excellent means of getting salvation and attaining benefits of visiting of *tirthas*, performing *Rajsuya Yajga*, *Agnihotra* (fire) sacrifices as well as gifting of thousand of tawny coloured cows which makes it integral part of Hindu Dharma and Hindu Religion.

IV. FOR THAT The High Court failed to consider the ratio

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the Hon'ble Supreme Court has held that a Mosque is not an essential part of practice of the religion of Islam and *Namaz* (prayer) by Muslim can be offered anywhere, even in open place and the right to worship is not at and in every place so long as it can be practiced effectively, unless the right to worship at a particular place is itself an integral part of that right.

- V. FOR THAT The High Court failed to consider that the Muslims have no fundamental right to offer prayer (*Namaz*) at a particular place i.e. Shri Ramjanmabhumi while the Hindus have fundamental right guaranteed under Articles 25 and 26 of the Constitution of India to worship and perform their religious: rites, rituals and practices at Shri Ramjanmabhumi as it is integral part of Hindu Dharma and Hindu Religion. As there is *Shastric* (scriptural) command upon the Hindus to visit Shri Ramjanmabhumi have *darshan* thereof and perform religious rituals thereon and thereby attains benefit of religious merits and salvation.

- VI. FOR THAT in passing the impugned judgment the

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of Certain Area at Ayodhya Act, 1993 which clearly says that there has been a long standing dispute relating to the disputed structure in Ajodhya which led to destruction of the disputed structure on 6<sup>th</sup> December, 1992 which was followed by widespread communal violence resulting into large number of deaths, injuries and destruction of properties in various parts of the country. As the said dispute had affected the maintenance of public order and harmony between different communities in the country, to maintain communal harmony and the spirit of clam and brotherhood it was considered necessary to acquire the site of the disputed structure and adjacent land for setting up a complex and thereafter Ram temple, a Mosque, a library, museum and other suitable facilities and thereby the High Court misdirected its decision.

- VII. FOR THAT The High Court failed to consider that vide Schedule of the Acquisition of Certain Area in Ajodhya Act, 1993 in total 112 Bighas 02 Biswa 13 Biswansi land corresponding to 70.0228 acres land was

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Muslims by paving way to erect Rama temple in one part of acquired land and to erect Mosque in other part of the acquired land and to avoid altercation to establish a library, museum etc. of secular nature in between those two proposed religious places of worship as buffer institutions. But in spite of declaring Shri Ramjanmabhumi as deity unanimously, the Hon'ble High Court passed a decree to trifurcate a very small area of 130 ft. x 80 ft. which is integral and highly revered sacred Janmmmbhumi of Lord of Universe Shri Rama as per the sacred scriptures of the Hindus and has special significance for the Hindus and it is integral part of the Hindu religion, and such partition shall frustrate the whole object of the said Act of 1993 as it will become arena of permanent conflict amongst Hindus and Muslim and will not promote harmony amongst the Hindus and Muslims.

VIII. FOR THAT The High Court failed to consider the sacred Hadith wherein Holy Prophet Hazarat Mohammed Saheb has commented that in one plot of land there cannot be places of worship of two different religions and thereby the High Court passed

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of Hindus and Muslims in one plot of land i.e. Nazul Plot No.583.

IX. FOR THAT The High Court failed to consider the direction of the Hon'ble Supreme Court as laid down in M. Ismile Faruqui, Dr. - Vs. - Union of India reported in AIR 1995 SC 605 in its true letter and spirit whereby the Hon'ble Supreme Court has held that amongst the Hindus and Muslims who will be able to prove the disputed place as significant and integral part of their religion, shall be entitled to be handed over the disputed land, and in spite of holding the place as Shri Ramjanamabhumi which is significant and integral part of Hindu religion, the High Court has erroneously decreed for trifurcation of the said sacred land of Shri Ramjanmabhumi and thereby erred in law.

X. FOR THAT The High Court erred in law in granting relief to the plaintiffs of O.O.S No.3 of 1989 and O.O.S. No.4 of 1989 even after dismissal of their respective Suits in O.O.S. No.5 of 1989 wrongly applying the provisions of Order 7 Rule 7 of the Code

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XI. FOR THAT The High Court erred in law in not holding that the power under Order 7 Rule 7 does not enable the Court to override the statutory limitations contained in Article 120 of the Indian Limitation Act, 1908.

XII. FOR THAT The High Court erred in law in applying Order 7 Rule 7 for the purpose of granting relief in favour of the defendants of O.O.S. No.5 of 1989 whose suit being O.O.S. No.4 of 1989 for identical relief in respect of self same property was dismissed by the Court as the defendants of O.O.S. No.5 of 1989 miserably had failed to prove their case as the plaintiffs in O.O.S. No.4 of 1989.

XIII. FOR THAT The High Court committed patent error of law and failed to consider that recourse to Order 7 Rule 7 can be taken only in a case where no suits of defendants are pending before the Court and there is trial of single suit of the plaintiff but not in a consolidated trial of Suits wherein the Court finds that the defendant had proved some rights over the disputed property by adducing cogent evidence and



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XIV. FOR THAT The High Court committed serious error of law in converting the suits for title into suits for partition in spite of the fact that neither such pleadings were made nor such relief were sought for by any of the parties of the said four Suit tried, heard and decided in consolidated manner and thereby exercised its jurisdiction beyond the scope of law otherwise which was not vested in it by law.

XV. FOR THAT The High Court failed to consider the ratio of law to the effect that only a relief which is claimed in a plaint can be moulded by the Court and not such relief which is not contained in four corner of the complaints or written statements of the parties to the suit.

XVI. FOR THAT The High Court committed serious error of law in allowing claim of the plaintiffs of O.O.S. No.4 of 1989 in O.O.S. No.5 of 1989 wherein they were arrayed as defendants and had miserably failed to prove their claim as plaintiffs in their own suit i.e. O.O.S. No.4 of 1989.

XVII. FOR THAT The High Court committed patent error of

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1/3<sup>rd</sup> of the suit property in favour of the Muslim parties who had already miserably failed either to prove their title through and under the rightful owner or acquisition of title by way of adverse possession.

XVIII. FOR THAT The High Court erred in law in granting such relief to the defendant Nos.3 to 6 of O.O.S. No.5 of 1989 i.e. the plaintiffs of O.O.S. No.3 of 1989 and O.O.S. No.4 of 1989 which was not dealt with by the issues or the evidence of the case.

XIX. FOR THAT The High Court failed to consider that where plaintiffs of O.O.S. No.3 of 1989 and O.O.S. No.4 of 1989 have sought a particular relief on specific ground, any of them cannot be granted the same relying on different grounds which are not disclosed in the plaints of those suits and thereby misdirected its decision and erred in law.

XX. FOR THAT The High Court failed to consider that in O.O.S. No.3 of 1989 the plaintiffs have, inter alia,

prayed for a decree of removal of the receiver and

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as such granting relief by giving them 1/3<sup>rd</sup> of the disputed land by virtue of decree of trifurcation which was not sought for as also on the ground of non-exclusive possession which was never resorted to by those plaintiffs is beyond the purview of Order 7 Rule 7 of the Code of Civil Procedure and thereby misdirected its findings and decision and committed error in the eye of law.

XXI. FOR THAT The High Court failed to consider that in O.O.S. No.4 of 1989 the plaintiffs have, inter alia, prayed for a decree of declaration that the suit property is a public Mosque known as Babri-Masjid on the ground that Mosque was erected by Emperor Babar i.e. based on title claiming through and under the Emperor Babar as also on the ground of adverse possession. As such granting relief of giving them 1/3<sup>rd</sup> of the disputed land by virtue of decree of trifurcation which was not sought for as also on the ground of alleged custom of offering prayer before the idols in Ramjanmabhumi temple occasionally, which was neither pleaded nor such issue was framed nor evidence was adduced beyond the scope of Order 7

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XXII. FOR THAT The High Court failed to consider that a Court will not grant any relief which it cannot enforce or which is useless and unprofitable to the parties and thereby misdirected its decision and erred in law.

XXIII. FOR THAT The High Court failed to consider that trifurcation of the small piece of land which is sacred place and integral part of Hindu religion shall be unprofitable not only to the Hindus but to the Muslims also as presence of idols, ringing of bells, blowing of conch as well as presence of huge crowd of the Hindus will be unprofitable to the Muslims as well as injurious for the unity and integrity of the country and communal harmony and thereby misdirected its decision and erred in law.

XXIV. FOR THAT The High Court erred in law in granting 1/3<sup>rd</sup> of the disputed land to the plaintiffs of O.O.S. No.4 of 1989 i.e. the defendant Nos.4 to 6 in O.O.S. No.4 of 1989 when they failed to prove their rights over the disputed land based on title or adverse possession. As such the High Court in granting relief to those plaintiffs beyond the scope of Order 7 Rule 7

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XXV. FOR THAT the impugned judgment and decree of the High Court is erroneous as the reliefs granted to the plaintiffs of O.O.S. No.3 of 1989 and O.O.S. No.5 of 1989 are not based on facts stated in the plaint and are inconsistent with the case set up by those plaintiffs as well as with the relief claimed by them.

XXVI. FOR THAT the impugned judgment and decree passed by the High Court whereby the High Court has granted relief based on different cause of action as the relief claimed in O.O.S. No.4 of 1989 is erroneous and not tenable in the eye of law.

XXVII. FOR THAT the High Court in granting reliefs to the parties by passing the decree of trifurcation taking recourse of Order 7 Rule 7 of the Code of Civil Procedure, 1908 when no such cause of action was alleged or pleaded against the rival contestants by the parties substantially erred in law.

XXVIII. FOR THAT after dismissal of O.O.S. No. 3 of 1989 and 4 of 1989 granting relief to the plaintiffs of those Suits in O.O.S. No. 5 of 1989 in which those

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O.O.S. No.4 of 1989 has been taken by surprise and embarrassed as the relief granted is inconsistent with the claims and with the case raised in the pleadings and the parties did not know the case which ought to be tried, as such, the High Court erred in law in granting relief under Order 7 Rule 7 of the Code of Civil Procedure, 1908.

XXIX. FOR THAT in terms of Order 7 Rule 7 of the Code of Civil Procedure, the High Court was not entitled to grant reliefs not specifically prayed for inasmuch as it is inequitable to do so.

XXX. FOR THAT where the facts are not in dispute and accrual of the cause of action subsequent to the suit is under the terms of a statute of which the Court must take notice, a formal amendment of the pleading is unnecessary as the Court is bound to administer the law of the land on the date when it gives its decision on a dispute, as such by not applying Section 87 of the Waqf Act, 1995 the High Court erred in law.

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Procedure in moulding the relief, the Court has no discretionary power to depart from the general rule to decide the case as it was presented before the Court more so where to do so would be to give manifest advantage to the plaintiffs of O.O.S. No.3 of 1989 and O.O.S. No.4 of 1989 and disadvantage to the appellant i.e. defendant No.20 of O.O.S. No.4 of 1989 who was contesting the said suit in furtherance of the cause of the plaintiff Nos.1 and 2 of O.O.S. No.5 of 1989.

XXXII. FOR THAT in O.O.S. No.4 of 1989 i.e. the suit for declaration of title and possession by the defendant Nos.4 to 6 of O.O.S. No.5 of 1989 where the claim of the said defendants was to get a declaration of the suit property, a public Mosque, has been negated by the High Court, the High Court cannot direct under Order 7 Rule 7 of Code of Civil Procedure that the said defendants be allowed to remain in possession of a portion of the suit property for the purpose of offering prayer i.e. Namaz.

XXXIII. FOR THAT by majority view the High Court

Indian Limitation Act, 1908. The High Court erred in law in granting similar relief in lesser extent i.e. to the extent of one-third of the suit property to the plaintiffs of the each of the aforesaid suits in exercise of power under Order 7 Rule 7 of the Code of Civil Procedure in O.O.S. No.5 of 1989 wherein the plaintiffs of O.O.S. Nos.3 and 4 of 1989 were arrayed as defendant Nos.3 to 6 and thereby had unsettled a settled principle of law which says that the power under Order 7 Rule 7 conferred on the Court does not enable it to override the statutory limitation contained in Article 120 of the Indian Limitation Act, 1908 which precludes the grant of relief except within the period of six years prescribed by the said Article.

XXXIV. FOR THAT the High Court in granting relief to the plaintiffs of O.O.S. No.4 of 1989 based on finding of intermittent trespassing of the suit premises of the plaintiff Nos.1 and 2 of O.O.S. No.5 of 1989, erred in law as it is established principle of law that between co-owners who holds title and the rank trespassers, the Court is bound to protect the owner. As such in not protecting the owners i.e. Shri Ramlala Virajman as well as Asthan Shri Ramjanmabhumi and granting



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injuries upon the owners perpetual which is not sustainable in the eye of law and against the established principle of law.

XXXV. FOR THAT the High Court in granting relief to the plaintiffs of O.O.S. No.3 of 1989 based on finding of worshipping an idol of Shri Ram in a portion of the suit property since 18<sup>th</sup> century claiming right, title and interest against the owners i.e. Shri Ram Lala Virajman and Asthan Shri Ramjanmabhumi; granting relief to such de facto Sebaites who are guilty of breach of trust and have deliberately attempted to effect a vital change of usage by removing the image from the disputed structure and installing it near the disputed structure on a *chabutra* contrary to the opinion of the majority of the worshippers who continued to worship the deity on '*sbandil*' i.e. '*vedi*' (altar) under the central dome of the disputed structure amounts to giving premium to the wrong doers and making the injuries caused by commissioning an act of breach of trust by the plaintiffs of O.O.S. No.3 of 1989 against the deity Shri Ram Lala Virajman and Asthan Shri

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XXXVI. FOR THAT by majority view the High Court erred in law and failed to consider that the Court cannot make out a new case for a party and the Courts are not at liberty to grant a relief either not sought for in the plaint or that does not find place from the ground of claim as stated in the plaint as **such**, the majority view granting relief to the plaintiffs of O.O.S. Nos.3 and 4 of 1989 in O.O.S. No.5 of 1989 where they were arrayed as defendants is not tenable in the eye of law.

XXXVII. FOR THAT by majority view the High Court passed erroneous order taking recourse of Order 7 Rule 7 of the Code of Civil Procedure by making out a new case for the plaintiffs of O.O.S. No.4 of 1989 i.e. the defendant Nos.4 to 6 of O.O.S. No.5 of 1989 on erroneous and perverse finding that for last 80 years the Muslims were considering the disputed structure as Mosque against the dictum of law of Shar and offering prayers in the disputed structure which has images, bells and was surrounded by the graves from all sides and thereby concluding that new custom had

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consideration or facts not disclosed in the pleadings is  
contrary to the settled principle of law.

XXXVIII. FOR THAT by majority view the High Court  
erred in law and failed to follow the established  
principle of law that the plaintiffs who have failed to  
establish their cases and their claim was found barred  
by limitation can not get decree on the basis of the  
case made out by defendants and as such in not  
arriving at finding that as the plaintiffs of O.O.S.  
Nos.3 and 4 of 1989 failed to prove their case and  
their claim was found barred by Article 120 of the  
Indian Limitation Act, 1920, there was no scope of  
granting relief to those plaintiffs on the basis of the  
case made out by the defendants or the plaintiff Nos.1  
and 2 of O.O.S. no.5 of 1989 for whose benefit the  
Hindu defendants were contesting in O.O.S. No.4 of  
1989 erred in law.

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XXXIX. FOR THAT where the plaintiffs of O.O.S. No.4 of  
1989 had sued for declaration/possession on the  
allegation that the defendants had committed a

and 4 have been failed to prove better title than the plaintiff Nos.1 and 2 of O.O.S. No.5 of 1989 for whose benefits the Hindu defendants were contesting against those plaintiffs in the plaintiffs' respective suits, there was no occasion for the High Court to grant any relief to those plaintiffs and in doing so, the High Court has committed serious error of law.

XL. FOR THAT by majority view the High Court erred in law and failed to consider that where a specific allegation of title was not proved by the plaintiffs of O.O.S. Nos.3 and 4 of 1989 and relief claimed by them was found barred by limitation, it was not open for the High Court to arrive at a finding in their favour contrary to the allegations set up and thereby granting relief taking recourse of Order 7 Rule 7 of the Code of Civil Procedure.

XLI. FOR THAT by majority view the High Court failed to consider and hold that in O.O.S. No.5 of 1989 Shri Ramlala Virajman and Asthan Shri Ramjanmabhumi as their was no claim for recovery of possession i.e. eviction of the defendants from the temple lands on

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on proof of title and compelling the plaintiffs to put the de facto worshippers i.e. defendant No.3 therein and plaintiff No.1 in O.O.S. No.3 of 1989, in possession as one-third portion of temple lands is illegal.

XLII. FOR THAT by majority view the High Court failed to consider and hold that where by proclamation of Lord Canning dated 15<sup>th</sup> March, 1959 all perpetual rights in soil of the province of Oudh including the suit property were confiscated but the deity Shri Ramjanmabhumi continued to remain in possession of and intermittently its land was trespassed by the persons through or under whom the plaintiffs of O.O.S. No.3 of 1989 and O.O.S. No.4 of 1989 claiming right, title and interest in the said land, the plaintiff Nos.1 and 2 of O.O.S. No.5 of 1989 even with a defective title were entitled to the decree on the basis of prior possession and thereby the High Court misdirected its decision and committed patent error of law whereby the appellants has been taken to surprise and has been seriously prejudiced which is required to be remedied by this Hon'ble Court.

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cannot grant relief to the plaintiff and/or defendant on a case for which there was no foundation in the pleadings and which the other side was not called upon or had no opportunity to meet as in the instant case, there was no foundation in the pleadings that there is established customs amongst Muslims to offer prayer in Hindu temples having idols and surrounded by all sides with graveyards where bells are rang, conches are blown as also that by usurping temple land and/or other's land a valid Mosque cannot be created and the other side were neither called upon nor had opportunity to meet the same decision on such extraneous consideration of the High Court is illegal and the High Court has no power to mould the relief under Order VII Rule 7 in the facts and circumstances of the instant case.

XLIV. FOR THAT by majority view the High Court failed to consider that relief not claimed cannot be granted specially when it affects rights of an interested party i.e. the appellants who was defendant No.20 in O.O.S. No.4 of 1989, and formally contested that case by pleading that the plaintiff Nos.1 and 2 of O.O.S. No.5 of 1989 were owner of the suit property as such the

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XLV. FOR THAT by majority view the High Court failed to consider that under Order VII Rule 7 of the Code of Civil Procedure, Court cannot grant ancillary relief which is not consistent with the case set up by the plaintiff or defendants and is based on the same cause of action but the Court cannot grant any relief to the party which flows from extraneous consideration or facts disclosed in the pleadings as such in granting relief to the plaintiffs of O.O.S. No.4 of 1989 i.e. the defendant Nos.4 to 6 in O.O.S. No.5 of 1989 possession of one-third of the suit property on extraneous considerations that contrary to law of Shar for last about 80 years new custom had taken place among the Musalmans to consider the disputed structure as a Mosque otherwise which was not Mosque according to established principle of Muslim Law and on the basis of such custom they were intermittently entering into the suit property and offering prayers in the disputed structure before the idols is totally beyond the purview of Order VII Rule 7 of Code of Civil Procedure and is liable to be set aside.

XLVI.

FOR THAT the Learned Judge Hon'ble

... deciding the issue No.2 of

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the plaintiff No.1 i.e. Nirmohi Akhara as they have failed to prove and produce even a single document to show their title and also failed to prove acquisition of title by way of adverse possession and ignoring the facts on record that Mahanta Raghubar Das had not filed suit in 1885 as a Mahanta of Nirmohi Akhara but had filed the said suit as Mahant of Janam Asthan and in their written statements filed in O.O.S. No.4 of 1989 by them as defendant Nos.3 and 4 discarding the fact that said Mahanta Raghubar Das was Mahanta of Nirmohi Akhara in granting one-third of the land to the plaintiffs of O.O.S. No.3 of 1989 i.e. defendant Nos. 3 and 4 in O.O.S. No.4 of 1989 and the defendant No.3 in O.O.S. No.5 of 1989 has committed serious error of law as he was not supposed to grant any relief to the said party.

XLVII. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. arriving on finding on issue No.4 of O.O.S.

No.3 of 1989 to the effect that the plaintiffs miserably

failed to prove that they managed, possessed and

owned the temple even before 1528 as also that they

were sebaite of the deity, the Court had no reason in



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prejudice to the right, title and interest of the deity and thereby has committed error in the eyes of law.

XLVIII. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. after holding the O.O.S. No.3 of 1989 not maintainable for the reasons that the plaintiffs had neither sought any declaration about their title or status and without determining the same, it was not appropriate for the civil Judge to direct handing over the charge from the receiver to the said plaintiffs; had no reason to grant those plaintiffs relief in other suit i.e. in O.O.S. No.5 of 1989 and thereby has committed error of law in serious prejudice to the right, title and interest of the deities i.e. plaintiff Nos.1 and 2 of O.O.S. No.5 of 1989.

XLIX. FOR THAT by majority view the High Court failed to consider that vide order dated 21<sup>st</sup> April, 1966 the learned Civil Judge has decided the issue No.17, 5(a) and 5(c) of suit O.O.S. No.4 of 1989, inter alia, holding under issue No.17 that no valid notification under Section 5(1) of U.P. Muslim Waqf Act, (Act

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paper No.243/C read with list paper No.243/1A did not comply with the requirements of a valid notification in the eyes of law and equity and the aforesaid two papers, therefore, serve no useful purpose to the plaintiffs of the leading case i.e. Original Suit No.12 of 1961. The said learned Judge held that the bar provided in Section 5(3) of U.P. Act No.XIII of 1936 does not hit the defense of the defendants of the leading case and their suits which are connected with the aforesaid leading case and thereby misdirected its decision and erred in law.

- L. FOR THAT the Hon'ble S.U. Khan, J. has failed to appreciate the documents and materials on record and thereby wrongly recorded the fact that the disputed area was 1500 sq. yard as also in other place 1408 sq. yard while in fact the disputed area is only 130' x 80' i.e. 1155.55 sq. yard which is required to be corrected.

- LI. FOR THAT the Hon'ble S.U. Khan, J. failed to appreciate Exhibit-A and thereby came on erroneous recording of fact that in the map dated 6<sup>th</sup> December,

the constructed portion was Masjid and in possession of Mohammadans where outer courtyard including *chabutra* in question was shown in possession of Hindus. While it is very much apparent on face of the said map that the disputed structure in inner courtyard was not shown as a Mosque but in the extreme South-East corner of the inner courtyard, a very small square like structure has been shown as Mosque and thereby misdirected its decision and erred in law.

LII. FOR THAT the Hon'ble S.U. Khan, J. failed to appreciate the map of 6<sup>th</sup> December, 1885 properly where in the South-East portion a platform of about 21 ft. X 17 ft. in area consisting a small *chabutra* as well as a *chabutra* Thakurasthan, in right hand side of the main entrance from Eastern side a resting cottage for disciple of Mahant; in the Northern side of the disputed structure Sita Rasoi and in between Sita Rasoi and tiny square marked as mosque, the Building in dispute in the instant Suits has been shown without describing it either temple or Mosque but as *parikrama* around all four sides of the inner

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structure was a big temple of Shri Ramjanmabhumi in view of the inner evidence that is to say the symbol shown for temple on Chabutra Tkahur Asthan in the map is similar with the symbol made for the disputed structure; which mistake in noticing the fact of the learned Judge rendered his finding perverse.

LIII. FOR THAT one of the learned Judges of the Bench, S.U. Khan, J. failed to take note of the fact that as Mohd. Asghar, had no objection to the said map wherein the disputed structure in inner Courtyard has not been shown as Mosque but in extreme South East of the inner courtyard a very small square has been shown as Mosque. The learned Judge had no occasion to arrive on erroneous finding that the disputed structure was shown as a Mosque in the map and it was in possession of the Muslims. In fact, from the said map it is crystal clear that the entire premises was being used as a Hindu shrine.

LIV. FOR THAT by majority view the High Court erred in law in relying on the correspondence and diary reports contained in the original file brought by the

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shown to any of the parties nor parties were given opportunity to challenge the contents and legality of those documents. As such by relying on the documents contrary to the provisions of the Indian Evidence Act, 1872, the High Court has committed patent error of law and its finding arrived at on the basis of the contents of the said file are illegal and contrary to the established principle of law and the same are liable to be set aside.

LV. FOR THAT by majority view the High Court committed irregularity and failed to appreciate the evidentiary value of the map of Commissioner, prepared on 6<sup>th</sup> December, 1885 under judicial order vis-à-vis the site plan annexed to the letter dated 16-12-1949, the District Magistrate and more so when the High Court has doubted integrity of the District Magistrate coming on conclusion on the basis of alleged site plan annexed to his letter and coming on conclusion that the disputed structure was a Mosque has taken the appellants and other defendants to the suits to surprise as the parties have come to know about the said map and report only after going through the

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appropriate submission or objection against the said site plan.

LVI. FOR THAT the recording of the fact by the learned judge S.U. Khan, J. to the effect that the defendant Nos.1 to 5 in O.O.S. No.1 of 1989 all being Muslim residents of Ayodhya who have died, have not been substituted is perverse as it is very much apparent on face of record that one of those defendants being defendant No.1, Zahoor Ahmed, has been substituted by his son Farooq Ahmed.

LVII. FOR THAT the recording by the learned Judge, S.U. Khan, J. to the effect that Shri P. N. Mishra, learned Counsel argued the case on behalf of defendant No.20/Appellant herein for about 15 days is incorrect.

LVIII.FOR THAT the recording of the fact by the learned Judge S.U. Khan, J. to the effect that in paragraph 13 of the plaint of O.O.S. No.5 of 1989, it has been mentioned that through order of District Judge, Faizabad dated 01.02.1986 barriers, locks and brick

and while in the said paragraph there is

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and thereby misdirected its decision and erred in law in passing stricture against the said Ld. District Judge.

LIX. FOR THAT the learned Judge S.U. Khan, J. failed to appreciate the pleading of the appellant i.e. the defendant No.20 in O.O.S. No.4 of 1989 and thereby misdirected recording of facts to the effect that in the written statement filed by defendant No.20 it has not been case of the appellant that Aurangzeb damaged the temple to some extent and within a few days thereafter Hindus re-occupied the same while in nutshell such pleadings are found in the written statement of the appellant as well as in the written statement of the defendant No.13 of O.O.S. No.4 of 1989 and thereby misdirected its decision and erred in law.

LX. FOR THAT the finding of the learned Judges S.U. Khan, J. and D.V. Sharma, J. forming majority view in respect of the fact to the effect that the constructed portion of the premises in dispute was constructed as a Mosque by or under orders of Babur, is perverse

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the learned Judges, as they have failed to appreciate the evidences properly, as such, said finding is liable to be set aside and the finding of the learned Sudhir Agarwal, J. forming minority view to the effect that no Mosque was erected by the Babur, but the temple was damaged and demolished some-time during the reign of Aurangzeb, is liable to be upheld as it is based on appreciation of evidence on sound principle of law.

LXI. FOR THAT the aforesaid finding of S.U. Khan, J. is in contradiction of His Lordship's own finding to the effect that Muslims have failed to prove that Babur was owner of the land over which disputed structure was erected as also have not been able to prove that the land belonged to Babur under whose order the Mosque was constructed, as such said contradictory finding based on no evidence and contrary to law is liable to be set aside.

LXII. FOR THAT the finding of S.U. Khan, J. that offering of only Friday prayers is sufficient for continuation and possession in use of a Mosque is perverse as it is



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two times prayers is offered by assembly of worshippers publicly in a building followed by Azan with permission of the owner of the building, the building is ceased to be a Mosque.

LXIII. FOR THAT the finding of S.U. Khan, J. to the effect that the disputed structure was erected as a Mosque by Babur is in contradiction of His Lordship's own finding that the plaintiff of O.O.S. No.4 of 1989 have failed to prove that Babur was owner of land over which the disputed structure was erected and as such said erroneous finding which is in contradiction of the well-settled principle of law of Shar that valid Mosque can be erected and/or Waqf can be created only by the owner of the land in other words 'Wakif must be the owner of the land' and thereby misdirected its decision and erred in law.

LXIV. FOR THAT by majority view the High Court came on perverse and erroneous finding in holding that during arguments none of the learned Counsels for different Hindu parties could gave any specific reply to

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Rama gave birth to the Lord of Universe, Rama or it meant the room in which the birth took place or it meant the mansion where mother of lord Rama used to reside, said finding is contrary to the written arguments contained in part-I & VI of the learned Counsel of the appellant herein i.e. defendant No.20 in O.O.S. No.4 of 1989 wherefrom it is crystal clear that it was argued and established by the said learned Counsel that lord Shri Rama was born at 'Shri Ram Janmabhoomi' means the 'tri domed palace of mother Kaushallya situated in the centre of Ramkote wherein under its central dome Lord Shri Rama appeared' that is why under the command of the holy scriptures, the Hindus erected a *vedi* (alter) in the central dome and started worshipping Shri Ram Janmabhoomi as deity since *treata yug* itself and below the Northern dome of the place mother Kaushallya used to worship idol of lord Vishnu. It was also argued and proved that the said palace of Kaushallya was standing over the land over which subsequently during the reign of Aurangzeb attempt was made to convert the Janmabhoomi place temple into Mosque; and thereby misdirected its decision and erred in law.

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constructing the Mosque and after construction of the Mosque by Babur, the Hindu people started believing said site as the exact birth-place of Lord Rama and that sometimes before 1949, Hindus started to believe the place beneath the central dome of the Mosque as place of birth of Lord Rama are perverse, misconceived, based on no evidence and only guess of the learned Judge, in contradiction to each other and thereby the learned Judge misdirected his decision.

LXVI. FOR THAT finding/observation of the Learned Judge Honble S.U. Khan J to the effect that there were also ruins of some Buddhist religion place on which the Mosque was constructed and some material thereof was used in the construction of Mosque is erroneous as neither such pleadings were made by either sides nor any issue to that effect was framed as such no evidence was adduced therein, more so it was unwarranted, uncalled for, for deciding the issues between the parties as it was presented before the Court and as such said perverse and erroneous finding is liable to be set aside.

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pulpit inside the constructed ~~portion~~/Mosque for the first time in the night of 22/23<sup>rd</sup> December, 1949 is erroneous, misconceived and a result of non-appreciation of the materials available on record. More so ~~when~~ it was crystal clear from the Hindu holy scriptures namely, 'Shri Balmiki Ramayana' and Sacred Shrimat Atharvaveda' that idol of Lord of Universe was being worshipped in the palace of Kaushallya since *treata yug* as also it was evidenced from the holy scripture of the Hindus Shri Skandapurana and Shri Naraienghapurana as well as accounts of Joseph Tiffenthellar that beneath the central dome of the palace temple, a vedi (altar) was being worshipped as a deity, 'Shri Ramjanmabhoomi' and thereby misdirected its decision and erred in law.

LXVIII. FOR THAT the finding of Learned S.U. Khan, J.

to the effect that Ram Chabutra etc. came into existence before visiting of Joseph Tiffenthaler but after construction of Mosque is based on assumption, presumption, conjecture and surmise of the learned Judge and against the evidence on record or based on no evidence and is liable to be discarded.

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LXIX. FOR THAT the finding of learned S.U. Khan, J. to the effect that Hindus have not been able to prove that there was any existing temple at the place where the Mosque was constructed after demolishing the temple as also that the specific small portion of 1500 sq. yard was treated, believed and worshipped as birth place of Lord Rama before construction of Mosque, is result of non-appreciation of evidence and non-application of judicial mind, more so when in his judgment the said learned Judge himself has come on finding that Mosque was constructed over the ruins of temples which were lying there since a very long time before the construction of Mosque, as such the self-contradictory findings based on no evidence and the inference drawn on the basis of imagination of the learned Judge even contrary to the scientific report submitted by the Archaeological Survey of India is liable to be set aside.

LXX. FOR THAT the finding of S.U. Khan, J. that the Muslims are one of the joint title holders in possession of the premises in dispute is erroneous

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it is not only against the weight of

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through Babur or acquisition of right or title or perfection of adverse possession by prescription or prior possession than the possession of the Hindus is patent error of law as it is settled law that on the basis of intermittent trespassing and/or encroaching premises without perfection of title by prescription no possessory title can be conferred upon anyone as also that even if there is defective title, the title should be conferred upon the person based on his prior possession. As the Hindus were in prior possession, the learned Judge had no occasion to hold the Muslims as joint holders based on intermittent trespassing of the premises more so when the Muslim Law says that in one piece of land there cannot be place of worship of two different religion.

LXXI. FOR THAT the finding of the Hon'ble S.U.

Khan, J. based on his presumption to the effect that as it has not been proved that land belong to anyone else hence from existence of Mosque for a long period, title will be presumed and it cannot be said that the Mosque was not a valid Mosque having been constructed over the land of someone else is contrary

to Islamic Law which does not permit to usurp land of

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is settled principle of law that wakif must be owner,  
and the same is not tenable in the eye of law.

LXXII. FOR THAT the finding of Hon'ble S. U. Khan, J.

that there is no difficulty in presuming the dedication  
by user, if a Mosque is constructed at a place which is  
not adjacent to residence or other building of the  
person who constructs the Mosque and public offers  
prayer therein, dedication by user is to be presumed  
is erroneous and contrary to the evidence and law in  
view of the fact that in his judgment the learned  
Judge has himself has come on finding that prior to  
erection of alleged Mosque there were temples and  
there were ample evidence before the Court that  
Hindus were offering there worship inside the  
disputed premises since *treata yug* and no permission  
was granted by the owners i.e. sebaity of Hindu deity to  
offer prayer therein before the idols followed by Azan  
publicly in view of the clear authority of Imam Yusuf  
and Imam Mohammad that waqf by user cannot be  
presumed and the said finding is liable to be quashed  
and set aside.

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suit of 1885, a place of vazoo has been shown is based on his own hypothesis and imagination as in the said map a very tiny square in South-East corner of inner courtyard has been shown as Mosque and in outer courtyard several Hindu worshipping places have been shown, in view whereof it can be safely inferred that water reservoirs were of Hindu shrines.

LXXIV. FOR THAT the finding of the learned Judge S.U.

Khan, J. to the effect that there is no absolute prohibition that near or in a graveyard there cannot be a Mosque and in any case the graveyard around the Mosque came into existence after construction of Mosque as about 75 Muslims were killed in the riot of 1855 and buried around the Mosque is contrary to the pleadings and evidence of the Muslims parties itself as it was the case of the Muslims that the graveyard came into existence during the period of Babur in consequence of death of the Muslims soldiers of Babur in a battle fought between Babur and the previous ruler of Ayodhya. Apart from this, law of Shar says that prayer cannot be offered towards facing graves as such a premises surrounded



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Law and in not holding like that the Ld. Judge committed error in law.

LXXV. FOR THAT the finding of Hon'ble S.U. Khan, J. to the effect that it is for the conscience of the Muslims who in a Mosque go to pray to decide as to whether its prayer for them to offer prayer even if it contains figures is contrary to the authority of Islamic Law laid down by the Holy Prophet who said that angels do not go in a place where there are images, portraits, idols or pictures, as also that the Muslims are not free to act on the basis of their own sweet-will but they are bound by the divine law of Shar. As such the aforesaid findings of the learned Judge is not tenable in the eye of law and is liable to be set aside.

LXXVI. FOR THAT the Hon'ble Sudhir Agarwal, J. has wrongly recorded that Shri P. N. Mishra, learned Counsel for the defendant No.20 in suit No.4 submitted that as 'the disputed building in suit is never treated to be waqf by them and, therefore, since it was not a waqf, the Act itself is not applicable. Hence, suit-4 by plaintiff No.1 is not maintainable.'

Central Waqf Board has no right to file the above suit'. In fact, the submission which was made before the High Court was also submitted by way of written argument. Paragraph no.1 of Part-XXVI of the said written argument is that 'in view of the findings recorded by the learned Civil Judge on 21-04-1966 in deciding the issue No.17 to the effect that "no valid notification under Section 5(1) of the Muslims Act, (No.XIII of 1936) was ever made in respect of the property in dispute," the plaintiff Sunni Central Waqf Board has no right to maintain the present suit and the present suit is liable to be dismissed under Section 87 of the Waqf Act, 1995 (Act No.43 of 1995)' and thereby the Court misdirected its finding and decision.

LXXVII. FOR THAT by majority view the High Court erred in law in not holding that as after invalidation of notification under Section 5(1) of the United Provinces Muslim Waqfs Act, 1960 by the learned Civil Judge vide his order dated 21-04-1966 neither fresh survey of the alleged waqf in question was caused under Section 6 of the United Provinces Muslim Waqfs Act, 1960 nor application for registration was made under

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U.P. did take any steps for registration of the said waqf under Section 31 of the said Act of 1960, the alleged waqf remained unregistered waqf as such the Sunni Central Waqf Board, U.P. has no *locus standi* to maintain O.O.S. No.4 of 1989 and the same was hit by the provisions of Section 87(1) of the Waqfs Act, 1995 and was not fit for being continued, heard or decided and is liable to be dismissed on this score alone.

LXXVIII. FOR THAT by majority view the High Court failed to consider that the provisions of the United Provinces Muslim Waqfs Act, 1936 does not apply to the waqfs in respect whereof notification under Section 5(1) has not been made and in furtherance whereof has not been registered under Section 38 or Section 40, as the case may be; the Sunni Central Board of Waqfs, U.P. cannot maintain or defend suit in view of the provisions contained in Sections 18(1), 18(2), 18(e) and 18(g) of the said Act of 1936, according to which Sunni Central Board of Waqfs can maintain or defend suit in respect of administration

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LXXIX. FOR THAT by majority view the High Court failed to consider that Section 38(1) which is a mandatory provision provides that *Mutawalli* of every waqf whether created before or after the commencement of the Act shall make an application for registration within three months of its entering into possession of waqf property or in the case of waqf existing at the time of formation of the first Central Board within three months of the formation of such Central Board and thereby misdirected its finding and decision.

LXXX. FOR THAT by majority view the High Court failed to consider that prior to 21-04-1966 i.e. the date of invalidation of the notification under Section 5(1) of the United Provinces Muslim Waqfs Act, 1936 by the learned Trial Judge in O.O.S. No.4 of 1989, the Uttar Pradesh Muslim Waqfs Act, 1960 had already come into force wherein under Section 6(2), the Commissioner of Waqfs was empowered to make enquiries in respect of waqfs and to sent his enquiry report to each of the Boards and State Government under Section 6(4) of the said Act for its notifying the

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the respective Waqf Boards and thereby misdirected its finding and decision.

LXXXI. FOR THAT by majority view the High Court failed to consider that after invalidation of notification under Section 5(1) of the United Provinces Muslim Waqfs Act, 1936 neither fresh survey of the waqf in question was caused under Section 6 of the U.P. Muslim Waqfs Act, 1960 nor application for registration was made under Section 29(2) of the said Act of 1960 within a period of three months nor the Sunni Central Waqf Board did take any step for registration of the said waqf under Section 31 of the said Act of 1960. Thus the alleged waqf remained an unregistered waqf and as such O.O.S. No.4 of 1989 is hit by the provision of Section 87(1) of the Waqf Act, 1995 and the said suit is not fit for being continued, heard, tried or decided and is liable to be dismissed; and thereby misdirected its finding and decision.

LXXXII. FOR THAT majority view of the High Court

holding that it is not the case of any of the defendants (suit-4) that there is no registration or that registration was not done validly in accordance with

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statement of defendant No.4 (suit-5) or paragraph 16 of the written statement of defendant No.10 (suit-1) is factually incorrect. Since the question as to whether a particular waqf property is a registered one or unregistered one is a question of fact and there being an averment stating that the disputed property is a registered waqf which has not been pleaded to be incorrect by the other side, we are of the view that suit-4 filed by the Waqf Board and others cannot be held not maintainable by virtue of Section 87 of 1995 Act' is perverse and erroneous as it is not only against the weight of evidence but against the evidence itself.

LXXXIII. FOR THAT the High Court erred in law in ignoring the fact that there was an issue being issue No.5(e) framed in O.O.S. No.4 of 1989 to the effect that 'whether in view of the findings recorded by the learned Civil Judge on 21.04.1966 on issue No.17 to the effect that no valid notification under Section 5(1) of the Muslim Waqf Act (No.XIII of 1936) was ever made in respect of the property in dispute, the plaintiff Sunni Central Board of Waqf, U.P. has no right to maintain the present suit' and thereby the

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LXXXIV. FOR THAT by majority view the High Court erred in law in not considering the consequence of the judicial order of learned Civil Judge passed on 21.04.1966, inter alia, holding that no valid notification under Section 5(1) of the Muslim Waqf Act, 1936 was ever made in respect of property in dispute vis-à-vis Section 87 of the Waqf Act, 1995 and thereby misdirected its decision and erred in law in not holding that the alleged waqf was un-registered one.

LXXXV. FOR THAT the High Court failed to consider the legal implication of the aforesaid finding contained in order dated 21.04.1966 of the learned Civil Judge in the context of issue No.5(f) of O.O.S. No.4 of 1989 which is to the effect that 'whether in view of the aforesaid finding the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslims Wakf Act, 1960' and thereby misdirected its decision holding that the suit was not hit by the provisions of Section 87(1) of the Wakf Act, 1995.

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registration of a waqf under the provisions of United Provinces Muslim Waqfs Act, 1936 which was a precondition for registration and applicability of provisions of the said Act of 1936 where under submission of enquiry report by the Commissioner to the local government under Section 4(5) of the said Act showing the shia waqfs and sunni waqfs separately in accordance with provisions of Section 6(2)(a) of the said Act and thereafter under Section 5(1) of the said Act of 1936 it was statutory duty of the local government to forward a copy of the Commissioner's report to each of the Central Boards for notifying in the gazette the waqfs relating to the Shia or Sunni sects, according to such report the provisions of the Act of 1936 was made applicable.

LXXXVII. FOR THAT as the notification under Section 5(1)

of the United Provinces Muslim Waqfs Act, 1936 was foundation of registration of alleged waqf and the said notification has already been held to be invalid by the learned Civil Judge vide order dated 21.04.1966 and in paragraph 45 of the written statement of the U.P. Sunni Central Board of Waqf i.e. defendant No.4 in O.O.S. No.5 of 1989 and plaintiff No.1 in O.O.S. No.4



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property and stands registered as a waqf, in the register of waqf maintained by the Sunni Waqf Board under Section 30 of the Waqf Act and a gazette notification in respect thereto has also been issued by the State Government in 1944'. It is admitted position that the Sunni Central Board of Waqf, U.P. was claiming registration of the alleged waqf on the basis of the notification of 1944 which was held invalid vide order dated 21.04.1966 as such it was clear legal position that the registration which was effected under the provisions of 1936 Act had become ab initio null and void and as it was no case of the defendants that subsequent to commencement of the Uttar Pradesh Muslims Wakfs, 1960 neither any commissioner's report was submitted to the State Government, inter alia, stating that whether it was Shia waqf or Sunni Waqf, as such said alleged waqf remained unregistered in consequence whereof in view of Section 89 of the subsequent Act, that the Waqf Act, 1995, the said suit was not maintainable.

LXXXVIII. FOR THAT by majority view the High Court erred in law in not holding that it was the gazette notification published under Section 5(1) of the United

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Central Board of Waqfs in respect of the waqfs of sunni sect and upon the shia central board of waqfs, in respect of waqfs of shia sect. For the applicability of the provisions of the said Act as such in view of invalidation of the gazette notification of 1944 Sunni Central Board of Waqfs lost its jurisdiction to maintain the suit O.O.S. No.4 of 1989 as well as to defend the suit O.O.S. No.5 of 1989 under the provisions of Section 18(2)(e) and 18(2)(g) of the said Act.

LXXXIX. FOR THAT by majority view finding of the High Court that provisions of the United Provinces Muslims Waqfs Act, 1936 was applicable in respect of the alleged waqf in spite of invalidation of notice under Section 5(1) of the said Act which nullified the registration of the alleged waqf is in clear contradiction of and contrary to the provisions contained in Section 5(1) of the said Act of 1936 which says that the provisions of the said Act of 1936 were applicable to the waqfs of respective sect only after gazette notification under Section 5(1) of the said Act of 1936 as such the finding of the High Court is

XC. FOR THAT by majority view the High Court in holding that under Section 18(2)(e) and 18(2)(g), the plaintiff No.1 of O.O.S. No.4 of 1989 has right to maintain the said suit and is also entitled to defend O.O.S. No.5 of 1989 as defendant No.4 has erred in law and failed to follow the established principle of law that the things as it is required by the statute should be done in the way as it is required by the statute or it should not be done at all. As in the instant case the jurisdiction to maintain the suit or defend the suit was conferred upon the respective boards only after gazette notification of the waqfs under Section 5(1) and when the said gazette notification was rendered invalid by the learned trial Judge, the High Court had no occasion to examine the pleadings, evidence etc. on that point as it has become pure question of law based on undisputed question of fact that there was no valid notification.

XCI. FOR THAT by majority view the High Court erred in law in not holding that when the gazette notification of 1944 alleged to be published under Section 5(1) of the United Provinces Muslims Waqfs Act, 1936 declared invalid by the learned trial judge and specific

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record that there was no valid registration, onus was upon the plaintiff No.1 of O.O.S. No.4 of 1989 i.e. the defendant No.4 of O.O.S. No.5 of 1989 and not upon the Hindu defendants and thereby the High Court had committed patent error of law and came on a wrong finding.

XCII. FOR THAT by majority view the finding of the High Court to the effect that the documents referred by the learned Counsel of the appellant would not negate the positive assertion by defendant No.4 of O.O.S. No.5 of 1989 to the effect that the waqf was registered and moreover some irregularity or discrepancy in procedure would not render the said waqf as a registered as also that no issue on this aspect has been framed, the suits in question would be held to be barred by Section 87 of the Act; is completely perverse. This finding is not only against the weight of evidence but against the evidence itself.

XCIII. FOR THAT the High Court by majority view erred

in law in holding that where specific issue concerning the very existence of the waqf and creation of a valid

waqf in accordance with Sariat law is involve, in such

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validity of the waqf is in question, the plaintiff No.1 of O.O.S. No.4 of 1989 i.e. the defendant No.4 of O.O.S. No.5 of 1989 had no jurisdiction either to institute and defend suits and proceedings in a Court of law relating to such waqf, and thereby the High Court misdirected its finding and decision.

XCIV. FOR THAT by majority view the High Court erred in law in holding that the Court was not supposed to consider whether the building in question was a Mosque according the tenets of law of Shariyat or could not be a Mosque under the Islamic law but it was to reply whether the building in question was a Mosque as claimed by the plaintiffs; and failed to consider that the statutes defined the waqfs as 'means of permanent dedication or grant of any property for any purpose recognised by Musalman law or usage as religious, pious or charitable' and as Mosque is a dedication of a property to Allah, it comes within the definition of Waqf and it must be in strict test of the Musalman Law and thereby misdirected its finding and decision.

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was always termed and known as a "Mosque", "Babri Mosque", or "Masjid- Jamam Asthan" and Hindus also treated it as Mosque is perverse and against the evidence in view of the sufficient unimpeachable evidence on record wherefrom it is crystal clear that prior to the reign of Aurangzeb, the said building was always known as Shri Ramjanambhumi and Shri Ram Janambhumi temple and this perverse making of mind resulted into non-application of judicial mind and thereby misdirected its decision and erred in law.

**XCVI.** FOR THAT when by majority view the High Court came on the finding that the building in dispute itself was not constructed by the owner of the land or any of his agent the Ld. Judges ought to have held that the question of creation of waqf by dedication to Almighty by any of them could not arise and all issues relating to characteristics of Mosque, dedication by Babur and whether valid waqf was created i.e. issue No.6 of O.O.S. No.3 of 1989; issue No.1 1(B)(b), 1(B)(c), 19(d), 19(e), 19(f) of O.O.S. No.4 of 1989 and issue No.9 of O.O.S. No.5 of 1989 ought to have been decided against the pro-Mosque parties in not doing

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XCVII. For that when the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. had already recorded the admission of the Sri Jilani, the Ld. Advocate of the Sunni Central Board of Waqfs U.P. to the effect 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 and had already come on finding that there is no evidence whatsoever that after construction of the disputed structure it was ever used as a mosque by Muslims at least till 1856-57 its finding that the building in dispute for about last 2 and half Centuries and at least about 200 years before the present dispute arose has always been termed, called and known as a "Mosque" as such it is Mosque said finding is perverse and is liable to be set-aside.

XCVIII. For that when the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. had already come on finding that the disputed structure continued to be visited by Hindus and they continued to perform Darshan, Puja etc. therein it is mentioned in a number of documents as well as in the Historical

the Court had no occasion to arrive on

XCIX. For that when the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. drew inference after appreciation of evidence on record to the effect that Muslim parties failed to prove that daily prayers were used to be held in the property in dispute and entire suit property was not in possession of Muslims but only inner courtyard was open for all, the Court had no occasion to arrive on finding that the building was a Mosque.

C. For that when the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. drew inference after appreciation of evidence on record to the effect that at least till 1860 the Court did not find any material at all supporting the claim of the Muslim Parties showing that they also simultaneously offered Namaz at the disputed site from the date of its construction to the year 1856-57 and on contrary there are documents wherein the Hindus visited disputed building and offered worship continuously, the self contradictory finding of the High Court is contrary to the established principle of law and it is not tenable in the eye of law.



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CI. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. ignoring the admission of Mohammad Ashgar, alleged Mutawalli made in Novemember, 1858 through or under whom the Muslim parties are claiming the building to be a Mosque to the effect that "the symbol of the birth place had been remained there for hundreds of years and Hindu populace used to worship it" and thereby erred in law and fact in holding that the disputed structure was a Mosque and being termed as a Mosque for last 250 years.

CII. For that when the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. drew inference after appreciation of evidence on record to the effect that till 1934 it did not get any evidence (oral or written) suggesting worship by Muslims in the premises in dispute whether inner courtyard or outer courtyard its contrary finding that the building was a Mosque for last 250 years is perverse erroneous based on no evidence and not tenable in the eye of law.

CIII. For that the High Court by majority speaking through

holding that issue no.1 (B) (b) i.e. 'whether the building stood dedicated to almighty God as alleged by the plaintiffs?' of O.O.S. No. 4 of 1989 irrelevant and thereby leaving the same unanswered.

CIV. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. when after appreciation of evidence concluded that 'no material has been placed before us by the plaintiffs (Suit - 4 ) and / or other Muslim parties to show that the property in dispute was ever dedicated by the wakif at any point of time. In fact, what (sic who ) the real Wakif is, not known. Even the successors at any point of time allowed / dedicated it, has not been shown', in not deciding the issue no.1(B) (b) of O.O.S. No.4 against the plaintiffs the Court has committed serious error of law.

CV. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. when after appreciation of evidences concluded that 'reliance was placed in entirety the stone inscriptions and the contents thereof to show that the spirit thereof makes it inevitable to hold that the building in dispute was a

by Muslim public for religious purposes' as also that 'those inscriptions are holly unreliable, appears to have been placed later on' and are 'fictitious' and 'the inscriptions cannot help the plaintiffs on this aspect'; the court ought to have held that the disputed building was not a "Mosque" and thereby misdirected its finding contrary to clinching evidences before it.

CVI. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. when after appreciation of evidences concluded that 'we have already discussed and held the earliest evidence of user of the building in dispute we find is by Hindus in the traveller's account of Tieffenthaller published in 1786. He visited Awadh area sometimes between 1766-1771 A.D. We did not find any user by the Muslims of the disputed premises'; the court erred in law in not holding that as the building in question was not dedicated to Almighty it was not a Mosque.

CVII. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. when after appreciation of evidences concluded that there was no oral or

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 first suit was filed' i.e. since 1870 'it, therefore, constitutes customs and practice to both the sides. For Hindus, for several centuries but for Muslims almost 100 years or more' has committed patent error of law by relying on such perverse findings.

CVIII. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. in recording the wrong fact that 'the plaintiffs (Suit-4) have not claimed dedication of the building in dispute to Almighty God in such circumstances and with these facts their claim is totally different in the plaint,' and ignoring the pleading of the said plaintiffs to the effect that 'the mosque and the graveyard is vested in the Almighty' and holding that said issue no.1(B) (b) irrelevant by putting reliance on such erroneous fact has erred in law.

CIX. For that the High Court by majority speaking through

and disturbed manner for about 80 years prior to institution of first Suit i.e. 16<sup>th</sup> Day of January, 1950 constitutes custom and practice of Muslims, the High Court committed serious error of law in arriving at such erroneous finding more so when the High Court had itself quoted ratio of law laid down by the Hon'ble Apex Court holding that every custom must have to be in existence preceding memory of man and if the proof was carried back as far as living memory would go, it should be presumed that the right claimed had existed from time of legal memory, the essence of special usages modifying the ordinary law they should be ancient and invariable, it is essential that they should be established to be so, by clear and unambiguous evidence and it is only means such findings the courts can be assured of their existence and they possess the conditions of antiquity, continuity and certainty on which alone their legal Title to recognition depends. Custom must be proved and burden of proof is on the person who asserts it.'

CX. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. when after appreciation of evidences concluded that 'the Hindus are

immemorial' the court ought to have hold that it constitutes custom of Hindus to worship at Sri Ramjanmbhoomi which was entitled for recognition and protection under Article 25 of the Constitution of India and in not doing so the court has erred in law.

CXI. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. by recording wrong fact that 'repair and maintenance of the building in dispute between 1860 to 1949 also appears to have been made by the Muslims except of a riot case' misdirected its finding in respect of custom, while in fact there is neither pleading of the Muslim Parties nor any such evidence was adduced by them that they had maintained and repaired the disputed building between 1860 to 1949.

CXII. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. extending the benefit of "custom" to the Muslims inspite of the fact that neither it was pleaded nor proved that since time immemorial Muslims were offering Namaz in the disputed building, the court has committed patent

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CXIII. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. in not extending the benefit of "custom" to the Hindus inspite of the fact that it was pleaded and proved by the Hindu Parties that since time immemorial Hindus were worshipping in the disputed building, the court has committed patent error of law.

CXIV. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. after holding that 'the Islamic tenets clearly bar two religions at the same place meaning thereby the Islamic tenets prohibit non Islamic worship at a place meant for worship by Muslim people and various religious expert witnesses produced by the plaintiffs (Suit-4) also admit this position that anything which is contrary to Islamic tenets cannot be accepted by Almighty God which admissions are binding upon the plaintiffs' erred in law in not arriving at the finding that the building in dispute was not a Mosque.

CXV. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. committed error of law

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whether it is in accordance with Shariyat or not, cannot be question by Hindus in as much as it is settled law that mosque can be built only in obedience of the command of Holy Quran and Holy Prophet otherwise it remains only a building, and thereby misdirected its decision and erred in law.

CXVI. For that the High Court by majority speaking through the Hon'ble Sudhir Agarwal J. in reiterating that upto 1950 it was never doubted that the building in dispute was a mosque has overlooked and / or misconstrued the documents available on record from which it is crystal clear that prior to visit of Tieffenthaller in 8<sup>th</sup> decade of the 18<sup>th</sup> Century and in the Gazetteer of 1828 the disputed building has been described as Hindu shrine being birth place of the Lord of Universe Sri Ram Lala, and even after 1828 till 1950 in all relevant records the said building has been mentioned as a building erected over the birth place of Sri Ram which has vitiated its finding and thereby misdirected its decision and erred in law.

CXVII. For that the High Court by majority speaking



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recorded the fact to the effect that 'though public prayer for religious purposes at graveyard is not permitted but it is not shown to us that a building would not be construed as a mosque if it is surrounded on three sides by graveyards' contrary to aforesaid recording it is fact that an Authority of Islamic law Jami' AT-Tirmidhi (Vol-2) Hadith 1050 was placed before the High Court wherein the Holy Prophet has commanded not to perform Namaz towards Graves and said Authority has been reproduced in Vol-1 Part XIX at pages 188 of the Written Argument submitted by the Appellant. As from the Sketch-map attached to the plaint of O.O.S. No.4 which has been reproduced in the impugned judgment it is evident that the building in dispute on all four sides was surrounded by graveyards no one have religious sanction to offer prayer in such building as such the High Court by ignoring the Authority which is binding upon the Muslims and coming on erroneous finding has erred in law as well as in fact on the basis of non appreciation of evidence and submission.

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inconsistent with the plan no. 01 and 02 prepared by Shiv Shankar Lal Pleader, Commissioner dated 25.05.1950 submitted in O.O.S. No.1 of 1989 (Regular Suit No. 2 of 1950) being Appendix 2B and 2C of the impugned Judgment and also it is inconsistent with the Site Plan prepared by the Amin Gopal Sahai dated 6<sup>th</sup> December, 1885 submitted in Suit No.61 / 280 of 1885 being Appendix 3 and 3A to the impugned Judgment as such the same is liable to be discarded and corrected.

CXIX. For that as it is evident from the Appendix 2B and 2C as well as Appendix 3 and 3A of the Judgment of the Hon'ble Sudhir Agarwal J that on all four sides around the Suit premises there was *Parikrama Marg* (path of Circumambulation) and beyond the Parikrama Marg on the north side there were Samadhis of Sanat, Sanandan, Sanatan, Sanat Kumar as well as Samadhis of the Garg, Gautam, Sandilya and Narad Chabutara there after open land and then metalled road and there after open land. On the Southern side beyond Parikrama Marg there were Samadhis of Markandey and Angira. On the western

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open land and the topography given in the Impugned Judgment is liable to be corrected accordingly.

CXX. For that the Topography reproduced by the Hon'ble Sudhir Agarwal J in the impugned Judgment from the another Judgment passed in a Writ Petition in which the Appellant was not impleaded as party and had no occasion to dispute the same is required slight correction which is of vital importance and it is required to be added that in the outer courtyard north of the Chabutara and adjacent to eastern gate there was Bhandar (kitchen cum store) and abode for the Saints as such the Ld. Judge committed error in recording the Topography from another Judgment and not taking into account of the Topography given by the Pleader Commissioner in 1950.

CXXI. For that the Hon'ble Sudhir Agarwal J erred in law and failed to consider that as the Wakf Act, 1995 came into existence after filing of the written statement by the parties, the parties particularly the Appellant had no occasion to plead consequence of coming into force of Section 87 of the said Act of 1995

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Notification of 1944 under Section 5 (1) of the United Provinces Muslim Waqfs Act, XIII of 1936 was invalid in consequence whereof it was legal position that the alleged Registration had become ab-initio null and void and there was no need to trace it in pleading to take a legal plea before the Court as such the recording of the said Ld. Judge to the effect that Ld. Council for the Defendant No. 20 Sri Mishra could not show any such pleading is extraneous and liable to be struck down.

CXXII. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. when came on the finding that the pillars fixed inside and outside the building in dispute contain some human images and some images of human Gods and Goddess as also on finding that according to tenets of Islam it is very clear that at a place where human or animal images are placed, there Namaz cannot be offered. The learned Judge ought to have decided issue No.19(f) i.e. 'whether the pillars inside and outside the building in question contain images of Hindu God and Goddess ? If the finding is in affirmative then it has to be seen whether

against the Muslim parties and in favour of Hindu parties and in not doing so the Ld. Judge committed patent error of law.

CXXIII. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. in view of the recording of admission of the five witnesses of plaintiffs (plaintiffs of O.O.S. No.4 of 1989) being experts in Islamic religious matters to the effect that 'sole purpose of Mosque in Islam is to offer public Namaz and nothing else. Though we are strengthen on this aspect from the Shariyat text, the relevant part whereof we have already quoted, but we may point out that almost all the five witnesses of plaintiffs (suit-4) whom they claim to be the expert in Islam religious matters have unhesitatingly said that nobody will allow any image of human-being or animal in Mosque. Therefore, under the tenets of Islam if a place has a permanent structure, which contains human or animal images, it would not be a fit place for offering Namaz since Namaz, if any offered, at such place shall stand vest' has failed to draw correct inference from the said fact to the effect

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CXXIV. FOR THAT it is settled law that a building can be termed as a Mosque if it was constructed according to the Islamic tenets and law flowing from the Holy Quran and command of Holy Prophet Mohammed contained in Hadiths and when the Holy Prophet has said that angels do not enter in a house which has images, portraits, pictures idols etc. and for that reason it is prohibited to decorate a Mosque with pictures. The Learned Judge Hon'ble Sudhir Agarwal, J. in holding the building in dispute as a Mosque, has committed patent error of law in not deciding the issue according to the personal law of Muslims and thereby the learned Judge has ignored the decision of the Hon'ble Apex Court which was cited before him to the effect that in deciding the matters related to personal law of the parties in a field which is codified, the Court has no power to decide by substituting its own view in place and instead of sacred books of that particular religion.

CXXV. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. totally ignored the authorities of Islamic law and tenets place before him by the learned Counsel of the appellant herein i.e. Hadith-Sahih-

Hadith 2804), Hadith-Sahih-Muslim (Vol-1, Hadith-556) and Muwatta: Imam Malik 1743 wherein the Holy Prophet has commanded that a Mosque must not contain pictures, and object of images or portraits etc. and in the building which has pictures, and object of images or portraits, the angels do not enter therein and thereby has tried to give birth of new custom of Muslim which was neither pleaded, nor proved and is contrary to the command of Holy Prophet, not acceptable to the Muslims doctors and in particular the Muslim populous a lot.

CXXVI. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. failed to take note of and totally ignored the pleading of the defendant No.24, Prince Anjum Quder as contained in paragraph 15 of his written statement wherein mentioning the proposal of Jagatguru Sankaracharyya Swaroopananda Saraswati to resolve the Ram Janambhoomi-Babri Masjid tangle as quoted statement of the celebrated Muslim historian and scholar Maulane Syed Sahabuddin Abdur Rahman from his treatise on 'Babri Masjid' to the effect that 'on behalf of Muslim I also have right to

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land, deserves to be destroyed. No theologian or Alim can give Fatwa to hold *Namaz* in it'. In the said paragraph an extract from Manumental theological work Fatawa-e-Alamgiri, has also been quoted to the effect that 'it is not permissible to build Mosque on unlawfully acquired land. There may be many forms of unlawful acquisition. For instance, if some people forcibly take somebody's house, or land and build a Mosque, or even Jama Masjid then *Namaz* in such a Mosque will be against Shariat' and thereby has committed serious error of law in holding the building in dispute as a Mosque which was not erected over the land of Emperor Babur or any other Muslim person and admittedly was erected over the usurped land.

CXXVII. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. failed to consider the authorities of Islamic law particularly, the sacred compilation Hadith-Sahih-Bukhari 3.632, 3.633, 3.634, 4.413, 4.418 as well as the sacred compilation Hadith-Sahih-Muslim (vol-3) 1610, 1610R1, 1610R2, 1610R3, 1611 and 1612 place by the learned Counsel of the



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land of others as such after arriving at a finding that the Hindus were worshipping Shri Ram Janambhoomi since time immemorial i.e. even prior to invasion of Babur and 1526 AD and thereby acquiring territories of Delhi, Agra and Oudh as also in view of his finding that the Muslims were offering prayers occasionally intermittently for a period of about 80 years back from the date of filing of the first suit i.e. on 16<sup>th</sup> January, 1950, the Court had no other alternative but to decide that the building in dispute is not a Mosque as Mosque can be claimed only according to the established tenets of Islamic Law not on the basis of acts contrary to the dictum of Holy Prophet.

CXXVIII. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. in holding that the building admittedly erected contrary to the tenets of Islam as a Mosque on the basis of his finding to the effect that for last 80 years from the date of filing of the first suit the Muslims were intermittently and occasionally offering prayers in a building wherein offering prayer was not desirable according to Islamic tenets has failed to consider and totally ignored the authorities of the Islamic Law which was placed by the learned Counsel

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Tirmidhi (Vol-3) Hadith-1601, (Vol-4) Hadiths-2174, 2030, 2324, (Vol-5) Hadith-2683, 2687, 2826, 2305 and 1987, sacred compilation Hadith-Sahih- Bukhari 8.763, 3.627-629, the sacred compilation Hadith-Sahih-Muslim (vol-1) Hadith 142, 142R1 and (Vol-3) of the said book, Hadith-1827 to 1829, 1839, 1840R1, 1854, 1854R1 and the Muaatta-Imm-Mallick 959, 960 wherein the Holy Prophet has commanded that the Muslims are not free to lead the lives of their choice and they are bound by the law of Shar, they should not transgress law as enunciated in Shar otherwise they will lose their status of being Muslim, plunderers, looters are not Muslims. Islamic rulers are subject to Shar and it is duty of Muslims to disobey oppressive and sinful order of a Tyrant ruler and refrain himself from such sinful acts. Muslims should not approve bad deed of the Amirs i.e. the rulers. Making a just statement before the tyrannical ruler is greatest type of Jihad and a person who acts as guard against the unlawful, is kind to his neighbour and loves the people as he loves himself is Muslim otherwise not. As such anyone who is claiming the suit property contrary to Islamic tenet

of Islamic religion in clear defiance and contradiction of the authority laid down by the Holy Prophet.

CXXIX. FOR THAT in view of the findings of the learned Judge Hon'ble Sudhir Agarwal, J. on first part of the issue No.19F of O.O.S. No.4 of 1989 to the effect that the building in dispute had several images of human beings as well as Hindu Gods and Goddess, the learned Judge erred in law in holding the second part of the said issue No.19f has become redundant and thereby he has committed serious error of law and has failed to exercise the jurisdiction vested on him by law and for which otherwise he was bound to answer.

CXXX. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. in holding that as despite existence of the pillars containing images, the Muslim people do not only believe and treat the building in dispute to be a Mosque, but they continue to offer public *Namaz* thereat for more than 80 years till the time when order of attachment was passed on 29<sup>th</sup> December, 1949 and when the Muslims, according to their tenets, have believed in the status of a particular

the thing was not in accordance with the tenets of Islam has given a go-bye to the settled principle of law as well as evidences on record wherefrom it becomes crystal clear that Hindus were not raising such a question after a long time but from the appreciation of evidence it becomes crystal clear that all along Hindus were treating the said building as a temple and Shri Ramjanmabhoomi and were all along resisting the claim and attempts of Muslims to term it as a Mosque and convert it into a Mosque and prevented them from offering *Namaz* therein, as such if Muslims are claiming any right particularly fundamental right based on faith which is going to infringe or infringing superior fundamental rights of the Hindus to worship at a place which has significant importance for the Hindus for being birth-place of highly revered incarnation of Lord of Vishnu, the Hindus have right to plead and prove before the Court that the Muslims' right is not based on their faith as it is contrary to the Islamic tenets which flows from the Holy Quoran and command of the Holy Prophet contained in Hadiths. The learned Judge failed to consider that the new principle of law established by him is nothing but to

years and never allowed the Muslims to offer prayer at all which is very much apparent from the materials on record.

CXXXI. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. has committed patent error of law in arriving at a finding that in spite of the fact that the building cannot be termed as a Mosque, according to the recognized Islamic tenets even then as the Muslims were considering it Mosque, it is a Mosque and his said finding is liable to be set aside .

CXXXII. FOR THAT the finding of the learned Judge Hon'ble Sudhir Agarwal, J. to the effect that both the parties used the disputed structure and the premises within the inner courtyard, is contrary to evidence and the inference which he has drawn from the evidence is contrary to his own findings wherein the said Ld. Judge himself has held that the Muslims have failed to produce any oral or documentary evidence to show that at least till 1934 Namaz was offered in the disputed structure. As such his

subsequent finding contrary to the said finding is

CXXXIII. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. erred in law and in fact in holding that the inner courtyard and the building in dispute was not restricted for user of any one community which finding is based on no evidence and/or wrong appreciation of evidence contrary to his own finding

CXXXIV. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. in holding the building as a Mosque has committed material irregularity and error of law in view of his own finding on issue No.1(b) of O.O.S. No.4 of 1989 as well as issue No.14 of O.O.S. No.5 of 1989 i.e. '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 ?' and 'whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janam Asthan temple at his site affirmative ?'

CXXXV. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. after holding the issue No.19(b) of O.O.S. No.4 of 1989 affirmative to the extent that the building in dispute was land locked and could not be

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that the consequence of the said finding is that the said land locked building which was surrounded by graveyards on all four sides and several Hindu objects of reverence and place of worship were there cannot be a valid Mosque. And in not doing so in spite of the fact that the learned Counsel of the appellant herein had placed the sacred compilation Jami'-At-Tirmidhi (vol-2) Hadith 633 wherein the Holy Prophet has said that as Jiziya cannot be imposed upon Muslims in the same way, there cannot be religious building of two different religion in one land. As also Holy Quoran, Sura-I-at-Taubah Ayat 18 wherein it has been stated that Mosque cannot be maintained by person of other faiths. As well as Jami'-At-Tirmidhi (Vol 2) Hadith 1050 which reveals that Holy Prophet has commanded not to perform prayers towards graves and Jami'-At-Tirmidhi (Vol-5) Hadith 2890 which reveals that even a tent cannot be erected over the grave as it invites sin. The learned Judge has failed to answer the consequence of his finding by applying the Muslim personal law in a field otherwise which is not codified which has caused serious miscarriage of Justice and flagrant violation of the fundamental

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CXXXVI. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. after deciding the issue No.13 and 14 of O.O.S. No.4 of 1989 and issue No.24 of O.O.S. No.5 of 1989 in favour of the Hindu parties and against the Muslim parties holding that worship of Shri Ramlala as well as Shri Ramjanambhoomi was going on since the time immemorial and the Hindus cannot be denied right to worship after such a long time has committed mistake in law in not holding that the said building was not a Mosque and the Muslim had no right to go and offer prayer therein.

CXXXVII. FOR THAT the finding of the learned Judge Sudhir Agarwal, J. to the effect that the idol was placed inside the building in dispute in the night of 22/23<sup>rd</sup> December, 1949 is not convincing one in view of the fact that authority of the Athavaveda Shri Balmiki Ramayana, Shr8I Skandapuran, Shri Narasinghapuran, Gazetteer of 1828 as well as account of Joseph Tiffenthellar proved that even during the *treata yug* there was idol of Lord of Universe Vishnu and symbol of Lord of Universe Shri

... in form of Sthandil i.e. Vedi (altar) and it is



new one, for all practical purpose it is considered as image in continuation as such this finding of the Hon'ble Judge is erroneous and required to be modified.

CXXXVIII. FOR THAT after deciding the issue No.11 of O.O.S. No.4 i.e. 'is the property in suit the site of Janam Bhumi of Shri Ram Chandrajii ?' and issue No.22 of O.O.S. No.5 of 1989 i.e. 'whether the premises in question or any part thereof is by tradition, believe on faith the birth-place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint ? If so, its effect ?' affirmative, committed serious error of law in trifurcating the birthplace temple which has special significance for the Hindus and the Court had no right to override the fundamental right of the Hindus guaranteed to them under Article 25 and 26 of the Constitution of India and in not holding that effect of the aforesaid finding of the learned Judge was that the entire premises in dispute was sacred shrine of the deity Shri Ramjanambhoomi and infant Shri Ram erred in law.

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of 1989 against the mandate of sacred scriptures of the Hindus according to which Parikrama (circumambulation) of a temple is integral part of Hindu religious custom, usage and practice since time immemorial and according to relevant versus of Shri Narsinghapuran which were produced by the learned counsel of the appellant herein Parikrama is 15<sup>th</sup> essential part of worshipping of Lord Vishnu which was incarnated as Lord of Universe Shri Rama as such the entire disputed premises which was surrounded by Parikrama on its all four sides which is very much apparent from the sketch map of Amin Gopal Sahay as well as from the sketch map of pleader commissioner Shri Shiv Shankar Lal and in spite of such clinching evidence and scriptural sanction by holding that the Parikrama of a temple is not essential and integral part of worship, the learned Judge has tried to decide the religious matter and override the religious practices by substituting its own view in places and instead of scriptural sanction which was unwanted and uncalled for and is against the dictum of the Hon'ble Supreme Court laid down in various other matters. As such by trifurcating the suit premises which was considered as one and

is allowed to remain, it will infringe the fundamental right of Hindus and deprive them from observing their religious practices which is going on at the Suit premises since the time immemorial.

CXL. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. when answered issue No.20(b) of O.O.S. No.4 of 1989 holding that in absence of Mutawalli relief of possession cannot be allowed to the plaintiffs of O.O.S. No.4 of 1989 who have come before this Court in the capacity of worshipper, the Court had no reason to grant those worshippers relief of possession of one-third portion of the suit property taking recourse of Order VII Rule 7 of Code of Civil Procedure, 1908 in other suit i.e. O.O.S. No.5 of 1989 and decree has been passed in contradiction of Court's own finding, the same is not tenable in the eye of law.

CXLI. FOR THAT in deciding the issue Nos.10 and 11 of O.O.S. No.5 of 1989 affirmative holding that under issue No.10 that the disputed structure can be

contradictory, misconceived, erroneous and liable to be set aside.

CXLII. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. when deciding issue No.19(c) of O.O.S.

No.4 of 1989 i.e. 'whether any portion of the property

in suit was used as a place of worship by the Hindus

immediately prior to the construction of the building

in question? if the finding is in the affirmative, where

no Mosque could come into existence in view of the

Islamic tenets at the place in dispute ?' held that

even before construction of the building in dispute,

the place which the Hindus believed to be the place of

birth of Lord Rama used to be worshipped and

according to faith, believe and tradition amongst

Hindus, it is the area covered under the central dome

of the disputed structure which they believe to be the

place of birth of Lord Rama and worshipped thereat

continuously. Thus by declining to answer the

second portion of the said issue stating that being

hypothetical question it was irrelevant as it was

constructed centuries back under the sovereign

command and thereby the learned Judge has

committed gravest error of law as it is settled law that

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building constructed contrary to the dictum of Prophet Mohammed and Holy Quran cannot be termed as a Mosque even it was erected by the command of sovereign for the reasons that religious field is governed by Law of Shar not by dictate of a sovereign .

CXLIII. FOR THAT the learned Judges S.U. Khan, J. and

Sudhir Agarwal, J. failed to consider that the law of *Shar* does not recognize adverse possession but recognizes right of Jimmis to own landed property subject to payment of Jeziah (protection Tax) and, it makes some special provisions to debar the Muslims from acquiring the lands of Jimmis. Usurping land of lawful owner is prohibited in *Shar*. *Shar* does not permit adverse possession rather says that it is gravest sin, as such any building erected over the Temple-Land of the Hindus by Emperor Babur or any other Muslim cannot be construed as Masjid and the plaintiffs of O.O.S.No.4 of 1989 have no fundamental right to offer prayer in such a place where a prayer has been prohibited by Islamic tenet; and thereby misdirected their findings and decisions and erred in

law.

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CXLIV. FOR THAT the learned Judges S.U. Khan, J and

Sudhir Agarwal, J. failed to consider that the Holy Quran and the Holy prophet has commanded that no one should be compelled to change religion, idolater should be allowed to worship in their own way, the Holy prophets have appeared in every community and they should not be compared but respected and a Muslim can maintain good relation with his Pagan (i.e. worshipper of multi-deities) relative; and thereby misdirected their findings and decisions and erred in law.

CXLV. FOR THAT the learned Judges S.U. Khan, J and

Sudhir Agarwal, J. failed to consider that the Muslims are not free to lead the life of their choice and they are bound by the law of Shar. Muslims should not transgress law as enunciated in Shar otherwise they will lose their status of being Muslim. According to Shar Plunderer & looters are not Muslims. Islamic Ruler and Muslims are subject to Divine Law of Shar according to which duty of an Islamic Ruler is to guard the lives, honour and property of his subjects, maintain peace, check the evil-doer, and prevent injuries and; duty of Muslims is to disobey oppressive

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bad deed of the Amirs i.e. the rulers. Making a just statement before tyrannical ruler is a greatest type of *Jihad*. A person who acts as God against the unlawful, is kind to his neighbour and loves the people as he loves himself is Muslim, otherwise not; and thereby misdirected their findings and decisions and erred in law.

CXLVI. FOR THAT the learned Judges S.U. Khan, J and Sudhir Agarwal, J. failed to consider that Idolator Hindus were recognized as Zimmis by the great Imam Abu Haneef as such Emperor Babar or Emperor Aurangzeb being follower of said Imam's school had no right to erect valid mosque over Hindu Shrine; and thereby misdirected their findings and decisions and erred in law.

CXLVII. FOR THAT the learned Judges S.U. Khan, J and Sudhir Agarwal, J. failed to consider that according to the command of the Holy Prophet in one land there cannot be two Qibalas (Houses of Worships) or Idgah & Mosque as such Sri Ramjanmasthan Temple and a Mosque cannot co-exist in disputed site; and thereby

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CXLVIII. FOR THAT the learned Judges S.U. Khan, J and

Sudhir Agarwal, J. failed to consider that the Holy prophet has said that angels do not enter in a house which has images, portraits, pictures, idols etc. and even the designed garments detract attention from prayer and, for that reason prohibited to decorate a mosque with pictures vis-à-vis the facts that the disputed structure on its columns and other parts had engraved/chiseled images/idols of Load-bearing Yakshas, Devis, Divine - couples, Kal ash, Lotus, Leaves, Varah, Swastiks, Srivatsa, Kapot-pallis, etc. which makes the building in dispute beyond the scope of the definition of Masjid according to Muslim Religious Law and belief but it comes within the definition of a Hindu Temple according to Hindu Personal Religious Law and belief; and thereby misdirected their findings and decisions and erred in law.

CXLIX. FOR THAT the learned Judges S.U. Khan J and

Sudhir Agarwal, J. failed to consider that in vicinity of bells there cannot be a Mosque because it is Revelation of the Holy Prophet that bell is abode of



mosque; and thereby misdirected their findings and decisions and erred in law.

CL. FOR THAT the learned Judges S.U. Khan, J and Sudhir Agarwal, J. failed to consider that Wakif must be owner of the property for creating valid waqf as Emperor Babur was not owner of the Hindu Shrine Sri Ramajanmasthan he or his Commanders had no right to erect mosque and thereby erred in law in not arriving at finding that the building in dispute erected contrary to religious mandate of the Islam cannot be construed a mosque and that the disputed structure was all along a Hindu Temple & Sacred Shrine.

CLI. FOR THAT the learned Judges S.U. Khan, J and Sudhir Agarwal, J. failed to consider the principle of law laid down by the Hon'ble Supreme Court of India that the Hindu and the Muslim Kings were subject to law of their respective Dharma & Religion and thereby committed error in not arriving at the finding that Emperor Babar or Aurangzeb were also subject to law of Shar and their alleged action of erection of alleged

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CLII. FOR THAT the learned Judges S.U. Khan, J and Sudhir Agarwal, J. failed to consider the legal implication of the Farman of the Emperor Shah Jahan wherein it has been held that the building constructed by the Governor appointed by the Emperor over the land of a Temple cannot be a Mosque and owner of the Temple is entitled for restoration of possession with liberty to Worship therein according to his own religion has force of law; and thereby misdirected their findings and decisions and erred in law.

CLIII. FOR THAT the learned Judges S.U. Khan, J and Sudhir Agarwal, J. failed to consider that adverse possession of Debttar property is impermissible in Hindu Law.

CLIV. FOR THAT the Learned Judge Hon'ble Sudhir Agarwal, J. in deciding issue No.16 of O.O.S. No.4 of 1989 that 'to what relief, if any, are the plaintiffs or any of them entitled ?' held that since the suit is barred by limitation the question of entitlement of any relief to the plaintiff does not arise as the suit itself if liable to be dismissed, by granting relief to those

has committed error of law in granting relief by overriding the specific statutory provision contained in Article 120 of the Indian Limitation Act, 1908.

CLV. FOR THAT the Learned Judge Hon'ble Sudhir

Agarwal, J. when deciding issue No.13 of O.O.S. No.3 of 1989 i.e. 'to what relief, if any, is the plaintiff entitled?' held that in view of their finding in respect of issue Nos.2, 3, 4, 9 and 14 the plaintiffs of O.O.S. 3 of 1989 is not entitled to any relief. By granting relief to the said plaintiffs in O.O.S. No.5 of 1989 wherein it was impleaded as defendant No.3 under Order VII Rule 7 has committed patent error of law in granting relief by overriding the specific statutory provisions contained in Article 120 of the Indian Limitation Act, 1908.

CLVI. FOR THAT the learned Judges S.U. Khan, J and

Sudhir Agarwal, J. in granting one-third of the disputed property to each of the plaintiffs of O.O.S. No.3 of 1989 and O.O.S. No.4 of 1989 in addition to the plaintiff Nos.1 and 2 of O.O.S. No.5 of 1989 and taking recourse of Order 7 Rule 7 of Code of Civil

Procedure moulding the relief relving on the judgment

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not applicable in the facts and circumstances and otherwise distinguishable the learned Judges have committed patent error of law in granting relief to the plaintiffs of O.O.S. No.3 of 1989 and O.O.S. No.4 of 1989 to whom the learned Judges had found not entitled for any relief and whose claims were found time-barred under Article 120 of the Indian Limitation Act, 1908 as such the impugned judgment and the decree passed by the Hon'ble Justices S.U. Khan, J. and Sudhir Agarwal, J. are liable to be set aside and the judgment and decree passed by the Hon'ble Judge D.V. Sharma save and except one finding is liable to be upheld and confirmed by modifying the same to the extent as prayed for in this appeal.

CLVII. FOR THAT it appears that due to typographical and clerical inadvertence in the impugned judgment, the arguments which were originally advanced by the learned Counsel of defendant No.20 in O.O.S. No.4 of 1989, Mr. P. N. Mishra, Advocate, i.e. the appellant herein and adopted by other learned Counsels, who argued later on, have been at several places recorded as the argument of those learned Counsels who did not render that argument but had only adopted the

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herein submitted before the Hon'ble Court. As such said clerical error is required to be corrected in accordance with the written argument which is part and parcel of the record.

CLVIII. FOR THAT the judgments of the Hon'ble Justice S.U. Khan, J. and the Hon'ble Justice Sudhir Agarwal, J. are contrary to the provisions contained in Order XX of the Code of Civil Procedure, 1908, as amended up to date as such are erroneous decision.

CLIX. FOR THAT the Hon'ble Justice S.U. Khan, J. and the Hon'ble Justice Sudhir Agarwal, J. failed to consider that when the claim of the Muslim parties was barred by law on the date of institution of R.S. No.12 of 1961/O.O.S. No.4 of 1989 subsequent amendment after about three decades granted by the Court erroneously and/or contrary to law cannot make their claim maintainable and thereby misdirected their findings and decisions and erred in law.

appreciate consequence of non-existence of the building in dispute since 1992 and thereby erred in law in not holding that that the right of the Muslims to offer prayer at the disputed site had been abolished and the Muslim parties were not entitled for any relief in O.O.S.No.5 of 1989.

CLXI. FOR THAT the learned Judges Hon'ble S.U. Khan, J. and Hon'ble Sudhir Agarwal, J. wrongly applied the principle of law enunciated in Section 110 of the Indian Evidence Act, 1872 and shifted burden of proof upon the plaintiff Nos.1 and 2 of O.O.S.No.5 of 1989 who were in possession of the disputed property since time immemorial and thereby erred in law.

CLXII. FOR THAT the learned Judges Hon'ble S.U. Khan, J. and Hon'ble Sudhir Agarwal, J. failed to consider legal implication of Section 34 of the Specific Relief Act, 1963 and thereby erred in law in not holding that the Muslim parties were not entitled for any relief in the eye of law.

in not holding that the Hindus have superior fundamental rights as Shri Ram Janam Bhumi has special significance for the Hindus and worshipping thereat has been commanded by the sacred scriptures of the Hindus, the custom, usage, rights to manage and religious practices of the Hindus comes under the protection of Article 25 and 26 of the Constitution of India and only Hindus are entitled for the said sacred shrine.

CLXIV. FOR THAT the learned Judges Hon'ble S.U.

Khan, J. and Hon'ble Sudhir Agarwal, J. erred in law in not holding that the Muslims have no fundamental rights to offer prayer at Shri Ram Janam Bhumi which has special significance for the Hindus and worshipping thereat has not been commanded by the Holy Quran or the Holy Prophet, and the Muslims neither pleaded nor proved any custom since time immemorial to offer prayer in Hindu temples having idols contrary to the tenets of Islam the Muslims' claim does not come within the ambit of the protection of Article 25 and 26 of the Constitution of India and Muslims are not entitled for any right, title

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CLXV. FOR THAT the High Court by majority has failed to consider the facts recorded in Gazetteers to the effect that in hundreds of years back not less than four lakh people used to collect at Sri Ram Janma Bhoomi to celebrate birth ceremony of Ram Lala and now- a-days said number has increased to manifold, in one third of the total area of 130' x 80' it is quite impossible for Hindus to observe such customary ceremony and thereby have failed to uphold fundamental right of the Hindus and erred in law and equity.

CLXVI. FOR THAT in the impugned judgment the Ld. Judges Hon'ble S.U. Khan J. and Hon'ble Sudhir Agarwal J. have relied on and drawn inferences from several documents that had not come through proper custody nor proved nor had evidentiary values otherwise are inadmissible in evidence which vitiated their findings.

CLXVII. FOR THAT the remarks of the Hon'ble S.U. Khan J. in respect of passing of a Judicial Order being

1.01.00.1086 for opening the locks of the



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District Judge of Faizabad who is no more and had no occasion to defend his Judicial Act that was not subject matter of decision of the High Court is uncalled for, unwarranted and against the Judicial norms as propounded by this Hon'ble Apex Court of the land as such those adverse comments and remarks made by the said Ld. Judge against said K. M. Pandey are liable to be expunged from the records for the ends of justice.

CLXVIII. FOR THAT the appellant who was not party in O.O.S.No. 5 of 1989 but had contested the O.O.S.No.4 of 1989 as defendant No.20 in furtherance of the claim of the plaintiff No.1 and 2 of O.O.S.No.5 of 1989, the appellant is aggrieved person and entitled to prefer the instant appeal for the reasons that Issues covering the subject-matter of all above mentioned four suits were common, all the four suits were consolidated, tried, heard and disposed of together by single judgment and order i.e. impugned judgment.

impleadment of deity as party defendant in suit No.4 stood cured in view of the fact that suit No.5 is on behalf of deity and all the suits have been consolidated as such against the order passed in disposing of all four suits in consolidated manner which is affecting adversely to the appellant who contested O.O.S. No.4 of 1989 for the benefit of the deities is entitled for being granted leave to prefer the instant appeal.

CLXX. FOR THAT as the Appellant is an outfit founded and presided over by His Holiness Jagadguru Shankaracharya Shardamath-Dwarka and Jyotirmath-Badarikashram who is ex-officio religious Acharya of Lord Narayan of Badarikashram and has been authorized by the religious commandment of Adi-Shankaracharya, an incarnation of Lord Shiva to protect and upheld the religion and dharma in Northern India and Western India, having all qualification of being appointed Sebait of Sri Ram Lala has right to put forward and defend the claim of Sri Ram Lala before the Court's of Law as defecto/ex-officio sebait and or custodian of dharma and have superior right to do so than any worshipper : the

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CLXXI. FOR THAT as the suits have been tried by the High Court as a Court of trial, under Section 96 of the Code of Civil Procedure, 1908 as amended upto date this Hon'ble Apex Court is first appellate Court.

CLXXII. FOR THAT the High Court vide its later Order dated 30.09.2010 has held that there is no need of granting Certificate to appeal as there is already provision of Statutory appeal under section 96 of the Civil Procedure Code the instant first civil appeal is maintainable before this Hon'ble Court.

CLXXIII. FOR THAT since the impugned judgment is voluminous one having more than 8000 pages and the certified copy of the same was made ready and delivered only on 27<sup>th</sup> January, 2011, there was not sufficient time to deal with each and every points contained in the impugned judgment which are contrary to the interest of the deities i.e. plaintiff Nos.1 and 2 of O.O.S.No.5 of 1989, the appellant crave leave to take additional grounds, if any, later on.

CLXXIV. FOR THAT the judgment and order dated 30<sup>th</sup>

Sudhir Agarwal, J. forming majority view of the High Court decreeing it in part and declaring the Muslims, Hindus and Nirmohi Akahara joint title holders of the property/premises in dispute to the extent of one-third share each for using and managing the same for worshipping are not tenable in the eye of law as their judgments are based on non-application of judicial mind, extraneous consideration, assumption, presumption, conjecture and surmise, non-appreciation or mis-appreciation of evidence in the light of established principle of law, non-drawing of inferences thereon according to law and are based on perverse findings and are liable to be set aside while the judgment and order dated 30<sup>th</sup> September, 2010 passed in O.O.S.No.5 of 1989 by the Hon'ble Justice D.V. Sharma, J. forming minority view of the High Court decreeing it in full by declaring that 'the entire premises of Sri Ram Janma Bhumi at Ayodhya as described and delineated in Annexure No.1 and 2 of the plaint belonged to the plaintiff No.1 and 2, the deities and restraining the defendants permanently from interfering with or raising any objection to or placing any obstruction in the construction of the temple at Ram Janma Bhumi Ayodhya at the site

evidence, drawing on inferences according to law and proper application of judicial mind.

CLXXV. FOR THAT all findings of the learned Judge Hon'ble D.V. Sharma, J. save and except one finding that the building in dispute was erected by Babur or his commander are fit for being upheld.

CLXXVI. FOR THAT all findings of the learned Judge Hon'ble S.U. Khan, J. which are inconsistent with the findings of the Hon'ble Justice D.V. Sharma, J. as also His Lordship's finding that the Babur had erected the building in dispute are not tenable in the eye of law and are liable to be set aside.

CLXXVII. FOR THAT all findings of the learned Judge Hon'ble Sudhir Agarwal, J. which are inconsistent with the findings of the Hon'ble D.V. Sharma, J. save and except His Lordship's finding that the building in dispute was not erected by Babur or his commander, are not tenable in the eye of law and are liable to be set aside.

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of the Hon'ble D.V. Sharma, J thereon with one exception are not tenable in the eye of law and are liable to be set aside.

5. 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. 5/1989 challenging the judgments impugned in the present appeal.

**PRAYER**

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

a) Allow and admit the Appeal and set aside the impugned judgment and final order dated 30.09.2010 passed in O.O.S. No. 5 of 1989 by the High Court of Judicature at Allahabad Lucknow Bench, Lucknow vide which the High court by majority disposed of the said O.O.S. No. 5 of 1989 along with O.O.S. No. 1 of 1989, O.O.S. No. 3 of 1989 and O.O.S. No. 4 of 1989.

b) Call for the records of the case relating to O.O.S. No. 5 of 1989, titled as Bhagwan Sri Ram Virajman & ors. Vs. Sri Rajendra Singh & ors. Decided by the special bench of three judges of Hon'ble High court of Allahabad, Lucknow Bench,

0672

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

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S.S.NEHRA  
Advocate for the Appellant

DRAWN BY:

Mr. P.N.Mishra, Adv.

Assisted By  
MS. Ranjana Agnihotri, Advocate  
&  
M/s Law & Equity  
Advocates & Legal Consultants

Drawn On: 13.02.2011

Filed on: 19.02.2011

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**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.        OF 2011****IN THE MATTER OF :-**

CONVENOR OF AKHIL BHARTIYA SRI  
RAM JANAM BHOOMI PUNARUDHAR  
SAMITI-

.....APPELLANT

VERSUS

SRI RAJENDRA SINGH &amp; ORS.

.....RESPONDENTS

**"CERTIFICATE"**

Certified that the Memorandum of Appeal is confined only to the pleadings before the Court whose order is challenged and other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Memorandum of Appeal. This Certificate is given on the basis of the instructions given by the Appellant whose affidavit is filed in support of the Memorandum of Appeal.

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**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**(UNDER ARTICLE 132 OF THE CONSTITUTION OF INDIA)**  
**CIVIL APPEAL NO.      OF 2011**

**IN THE MATTER OF:-**

CONVENOR OF AKHIL BHARTIYA SRI  
RAM JANAM BHOOMI PUNARUDHAR  
SAMITI      ...APPELLANT

VERSUS

SRI RAJENDRA SINGH & ORS.      ...RESPONDENTS

**AFFIDAVIT**

I, Subuddhanand Bramhachari disciple of His Holiness Jagadguru Shankaracharya of Shardamath-Dwarka and Jyotirmath -Badarikashram, aged about 60 years, R/o Paramhamsi Ganga Ashram Sridham, at Post Office/P.S. Shridham, District Narasinghpur in the State of Madhya Pradesh do hereby solemnly and declare on oath as under:

1. That I am the Convener of the Akhil Bhartiya Sri Ram Janma Bhoomi Punarudhar Samiti i.e. the Appellant and fully conversant with the facts and circumstances of the present case and am

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2. That I have read and understood the contents of the accompanying: ~~Civil Appeal~~ from Para 1 to pages to , Synopsis, List of Dates and events from pages B to , interim relief and application for exemption from filing Official Translation, <sup>and Application for Permission to file Appeal.</sup> which have been drafter under my instructions and I say that the contents of the same are true and correct and that nothing material has been concealed and no part of it is false.
3. That the Annexure-P/1 to P/ annexed with the petition are true copies of the respective originals.
4. That the contents of the petition is read over and explained to me in vernacular language and the same is understood by me.

Verified and signed on this day of February, 2011  
at New Delhi.

  
DEPONENT

अ.भा. श्रीरामजन्मभूमि पुनरुद्धार समिति

(60) 8676

**IN THE HON'BLE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
( UNDER ARTICLE 132, 133, 134A OF CONSTITUTION  
OF INDIA READ WITH ORDER XV OF SUPREME COURT  
RULES AND READ WITH SECTION 96 OF CIVIL  
PROCEDURE CODE 1908)  
I.A. NO.      OF 2011  
IN  
CIVIL APPEAL NO.      OF 2011**

CONVENOR OF AKHIL BHARTIYA SRI  
RAM JANAM BHOOMI PUNARUDHAR  
SAMITI-

.....APPELLANT

VERSUS

SRI RAJENDRA SINGH & ORS.

.....RESPONDENTS

**APPLICATION ON BEHALF OF THE APPELLANT**

**/APPLICANT FOR PERMISSION TO FILE CIVIL APPEAL.**

TO,  
The Hon'ble chief justice of India and his Hon'ble  
Companion judges of the Hon'ble Supreme  
Court of India at New Delhi

The humble Appeal of the  
Appellant/ Applicant above named

**MOST RESPECTFULLY SHOWETH:-**

1 That the Appellant above named respectfully submits  
that the Appellant is seeking the First Appeal being

Court of Judicature at Allahabad Lucknow Bench,  
Lucknow.

2. The Appellant has challenged the said impugned judgment in the facts and circumstances and the grounds taken therein in the said Appeal. For the sake of brevity and to avoid repetition, the Appellant is not repeating the same and crave indulgence of this Hon'ble Court to treat the same as an integral part of this application. The Appellant crave indulgence of this Hon'ble Court to refer to and rely upon the same at the time of hearing of this application.

3. That the Appellant /applicant have prima-facie a good case and have every hope of success. It is submitted that the Appellant here in is the defendant no. 20 in Suit O.O.S. No. 4 of 1989, wherein the Hon'ble High Court has been pleased to dismiss the Suit.

4. That the Hon'ble High court by majority disposed of the said O.O.S. No. 5 of 1989 along with O.O.S. No. 1 of 1989, O.O.S. No. 3 of 1989 and O.O.S. No. 4 of 1989 decreeing the said O.O.S. No. 5 of 1989 inter alia declaring all the three sets of parties i.e. Muslims, Hindus and Nirmohi

prepared by Sri Shiv Shanker Lal, Pleader / Commissioner appointed by Court in O.O.S. No. 1 of 1989 to the extent of one third share each for using and managing the same for worshipping; and a preliminary decree to that effect, with further declaration that the portion below the Central Dome where at present the Idol is kept in makeshift temple will be allotted to Hindus in final decree, with a further direction that Nirmohi Akhara will be allotted share including that part which is shown by the words Ram Chabutara and Sita Rasoi in the said map, with further clarification that even though all the three parties are declared to have one third share each, however if while allotting exact portions some minor adjustment in the share is to be made then the same will be made and the adversely affected party may be compensated by allotting some portion of the adjoining land which has been acquired by the Central Government;

5. That since the outcome of the Judgment and final Order dated 30.09.2010 of the Hon'ble High Court of Judicature at Allhabad, Lucknow bench passed in O.O.S.No5 of 1989 effects to the Appellant herein/ defendant no. 20 of O.O.S. No. 4 of 1989. So the Appellant may be permitted to file

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06/29

6. The Appellant will suffer irreparable loss if he is not allowed to file this instant Appeal and the respondents would not, in any way, be prejudiced.

7. This application is being bona-fide and in the interest of justice.

PRAYER

In view of aforesaid facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to,

i) allow the Appellant to file the instant Civil Appeal,

ii) pass such other or further order(s) as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of this Case.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE  
APPELLANT/APPLICANT AS IN DUTY BOUND SHALL  
EVER PRAY

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S.S. NEHRA  
Advocate for the Appellant/Applicant

**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. OF 2011****IN THE MATTER OF:-**

CONVENOR OF AKHIL BHARTIYA SRI  
RAM JANAM BHOOMI PUNARUDHAR  
SAMITI

...APPELLANT

VERSUS

SRI RAJENDRA SINGH &amp; ORS.

...RESPONDENTS

**APPLICATION UNDER ORDER XXXIX RULE 1 & 2 READ  
WITH SECTION 151 CPC AND FURTHER READ WITH  
ARTICLE 132 OF THE CONSTITUTION OF INDIA**

TO,

The Hon'ble chief justice of India and his Hon'ble  
Companion judges of the Hon'ble Supreme  
Court of India at New Delhi

The humble Application of the  
Appellant above named

**MOST RESPECTFULLY SHEWETH:-**

1. That the Appellant respectfully submits that the Appellant is seeking the First Appeal being aggrieved by the judgment and final order dated 30.09.2010 passed in O.O.S. No. 5 of 1989 by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

avoid repetition, the Appellant is not repeating the same and crave indulgence of this Hon'ble Court to treat the same as an integral part of this application. The Appellant crave indulgence of this Hon'ble Court to refer to and rely upon the same at the time of hearing of this application.

3. That the Appellant submits that the judgment impugned herein is Ex-facie, fallacious and unsustainable in the eyes of law, because the findings arrived by the Hon'ble court are not based on facts and law as well.

4. That the Hon'ble High court has decided the suit vide judgment and decree dated 30.09.2010 and has also directed the status quo to be maintained for three months from 30.09.2010, which was subsequently extended to 15.02.2011 vide order dated 10.12. 2010 and further extended upto 31.05.2011 vide order dated 09.02.2011.

5. That the balance of convenience lies in favour of the Appellant and against the contesting respondents and the Appellant will suffer irreparable loss if status- quo is not maintained.

6. This application is being bona-fide and in the interest of justice.



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PRAYER

In view of aforesaid facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to,

- (a) Pass ad-interim ex-parte stay, staying the operation of the preliminary decree against the impugned final judgment and order dated 30.09.2010 passed collectively in O.O.S. No. 1 of 1989, O.O.S. No. 3 of 1989, O.O.S. No. 4 of 1989 and O.O.S. No. 5 of 1989 by the special full Bench of Hon'ble High Court Judicature at Allahabad Lucknow Bench, till the final disposal of the Appeal and maintain the status quo.
- b) pass such other or further order(s) as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of this Case.

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S.S.NEHRA  
Advocate for the Appellant/Applicant

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPEAL NO.        OF 2011**

**IN THE MATTER OF:-**

CONVENOR OF AKHIL BHARTIYA SRI  
RAM JANAM BHOOMI PUNARUDHAR  
SAMITI

...APPELLANT

VERSUS

SRI RAJENDRA SINGH & ORS.

...RESPONDENTS

**APPLICATION ON BEHALF OF THE APPELLANT/ APPLICANT  
FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION OF  
IMPUGNED JUDGMENT AND FINAL ORDER DATED  
30.09.2010 I.E. VOLUME-I TO VOLUME-XXXIII.**

TO,

The Hon'ble chief justice of India and his Hon'ble  
Companion judges of the Hon'ble Supreme  
Court of India at New Delhi

The humble Application of the  
Appellant above named

**MOST RESPECTFULLY SHEWETH:-**

1. That the Appellant respectfully submits that the Appellant is seeking the First Appeal being aggrieved by the judgment and final order dated 30.09.2010 passed in O.O.S. No. 5 of 1989 by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

therein in the said Appeal. For the sake of brevity and to avoid repetition, the Appellant is not repeating the same and crave indulgence of this Hon'ble Court to treat the same as an integral part of this application. The Appellant crave indulgence of this Hon'ble Court to refer to and rely upon the same at the time of hearing of this application.

3. It is submitted that the impugned judgment contains different vernaculars like Sanskrit, Urdu, Hindi and Gurumukhi and foreign language like Arabic, Persian and French. Since the matter is urgent and translation by the official translator will take considerable time, hence the same has been translated by one Advocate of this Hon'ble Court and Ld. Counsel has tried his level best to give maximum accuracy to the said Translation.

4. It is submitted that irreparable loss would be caused to the Appellant/Applicant, if the present application is not allowed and translated documents are not taken on record. It is submitted that these documents are important and vital for the decision in this present case. The Respondent in any case would not be prejudiced.

6. This application is being *bona fide* and in the interest of justice.

**PRAYER**

In view of aforesaid facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i. Exempt the Appellant/ Applicant from filing official translation of the vernaculars used in volume-I to Volume-XXXIII and;
- ii. pass such other or further order(s) as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of this Case.

**AND FOR THIS ACT OF KINDNESS THE  
APPELLANT/APPLICANT AS IN DUTY BOUND SHALL  
EVER PRAY**

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S.S.NEHRA

Advocate for the Appellant/Applicant

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
Diary no. 5780 of 2011

CIVIL APPEAL NO.        OF 2011

IN THE MATTER OF:-

CONVENOR OF AKHIL BHARTIYA SRIRAM JANAM  
BHOO MI PUNARUDHAR SAMITI- .....APPELLANT

VERSUS

SRI RAJENDRA SINGH & Ors. ....RESPONDENTS

APPLICATION FOR CONDONATION OF DELAY IN RE-  
FILING THE AFORESAID MATTER UNDER ORDER XLVII  
OF SUPREME COURT RULES, 1966

TO

The Hon'ble Chief Justice of India  
and his companion Justices of the  
Supreme Court of India.

The humble Application of  
the Applicant above named:

MOST RESPECTFULLY SHOWETH:-

1. That the Appellant/Applicant respectfully submits  
that the Applicant is seeking the First Appeal being  
aggrieved by the judgment and final order dated  
30.09.2010 passed in O.O.S. No. 5 of 1989 by the  
High Court of Judicature at Allahabad, Lucknow

2. The Appellant has challenged the said impugned judgment in the facts and circumstances and the grounds taken therein in the said Appeal. For the sake of brevity and to avoid repetition, the Appellant is not repeating the same and crave indulgence of this Hon'ble Court to treat the same as an integral part of this application. The Appellant crave indulgence of this Hon'ble Court to refer to and rely upon the same at the time of hearing of this application.

3. Since the impugned judgment and final order of the aforesaid matter is more than 8000 pages and the contents of the impugned judgment comprising of voluminous translation of many vernacular languages like Sanskrit, Hindi, Urdu, Persian and of many foreign languages like French, Arabic. Hence it is difficult to translate the aforesaid matter within the stipulated time and there is delay of days.

4. In view of the aforesaid facts and circumstances of the case, it is prayed that the delay of days may be condoned in the interest of justice

6. That the Applicant would suffer irreparable loss if the delay is not condoned. It is submitted that the said delay would merit gracious condonation by this Hon'ble Court.

#### PRAYER

In view of the above facts and circumstances of the case, It is most respectfully, prayed that this Hon'ble Court may kindly be pleased to

- i. Condone the delay in refiling the aforesaid matter and;
- ii. Pass such other or further order(s) as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of this Case.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE  
APPLICANT AS IN DUTY BOUND SHALL EVER PRAY

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*S.S. NEHRA*

S.S. NEHRA (Code-1607)  
Advocate for the petitioner