EM

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2215 OF 2011

(Against the impugned Judgment / Decree dated 30.9.2010 passed by the three Judges Special Bench of the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow disposing of Other Original Suit No. 4 of 1989 (Regular Suit No. 12 of 1961) vide three separate judgments.)

IN THE MATTER OF:-

Misbahuddeen ... Appellant

Versus

Mahant Suresh Das and others ...Respondents

PAPER-BOOK

VOLUME - XXXVI

Civil Appeal with Affidavit

WITH

I.A. No. of 2011 : Application for Interim Relief/Order

AND WITH

I.A. No. of 2011 : Application for exemption from filing official translation.

FILED BY:-
MR. EJAZ MAQBOOL, ADVOCATE FOR THE APPELLANT

VOLUME – XXXVI

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2011

POSITION OF PARTIES

	In the High Court	In this Court

IN THE MATTER OF :-

Misbahuddeen
aged about 41 years,
S/o late Ziauddin,
Resident of Mohalla Angoori Bagh,
Faizabad City,
Faizabad,
Uttar Pradesh — Plaintiff No. 6/1/1 — Appellant

VERSUS

1. Mahant Suresh Das
Chela Sri Param Hans Ram Chander Das
resident of Digambar Akhara,
Ajodhia City,
District Faizabad,
Uttar Pradesh — Defendant No. 2/1 — Contesting Respondent No. 1

2. Nirmohi Akhara
situated in Mohalla Ram Ghat,
City Ajodhiya, District Faizabad,
through Mahant Rameshwar Das,
Mahant Sarbarakar,
R/o Nirmohi Akhara,
Mohalla Ram Ghat,
City Ajodhiya,
District Faizabad,
Uttar Pradesh — Defendant No. 3 — Contesting Respondent No. 2

3. Mahant Raghunath Das
Chela Mahant Dharam Das Mahant
and Sarbarakar
Nirmohi Akhara,
Mohalla Ram Ghat,
City Ajodhiya,
District Faizabad,
Uttar Pradesh — Defendant No. 4 — Respondent No. 3

4.	The State of Uttar Pradesh through Chief Secretary to the State Government, Uttar Pradesh	Defendant No. 5	Contesting Respondent No. 4
5.	The Collector, Faizabad, Uttar Pradesh	Defendant No. 6	Contesting Respondent No. 5
6.	The City Magistrate, Faizabad, Uttar Pradesh	Defendant No. 7	Contesting Respondent No. 6
7.	The Superintendent of Police Faizabad, Uttar Pradesh	Defendant No. 8	Contesting Respondent No. 7
8.	B. Priya Dutt S/o R. B. Babu Kamlapat Ram R/o Rakabganj, Faizabad, Uttar Pradesh	Defendant No. 9	Respondent No.8
9.	President All India Hindu Maha Sabha Read Road, New Delhi.	Defendant No. 10	Contesting Respondent No. 9
10.	President, Arya Maha Pradeshik Sabha Baldan Bhawan, Shradhanand Bazar, Delhi.	Defendant No. 11	Contesting Respondent No.10
11.	President All India Sanatan Dharam Sabha, Delhi.	Defendant No. 12	Contesting Respondent No.11

12. Dharam Das
alleged Chela Baba Abhiram Das
Resident of Hanuman Garhi,
Ayodhya, Faizabad,
Uttar Pradesh — Defendant No. 13/1 — Contesting Respondent No.12

13. Sri Pundrik Misra
Son of Raj Narain Misra,
Resident of Balrampur Sarai,
Rakabganj, Faizabad,
Uttar Pradesh — Defendant No. 14 — Contesting Respondent No.13

14. Sri Ram Dayal Saran
Chela of late Ram Lakhan Saran,
R/o Town Ayodhya,
District Faizabad,
Uttar Pradesh — Defendant No.15 — Contesting Respondent No.14

15. Ramesh Chandra Tripathi
aged about 73 years,
son of Sri Parsh Rama Tripathi,
R/o village Bhagwan Patti,
Pargana Mijhaura,
Tahsil Akbarpur,
District Ambedkar Nagar,
Uttar Pradesh — Defendant No.17 — Contesting Respondent No.15

16. Mahant Ganga Das
Chela of Mahant Sarju Dass,
R/o Mandir Ladle Prasad,
City Ayodhya,
Faizabad,
Uttar Pradesh — Defendant No.18 — Contesting Respondent No.16

17. Shri Swami Govindacharya
Manas Martand Putra Balbhadar Urf Jhallu,
R/o Makan No. 735, 736, 737,
Katra Ayodhya, Pergana Haveli Audh,
Tahsil and District Faizabad,
Uttar Pradesh — Defendant No.19 — Contesting Respondent No.17

18. Madan Mohan Gupta
Convener of
Akhil Bhartiya Sri Ram Janam
Bhoomi Punarudhar Samti,
E-7/45, Bangla T.T. Nagar,
Bhopal,
Uttar Pradesh — Defendant No.20 — Contesting Respondent No.18

19. President
All India Shia Conference
Registered, Qaumi Ghar,
Nadan Mahal Road,
F. S. Chowk, Lucknow
Uttar Pradesh — Defendant No.21 — Respondent No.19

20. Umesh Chandra Pandey
S/o Sri R.S. Pandey,
Resident of Ranupalli,
Ayodhya, District Faizabad,
Uttar Pradesh — Defendant No.22 — Contesting Respondent No.20

21. The Sunni Central Board of Waqfs U.P. Lucknow
now known as U.P. Sunni Central Waqf Board,
through its Chief Executive Officer.
3-A, Mall Avenue,
Lucknow,
Uttar Pradesh — Plaintiff No. 1 — Proforma Respondent No.21

22. Mohd. Siddiq alias Hafiz Mohd. Siddiq
S/o late Haji Mohd. Ibrahim,
resident of Lalbagh, Moradabad,
General Secretary, Jamiatul Ulema Hind,
Uttar Pradesh, Jamiat Building,
B.N. Verma Road (Katchechry Roard),
Lucknow,
Uttar Pradesh — Plaintiff No.2/1 — Proforma Respondent No.22

23. Ziauddin
Aged about 46 years,
S/o Haji Shahabuddin (deceased)
R/o Mohalla Angoori Bagh,
Pargana Haveli Oudh,
City and District Faizabad,
Uttar Pradesh — Plaintiff No.6/1 — Proforma Respondent No.23

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24. Mohammad Hashim
aged about 90 years
son of late Karim Bux,
resident of Mohalla Kutiya,
Panji Tola, Ajodhiya City,
District Faizabad,
Uttar Pradesh — Plaintiff No.7 — Proforma Respondent No.24

Dead

25. Maulana Mahfoozurrahman
S/o late Maulana Vakiluddin,
Resident of Village Madarpur,
Pergana and Tahsil Tanda,
District Ambedkarnagar
(old District Faizabad),
Uttar Pradesh — Plaintiff No.8/1 — Proforma Respondent No.25

26. Mahmud Ahmad
Aged about 30 years
S/o Ghulam Hasan,
R/o Mohalla Rakabganj,
City Faizabad,
Uttar Pradesh — Plaintiff No.9 — Proforma Respondent No.26

27. Farooq Ahmad
S/o late Sri Zahoor Ahmad,
Resident of Mohalla Naugazi Qabar,
Ayodhya City, Ayodhya,
District Faizabad,
Uttar Pradesh — Plaintiff No.10/1 — Proforma Respondent No.27

APPEAL UNDER SECTION 96 READ WITH SECTION 109 AND SECTION 151 OF THE CODE OF CIVIL PROCEDURE,1908 (CPC), AND ALSO READ WITH ARTICLES 133, 134A AND 136 OF THE CONSTITUTION OF INDIA

To
The Hon'ble Chief Justice of India
and his companion justices of the
Hon'ble Supreme Court of India

The humble Appeal of the
above named Appellant

MOST RESPECTFULLY SHOWETH: -

1. This is a Civil Appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") read with Section 109 CPC and also read with Articles 133/ 134A/136 of the Constitution of India against the impugned judgment, order and preliminary decree dated 30.09.2010 passed by the three Judges Special Bench of the Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow rendered in *O.O.S. No.4 of 1989* and other connected suits vide their separate judgments. In this respect, the Special bench of the Hon'ble High Court has passed a separate order on the same date observing that in the opinion of the Hon'ble Judges of the High Court an appeal is maintainable in this Hon'ble Court under Section 96 of Civil Procedure Code, 1908.

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

i. That during the rule of Emperor Babar in the year 1528 the Babri Mosque was constructed where the Muslim community started offering prayers. These prayers continued uninterrupted in the Mosque from 1528 untill 22 December 1949.

ii. That in the year 1857 the courtyard of the Mosque was divided and an inner and the outer courtyard was created, separated by a wall made of bricks and an iron grill. From on or around 1857, a Chabutra admeasuring 17 x 21 ft, was set out in the outer courtyard of the Mosque (the "Chabutra").

iii. That in January 1885 an Original Suit No. 61/280 of 1885 was filed by Mahant Raghubar Dass (claiming to be the Mahant of Janamsthan), against the Secretary of State for India in Council,

interalia seeking permission to build a temple on the Chabutra. In the said suit, the existence of the Mosque was admitted by the Plaintiff, who in essence represented the entire Hindu community.

iv. That the Learned Trial Court namely Sub-Judge, Faizabad by its order dated 24.12.1985 dismissed the aforesaid Original Suit No. 61/280 of 1885 and did not grant the prayer seeking permission to construct a temple on the site of Chabutra.

v. That the Plaintiff in Original Suit No. 61/ 280 of 1885 preferred Civil Appeal No. 27 of 1886 and the Appeal was dismissed by the First Appellate Court by its order dated 18/26 March, 1886. It is imperative to set out the finding of the Appellate Court, which formed the basis for dismissal of the Civil Appeal. The Learned Court held as follows :-

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

vi. That a Second Appeal No. 122 of 1886 was preferred against the judgment and order dated 18/26.3.1886. The Second Appeal came to be dismissed by the order passed by the Learned Judicial Commissioner, Oudh. The finding of the Learned Judicial Commissioner, while dismissing the Second Appeal is as follows:

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

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

(1) Sita Ki Rasoi

(2) Ram Chander Ki Janam Bhumi.

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

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

.....

.....

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

vii. That communal riots took place in Ayodhya in 1934 and the mosque was partly damaged. However, the mosque was repaired at the cost which was borne by the local Government. It is pertinent to state that in the period before as well as after the riot, right until 22 December 1949, prayers were being offered by the Muslim community at the Mosque.

viii. That in the intervening night of 22/23 December, 1949 around 50 to 60 persons belonging to Hindu faith trespassed into the Mosque and placed the idols of Ram below the Central Dome of the Mosque. This was a clear case of trespass and no right can accrue out of the criminal act of trespass which was committed on that date.

ix. That a First Information Report (FIR) was lodged about the said incident of placing idols in the Mosque on 23.12.1949.

x. That the local Government instructed the District Magistrate Faizabad to remove the idols from inside the Mosque on 26.12.1949.

xi. That the District Magistrate Faizabad did not abide by the direction of the local Government and failed to remove the idols from the Mosque.

xii. That on account of the possibility of breach of peace, on 29 December 1949, the Additional City Magistrate, Faizabad passed an order under section 145 of the Cr.P.C, attaching the Mosque. Shri Priya Dutt Ram, Chairman, Municipal Board was appointed as the Receiver.

xiii. That Shri Priya Dutt Ram took the charge as the Receiver on 5.1.1950 and made an inventory of the attached properties.

xiv. That a Regular Suit No. 2 of 1950 (O.O.S. No. 1 of 1989) titled Gopal Singh Visharad Versus Zahoor Ahmed and others was filed. In the said suit an interim injunction was granted in favour of the Plaintiff against the removal of the idols from the Mosque.

xv. That the order of temporary injunction was modified on the basis of an application moved on behalf of the District Magistrate to the effect that darshan and puja shall continue as was being done on 16.01.1950. The order read as:-

> *"The parties are hereby restrained by means of temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with Puja etc. as at present carried on."*

xvi. That one Mr. Anisur Rahman filed Transfer Application No. 208 before the Hon'ble High Court of Allahabad, Lucknow Bench seeking a transfer the proceedings initiated under Section 145 of the Cr.P.C from the Additional City Magistrate, Faizabad to another Court of competent jurisdiction outside the District of Faizabad. The Transfer Application also sought a stay of the proceedings (u/s 526, 528 Cr.P.C.). The Hon'ble High Court by its order dated 3.2.1950 was pleased to stay further proceedings and passed the following order:-

> *"Issue notice. Stay meanwhile. A copy of the order may be handed over to the learned counsel on payment of the necessary charges."*

xvii. That the Learned Civil Court, Faizabad appointed Mr. Shiv Shankar Lal Vakil as a Commissioner. Mr. Shiv Shankar Lal Vakil prepared a map of the entire premises. Since the map prepared by Mr. Shiv Shankar Lal Vakil, had nomenclatures for certain areas as Sita Rasoi, Bhandar, Hanuman Dwar etc., which was not in accordance with the said land, objections were lodged by the Muslim parties against the same, which were then recorded in an Order dated 1.4.1950.

xviii. That Shri Shiv Shankar Lal, pleader as a Commissioner appointed by the Learned Court in Suit No. 2 of 1950 prepared two site plans on 25.5.1950.

xix. That a Regular Suit No. 25 of 1950 (O.O.S. No.2 of 1989); *Paramhans Ramcharan Dass Vs. Zahoor Ahmed and others* was filed. The prayers in the said suit were similar to the prayer and reliefs claimed in Regular Suit No. 2 of 1950. Notably, while Regular Suit No. 2 of 1950 had been filed without the mandatory notice under Section 80 of the CPC to the State Government and its officers, the second suit was filed after giving the aforesaid notice.

xx. That on 3 March 1951, the interim injunction dated 16 January 1950 as modified on 19 January 1950 was confirmed. The order stated:-

> *"The interim injunction order dated 16.1.50 as modified on 19.1.50 shall remain in force until the suit is disposed of."*

xxi. That Regular Suit No. 2 of 1950 and Regular Suit No. 25 of 1950 were consolidated by an Order dated 4.8.1951 of Civil Judge, Faizabad.

xxii. That on 30 July 1953, the proceedings under section 145 CrPC were put in abeyance in view of the pending suits on the ground that the same would be taken up after the disposal of the suits.

xxiii. That a first appeal was filed from the order dated 3 March 1951 before the Hon'ble High Court of Allahabad and the same was numbered as F.A.F.O No. 154 of 1951. This first appeal was dismissed by the order dated 26.4.1955 with the direction that the suit be expeditiously decided.

xxiv. That a Regular Suit No. 26 of 1959 (O.O.S. No. 3 of 1989) titled *Nirmohi Akhara Vs. Babu Priya Dutt Ram & Others* was filed on 17.12.1959.

xxv. That another Regular Suit No. 12 of 1961 (O.O.S. No. 4 of 1989), titled *Sunni Central Board of Waqf & Others Vs. Gopal Singh Visharad & Others* was filed on 18.12.1961.

xxvi. That on 9.3.1962 Issues were framed by the Learned Civil Judge, Faizabad in Regular Suit No. 2 of 1950 and Regular Suit No. 25 of 1950.

xxvii. That on 17.5.1963 Issues were framed in Regular Suit No. 26 of 1959.

xxviii. That by an Order dated 6.1.1964 of the Civil Judge, Faizabad all the four suits were consolidated together and Regular Suit No. 12 of 1961 was made the leading suit.

xxix. That certain findings were recorded by the Learned Civil Judge Faizabad by his order dated 21.4.1966 on the issue regarding the validity of notification issued under Section 5(1) of U.P. Muslim Waqf Act, 1936 in the consolidated suits.

xxx. That a Trust called the Ram Janambhoomi Nyas was formed on 18.12.1985 for the construction and management of a Ram Temple, and was registered on the same day by Sub-Registrar, S.D.No.1, at Delhi.

xxxi. That in a Miscellaneous Appeal filed by a stranger to the suit, an Order was passed by the District Judge, Faizabad on 1.2.1986 directing the District Magistrate and the S.S.P. of

Faizabad to remove the locks of the two gates of the Mosque in order to enable the general public to enter the main building of the Mosque for the darshan and puja of the idols kept inside. This order was contrary to the terms of the Order dated January 19, 1950.

xxxii. That a Writ Petition was filed by Mr. Hashim Ansari on 3.2.1986 before the Hon'ble High Court, Lucknow Bench challenging the order of District Judge Faizabad, dated February 1, 1986.

xxxiii That another Writ Petition against the aforesaid order of the District Judge, Faizabad, dated February 1, 1986 was filed by the Sunni Waqf Board in May, 1986.

xxxiv. That the State of U.P. filed an application (Misc. case No. 29 of 1987) on 15.12.1987 under Section 24 of Code of Civil Procedure read with Section 151 C.P.C. before the Hon'ble High Court on the ground that due to importance of the matter these suits may be withdrawn from the Civil Court, Faizabad to the Hon'ble High Court.

xxxv. That Regular Suit No. 236 of 1989 (O.O.S. No. 5 of 1989) was filed on 1.7.1989 in the Court of Civil Judge, Faizabad by three plaintiffs namely, (1) Bhagwan Shri Ram Virajman at Shri Ram Janam Bhumi, Ayodhya, represented by next friend Sri Deoki Nandan Agarwala, (2) Asthan Shri Rama Janama Bhumi, Ayodhya represented by next friend Sri Deoki Nandan Agarwala and (3) Sri Deoki Nandan Agarwala himself.

xxxvi. That on an Application u/s 24 C.P.C. by the State of U.P. all the five Suits were withdrawn by an order dated 10.7.1989 and transferred to the Hon'ble High Court of Allahabad, Lucknow Bench (and were assigned to a Full Bench of three Hon'ble Judges for trial of the said cases).

xxxvii. That O.O.S. No. 2 of 1989 withdrawn by the plaintiff in the said suit on 18.9.1990.

xxxviii. That the Government of Uttar Pradesh issued a notification dated 7/10.10.1991 for acquisition of a part of the property in dispute including outer courtyard of the Mosque.

xxxix. That the Mosque was illegally demolished on 6 December 1992.

xxxl. That the notification issued by the Government of Uttar Pradesh on 7/10 October 1991 was struck down by the Hon'ble High Court of Allahabad, Lucknow Bench on 11.12.1992.

xli. That an Ordinance titled the 'Acquisition of Certain Area at Ayodhya Ordinance' dated 7.1.1993 was issued by the Central Government for the acquisition of 67.703 acres of land in Ayodhya, including the land of demolished Mosque and some adjoining areas and also for abating all the suits pending in the High Court.

xlii. That a Reference was made to this Hon'ble Court on the same day under Article 143(1) of the Constitution of India.

xliii. That the Acquisition of Certain Area at Ayodhya Ordinance, 1993 (No. 8 of 1993), replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993) which was gazetted on 9.3.1993.

xliv. That this Hon'ble Court by its judgment and order dated 24.10.1994 in the case entitled as Dr. M. Ismail Faruqui and Ors. Vs. Union of India and Ors. (Reported in (1994) 6 SCC 360, struck down Section 4(3) of the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993) and revived all the Civil Suits for adjudication by the Hon'ble High Court and declined to answer the Special reference and returned the same.

xlv. That the recording of oral evidence began in the Suits on 24.7.1996.

xlvi. That the Full Bench of the Hon'ble High Court decided to take assistance of the Archeological Survey of India ("ASI") and passed orders dated 18.1.2002 in terms thereof by directing ASI to survey the disputed site by Ground Penetrating Survey/ Geo Radiology Survey.

xlvii. That the Hon'ble High Court by its order dated 5.3.2003 directed the A.S.I. to excavate the site and give its report about the existence of a temple/ structure beneath the Mosque.

xlviii. That excavations were carried out at the disputed site between 12.3.2003 to 7.8.2003.

xlix. That ASI filed a report dated 22.8.2003 of excavation before the High Court (the "ASI Report").

l. That objections were filed by the Muslim parties against the ASI Report in October, 2003.

li. That the Full Bench of the High Court passed its Order dated 4.12.2006 on the objections inter-alia in the following terms:-

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

lii. That the recording of oral evidence concluded on 23.3.2007.

liii. That the oral arguments commenced on 25.4.2007.

liv. That on the retirement of Hon'ble Mr. Justice O. P. Srivatsava, the oral arguments again restarted before the reconstituted Bench in which Hon'ble Mr. Justice Sudhir Agarwal was included on 29.9.2008.

lv. That on account of the elevation of Hon'ble Mr. Justice S. Rafat Alam as Chief Justice of the M P High Court the oral arguments again restarted after the Bench was reconstituted with the inclusion of Hon'ble Mr. Justice S. U. Khan on 11.1.2010.

lvi. That all the hearings concluded in all the Suits on 26.7.2010.

lvii. That the impugned judgments pronounced by all the three Hon'ble Judges separately on September 30, 2010.

3. That being aggrieved by the impugned judgment, order and preliminary decree dated September 30, 2010 passed by the Special Full

Bench of the Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow in Other Original Suit No. 4 of 1989 and other connected Suits, the Appellant etitioner is filing the present Civil Appeal on the following, amongst other grounds which are being raised without prejudice to one another: -

GROUNDS

(I) ERRONEOUS FINDINGS OF FACT

At the outset, on the question of appreciation of evidence, it is respectfully submitted that the impugned judgment is based on divergent standards in the consideration of evidence led by the counter-parties. The Appellant craves leave to place specific instances of such divergence at the time of argument. However, at this juncture, by way of an example drawn from Justice Sudhir Aggarwal's judgment, the Appellant states that while the Hon'ble Judge has accepted the finding that Nirmohi Akhara was a religious denomination since 1728 based on inadmissible hearsay evidence, the Hon'ble Judge required the Muslims to lead direct primary evidence to prove that the Mosque was constructed in 1528 AD by holding that certain inscriptions on the disputed structure pointing to the construction of the Mosque in 1528 AD were not credit worthy. Therefore, it is apparent that the differing standards adopted for accepting the evidence of the parties was erroneous and has been the fundamental reason why the Hon'ble Judge erred on both fact and law.

(A) **Use of disputed area prior to 1855 (From 1528 AD)**

i. That the recording of the finding that since 1934 to 1949 only Friday Prayers were being offered in the premises in dispute is against the evidence on record as it was fully established from the evidence on record that regular 5 times prayers were

being offered in the building in dispute upto December, 1949. In this respect not only evidence adduced by the Muslims has been ignored but some of the statements made and documents filed by the Hindu parties were also not taken into consideration. *(See Page 231 of the Judgment of S.U.Khan, J. in Volume - II).*

ii. That the finding that since much before 1855 both the parties were using the premises in dispute as their religious place, is based upon surmises and conjectures and not based on cogent or reliable evidence. (See Page 250 *of the Judgment of S.U.Khan, J. in Volume - II).*

iii. That the pleadings from the Mosque side have been very clear and categorical stating that after the Mosque was constructed in 1528 A.D., it has been a Waqf where Muslims have been offering their Namaz continuously.

iv. That Hon'ble Justice Sudhir Agarwal wrongly observed that Muslims have not used the premises covered by the outer courtyard for any purposes since 1856-1857 and as such it could be said that so far as the outer courtyard is concerned, the right of prayer by Hindus had perfected having continued exclusively for more than a century. Hence the finding on Issue No. 4 (Suit-4) was also illegal and based on no reliable evidence at least to the extent of observations referred to above. The observation regarding the premises within the

inner courtyard that the same has been used by both the sides may be more frequently by Hindus and occasionally or intermittently by Muslims was also illegal and against the evidence on record. *(See page 2964 of the judgment in Volume XIV).*

v. That Hon'ble Justice Sudhir Agarwal wrongly observed that the partition wall dividing the inner courtyard of the building in suit said to have been raised in 1856-1857, was constructed when "the Hindu worshippers tried to enforce their right to the exclusion of Muslims some time in 1853-1855." It was also wrongly observed that even this arrangement could not detain Hindus from continuing to enter the inner courtyard and the "Hindus continuously worshipped in the inner courtyard also though at time the Muslims Friday prayers were also held thereat." All these observations of the Hon'ble Judge were based on no reliable evidence and were simply conjectural in nature. *(See page 2635 of the judgment in Volume XIV).*

vi. That the finding given by Hon'ble Justice Sudhir Agarwal on issue No. 1-B (c) (Suit-4) is also against the evidence on record and it was wrongly observed that "disputed structure in the inner courtyard had been continuously used by Hindus for worship pursuant to the belief that the site in dispute is the birth place of Lord Rama." It was also wrongly held that there was recorded evidence to that effect at least from second half of 18th century. It was also wrongly observed that "regarding

the user of the premises by Muslims no evidence has been placed to show anything till at least 1860." It was also wrongly held that "the members of both the communities i.e. Hindu and Muslim had been visiting the building in dispute in the inner courtyard and that "the premises within the inner courtyard.....was not restricted for user of any one community." As such the findings given on issue No. 1 (B) (c) (Suit-4) was against the evidence on record. *(See pages 3413-3414 of the Judgment in Volume - XVI).*

vii. That Hon'ble Justice Sudhir Agarwal has failed to appreciate that construction of the building in dispute in 1528 A.D. was not being disputed either in pleadings of the main contesting parties or in the evidence of historians of either side and as such there was no justification for the Hon'ble judge to have recorded a finding against the evidence adduced from both the sides by holding that the building in dispute was not constructed in 1528 A.D. by Babur or any of his agents. (See page 1763 of the Judgment in Volume - X)

(B) **OVERWHELMING EVIDENCE OF EXISTENCE AND USE OF MOSQUE UNTIL 1949 / 1950**

Summary of submissions on construction and existence of mosque

i. It is submitted that Hon'ble Justice Sudhir Agarwal erred in holding that the Mosque was not constructed by Babar on the ground that the Muslim parties had been unable to prove the same. It is submitted at the outset that Issue No. 6 in Suit No. 1, i.e. "Is the property in suit a mosque constructed by

Shahanshah Babar commonly known as Babri Mosque in 1528 AD" was framed because the existence and the creation of the Mosque in 1528 AD was challenged by the plaintiff, thereby transferring the burden of proof on the plaintiff to show that the Mosque was not constructed in 1528 AD. However, it is evident from the findings rendered by the Hon'ble Judge from paragraphs 1295 to 1687 *(at pages 1449 to 1804 in Volumes VIII to X)*, that the burden of proof was erroneously transferred to the defendant to show that the Mosque was in fact constructed by Babar in 1528 AD.

ii. Furthermore, it is evident that while the Hindu's took a contradictory position regarding the construction of the temple *(See paragraphs 1314 and 1325 at pages 1458 to 1464 in Volume - VIII)*, the Muslims have all taken a consistent position, as noted by the Hon'ble Judge at paragraph 1327. However, despite the inconsistent stand taken by the Hindus, by transfering the burden of proof, the Hon'ble Judge failed to appreciate that the Hindus had offered no plausible evidence to suggest that the Mosque was not constructed in 1528 AD.

iii. Furthermore, it is submitted that Hon'ble Justice Sudhir Agarwal also failed to appreciate that evidence in the form of a Government White Paper and various gazetteers all pointed to the Mosque having been constructed in 1528 AD. Furthermore, historical evidence, including inscriptions, also suggested the construction of the Mosque by Babar. However, this evidence was not accepted by the Hon'ble Judge, who despite the lack of plausible evidence to suggest

that the construction of the Mosque was much later, proceeded to hold that the Mosque was constructed sometime between 1659 to 1707, i.e. during the reign of Aurangzeb. It is evident that the Hon'ble Judge's findings are erroneous because:

a) It is based on a preponderance of probabilities and such preponderance is against direct evidence to the contrary;

b) The Court is not an expert and unless a Court finds that an experts testimony is unreliable (which would be in rare cases), there is no occasion for the Court to disbelieve the expert. In this regard, the Court supplanted the views of the historians without having any independent evidence of their own, making it evident that their findings, including the findings at paragraph *1660 at page 1787 in Volume – X*, were unsupported;

c) The findings of the Court were based on the assumption that the inscriptions were not contemporary with the building of the Mosque because (i) they were not inscribed on tablets set up on the wall, (ii) found incised on prominent places, (iii) were not noticed by Tieffenthaler in his historical account. It is submitted that not only was such an appreciation purely subjective (and thus erroneous) but also that the above evidence could not support the conclusion drawn that the Mosque was not constructed in 1528 AD.

d) The findings of the Court at paragraphs 1638 at page 1764 in Volume – X were again based on a subjective appreciation of the evidence and not on any objective criteria.

Detailed submissions on construction and existence of the mosque

i. That the Hon'ble Judge has fallen into serious error by wrongly recording that in the year 1949 there was no place for Wazu or that the facility for Wazu was discontinued sometimes after 1885 while the evidence on record including the photograph taken by Sri Bashir Ahmad Khan, Advocate (Vakeel Commissioner) fully established that there was specific place for Wazu etc. on southern side *Chabutra* of the Mosque (*See Page 257 of the Judgment of S.U.Khan J in Volume - II).*

ii. That Hon'ble Justice Sudhir Agarwal has wrongly held that Muslim parties had miserably failed to discharge the burden of proof regarding the construction of building in question in 1528 A.D. and a totally vague and incorrect finding has been recorded in this respect in para 1681 (P. 1796 in Volume - X) which is based on no evidence and the observations of the Hon'ble Judge that, "The possibility of change, alteration or manipulation in the inscriptions cannot be ruled out" was totally unfounded and based on no evidence and his further finding that the building in dispute might have been constructed probably between 1659 to 1707 A.D. was also a purely conjectural finding based on no evidence. Thus the findings recorded on Issue No. 6 (suit 1), Issue No. 5 (suit 3) and issue No. 1 (a) (suit 4) are illegal, unsustainable and against the evidence on record. (Kindly see pages 1795 to 1797 of the Judgment in Volume - X).

iii. That Hon'ble Justice Sudhir Agarwal wrongly observed that after the riots of 1934 no order had been placed before the court to show that the premises in dispute was ever handed over to the Muslims or that they were allowed to offer Namaz in the building in dispute. In this respect the specific averments made in the order dated 12-5-1934 (Ext. A-49 of Suit-1) referred on page 2922 *(See Volume – XIV)* and other documents referred on pages 2921-2933 *(See Volume – XIV)* were mis-appreciated and misread. The word "religious services" used in the order dated 12th May 1934 could not be interpreted for any other service except Namaz. (See pages 2921-2933 of the Judgment in Volume - X.).

iv. That Hon'ble Justice Sudhir Agarwal mis-appreciated and misread the documents referred on pages 2935-2958 and wrongly observed that these documents "show at the best that, Namaz, only on Friday, used to be offered in the disputed structure in the inner courtyard and for rest of the period the building remain unattended by Muslim." In this respect, the observation made by the Hon'ble Judge that witnesses of the plaintiffs (Suit 4) have expressed their ignorance about the visit of the Waqf Inspector dated 10-12-1949 and 23-12-1949 was also uncalled for and improper as no one had claimed that the said visit was made in his presence. It was also wrongly observed that the certified copies of the said 2 reports had not been proved and the same could not be termed to be the public document or that the contents of the same were required to be proved. In this respect the Hon'ble Judge did

not take into account the relevant provisions of the Waqf Act as well as the fact the author of these 2 reports (Sri Mohd. Ibrahim) had expired long back and as such he could not be produced to prove the contents of the same. It was also not noticed by the Hon'ble Judge that the said 2 reports had neither been doubted in any manner by the other side but rather the same were even relied upon by the other side during the course of arguments and otherwise also. *(See pages 2935-2958 of the Judgment in Volume - XIV).*

v. That Hon'ble Justice Sudhir Agarwal has not properly appreciated the wordings of inscriptions of Babri Masjid and in this respect, observations made regarding the book titled as "The Sharqi Architecture of Jaunpur" by A. Fuhrer and about the article of Maulvi Mohd. Ashraf Husain published in "Epigraphia Indica Arabic and Persian supplement 1964-1965" were incorrect (See pages 1461-1464 of the Judgment in Volume - VIII.).

vi. That Hon'ble Justice Sudhir Agarwal while dealing with the issue of construction of 1528 AD, has wrongly been given undue importance to the missing pages of Babur's diary called Baburnama. (See Para 2939 at page 2799 in Volume - XIV). The claim of the Muslim side that the Mosque was constructed in 1528 A.D, is supported by historical evidence as placed on record by the Plaintiff of Suit No.4. On one hand, the Hon'ble Judge wants to see the direct evidence with respect to creation of Waqf and on the other hand, the Hon'ble Judge has decided the core issues on preponderance and

probabilities and further on the basis of faith and belief. It is submitted that there are a number of Waqfs made by Muslims which are being recognized Waqf by user and the use itself is a proof that the property is a Waqf. There will not be direct evidence available with respect to innumerable Waqfs in the country and not taking cognizance of the fact that the said property is a Waqf by user and not treating them as evidence would lead to a disastrous condition.

vii. That Hon'ble Justice Sudhir Agarwal wrongly observed that "in the entire plaint there is not even a whisper that Babar dedicated alleged Mosque for worship by Muslims in general and made a public Waqf property. On the contrary para 1 says that it was built by Mir Baqi under the command of Emperor Babar for use of Muslims in general as a place of worship" (P. 3288 in Volume - XVI). In this respect also para 1 of the plaint was misquoted as para 1 of the plaint reads as under:-

> *"1. That in the town of Ajodhiya, pergana Haveli Oudh there exists an ancient historic mosque known as Babri Masjid, built by Emperor Babar more than 433 years ago, after his conquest of India and his occupation of the territories including the town of Ajodhiya, for the use of the Muslims in general, as a place of worship and performance of religious ceremonies."*

It is thus evident that firstly the Hon'ble Judge appears to have proceeded on a wrong assumption about the requirement of

any express "dedication" for creation of the Waqf and, secondly, the Hon'ble Judge has failed to appreciate that there was hardly any difference in actual construction having been done by Mir Baqi under the express or implied command of Babar as it is a matter of common knowledge that almost all the constructions are made by the subordinates of the King under an implied command / authority of the King and the same are attributed to the King / Emperor. Similarly, in the instant case actual construction having been got done under the supervision of Mir Baqi and the same having been attributed to the command of Babar could not be said to be unusual. Regarding the public Waqf or for the benefit of the Muslims in general the Hon'ble Judge ought to have relied upon the decision of this Hon'ble court reported in AIR 1956 SC 713 in order to infer implied dedication as the building in dispute was being treated and used as a Mosque by the Muslims in general, and use of the same as a Mosque was admitted by some of the witnesses of Hindu side as well as in the books relied upon by the Hindu side. It was also wrongly observed by the Hon'ble Judge that: "Even if we assume that Emperor Babur was owner, no material has been placed which may suggest or give even a faint indication that with his permission any public prayer was made in the building in dispute." The Hon'ble Judge has gone to the extent of saying that he did not find any "material to suggest that any public prayer was offered by Muslims at least till 1860."(P.3289 in Volume - XIV) The Hon'ble Judge has failed to take into

account the entire documentary and oral evidence on the basis of which no other inference was possible but to accept that the Mosque in question was continuing from 1528 A.D. in the use and occupation of Muslims and if a Mosque is being used by the Muslims it has to be inferred that the same is being used for prayers being offered in the said Mosque. (See pages 3288 and 3289 of the Judgment in Volume - XVI.).

viii. That Hon'ble Justice Sudhir Agarwal wrongly observed that "so far as the identity of the place was concerned, three things, remained unchallenged upto 1950, ...(a) the disputed structure was always termed and known as "Mosque" .....(b) it was always believed and nobody ever disputed that the said building was constructed after demolishing a temple and (c) that the disputed site, as per belief of Hindus, is the birth place of Lord Rama.....". As a matter of fact, only one of the aforesaid three things, mentioned at (a), had remained unchallenged upto 22nd December, 1949, while the other two things mentioned at (b) and (c) above had remained under challenge since the very beginning of such claims. In this respect the statements mentioned in the Gazetteers were wrongly treated as "entitled to consideration" in so far as the facts mentioned therein pertained to the alleged events of 16th, 17th and 18th centuries. (See pages 3301-3304 of the Judgment in Volume - XVI).

ix. That Hon'ble Justice Sudhir Agarwal wrongly observed that issue No.1 (B) (b) (Suit-4) was irrelevant and hence it had remained unanswered although the Hon'ble Judge had found

that upto 1950 it was never doubted that the building in dispute was a Mosque."

As such he ought to have held that the building in suit was dedicated to God Almighty as claimed by the plaintiffs of Suit-4 and as such the finding given by the Hon'ble Judge suffers with infirmity. In this respect it was also wrongly observed that the building "was constructed as an attempt to desecrate one of the most pious, sacred and revered place of specific and peculiar nature i.e. the birth place of Lord Rama which could not be at any other place....." (P.3349) (See pages 3349-3350 of the Judgment in Volume - XVI).

x. That Hon'ble Justice Sudhir Agarwal failed to appreciate the contradictory statements of the Hindu witnesses regarding the alleged images on the Black Stone Pillars of the Mosque and wrongly held that the said pillars contained some human images and at some place there appeared to be some images of Hindu Gods and Goddesses (P.3411 in Volume XVI). It was also wrongly observed that due to the existence of certain alleged images on some of the pillars of the mosque, such a place would not be a fit place for offering Namaz. In this respect the statements of the expert witnesses of Islamic theology as well as the extracts of the Holi Quran and Hadith cited by the Hindu side were not correctly appreciated. (Kindly see pages 3359-3413 of the Judgment in Volume XVI).

xi. That the findings given by Hon'ble Justice Sudhir Agarwal in paragraphs 2283, 2284 and 3077 (pages 2271-2272 in

Volume – XII and 2886 in Volume - XIV) that there were no averment in the plaint (Suit-4) that the plaintiffs were dispossessed from the property in question at any point of time in 1949, and similarly, finding given in para 2558 (pages 2524-2525 in Volume - XIII) that there was no occasion of dispossession of Muslims or of discontinuation of their possession, are contradictory to his own finding given in paragraph 2439 (page 2443 in Volume - XII) where the Hon'ble Judge has clearly recorded that "the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23rd December, 1949..... since thereafter they are totally dispossessed from the property in dispute.....". In this respect the findings given by the Hon'ble Judge that it was difficult to treat the alleged wrong to be a continuing wrong has been given by ignoring the fact that the property in dispute has remained attached on 29-12-1949 and the attachment had continued thereafter. (See page 2443 of the Judgment in Volume - XII).

xii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that from Ext. 18 of Suit 1 referred on pages 2067-2068 it was fully evident that Raghubar Das, the then Mahant of Janam Asthan, had no right even to repair any portion of the inner or outer courtyard or of gate of the Mosque and Mohd. Asghar, the then Mutawalli of the Mosque, was simply asked that he may not lock the outer door of the Mosque so as to maintain the old practice. This document having been filed and relied upon by Hindu parties themselves is sufficient to discredit and

discard the so called theory of belief of Hindus about the place of birth of Lord Rama being worshipped in the inside portion of the Mosque (See pages 2067-2069 of the Judgment in Volume - XI.)

xiii. That the observations of the Hon'ble Judge that nothing has come on record to show as to when Sita Rasoi was actually constructed, is also not based on a correct perusal of record. (See page 2069 of the Judgment in Volume - XI).

xiv. That the Hon'ble High Court while deciding issue No.1-B(c) has ignored the relevant material and documents on record which show that the Muslims have been praying in the said Mosque. The said documents, inter-alia are as under:-

1. Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey, Station Officer dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.

2. – Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

3. - Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1858 regarding Nishan by Nihang Faqir

4. - Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey,18 Station Officer dated 1-12-1858 against Nihang Sikh for installing Nishan.

5. – Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.

6. – Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989)

7. – Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.

8. – Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.

9. – Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.

10. - Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.

11. – Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.

12. – Ext. 30 (Vol. 5 P. 107-116-A,B.C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).

13. – Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.

14. – Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.

15. – Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)

16. – Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.

17. - Exhibit 23 (Vol.- 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

18. - Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.

19. - Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

20. - Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his bill regarding repair of Mosque.

21. - Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

22. - Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.

23. - Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

24. - Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma,

Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.

25. - Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and houses.

26. - Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.

27. - Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.

28. - Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque

29. -Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

30. - Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc.

31. - Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 regarding Babri Masjid etc.

32. - Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.

33. - Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding Babri Masjid etc.

34. - Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for

sanction to file suit u/s 92 CPC. regarding Babri Masjid etc

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

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

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

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

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

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

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

42. Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf

Board. dated 20-11-1943 regarding management of mosque.

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

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

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

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

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

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

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

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

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

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

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

(C) FAILURE TO PROVE RESPONDENTS' POSSESSION / JOINT POSSESSION / ADVERSE POSSESSION

i. That the finding that both the parties were / are joint title holders in possession of the premises in dispute is perverse, without any legal basis and illegal as the evidence on record fully established that Muslims alone were in possession of the premises in dispute since the day when the Mosque was constructed and on the basis of its long and continuous user as a mosque, its implied dedication to God Almighty was also liable to be presumed.(*See Page 255 of the Judgment of S.U.Khan J. in Volume - II*).

In this regard it is submitted that a person does not cease to be in possession of a property merely because someone else comes into the property to offer prayers (even assuming, without prejudice, that the Hindus entered the inner court yard to offer prayers). That is because the fact of possession essentially means that the person in possession has the right to stop anyone else from entering into the property. In this case, without the Court rendering a finding that the Hindus had any possessory rights to the inner court yard or, for that matter, any finding that the Muslims could not have stopped the Hindus from entering the inner court yard to offer prayers because the Hindus' also had joint possessory rights, could

not have rendered the finding that the parties were in joint possession. That is because fundamental to the essence of joint possession is the individual right of the joint possessors to enjoy possessory rights to the property. The Hindus, not having shown that they had an equal possessory right to the inner court yard, clearly meant that the Court could not have rendered a finding of joint possession.

ii. That the finding recorded by the Hon'ble Judge that all the 3 parties *(Muslims, Hindus and Nirmohi Akhara)* were entitled to a declaration of joint title and possession to the extent of 1/3rd share each was based on presumptions and conjectures and not on substantive evidence adduced in the case which lead to the only inference that Muslims alone were entitled for declaration and possession at least for the entire inner portion including inner courtyard and for joint possession in the outer courtyard. (See Page 275 of the Judgment of S.U. Khan J. in Volume - II).

iii. That no plea of adverse possession could be available against the Mosque because the Muslims were in continuous possession of the same upto the year 1949.

iv. That the finding of Hon'ble Justice Sudhir Agarwal in relation to Issue No.2, Suit No. 4 stating that the premises marked as A, B, C and D in the Map appended to the Plaint was not in possession of the Plaintiffs upto 1949, is absolutely incorrect, erroneous, misconceived and without legal basis.

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

vi. That the entire premises of deciding the issue of adverse possession is based upon the bifurcation of the entire period into four parts as reflected in Para 2771 at Page 2663 in Volume XIII. The said categorization/bifurcation itself is not proper and correct. The evidence relied upon by the Counsel for the Plaintiffs in Suit No.4, as reflected in Para 2772 in relation to the position between 1528 A.D and 1950 has been completely misinterpreted and misapplied.

vii. Because the finding recorded by learned Judge that Hindus in general had also been visiting inner courtyard for Darshan and worship according to their faith and belief and hence it could be said that the inner courtyard was virtually used jointly by the members of both communities is based on no reliable evidence and is an assumption. This finding of the alleged joint possession is absolutely against the evidence of record. (See page 2524 of the Judgment in Volume - XIII).

viii. That Hon'ble Justice Sudhir Agarwal wrongly observed that claim of Hindus about their alleged possession of the premises of the outer courtyard was not disputed whereas the fact is that neither such claim was made in 1885 or subsequent thereto nor the Muslims had ever admitted that the entire premises of the outer courtyard had ever remained in the possession of Hindus upto 22-12-1949. In this respect specific averments were there in the Written Statement of Mohd. Asghar filed in 1885 suit (Ext. A-23 of Suit-1) (Register No. 7, pages 255-261) and even in the plaint of suit No. 4 the possession of Hindus was said to be only on Chabutra. It is also incorrect to say that the Muslims had not placed any evidence to rebut the claim of Hindus regarding the outer courtyard and to show that Hindus and never remained in the possession of entire outer courtyard. It was also wrongly observed by the Hon'ble Judge that a lot of documents were on record demonstrating that the Hindus continued to enter the premises in the inner courtyard also and offered worship there and the entrance door in the dividing grilled wall was never locked. It was also wrongly observed that there was no evidence that the Muslims were in the possession of the property in dispute "after its construction in the form of a Mosque by a Muslim Ruler before Tieffenthaler's visit but on the contrary, Hindus continued to enter the disputed premises and worship thereat....." (See pages 2891 and 2893-2895 of the Judgment in Volume - XIV).

ix. That Hon'ble Justice Sudhir Agarwal has erred in holding that revenue records do not create any right and "would not show that a particular party was in possession", thereby failing to appreciate the law laid down by this Hon'ble Court, the Privy Council and the Hon'ble High Court of Allahabad and Oudh, with regard to revenue entries. As a matter of fact, innumerable properties of Waqf are set out in the revenue records only. The observation of the Hon'ble High Court (in Para 2944) that the Waqf Board should have based its claim of adverse possession against the particular owner of the property is incorrect and it is stated that the claim is against all those who claim their rights and beliefs attached to the said piece of land, since only the Muslim party could claim title. Furthermore, the Hon'ble High Court has erred in not appreciating other documents like certified copies of accounts etc. submitted by the then Mutawalli to the Tahsildar/Collector as well as to the Waqf Board, observing that the documents referred to on pages 2898 to 2921 had not been proved. The provision in Section 26 of the U.P. Muslims Waqf Act, 1960 (now substituted by the Waqf Act, 1995) provides that all copies issued by the Waqf Board shall be received as prima-facie evidence of the record and be admitted as evidence. Therefore, there is no requirement of proving the contents of the said documents by any oral evidence and especially of documents which were 30 years old. (See pages 2898-2921 of the Judgment in Volume - XIV).

Hon'ble Justice Sudhir Agarwal has further mis-appreciated oral and documentary evidence with regard to the Pesh Imam having led the prayers upto 1949, the affidavit of the Pesh Imam and the FIR lodged on account of the incident of the night of 22/23 December, 1949. (See pages 2896-2897 of the Judgment in Volume - XIV)

x. That Hon'ble Justice Sudhir Agarwal wrongly observed that the date of the order given in Ext. O.O.S. No. 5 – 27 (Suit-5) was not legible or that it could not be ascertained as to whom it was addressed and therefore, it could not be relied upon. The Hon'ble Judge failed to appreciate that during the course of arguments it was specifically pointed out, which was not rebutted by any one, that the said order was dated 6-12-1912 and was issued by the legal Remembrancer of the Government of U.P. regarding the Mosque built by Emperor Babar known as Babri Masjid situated in village Ramkot, Ayodhya and the description of this document mentioned in the list of documents at serial No. 43 (given in Register No. 20) specifically mentioned therein about the nature of the said document. It was also wrongly observed by the Hon'ble Judge that from the order passed u/s 92 C.P.C. it was not evident that as to how and why the said sanction was granted. (See pages 2934-2935 of the Judgment in Volume - XIV).

xi. That Hon'ble Justice D.V. Sharma has wrongly decided Issue Nos.2, 4, 10, 15 and 28 in Suit No.4 in an illegal and perverse manner. The said issues relating to possession of the Plaintiffs

and claim of the Plaintiffs over the property in suit by way of adverse possession have been decided by applying wrong facts and ignoring material documents and evidence. The Hon'ble Judge has simply referred to and taken into account certain documents and has failed to acknowledge the arguments/submissions of Plaintiffs on these issues. However, on the other hand, the Hon'ble Judge has started by saying *"following documents show that the Hindus/defendants had absolute control over the disputed property"*. The Hon'ble Judge has recorded detailed submissions on these issues submitted on behalf of the Defendants and without taking into consideration the material evidence of the Plaintiffs the Hon'ble Judge has reached the finding indicating ownership of Ayodhya and Ramkot by Raja Dashrath and thereafter, the property passed on to the temple which was destroyed. Without any formal sanction in law, the Plaintiffs are claiming adverse possession which claim has failed. The Hon'ble Judge has applied the judgments of the Hon'ble Supreme Court out of context and without considering the facts as pleaded by the Plaintiffs in the present case. It is respectfully submitted that there was no evidence to substantiate the same, especially so when the period of Raja Dashrath was said to be 9 lakh to more than 1 Crore years ago.

xii. That the Plaintiff being owner in possession, the claim is against everyone who claims the disputed land to be a Temple or associated with Lord Ram. It is respectfully submitted that the Hon'ble Judge has not appreciated the same.

xiii. That Hon'ble Justice D.V.Sharma's finding at page 753 stating that "the Plaintiffs have neither proved the existence of animus possidendi at commencement of their possession nor they have proved continuance of their possession in such capacity" is perverse and untenable. It is clear from the facts that the day the Mosque was constructed in year 1528 A.D the existence of animus possidendi commenced and the same continued till the time the idols were placed inside the Mosque in December, 1949. The above stand of the Plaintiffs is in alternative to the stand of the Plaintiffs that when the Mosque was constructed, the entire land in question vested in the emperor/ruler of that time and the Mosque was built on the vacant land and hence there was no question to prove dispossession of the so called real owner of that time as the Mosque had then belonged to the King.

xiv. That Hon'ble Justice D.V. Sharma's observation that the *"adverse possession against the deity cannot be claimed"*, since it is not a living person would lead to an erroneous proposition of law. The Hon'ble Judge's observation that the shebait has not been impleaded in the present proceeding is also misconceived.

xv. That Hon'ble Justice D.V.Sharma's observation that the revenue record shows that disputed land is Nazool land and that there should have been a lease deed in favour of the Plaintiffs, is erroneous and misconceived. It was not the case of any party that the land was in the ownership of Nazool and neither there was any pleading, nor any issue to that effect

and the title of the land was not claimed by the State of Uttar Pradesh. The Mosque could not even be vested in the Nazool as per the Law of Nazool. The findings of the Hon'ble judge in this respect was therefore totally unfounded, illegal, erroneous and baseless.

xvi. That Hon'ble Justice D.V.Sharma has ignored the documents especially Exts. 62, 45, 89 in Suit No.5 of 1989 and, Exts.D-17, D-18, D-19 and, Exts. 19 etc. while dealing with the issue of possession and adverse possession. The Hon'ble Judge has further ignored the statements of witnesses of the Plaintiff being PW-1 to PW-9, PW-14, PW-21, PW-23 and PW-25. The finding of the Hon'ble Judge (D.V.Sharma, J) on the issue of possession/adverse possession is almost similar as the finding of the other Judges on the Bench deciding the Civil Suit. The Appellant has made detailed submissions as to how the findings of the other Judges (Sudhir Aggarwal, J and S.U.Khan, J) are not proper and legal on this issue and the same is reflected in the portion of grounds of appeal challenging the judgment of Sudhir Aggarwal, J. The said grounds and objections to the findings on adverse possession/possession may also be treated as part of the present segment since the reasons for reaching conclusion on the said issues are almost similar.

xvii. It is respectfully submitted that given the fact that it was the Hindus who had steathily and surreptisiously entered the inner court yard on the night of 22-23 December 1949 and placed the idols under the central dome, for the Hon'ble High Court to have

rendered an adverse finding against the Muslims because the Court took the view that the Muslims had not adequately pleaded adverse possession as well as dispossession was perverse.

xviii. That Hon'ble Justice Sudhir Agarwal erred in holding that the Muslims had not been able to prove that they were in possession of the inner court yard and the Mosque from 1528 AD. It is evident that the Hon'ble Judge's findings were based on subjective assumptions drawn from historical treatises and not from what the treatises stated themselves. For reasons set out in this appeal, it is respectfully submitted that findings based on the subjective assumptions drawn from the evidence must be set aside.

xix. Further, Hon'ble Justice Sudhir Agarwal also erred in holding that the failure of the Muslim defendants in Suit No. 1 to assert adverse possession resulted in the Muslim's being unable to raise the plea. At the outset, it is submitted that the basis for the finding of the Hon'ble Judge is erroneous because it presupposes that the Muslims were not in possession of the suit property prior to 22-23 December 1949. On that note it is submitted that the finding at paragraph 3077 regarding the lack of pleading of dispossession is not relevant, given that when the pleadings were filed, the property had been attached and it was the case of the Muslims that the Muslims were dispossessed with illegal placement of the idols.

Furthermore, it is submitted that the transfer of the burden of proof to the Muslim parties to show adverse possession was also erroneous, given that it was a suit filed by the Hindu's claiming a right of worship in the land. For the Hindus to claim a right of worship in the disputed structure, they would have to prove a right to possession of the disputed premises, making it evident that the factum of a right to possession was on the Hindus and not on the Muslims. Therefore, for the Hon'ble Judge to have erroneously cast the burden on the Muslims and thereafter rendered a finding that the Muslims had not been able to give any cogent material to show that they came into possession from 1528 AD and further that there was no proof of the building having been constructed in 1528 AD (See Paragraph 2989 at page 2826 in Volume - XIV) was erroneous.

It is respectfully submitted that the finding at paragraph 3113 (at page 2962 in Volume – XIV) of the impugned judgment as well as the finding of Justice S.U.Khan on the issue of joint possession is erroneous because prior to the order of the attachment, the disputed property was always in the sole possession of the Muslims. It is submitted that merely because Hindus may have come in offered prayers at the disputed structure does not, in any way, mean that it gave the Hindus a possessory right or that a possessory right was ever exercised by the Hindus in that regard: it is given that mere visitation on a property without objection does not lead to possession.

(D) **NO EVIDENCE OF DISPOSSESSION PRIOR TO 22/23 DECEMBER 1949 AND/OR EVEN THEREAFTER**

i. It is respectfully submitted that Hon'ble Justice Sudhir Agarwal has failed to appreciate that the idols could not be treated as deity since they were placed beneath the central dome stealthily and illegally, and hence could not be impleaded. Thus their non-impleadment could not result in the dismissal of the suit. It has been wrongly observed that the plaintiffs of Suit No. 4 had sought for a relief of "eviction" of the idol whereas the fact is that the plaintiffs have sought the possession by removal of the said idols which were being treated as objects of worship. (See pages 2180-2181 of the Judgment in Volume - XI.).

ii. It is submitted that Hon'ble Justice Sudhir Agarwal erred in holding that the Janam sthan occupies the status of a "deity" and that because allegedly when the idols were placed on 22/23 December 1949 they were consecrated, meant that the Plaintiffs 1 and 2 in Suit No. 5 became juridical persons. It is submitted that merely because a ceremony may have been allegedly performed when the idols were placed does not mean that the placement was not stealthy, surreptitious and illegal. It is submitted that should the conduct of the alleged ceremony have been sufficient to legalize the placing of the idol's it would not have resulted in proceedings having been initiated under Section 145 of the Cr.P.C.

Further, Hon'ble Justice Sudhir Agarwal has wrongly observed that defendant No. 4 (in suit No. 5) had not proved that the idol

in question was stealthily and surreptitiously kept inside the Mosque in the night of 22nd / 23rd December, 1949. The Hon'ble Judge has improperly and without taking into consideration the evidence on record observed that nothing was brought on record to prove it and the observation of the Hon'ble Judge that the same was kept after due ceremonies was also not based on cogent and reliable evidence. In this respect the facts and circumstances about the placement of the said idols as given in the First Information Report, in the Written Statements filed by the State Government and District Magistrate, Faizabad etc., as well as in the notings of the official record maintained by the District Magistrate, Faizabad included in the file of the District Magistrate, Faizabad placed in a sealed cover by the order of the court dated 29-5-2009 and in the letters dated 26th and 27th December, 1949 sent by the District Magistrate, Faizabad to Chief Secretary, Government of U.P. etc. were all ignored. (See pages 2184 and 2293 of the Judgment in Volumes – XI and XII respectively).

iii. That Hon'ble Justice Sudhir Agarwal has failed to appreciate that the idols placed on the Chabutra were said to be looked after by the Nirmohi Akhara and as such if the said idols could be said to be a deity there was no justification to observe that there was nothing on record to show that any person claimed himself as shebait of Plaintiff No. 1, (alleged deity). In this respect, Issues Nos. 2 and 6 (suit 5) were wrongly decided and it was wrongly held that suit No. 5 could not be held as

not maintainable on account of defect of pleadings with respect to the status of the next friend or Shebait (See pages 2185- 2186 of the Judgment of Volume - XI).

iv. That Hon'ble Justice Sudhir Agarwal wrongly observed that since Muslims had not placed any evidence contradicting the statement of O.P.W.1 regarding placement of idols, allegedly with due ceremonies, and, since the images of Gods and Goddesses as alleged to have been carved on the black stone pillars were there in disputed building in the inner courtyard, therefore entry of plaintiffs (Suit- 3) in the inner courtyard as a mere worshipper at least, till the date of attachment, may not be doubted. It was also wrongly observed that it could not be said that in the preceding 12 years before 1959 the said plaintiffs never had possession over the property in dispute (inner courtyard). (See pages 2884-2885 of the Judgment in Volume - XIV.).

v. That Hon'ble Justice Sudhir Agarwal wrongly held that the "deity," being a minor, will continue to be treated as minor for all purposes and he further wrongly observed that he found no authority to show as to how and in what circumstances and why there can be a distinction between the status of deity as minor and natural person as minor. In this respect the Hon'ble judge failed to appreciate the innumerable authorities of this Hon'ble Court, Privy Council as well as of High Courts (some of which were referred to in the judgment of S.U. Khan. J. between pages 165-189), especially 2 judgments of the Bench of three Hon'ble Judges of this Hon'ble Court namely *Dr. G.M.*

Kapoor Vs. Amar Das (AIR 1965 Supreme Court 1966) and *S.P. Matam versus R. Goundar* (AIR 1966 Supreme Court 1603), as well as the Constitution Bench case of Dr. Ismail Farooqi (1994), approving the law laid down by the privy council in Masjid Shaheedganj case (1940 Privy Council 116). The Hon'ble Judge also failed to appreciate the specific observations of the courts that an Idol cannot be treated to be minor for the purposes of Section 6 and 7 of limitation Act, vide., *Naurangi Lal Versus Ram Charan Das,* AIR 1930 Patna 455 (D.B.) (See page 2031 of the Judgment in Volume - XI.)

vi. That while deciding Issue Nos. 25 and 26 in Suit No 4, Hon'ble Justice D.V. Sharma has ignored the Plaintiffs' pleadings, oral evidences and documents. The Hon'ble Judge has ignored the evidence of Plaintiffs to show that the outer courtyard and inner courtyard was a Mosque and was in the possession of Plaintiffs/Muslim side. Further, the Hon'ble Judge has wrongly observed that the Muslims were dispossessed from the property in suit and Hindus had adversely possessed the same. The said observation is contrary to evidence and without any basis. The reliance of Hon'ble Judge on AIR 1940 PC 116 and 1994 (6) SCC 36 was also out of context and not proper in the facts and circumstances of the case. The Plaintiffs/ Muslims had possession of the premises till December, 1949 and there was no occasion to apply the proposition of law as settled in Masjid Shahid Ganj Case. The facts of that case were certainly of different nature. The

Hon'ble Judge has not at all taken into consideration the Islamic proposition of law which states that even open land could be a Mosque. It is material to state that the Hon'ble Judge has quoted Islamic laws on various other issues, though out of context, but the Hon'ble Judge has not taken into consideration the nature of place which could be considered as Mosque. Thus the findings on these issues are also perverse and liable to be set aside. (Kindly refer Pages 290/291 of Volume - XXIV)

(E) **ERRONEOUS FINDING ON FAILURE TO PROVE TITLE AND POSSESSION BY APPELLANTS**

i. Because the finding that the Muslims had not been able to prove that the land belonged to Babur under whose orders the Mosque was constructed is erroneous and uncalled for since it is an admitted fact that the building of the mosque was in existence for more than 400 years and undisputedly the Muslims offered Namaz in the said building since its construction. Without prejudice to the said user of the land / building for religious purposes by Muslims, the said finding is incorrect even on the ground that the documentary evidence adduced by the Muslim side, including the historical evidence of the books had amply proved that the vacant land belonged to the king during the entire Mughal period, and this evidence was also ignored by the Hon'ble Judge. It is also relevant to state that the said land has also not been proved to be owned by any temple and as such recording of such finding is erroneous, misconceived and baseless.*(See Page 251 of the Judgment of S.U.Khan J. in Volume - II).*

ii. That the Hon'ble Judge failed to decide the issue of perfection of title and rights on the basis of Adverse Possession of the Muslims and misdirected himself by giving a wrong finding of the alleged joint possession since before 1855 (*See Page 260 of the Judgment of S.U. Khan J. in Volume - II).*

iii. That Hon'ble Justice Sudhir Agarwal, after referring to Ext. A-13, Ext. 30, Ext. 15, Ext. 16, Ext. 34 and Ext. 17 of suit 1 wrongly observed that the aforesaid documents disprove the claim of Muslims. It is surprising that there being specific averments and proof about the Mosque in question being in the possession of Muslims in the aforesaid documents, the Hon'ble Judge has found that the said documents disprove the case of Muslims. (Kindly see page 2064-2067 of the Judgment in Volume - XI).

iv. That Hon'ble Justice Sudhir Agarwal wrongly observed that there was no evidence of the possession of Muslims of the property in suit for the period prior to 1855 and it was also wrongly held that the Muslims did not have the possession of the premises in outer courtyard at least since 1856-1857 when the dividing wall was said to have been raised. In this respect the Hon'ble Judge failed to appreciate the large number of documents and references of Historical Books as well as of the Books relied upon by the Hindu side which established that the Muslims were not only in full control of the inner portion of the Mosque but they had the possession and control of the outer courtyard also excluding the portion on which 'chabutra' of 17 X 21 ft. was made around 1857 A.D. It was

also not appreciated that the material like 'farsh,' 'pitchers' and the 'broom' etc. were all destroyed by the Hindus who had desecrated the Mosque in the night of 22nd / 23rd December, 1949 and had remained in possession thereof upto the date when the idols were illegally placed. As such there was no question of the aforesaid objects, being used in the Mosque, to have been found by the Receiver when he took over charge of the disputed premises pursuant to the Magistrate's order dated 29-12-1949. It was also not appreciated by the Hon'ble Judge that on account of the surcharged and tense atmosphere prevailing at the disputed site from the night of 22-12-1949 it could not be expected of the Muslims to have made complaint about the damage or destruction of the said articles / material which was kept in the Mosque for the use of Namazis upto 22-12-1949. Hence an absolutely unwarranted and illegal inference was drawn by the Hon'ble Judge that no such material existed there and such inferences are also in contradiction with the finding recorded by the Hon'ble Judge in para 3109 (P.2961) that there was no abandonment by Muslims of the property in dispute and that maintenance of building by the Muslims to the extent of the disputed structure and partition wall was also evident. The finding regarding the alleged joint possession of both the communities in the inner courtyard was also a perverse finding and based on no reliable evidence. It was also wrongly observed that so far as outer courtyard was concerned, the Muslims had lost possession at least from 1856-57 and onwards. Thus the

finding recorded on Issue Nos. 2, 10 and 15 (Suit- 4) and on Issue No. 7 (Suit-1) and on Issue 3 and 8 (Suit-3) were absolutely illegal and against the evidence on record. (See pages 2959-2963 of the Judgment in Volume - XIV).

v. That while deciding Issue No. 28 (Suit-4) Hon'ble Justice Sudhir Agarwal wrongly observed that the outer courtyard of the disputed site can be said to be in possession of the Defendant No. 3 (Nirmohi Akhara) and premises within the inner courtyard continued to be visited by the members of both the communities, meaning thereby, there was no obstruction to any one to enter the same and this position had continued till 22-12-1949. Thus the finding on Issue No. 28 (Suit-4) was manifestly illegal and against the evidence on record in so far as it concerned with the claim and possession of the Muslims. (See page 2962-2964 of the Judgment in Volume - XIV).

(vi) That Hon'ble Justice Sudhir Agarwal has made perverse and misconceived remarks stating that the contents of the revenue records etc. cannot be relied to prove the title of the parties concerned but they have to prove the same by producing relevant evidence. The said observation of the Learned Judge is improper and misconceived in view of the fact that innumerable properties of Waqf are set out in the revenue records only. The observation/finding of the Learned Judge, in Para 2944, stating that the Waqf Board should have based the claim of adverse possession against the particular owner of the property is not correct. The claim of Waqf Board or any of the Muslim Party's adverse possession is against all those

who claim their rights and beliefs attached to the said piece of land and not the specific owner of the said land as nobody else except the Muslim party could claim title. The Muslim Party's claim on the land is that they had the right to offer Namaz on the said land based upon their Waqf and/or continuance of possession of the premises and nobody else except Muslims could carry out their religious activities on the said land. The Learned Judge has misread and misinterpreted the stand of Muslim parties and has misdirected the entire issue and hence the observation in Paras 2944 and 2945 (pages 2802 and 2803 in Volume – XIV) is improper and incorrect.

(F) **LACK OF EVIDENCE TO DEMONSTRATE EXISTENCE OF TEMPLE IN 1528 AD AND ITS DEMOLITION**

i. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the ASI Report "does not answer the question framed by the Court, inasmuch as, neither it clearly says whether there was any demolition of the earlier structure, if it existed and whether that structure was a temple or not." (Para 3988 at page 4305 in Volume - 20). In this respect the Hon'ble Judge wrongly observed in Para 3990:

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

ii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that while digging up the Babri Masjid, the excavators claim to have found four floors, numbered, upper to lower, as Nos.1, 2, 3 and 4, Floor No.4 being the lowest and so the oldest. In Chapter III of the ASI's Report, Floor 3 is put in "Medieval Period" (i.e. 13th-16th century by categorization adopted in this Chapter. It is stated to consist of "a floor of lime mixed with fine clay and brick-crush" (p.41) — in other words a purely surkhi of standard 'Muslim' style. Floor 4, placed in the "Medieval-Sultanate Period", has also a "red-brick crush floor" (p.40), which too can come only from use of surkhi. The word "Sultanate" is apparently employed to explain away the use of surkhi. Floors 3 and 4 are obviously the floors of an earlier qanati Mosque/ Eidgah and mihrab and taqs (niches) were also found in the associated foundation wall (not, of course, identified as such in the ASI's report). Such a floor, totally Muslim on grounds of technique and practice, is turned by the ASI into an alleged temple floor, "over which", in its words, "a column-based structure was built". Not a single example is offered by the ASI of any temple of pre-Mughal times having such a lime-surkhi floor, though one would think that this is an essential requirement when a purely Muslim structure is sought to be represented by the ASI as a Hindu one.

iii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that once this arbitrary appropriation has occurred (page 41), we are then asked by the ASI's report to imagine a "Massive Structure below the Disputed Structure", the massive structure

being an alleged temple. It is supposed to have stood upon as many as 50 pillars, and by fanciful drawings (Figure 23, 23A and 23B) in the ASI's Report, it has been "reconstructed", Figure 23B showing the reconstructed temple with 50 imaginary pillars. Now, according to the ASI's Report, this massive structure with "bases" of 46 of its alleged 50 pillars allegedly exposed, was built in Period VII, the period of the Delhi Sultans, Sharqi rulers and Lodi Sultans (1206-1526): This attribution of the Grand temple, to the "Muslim" period is not by choice, but because of the presence of "Muslim" style materials and techniques all through. This, given the ASI officials' peculiar view of medieval Indian history, must have been all the more reason for them to imagine yet another structure below assignable to an earlier time. About this structure, however, it is admitted in the Summary of Results that "only four of the [imagined] fifty pillars exposed during the excavation belonged to this level with a brick-crush floor" (ASI Report, Chapter X, p.269), and it is astonishing that this should be sufficient to ascribe them to 10^{th} – 11^{th} century (the "Sultanate" tag of Chapter III for it, now forgotten) and to assume that all the four pillars belong to this structure. That structure is proclaimed as "huge", extending nearly 50 meters that separate the alleged "pillar-bases" at the extremes. If four "pillar bases" with their imaginary pillars were called upon to hold such a vast roof, it is not surprising that the resulting structure was, as the ASI admits, "short-lived."

iv. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the four alleged pillar bases dated to 11th -12th centuries are said "to belong to this level with a brick crush floor". This amounts to a totally unsubstantiated assumption that surkhi was used in the region in Gahadavala times (11th - 12th centuries). No examples of such use of surkhi in Gahadavala period sites are offered. One would have thought that Sravasti (District Bahraich), from which the ASI team has produced a linga-centred Shaivite "circular shrine" of the Gahadavala period for comparison with the so-called "circular shrine" at the Babri Masjid site, or, again, the Dharmachakrajina vihara of Kumaradevi at Sarnath, another Gahadavala site of early 12th century AD, which the Report cites on other matters (e.g. on p.56), would be able to supply at least one example of either surkhi or lime mortar. But such has not at all been the case. One can see now why it had been necessary in the main text of the Report to call this period (period VI) "Medieval-Sultanate" (p.40): By clubbing together the Gahadavala with the Sultanate, the surkhi is sought to be explained away; but if so, the alleged "huge" structure too must come to a time after 1206, for the Delhi Sultanate was only established in that year. And so, to go by ASI's reasoning, the earlier allegedly "huge" temple too must have been built when the Sultans ruled.

v. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the context and positions of the recess and niches show that these could only have belonged to a Muslim mosque or Eidgah. This has been thrown out of court presumably in

conformity with the argument advanced by the "Hindu parties" that the niche (taq) and mihrab (recessed false-doorway) in mosques are invariably arched, and here the niche at least is rectangular. It is submitted that this dogmatic assertion did not conform to reality in the 15th and 16th centuries. The book titled "Fuhrer's Sharqi Architecture of Jaunpur" (a book submitted to the Court and cited by the Hon'ble Judge in his discussion of Babri Masjid inscriptions), shows in its Plate XXVII ('Jaunpur: Interior of the Lal Darwaza Masjid'), a refutation of this facile assumption. The niche (taq) close to the mimbar on the right is rectangular, while the mihrab to the left, on the other side of the mimbar is basically rectangular (flat-roofed) with the arches above being only ornamental. The other side's claim that the floor of the mihrab is always at the same level as the main floor is not at all understandable one, as may be seen from the illustration of mihrabs in the Jaunpur Jami Masjid (Fuhrer, op.cit., Plates LXIII and LXIV), where the floor of the mihrab stands in one case two courses and in the other one course over the main floor. See also Fuhrer's text, p.47, for how the mihrab is always placed 'towards Makka', i.e. to the west. The evidence from the 15th-century Lal Darwaza Masjid is crucially relevant since the Babri Masjid in its design closely followed the style of Sharqi-period mosques of Jaunpur.

vi. That Hon'ble Justice Sudhir Agarwal wrongly held in Para 3928 (page 4229 in Volume – XIX) dismissing all the objections to the attribution of remains of the walls and floors,

found under the extant floor of the Babri Masjid, to an imagined temple:-

"The statements of Experts (Archaeologist) of plaintiffs (Suit-4) in respect to walls and floors have already been referred in brief saying that there is no substantial objection except that the opinion ought to this or that, but that is also with the caution that this can be dealt with in this way or that both and not in a certain way."

The Hon'ble Judge wrongly held that there was no substantial reason to doubt the report of ASI in this respect.

vii. That Hon'ble Justice Sudhir Agarwal proceeded on wrong assumption against the experts on the Muslim side that they have denied the existence of all pillars and pillar-bases. The Babri Masjid also used quite large pillars to carry the roof, and as we have shown pillars and colonnades were a feature of the Sharqi mosques. Thus the observation that all pillar-bases of whatever kind and those especially in the north are being rejected by critics of the ASI Report and, then, to discredit them on that basis (cf. Paras 3887 and 3890) is in effect either due to inadvertence or on account of some misconception . Incidentally, this is at par with his assertion that there was any suggestion on the part of the critics regarding a "north-south row of the wall 16 and 17", i.e. west of the Mosque's western wall (Para 3895), which is just a figment of the imagination. It is, therefore, all the more objectionable that in Para 3900, proper objections raised by Dr Jaya Menon and Dr Supriya Verma have been attacked. (See Volume – XIX)

All buildings including the Babri Masjid and its predecessor, the qanati mosque or eidgah, needed to stand on walls and pillars, and only the Hon'ble Judge could imagine that the concerned plaintiffs' experts would deny the existence of such structures.

viii. That Hon'ble Justice Sudhir Āgarwal failed to appreciate that Glazed ware, often called "Muslim" or medieval glazed ware, constitutes an equally definite piece of evidence, which militates against the presence of a temple, since such glazed ware was not at all used in temples. In this respect the Hon'ble Judge mis-appreciated (Para 3976) the claim that, after all, there was "glazed ware" also in Kushana times, so why not in Gahadavala times?

In this respect the matter is clarified in the authoritative Encyclopedia of Indian Archaeology, ed. A. Ghosh (former Director-General, Archaeological Survey of India), New Delhi, 1989, page 260, where we read under GLAZED WARE:-

> *"Potsherds, light buff in colour, with a heavy turquoise blue glaze, have been found at Chaubara and Mahauli mounds near Mathura and at several other sites in the country and have been dated to the Kushan period. However, it bears no similarity to the reddish buff Kushan ware which abounds around Mathura and is completely different from the later-day medieval (Islamic) Glazed ware."*

In other words, archaeologists of standing regard the presence of medieval glazed ware as evidence of Muslim presence; and this ware has nothing in common with the Kushana-period glazed ware. This passage disposes of the objection raised by the Hindu side (quoted by Justice Agarwal in Para 3976 at page 4286 in Volume - 20) that the medieval glazed ware was the same as Kushana ware and so was used in ancient India.

ix. That Hon'ble Justice Sudhir Agarwal failed to appreciate that there was no evidence to establish that Babar or Mir Baqi had ever destroyed any temples at Ayodhya. The real issue is not whether some Hindu temples were destroyed by Muslim rulers, but whether Babur or his officials had destroyed any temple at the site of Babri Masjid. For this, not the conduct of all Muslims, but only the conduct of Babur or his immediate successors in India, Humayun and Akbar was of relevance to the matter, as indeed, was correctly pointed out by Muslim side counsel. (Para 3995 at page 4333 in Volume - 20). For that matter, the fact that a Panchala ruler in the 11th-12th century, ruling from Badaun (UP), honoured a Brahman priest for having destroyed a Buddha idol in the south (Epigraphia Indica, I, pp.61-66, esp. p.63) does not mean that every Hindu ruler who built a Hindu temple or patronized Brahman priests, could be suspected of having connived at the destruction of a Buddhist image. However, Hon'ble Judge proceeded on the assumption that the case of Muslims in such circumstances is one apart from all others, for—

"whatever we had to do suffice it to conclude that the incidence of temple demolition are not only confined to past but is going on continuously. The religion which is supposed to connect all individuals with brotherly feeling has become a tool of hatred and enmity." (Para 4048).

The Hon'ble Judge further wrongly observed that:-

"The claim of Hindus that the disputed structure was constructed after demolishing a Hindu structure is pre-litem not post-litem, hence credible, reliable and trustworthy" (Para 4056).

(G) MANIPULATION OF EXCAVATION RESULTS BY ASI

i. That Hon'ble Justice Sudhir Agarwal failed to appreciate the practice prevalent at the site of excavation and wrongly laid much emphasis upon the signatures of the parties / their counsel / day to day register. The said day to day register did not give full reports of the excavation of each trench but rather the same mentioned about miss*(sic)* items of artefacts and quantity etc., or bones. It was also not appreciated that all the complaint mentioning about technical details were prepared by nominees of the Muslims side who were Archaeological Experts and there was no reason for any incorrect complaints having been prepared by the said Archaeologists present at the site of the nominees of the Muslims parties. (See pages 3766-3768 of the Judgment in Volume - XVIII).

Manipulation of Stratification and Periodization

ii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the elementary rules of excavation, as may be seen in any good textbook on archaeology, lay down that from alterations primarily visible in soil different layers should be established as one digs (see Peter L. Drewett, Field Archaeology — an Introduction, Routledge, London, 1999, pp.107-08), and then the artifacts and other material found in each of these layers are to be carefully recorded and preserved. The lower layers are older than the upper, and this sequence gives one a relative chronology of the layers. It is only through establishing dates of artifacts in different layers, by C-14 dates or thermo-luminescence or inscriptions, or comparisons with artifacts already securely dated, that the periods of different layers can then be keyed to absolute time (centuries BC or AD). See Kevin Green, Archaeology –An Introduction, New Jersey, 1989, Chapter 3 (Excavation). The first major defect of the ASI's final Report submitted to the High Court is that it manipulates periodization of the layers in the most unprofessional fashion (and with undoubted motivation), is loaded with contradictions and missing in essential details, quite contrary to Justice Agarwal's long-winded defence of their conduct (paras 3821 to 3879 of the Judgment at pages 3918 to 4128 in Volumes – XVIII and XIX).

iii. That Hon'ble Justice Sudhir Agarwal failed to appreciate the gross omission in the ASI's Report, i.e., the total absence of any list in which the numbered layers in each trench are

assigned to the specific period as distinguished and numbered by ASI itself during the digging. The only list available is for some trenches in the charts placed between pages 37-38 of the ASI Report. A list or concordance of trench-layers in all trenches with Periods was essential for testing whether the ASI has correctly or even consistently assigned artifacts from certain trench layers to particular periods in its main Report. Where, as we shall see below, in connection with bones, glazed ware and other artifacts and materials, the finds can be traced to trench-layers that are expressly identified with certain Periods by the ASI in its above-mentioned charts, it can be shown that the ASI's assignment of layers to particular periods is often demonstrably wrong and made only with the object of tracing structural remains or artifacts there to an earlier time in order to bolster the theory of a Hindu temple beneath the mosque. The Hon'ble Judge was very anxious to give no concession on the score of the ASI's erroneous periodization, "which would ultimately may result in rejection of the entire report itself" (Para 3846 at page 4029 in Volume - XIX). So without coming anywhere to grips with the issue of ASI's simultaneous application of the designation 'Medieval-Sultanate' to two different sets of centuries (11^{th}-12^{th} centuries in one portion and 12^{th} -16^{th} centuries in another), Justice Agarwal declares that he found "no reason whatsoever in the above background to hold periodisation determined by ASI as mistaken" (Para 3878 at page 4128 in Volume - XIX)

iv. That Hon'ble Justice Sudhir Agarwal acted with a biased approach against the critics of ASI's scheme of periodization and so in Para 3879 he takes them further to task: They should know that ASI officials "are experts of expert." The condemnation of the experts for the Muslim parties, simply because they were hired, is unwarranted and uncalled for

v. That Hon'ble Justice Sudhir Agarwal failed to appreciate the way in which the entire stratigraphy has been fixed by the ASI, and certain layers obviously of Islamic provenance pressed into pre-Muslim periods (Period VI and earlier) as shown in Annexure No.1, Table 2, attached to the objection of Mr. Hashim dated 8.10.2003 (Para 3821 at page 3918 in Volume – XVIII). This kind of false stratigraphy has led to situations that are impossible in correctly stratified layers, namely, the presence of later materials in earlier strata. The presence of earlier materials in later or upper layers is possible, but not the reverse except for pits, but these have to be demarcated clearly from the regular layers, as the digging takes place (and not later as an afterthought), which has not been done at all. (Obviously the entire stratigraphy has been frequently played with to invent a temple in "Post-Gupta-Rajput" times.)

vi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the way the ASI has distorted evidence to suit its "temple theory" is shown by its treatment of the mihrab (arched recess) and taqs (niches) found in the western wall (running north-south), which it turns into features of its imagined temple. On p.68 of the ASI's Report are described two niches

in the inner side of Wall 16 at an interval of 4.60 metres in trenches E6 and E7. These were 0.20 metre deep and 1 metre wide. A similar niche was found in Trench ZE2 in the northern area and these have been attributed to the first phase of construction of the so-called 'massive structure' associated with Wall 16. Such niches, along the inner face of the western wall, are again characteristic of Mosque / Eidgah construction. Moreover, the inner walls of the niche are also plastered (as in Plate 49 of the ASI's Report) which indicated that the plaster was meant to be visible. A temple niche, if found, would in any case have to be on the outer wall, and if it contained an image the plaster would be on the image, not on the nihce's interior. In the first phase of construction, the supposed massive structure was confined to the thin wall found in Trenches ZE1-ZH1 in the north and E6-H5/H6 in the south (p. 41). How then does one explain the location of niches outside the floor area of the massive structure? This is typical of a mosque/ eidgah, which would have a long, wide north-south wall, the qibla being in the western direction, with niches at intervals on its inner face. The ASI is able to produce no example of a similar recess and niches from any temple.

vii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the ASI made no use of thermo-luminescence (TL) dating, although this should have been used where so much pottery was involved; and in the case of TL, unlike most carbon-dates obtained from charcoal, the artefacts in the form of fired pottery can be directly dated. Yet only carbon-dating was

resorted to, and no explanation is offered why the TL-method was not also employed.

viii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that since the entire basis of the supposed "huge" and "massive" temple-structures preceding the demolished mosque lies in the ASI's reliance upon its alleged numerous "pillar bases", these had to be examined. In this respect, one must first remember that what are said by the ASI to be pillar bases are in many cases only one or more calcrete stones resting on brick-bats, just heaped up, and ASI admits that only mud was used as mortar to bond the brickbats. (One should not be led astray by a highly selective few "pillar bases" whose photographs appear in ASI's volume of illustrative Plates). In many claimed "pillar bases" the calcrete stones are not found at all. As one can see from the descriptive table on pages 56-67 of the Report not a single one of these supposed "pillar bases" has been found in association with any pillar or even a fragment of it; and it has not been claimed that there are any marks or indentations or hollows on any of the calcrete stones to show that any pillar had rested on them. The ASI Report nowhere attempts to answer the questions (1) why brickbats and not bricks were used at the base; and (2) how mud-bonded brick-bats could have possibly withstood the weight of roof-supporting pillars without themselves falling apart. It also offers not a single example of any medieval temple where pillars stood on such brick-bat bases.

ix. That Hon'ble Justice Sudhir Agarwal, in Paras 3901 to 3906, reproduces arguments advanced by Sri M.M. Pandey, though these include statements that are not even made in the ASI Report on a general basis at all, such as (a) brickbats in the pillar bases are not heaped up but are carefully laid in well-defined courses (Para 3901); (b) the foundation of pillar bases has been filled with brickbats covered with orthostat, which prima facie establishes its load-bearing nature (Para 3903), and (c) all the fifty bases, more or less are of similar pattern except the orthostat position. (Para 3903) These words of wild generalization, quite overlooking the brickbat heaps passed off as pillar bases by the ASI, and the technological wisdom about highly dubious 'orthostats' has wrongly persuaded Justice Agarwal, who in Para 3907 says shortly: "We find substance in the submission of Sri Pandey." (See pages 4177 to 4183 of Volume – XIX)

x. That Hon'ble Justice Sudhir Agarwal failed to appreciate that despite the claim of these pillar bases being in alignment and their being so shown in fancy drawings in the ASI's Report (figures 23, 23A and 23B), the claim is not borne out by the actual measurements and distances; and the plan provided by ASI is also not drawn accurately at all. The fact that the alleged pillar bases do not stand in correct alignment or equal distances is admitted by Justice Agarwal in Para 3917 at page 4200 in Volume - XIX, but he speculates on his own that "there may be a reason for having variation in the measurement of pillar bases that the actual centre of the pillar

bases could not be pointed out ...." The ASI admitted to no such disability. In this respect the Hon'ble Judge even ignored the statements of experts of Hindu side who had admitted in their statements that the alleged pillar bases were not in an alignment. Moreover, the Hon'ble Judge goes on to state that "Figure 3A in any case has been confirmed by most of the Experts (Archaeologist) of plaintiffs (suit-4)," when actually it has been unanimously maintained by them to be inaccurate and fanciful. Indeed, there are enormous discrepancies between Fig. 3A (the main plan) and the Table in Chapter 4 on the one hand, and the Report's Appendix IV, on the other. Trench F7 has four alleged "pillar bases" in the former, for example; but only one in the latter!

xi. Because the way the ASI has identified or created "pillar bases" is a matter of serious concern. Complaints were also made to the Observers appointed by the High Court that the ASI officials were ignoring calcrete-topped brick-bat heaps where these were not found in appropriate positions, selecting only such brick-bat heaps as were not too far off from its imaginary grids, and helping to create the alleged "bases" by clearing the rest of the floor of brick-bats. Despite Justice Agarwal's vehement rejection of these complaints, the complaints do not lose their validity.

xii. Because the most astonishing thing that the ASI so casually brushes aside relates to the varying levels at which the so-called "pillar bases" stand. Even if we go by the ASI's own

descriptive table (page 56-57), as many as seven of these alleged 50 "bases" are definitely above Floor 2, and one is at level with it. At least six rest on Floor 3, and one rests partly on Floor 3 and 4. Since Floor 1 belongs to the mosque, how did it come about that as many as seven pillars were erected, after the Mosque had been built, in order apparently to sustain an alleged earlier temple structure. Moreover, as many as nine alleged "pillar bases" are shown as cutting through Floor No.3. Should we then not understand that when the Mosque floor was laid out, there were no "pillar bases" at all, but they were either extant parts of earlier floors (now taken to be or made to look like pillar bases) or some kind of loosely-bonded brickbat deposits, connected with the floors?

xiii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that even the table on pages 56-67 of the ASI's Report may not correctly represent the layers of the pillar bases, since its information on floors does not match that of the Report's Appendix IV, which in several trenches does not attest the existence of Floor No. 4 at all, though this was the floor the "pillar bases" in many cases are supposed to have been sealed by, or to have cut through or stand on. For example, "pillar base 22" on pp.60-61 is indicated as resting on floor 4, but there is no Floor 4 shown as existing in Appendix IV of the Report in Trench F2 where this base supposedly stands. Similar other discrepancies are listed below:

Information in text of ASI's Report (PB = Pillar base)	Information in Appendix 4 of Report
PB No.3:ZG2-Fl. 2 (p.56)	Only Fl.1 mentioned (p.8)
PB No.6:ZJ2-Fl. 2(p.57)	Fl.1 mentioned (p.12)
PB No.8:ZG1-Fl. 2 (p.58)	Only Fl.1 mentioned (p.8)
PB No.18:H1-Fl.4 (p.60)	No Fl.4 (p.11)
PB No.22:F2-Fl.4 (p.60-61)	No Fl.4 (p.6)
PB No.27:H5-Fl. 4 (p.62)	3 successive floors. No Fl.4 (p.11)
PB No.28: F6-Fl.4 (p.62)	No Fl.4 (p.7)
PB No.31:F6-F7-Fl. 4 (p.63)	3 floors mentioned for F6 (p.7); Floors 1 and 1A for F7 (p.7)
PB No.32: F6/F7-Fl. 4 (p.63)	3 floors mentioned for F6 (p.7); Floors 1 and 1A for F7 (p.7)
PB No.34, 35: F7-Fl. 4 (p.64)	Only F1.1 and 1A (p.7)
PB No.36:G7-Fl. 4 (p.64)	No Fl.4 (p.10)
PB No.37: F8-Fl.3 (p.65); no.Fl.3 beyond 6 series (p.63)	–
PB No.39: G8-Fl. 4 (p.65)	3 successive floors (p.10)
PB No.45: G9-Fl. 4 (p.66)	3 successive floors (p.10)
PB No.44: F9-Fl. 4 (p.66)	2 floors mentioned (p.8)
PB No.46:H9-Fl. 4 (p.66)	3 floors (p.12)
PB No.47:F10/F10-Fl 4 (p.66)	E10:Fl.1 mentioned (p.5); F10: 2 floors mentioned (p.8)
PB No.48:F10-Fl. 4 (p.67)	2 floors mentioned (p.8)

PB No.49: G10-Fl. 4 (p.67)	2 floors mentioned (p.10)
PB No.49:G10/H10-Fl.4 (p.67)	2 floors each in G10 and H10 (pp.10,12)
PB No.50: H10-Fl. 4 (p.67)	Floors 1 and 2 only mentioned (p.12)

Note: Fl. in the above table is an abbreviation for Floor.

Thus in over 20 cases Floor 4 is presumed in the Report, whereas no proof of this is provided in Appendix IV.

xiv. That Hon'ble Justice Sudhir Agarwal failed to appreciate that there is also the crucial matter of what happened to the pillars that the alleged pillar-bases carried. Justice Agarwal dismisses this as unworthy of consideration since, in his view, they must have been demolished when the supposed temple was destroyed to build the mosque (para 3917).

The Hon'ble Judge wrongly observed that the objection was based on any childish expectation. If the mosque was built immediately upon the alleged temple's destruction, as Justice Agarwal holds, then, either the 50 stone pillars would have been used in the mosque or their remains should have been found in the debris of the demolished mosque which the ASI dug through. But no such pillar, or any recognizable part thereof, was found. Only one pillar fragment was found and that belonged to the set of 14 non-uniform decorative non-load bearing black basalt pillars which were part of the Babri Masjid structure.

xv. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the ASI should have looked about for other explanations of the heaps of brickbats before jumping to its "pillar bases" theory. There is at least one clear and elegant explanation for many of them, first proposed by Dr Ashok Datta (Para 540 sub-para 10). When Floor No.4 was being laid out over the mound sometimes during the Sultanate period, its builders must have had to level the mound properly, using stones (the latter often joined with lime mortar) and brick-bats to fill such holes. When Floor 4 went out of repair, it received similar deposits of brickbats to fill its holes in order to lay out Floor 3 (or, indeed, just to have a level surface), and this continued to happen with the successive floors. This explains why the so-called "pillar bases" appear to "cut through" both Floors 3 and 4, at some places, while at others they "cut through" Floor 3 or Floor 4 only. They are mere deposits to fill up holes in the floors. Since such repairs were in time needed at various spots all over the floors, these brickbat deposits are widely dispersed. Had not the ASI been so struck by the necessity of finding "pillar bases", which had to be in some alignment, it could have found scattered over the ground not just fifty but perhaps over a hundred or more such deposits of brickbats.

xvi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that when Dr. B.R. Mani, the first leader of the ASI team at Ayodhya, excavated at Lal Kot, District of South New Delhi, he

thus describes "pillar bases" of "Rajput style", of about 11th-12th century:

"These pillar bases rest on stone pedestals and are 2.90 m. apart from each other. They might have supported some wooden canopy."

(Indian Archaeology, 1992-93 – A Review, official publication of ASI, New Delhi, 1997, p.9).

Dr. Mani illustrates these four pillar bases in Plates VI and VII of the same publication. Each comprises a number of squarish stone slabs resting on each other with a larger stone slab at the bottom. Yet these were not thought by him to be strong enough to support anything more than "a wooden canopy." And yet at Ayodhya, single calcrete slabs resting on nothing more than brickbats are often held by the same Mr. Mani and his team to have supported stone pillars bearing "massive stone structures!"

xvii. That Hon'ble Justice Sudhir Agarwal failed to consider the shape and size of the alleged "shrine". The extant wall makes only a little more than a quarter of a circle (ASI Report, Fig.17). Though there is no reason to complete the circle as the ASI does, the circular shrine, given the scale of the Plan (Figure 17 in the Report), would still have an internal diameter of just 160 cms. or barely 5 ½ feet! Such a small structure can hardly be a shrine. But it is, in fact, much smaller. Figs.3 (General Plan of Excavations) and 17 in the Report show that not a circle but an ellipse would have had to be made by the

enclosing wall, which it has to be in order to enclose the masonry floor. No "elliptic (Hindu) shrine" is, however, produced by ASI for comparison: the few that are shown are all circular. As Plate 59 makes clear the drawing in Fig. 17 ignores a course of bricks which juts out to suggest a true circle, much shorter than the elliptic one: this would reduce the internal diameter to less than 130 cms, or 4.3 feet. Finally, as admitted by the ASI itself, nothing has been found in the structure in the way of image or sacred artifact that can justify it being called a "shrine".

xviii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that if the ASI insists on it being a shrine, it is strange that it did not consider the relevance of a Buddhist Stupa here. Attention was drawn to Plate XLV-A showing "exposed votive stupas" at Sravasti, in the ASI's own Indian Archaeology, 1988-89 – A Review. It is indicative of the ASI's bias that while it provided an example of an alleged circular Shaivite shrine from Sravasti, along with a photograph (Report's Plate 61), it totally overlooks the circular structures representing stupas there. As shown above the small size of the so called "circular shrine" at the Babri masjid site precludes it from being a shrine which anyone could enter, and the stupa (which is not entered) is the only possible candidate for it, if the structure has to be a pre-Muslim sacred structure. But the stupa is not a temple, let alone a Hindu temple. It is characteristic that despite no "circular shrine" of this small size being brought to the

attention of the court, Justice Agarwal gives his own reasons, based on no example or authority, to say that there could be a circular shrine which need not be entered! (Para 3947 at page 4243 in Volume - XIX). He dismisses any other explanation out of hand.

xix. That Hon'ble Justice Sudhir Agarwal also misread the A.S.I. report regarding description of circular shrine as the ASI on p.69 refers to a sample from "the deposit between Floors 2 and 3 in the Trench ZH-1", giving the date AD 1040± calibrated to AD 900-1030, which it itself rejected as "too early", the sample being held to be a possible intrusion from disturbed soils. Justice Agarwal in Para 3937, however, uses this reference to date the "Circular Shrine", which has no relationship to Trench ZH-1 (far on the northern side of the Masjid) or Floors 2 and 3. This shows erroneous reliance on a carbon-date which could be from disturbed strata according to the ASI itself and has nothing to do with the so-called circular shrine. In contrast, no consideration has been given to the other sample (BS No.2127) from a similar depth (47 cm), but from a trench G7 adjacent to the "circular shrine", and gives the calibrated range of AD 1400-1620. This date should make it, in Justice Agarwal's language, an Islamic structure.

xx. That Hon'ble Justice Sudhir Agarwal has wrongly referred to the parnala of the circular shrine as a decisive evidence, and wrongly described it as "an extremely important feature of this structure" (para 3926 at page 4223 in Volume - XIX). The

objection against the same were re-produced by the Hon'ble Judge in Paragraph 3929 at page 4229 in Volume - XIX in which in sub-para 6.10 it is pointed out that the channel cannot be a draining chute at all not only because of its small proportions, but also because it is uneven in width, and narrow end (see Plate No.60 in the ASI's volume of illustrations); measurements by a levelling instrument revealed it had no slope, and, finally, there were no residues or traces of deposits that are formed within water drains after a period of use. Not only does the Hon'ble Judge not take any notice of these objections, but in Paragraph 3937 at page 4240 in Volume – XIX makes the 'v' cut in a brick into a "gargoyle"., which means something else completely as per the Concise Oxford Dictionary.

Bones, Artefacts and Materials and Their Significance

xxi. That Hon'ble Justice Sudhir Agarwal failed to examine the archaeological finds that go entirely against the thesis of there having been a temple beneath the mosque. In this respect the Hon'ble Judge failed to appreciate that the bones of large and medium size animals (cattle, sheep and goats) would be a sure sign of animals being eaten or thrown away dead at the site, and, therefore, rule out a temple existing at the site at that time. In this respect directions were given by the High Court to the ASI to record "the number and wherever possible size of bones and glazed wares". (Order, 10.4.2003, reproduced in Para 230). Yet the ASI officials have provided in their Report no chapter or sub-chapter or even tabulation of animals by

species, by kinds of bones, whether with cut-marks or not, as is required in any proper professional report of excavation. In fact today, much greater importance is being attached to study of animal bones since they provide to archaeologists information about people's diet and animal domestication. From any point of view ASI's avoidance of presenting animal-bone evidence after excavation must be regarded as a motivated, unprofessional act. The Report in its Summary of Results admits that "animal bones have been recovered from various levels of different periods" (Report, p.270). Hon'ble Judge instead of taking the A.S.I. to task for this great omission made use of the omission of details about the animal bones in the A.S.I. report to provide imaginary explanations.

xxii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the statement actually made in the "Summary of Results" concedes specifically that animal bones have been recovered from "various levels". Here, then, it is not a matter of recovery from "pits" that Sri M.M. Pandey and, also the Hon'ble Judge enlarge on at length (Paras 3966 and 3968 at pages 4273 and 4275 in Volume - XX). Furthermore "various" in the context means "all" or "most," particularly since the ASI Report provides no reservation that there was any area or layers in which they were not found. Indeed, the above inference is fully supported from even a random examination of the ASI's day-to-day Register and Antiquities Register, where the bones recovered are not usually attributed to pits or 'secondary deposits.'

xxiii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that from the Day-to-Day and Antiquities Registers, we find that in Trenches Nos.E-6 (Layer 4), E-7 (Layer 4), F-4/F-5 (Layer 4) animal bones have been found well below Period VII – layers, i.e. in Period VI (Early Medieval or Pre-Sultanate) or still earlier, and in Trenches Nos.F-8, G-2, J-2/J-3, they are found in Layers assigned by ASI to Period VI itself. Thus bones have been found in what are allegedly central precincts of the alleged Rama temple allegedly built in 'Period VI'. The ASI says that a massive temple was built again in Period VII, but in Trenches Nos.E6, F8, G-2 and J-E/J-4 bones have been found in layers assigned to this very Period also in the same central precincts. The above data are given in the Tables produced in Sunni Central Board of Waqfs' 'Additional Objection' dated 3-2-04.

<u>Conduct of A.S.I. before and after Excavation</u>:-

xxiv. That Hon'ble Justice Sudhir Agarwal failed to appreciate that as for the ASI's expertise, it is of interest to note that since mid-1990's it has been headed continuously as Director General by a non-expert civil servant shifted from time to time at the whim of the Central Government, until this year (2010), when finally a professional archaeologist has been appointed to head it. When the excavations were ordered by the Allahabad High Court to be undertaken by the ASI, the latter was entirely controlled by the BJP-led Government at the Centre under the Ministry of Culture (Para 3789 at page 3816 in Volume - XVIII), then headed by the BJP, the author of the

demolition of Babri Masjid in 1992. The BJP itself had made the slogan of Ram temple at the Babri Masjid site one of its main election slogans. On the eve of the excavations, the BJP Government changed the Director-General to install yet another non-professional civil servant, apparently in order to have a still more pliant instrument to control the ASI.

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

xxv. That Hon'ble Justice Sudhir Agarwal failed to appreciate that from the very beginning the ASI made clear its loyalties to its political masters' beliefs and commitments. The High Court in its order dated 5.3.2003 (Para 216) directed the ASI to intimate its programme to "the Officer-on-Special Duty, Ram Janma Bhumi-Babri Masjid." The ASI, however, insisted on addressing the designated officer as "OSD, Ram Janma Bhoomi" in its letters dated 8.3.2003 and 10.3.2003, thus significantly omitting the name 'Babri Masjid' (Para 223; also statements in ASI's own Report, pp.5-6). The new Director-General, ASI, while constituting the team of officers for the excavation appointed 14 members, placed under Dr B.R. Mani as Team Leader. Only one Muslim, an Asst. Archaeologist, was included in the team, as may be seen from the list in Para 217.

These arrangements were in total contrast to what the High Court itself had visualized in its orders of 1.8.2002 saying that

in case excavations were required, they will be carried out in the supervision of 5 archaeologists, including two Muslims.

An eminent archaeologist surely means a person of the stature of DG or Additional DG of ASI, working or retired, or archaeologist of equal stature from outside the ASI. Not one of the 14 members of the team, including the Team Leader, who was not even a Director at ASI, fitted this requirement. The team was so formed as to be led and guided by a pliant subordinate, not an eminent archaeologist. Furthermore, the ASI formed a team of officials from which, until the Court directed otherwise, Muslims were almost wholly excluded.

xxvi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the "one-community" policy was also enforced by Dr Mani and his team on the labour force. When over fifty labourers were engaged for the work which began on 12.3.2003, not a single Muslim was found fit for employment. It seemed as if the ASI had decided that since it was 'Ramjanmabhumi' ground, no Muslim should be allowed to enter it. A complaint about this was made to Dr Mani, 'Team Leader', ASI, on 18.3.2003. Mani's reply that he had left the recruitment to District Administration (Para 227 at page 227 in Volume - III) is hardly credible and amounts to no more than the proverbial "passing of the buck" by those who are caught in any questionable act. On 26.3.2003 the High Court, noticing Dr Mani's attitude in the matter, expressly ordered that "labourers belonging to the Muslim community be engaged", and also that at least two more Muslim archaeologists be added to the ASI team (Para

228). This had little substantive effect. As of 4.4.2003, eight days after the High Court's orders, there were only 9 Muslims engaged out of a total of 89 labourers (Para 229). There was thus every reason for the suspicion that the ASI team's conduct was not likely to be impartial and above board. This began to be noticed in the way any materials likely to impede a 'temple-beneath-the-mosque' theory began to be treated after the digging began.

xxvii. That Hon'ble Justice Sudhir Agarwal wrongly observed in this respect that no complaint about the non preservation of bones etc. was made to the A.S.I. Team (Para 227). It is submitted that in the beginning the crucial levels were not at all involved. As late as 23.3.2003, Dr B.R. Mani reported to the High Court, through DG, ASI, that excavation began on 12.3.2003 and then, there were three non-working days (14, 17 and 18 March), so before 20.3.2003, when the first complaint was made, excavation work had taken place only on five days. Moreover, until then no digging had proceeded below the floor of the Babri Masjid. So the crucial layers were just now being laid bare. It was, therefore, totally unjustified and unwarranted on the part of the Hon'ble Judge that he should charge the complainants with delay in reporting the ASI's treatment of artifacts. This was evident from the order of the Bench also dated 26.3.2003 (Para 228) which had endeavoured to ensure that the ASI should take the minimum steps required for the proper recovery, registration and preservation of artifacts, and also measures to improve access to the counsels' nominees

to observe the excavation work. If the complaint had been baseless then why should the Bench have issued such orders?

xxviii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that on 7.4.2003, a complaint was filed to the effect that the ASI was not carrying out the Court's orders (Para 229), and again the Bench on 10.4.2003 passed detailed orders on the various lapses. The Bench was so much concerned with the ASI team's casual approach to its orders that the observers were "directed to ensure that" the "Court's instructions directions" were "carried out in letter and spirit" (Para 230). Finally, the Bench was so exasperated with Dr B.R. Mani's way of by-passing its orders, that on 22.5.2003 it passed an extraordinary order asking the DG, ASI to replace the Team Leader, Dr. B.R.Mani, but retain his services as a member of the team. (Para 235 at page 249 in Volume - III).

xxix. That Hon'ble Justice Sudhir Agarwal failed to take into account the ASI's motivated lapses and made no comment on this series of episodes, and its implications. On the other hand, his entire ire is directed towards the critics of ASI's conduct. In this respect the Hon'ble Judge takes up some of the complaints made to the Observers between 14.4.2003 and 26.7.2003. The response of Dr Mani to the complaint of 14.4.2003 was an admission that neither animal bones were being carefully recorded nor were pieces of glazed ware being sealed, but he promised that now this would be done (Para 3677 at page 3740 in Volume - XVII). A similar response to

the complaint of 15.4.2003 elicited a promise that the required videography and photography would be undertaken and a proper record would be kept (Para 3678). It was thus clear that the complaints were well taken. Yet Hon'ble Judge made improper and unwarranted comment on the complaint dated 16.5.2003 (Para 3682) which was against the nomenclature regarding the recording of artifacts, brick-bat remains, etc., where the ASI instead of proper descriptions, labeled them to serve its own objects. On this the Hon'ble Judge attributes to "ASI experts" power well above those of the common run of Archaeologists. The complaint, he says, was "mischievous and worthless." Why? Because "The ASI experts identify such item/ artifacts which ordinary people cannot. If only clear items were to be no expert would have needed." (Para 3682)

The Hon'ble Judge looks at "ASI experts" as "ordinary people" would. As a matter of fact it is not quite as easy in cases of broken artifacts or fragmented 'architectural pieces' for any 'expert' to imagine them what they were when they were complete pieces; and archaeologists have held different views about them.When Dr BB Lal, former Director-General, ASI, dug at what he called the Janma Bhumi mound, in 1976-77, he was not able to identify any "pillar-base" there, as may be seen from his report published in Indian Archaeology 1976-77 — A Review (ASI, Delhi, 1980), pp.52-53. Very properly he did not attempt any identification of the material evidence while undertaking field work and recording the finds. About fourteen years later did he suggest such identification in the RSS

journal Manthan, October 1999; and his interpretation of the structural pieces was still open to doubt. In the excavations at Babri Masjid, however, the "ASI experts" immediately began identifying and marking the pillar-less pillar-bases. A similar act on their part was to give suggestive names like 'divine couple', 'circular shrine', etc. where the terms 'divine' and 'shrine' were both subjective and motivated descriptions, not arising from any supposed professional expertise at all. At the same time they neglected other very significant objects in total violation of professional requirements, e.g. having identified the bones to species and to part of the skeleton, the bone assemblage should have been quantified. The "ASI experts", however, refused to record animal bones properly and failed even to tabulate them by species, trenches and layers in quantified form, as required by the standard manual of field archaeology. It is charitable to assume that the conduct of ASI "experts" in this matter arose not from gross ignorance, but from the fear that the presence of animal bones (cattle and caprine) could undermine their entire temple theory. It was this conduct of the A.S.I. which can be termed as "mischievous."

xxx. That Hon'ble Justice Sudhir Agarwal failed to appreciate that with reference to the complaint dated 21.5.2003, made about an alleged pillar base in G-2 (Para 3683 at page 3746 in Volume - XVII), it was noteworthy that Sri A.R. Siddiqui does not at all deny the allegation that the digging was so carried out that a squarish base was being created. He just said that

the digging was not completed and so the objection was "premature". Although this was a wrong piece of information as shown by the fact that on 18.5.2003, the day register for this trench distinctly records: "A pillar base on plan." (Para 3685); and another report of the same day (18.5.2003) gave a more a detailed description of "a structure of brickbats and rectangular in shape", which was encountered "during digging"; and which forthwith was declared a "pillar-base". (Para 3688 at page 3748 in Volume - XVII). So Sri A.R. Siddiqui's reply (vide Para 3683) was, to say the least, evasive and misleading: A squarish or rectangular pillar base was in fact already recorded, and he had to explain whether it really existed or had been created by removing surrounding brickbats — and this he entirely avoided doing.

xxxi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that on 7.6.2003, a detailed complaint was submitted pointing out the severe breaches of prescribed archaeological methods and procedures so far pursued by the ASI: it is reproduced in Para 3699. Though the High Court had ordered Dr Mani's removal as head of the ASI team on 22.5.2003, we find him still in that position on 8.6.2003 — another example of how casually ASI treated the High Court's orders. Thereupon, Dr. Mani attacked the complainants action in a manner which suggestive of arrogance and self-congratulation. (Para 3700 at page 3764 in Volume - XVIII)

Infact, bulk of the excavation was carried out under a person who had lost the confidence of the Court.

xxxii. That Hon'ble Justice Sudhir Agarwal, while discussing the texts of the complaints prepared by PW29 (Dr Jaya Menon) and PW 32 (Dr Supriya Verma) has suggested that it either lacks bonfides or they are trying to misguide the authorities (in Para 3712 at page 3774 in Volume -XVIII) but no such remarks were made against the ASI Team leader for covering in his report the excavations conducted during days he was not present at the site.

xxxiii. That Hon'ble Justice Sudhir Agarwal did not appreciate the statements of the said two archaeologists in a correct perspective. PW 32 (Dr Verma) claimed that she was present when trenches G-2 and F-3 were being excavated (Para 371). But the Hon'ble Judge has observed that her statement was not correct as the digging of F-3 had started on 30th May, while she was present only until 31st May. The Hon'ble Judge, therefore, failed to appreciate that the very dates he gives mean that Dr Verma had been able to watch the digging of the trench for two full days. As such her statement could not be said to be incorrect.

xxxiv. That Hon'ble Justice Sudhir Agarwal wrongly observed in Para 3717 (at page 3775 in Volume - XVIII) and concluded that the complainants alongwith their experts engaged in preparing anticipatory grounds to assail the ASI Report as soon as the excavation started. Then follows a sentence which we are unable to understand: "What was submitted on spot does not show that it was a simultaneous preparation of something

which was actually observed and found objectionable by the persons present thereat."

This kind of finding is totally conjectural and not based on evidence / material on record.

xxxv. That Hon'ble Justice Sudhir Agarwal in Para 3729 (at page 3779 in Volume - XVIII) brings in the GPR Survey Report. No significance could possibly attach to it once the ground was actually excavated, and there was no point in Dr Verma (PW 32) reading it and comparing it with the excavations. The Hon'ble Judge relies on the predictions on 'anomalies' in the report of a little known firm Tojo-Vikas International (Pvt.) Ltd. Such 'anomalies', the company's report had told us, "could be associated with ancient and contemporary structures such as pillars, foundation walls, slab-flooring extending over a large portion of the site." (Text reproduced in ASI's Report, p.5). No pillars were, however, found, except for one broken fragment in the Masjid debris; and the presence of bricks and brickbats was not at all predicted. The observation of the Hon'ble Judge about the said "alleged experts" (Para 3717 at page 3775 in Volume - XVIII) as "virtually hired experts" (Para 3879 at page 4128 in Volume - XIX), was totally unjust and based on no evidence as there was no suggestion much less proof that they lacked qualifications, or that they received any remuneration from the Muslim parties to the suit either for working as Nominence or for appearing as witness and no kind of any other advantage was also said to have been derived by them from the Muslim parties of the suit. It was

also wrongly observed that the said witnesses had admitted that they were partisan and interested. This serious allegation is also not based on proper appreciation of the record. Neither of them made any admission of this sort. Being "interested" means "having a private interest", especially "pecuniary stake" (see Oxford Concise Dictionary, s.v. "interest (n.)" and "interest (vt)"),. It is improper to suggest that the experts had something remunerative to gain from their work at Ayodhya.

(xxxvi) That Hon'ble Justice Sudhir Agarwal failed to appreciate that Dr. Mani's hand can be seen as the dominant one in the Final Report. While Sri Manjhi's name appears as the co-author of the Report, the Introduction is by Dr Mani alone. He is a co-author in three major chapters (II, Cuttings; IV, Structure; V, Pottery) while Sri Manjhi the Team Leader, is a contributor to none of these ten Chapters. The author of the last chapter, 'Summary of Results' is left unnamed — a curious way of evading responsibility. In sum, the result is that the very person with whose conduct of the excavations the High Court was not satisfied, was yet given full rein to 'direct' the excavations and write the Report.

Such are the plain facts, most of which have been simply ignored by the Hon'ble Judge, though almost all of them are brought out by the documents reproduced, in whole or in part, in the Judgment itself. It was, therefore, neither just and nor proper to hold that "all objections against ASI are, therefore, rejected." Rather,

the ASI's Final Report could not but be a partisan document and the same was liable to be rejected or at least discarded.

(xxxvii) That Hon'ble Justice Sudhir Agarwal failed to appreciate that "medieval (Islamic)" glazed ware is all-pervasive at the Babri Masjid site till much below the level of "Floor No.4", which floor is ascribed in the Report to the imaginary "huge" structure of a temple allegedly built in the 11th-12th centuries. The 'Summary of Results' in the ASI's Report tells us that the glazed ware shards "make their appearance" only "in the last phase of the period VII" (p.270). Here we directly encounter the play with the names of periods. On page 270, Period VII is called "Medieval Sultanate", dated to 12th-16th century A.D. But on p.40 "Medieval-Sultanate" is the name used for period VI, dated to 10th and 11th centuries. As we have noted, the Summary of Results claims (on page 270) that the glazed ware appears only in "the last phase of Period VII". In Chapter V (Pottery), however, no mention is made of this "last phase" of Period VII; it is just stated that "the pottery of Medieval-Sultanate, Mughal and Late-and-Post Mughal period (Periods VII to IX)... indicated that there is not much difference in pottery wares and shapes" and that "the distinctive pottery of the periods [including Period VII] is glazed ware" (p.108). The placing of the appearance of Glazed Ware in the "last phase" only of Period VII appears to be a

last-minute invention in the Report (contrary to the findings in the main text) to keep its thesis of alleged "massive" temple, allegedly built in period VII, clear of the "Muslim" Glazed-Ware, because otherwise it would militate against a temple being built in that period. All this gross manipulation has been possible because not a single item of glazed pottery is attributed to its trenches and stratum in the select list of 21 items of glazed ware (out of hundreds of items actually obtained) on pages 109-111. Seeing the importance of glazed ware as a factor for elementary dating (pre- or post-Muslim habitation at the site), and in view also of the High Court's orders about the need for proper recording of glazed ware, a tabulation of all recorded glazed-ware shards according to trench and stratum was essential. That this has been entirely disregarded shows that, owing to the glazed-ware evidence being totally incompatible with any temple construction activity in periods VI and VII, the ASI has resorted to the most unprofessional act of ignoring and manipulating evidence.

(xxxviii) That Hon'ble Justice Sudhir Agarwal failed to appreciate that the Pottery Section of the Report (p.108), the presence of Glazed Ware throughout Period VII (Medieval, 12th-16th centuries) rules out what is asserted on page 41, that a "column-based structure" - the alleged 50-pillared temple – was built in this period. The

whole point is that glazed ware is an indicator of Muslim habitation, and is not found in medieval Hindu temples.

(xxxix) That Hon'ble Justice Sudhir Agarwal failed to appreciate that the story of Glazed Tiles is very similar. These too are an index of Muslim habitation. The two glazed tiles being found in layers of Period VI means that the layers are wrongly assigned and must be dated to Period VII (Sultanate period). There could be no remains of any alleged "huge temple" in these layers, then.

Lime Mortar and Surkhi:-

(xl) That Hon'ble Justice Sudhir Agarwal failed to appreciate that since lime mortar and surkhi are profoundly involved in (a) the dating of the levels they are found in, and (b) resolving the issue whether they could have been used in the construction of a temple structure at all, it is essential, first of all, to be clear about what these are and what exactly is meant by their use. It is acknowledged by the ASI's Report also that lime mortar was used to fix calcrete stones in the so-called pillar bases.

(xli) That Hon'ble Justice Sudhir Agarwal failed to appreciate that Surkhi is still more elusive in pre-Sultanate ancient India. It is not at all mentioned among mortars or even plasters by the Encyclopedia of Indian Archaeology, Vol.I, p.295, the volume dealing only with Ancient India. This alone testifies to the rareness, if not absence, of the use of this material in ancient India. We should here take care to understand what the term

signifies. It means "pounded brick used to mix with lime to form a hydraulic mortar." No surkhi floor or bonding mortar has yet been found in any pre-1200 AD site in India, whether in a temple or any other building. One rare exception is the presence of surkhi as plaster in the lower levels of the Buddhist temple at Buddha Gaya and between it and the alleged temple at Ayodhya there is a gap of over a thousand years. Nor has the ASI in its Report or the Advocates of the other side been able to produce a single credible example from any Gahadavala or contemporary temple or structural remains.

(xlii) That Hon'ble Justice Sudhir Agarwal failed to appreciate that all the levels, especially Floors 1-4, which all bear traces of lime mortar and/ or surkhi must belong to the period after A.D. 1200 and cannot be parts of a temple. The Hon'ble Judge wrongly observed to in Para 3986 (at page 4298 in Volume - XX) that —

> *"whether lime molter or lime plaster from a particular period or not, whether glazed ware were Islamic or available in Hindustan earlier are all subsidiary questions when this much at least came to be admitted by the experts of the objectionists parties, i.e. the plaintiffs (Suit-4) that there existed a structure, walls, etc., used as foundation walls in construction of the building in dispute and underneath at least four floors at different levels are found with lots of several other structures."*

Let us here overlook the inaccurate statement that "lots of other structures" were found, but concentrate on the main argument. The Hon'ble Judge is in effect arguing that it just does not matter that the floors underneath the Babri Masjid contained all the standard accompaniments of Islamic (not temple) construction and customary use; the assumption is that anything found beneath the Babri Masjid ipso facto, by faith must be 'un-Islamic' and belong to a temple, irrespective of whether it bears Islamic features (mihrab and taqs) or its material is exclusively of Islamic manufacture and use.

(xliii) Because in this regard two more matters were also not considered by Hon'ble Sudhir Agarwal J.:-

(a) Underneath a "brick pavement" dated to Period VII, two Mughal coins (Reg. No.69 and 1061, one of which is of Akbar and the other of Shah Alam II, 1759-1806) have been found. (ASI's Report, pp.210-17). Obviously, the ASI's dating of the pavement to the Sultanate period (c.1200-1526) is erroneous, and the floor belongs to recent times (late 18th century or later).

(b) The presence of terracotta human and animal figurines is no index of Hindu or Muslim occupations. In Period II at Lalkot, Delhi, along with Sultanate coins were found 268 terracotta human and animal figurines Muslim children were apparently as drawn to terracota figurines (human as well as animal) as children everywhere in the word.

Evidence for Temple

(xliv) That Hon'ble Justice Sudhir Agarwal wrongly observed in paragraph 3986 that the expert witnesses for the Muslim parties have gone beyond the contours of the case in their zeal to help their party which is impermissible. However, their stand makes it clear that the disputed structure stood over a piece of land which had a structure earlier and that was of religious nature.

In this respect, the Report of Historians submitted to the Government in 1991 by eminent Historians like Prof. R.S. Sharma, Prof. Athar Ali, Prof. D.N. Jha and Prof. Suraj Bhan was also not taken into account (P.23), and the Hon'ble Judge has wrongly observed that a "new story" was being told now after the 2003 excavations by the ASI, by any of the academic witnesses. Their conclusion still remained that no temple was demolished in order to build the Babri Masjid, and this was the essence of the issue in the law-suit. Moreover, if any conclusion which is derived strictly from historical or archaeological evidence is said to be "impermissible in law", this does not mean that it is thereby wrong. The Hon'ble Judge failed to appreciate that the "Historian's Report to the Nation" submitted by Professors R.S. Sharma, M. Athar Ali, D.N. Jha and Suraj Bhan, all eminent historians, published in 1991 (Ext.O.O.S.5 in Suit-5) and also as Ext. 62 (Suit-4) had given detailed reasons for the aforesaid view. It is therefore,

incorrect to say that a new story was set up by any Expert witness of the Muslim side after 2003 excavations.

(xlv) That Hon'ble Justice Sudhir Agarwal failed to appreciate that mere assertion that the structural remains beneath the Babri Masjid are "religious" as stated in Para 3986 is not sufficient in itself, because such a religious structure could theoretically be also Islamic, Jain, Buddhist or Shaivite and, so not be a Ramajanmabhumi temple at all.

(xlvi) That Hon'ble Justice Sudhir Agarwal failed to appreciate that that by the archaeological finds it must be an Eidgah or qanati mosque (with much open land), constructed during the of the Sultanate period (1206-1526) — given its western wall, mihrab and taqs, glazed ware, lime mortar and surkhi. A Rama or Vaishnavite temple would yield images or idols and sculptured scenes as are seen in the façades and interior of the temples of Khajuraho, Bhubaneshwar and Konarak of the same period. A presumption of demolition of a temple to build a mosque must be reflected in signs of vandalism such as mutilated images or sculptures, to be found in the levels or fills beneath the Mosque. But not a single image or sculptured divinity, mutilated or otherwise, has been found even after such a comprehensive excavation where doubtless these were the things everyone in the ASI team was looking for.

(xlvii) That Hon'ble Justice Sudhir Agarwal failed to consider what the ASI offers as the main indicators of a temple at the site, besides those controversial pillar-bases we have already

discussed: It refers to "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, circular shrine having parnala (water chute) in the north". This list is at least descriptive, by simply calling all such features "Hindu motifs" is not sufficient.

(xlviii) That Hon'ble Justice Sudhir Agarwal failed to appreciate that in the curious phrase "stone and decorated bricks" perhaps, "stone" is a misprint for "stones" for there can be no stone bricks. But mere stones also have no significance either for period or for type of structure. As for 'decorated bricks', the sentence in Chapter IV is most revealing: "A band of decorative bricks was perhaps provided in the first phase of construction or in the preceding wall (wall 17) of which scattered decorated bricks with floral pattern were found re-used in the wall 16" (p.68). All this is just fanciful conjecture: no decorated bricks at all are mentioned when the supposed remaining courses of Wall 17, four courses in one and six in another area, are described (on the same page 68). No bands of decorated bricks but only some scattered re-used bricks of this kind were found in Wall 16. Such re-use shows that for builders of Wall 16 these bricks had no significance except as use of constructional material (and the decorations would in any case be covered by lime plaster). They could have been

brought from anywhere nearby and not taken from Wall 17 or from any pre-Mosque remains on the site.

(xlix). That Hon'ble Justice Sudhir Agarwal failed to appreciate that the A.S.I. had wrongly observed that the alleged temple-associated items: "the fragment of broken jamb with semi-circular plaster (pl.85), fragment of an octagonal shaft of Pillar (pl.84), a square slab with srivatsa motif, fragment of lotus motif (Pls.89-90) emphatically speak about their association with the temple architecture". In the same breath the Report also notes "that there are a few architectural members (Pls.92-94) which can clearly be associated with the Islamic architecture" (p.122). The two sets of finds are assigned their different dates (10^{th}-12^{th} centuries and sixteenth century or later) but such dates are assigned not by the positions of the artifacts in situ in archaeological layers, but purely on perceived stylistic grounds. The two tables listing the archaeological members found in the excavations show that none of the finds actually came from layers bearing remains of the so-called structure beneath the Babri Masjid, but rather from surface, or upper layers or the Masjid debris, or dumps or pits (see tables of the Report on pp.122-133). How, then, even if stylistic the 'temple' associations of a few of them are acknowledged, can it be argued that they belonged to the structure beneath the mosque, the one containing mihrab and taqs, whose 'religious character' is under discussion? They could have been brought for use in the Babri Masjid from remains of temples and other buildings at nearby sites, just as

were the 'Islamic' architectural fragments brought from ruins of older mosques in what was in the sixteenth century the headquarters of a large province, with a mixed Hindu-Muslim population.

(l) That Hon'ble Justice Sudhir Agarwal failed to appreciate that as for "the divine couple" which occupies a primary place in the ASI's list of supposed temple relics, the following points are noteworthy: it comes from the debris (see Sl. No.148 (Reg. No.1184) in table on p.130 of the ASI's Report) and is thus archaeologically un-datable. The description 'divine couple' is an invention of ASI, because here we have only a fragment of part sculpted rough stone, where only "the waist" of one figure and the "thigh and foot" of another is visible (See Plate 235 in ASI's volume of illustrations). How from this bare fragment the ASI ascribed divinity to the postulated couple and deduced the *alingana mudra* as the posture is evidence not of any expertise but simple lack of integrity and professionalism.

(li) That Hon'ble Justice Sudhir Agarwal failed to appreciate that the black schist stone pillar here presented as evidence for a temple at the site was recovered from the debris above floor 1, i.e. the admitted last floor of the Babri Masjid (ASI's Report, page 140), Sl. No.4, Reg. AYD/1, No.4). It is merely a fragment of one of the 14 such non-load bearing pillars installed in the Babri Masjid with no connection to the imagined pillared edifice underneath the Masjid.

(liii) That Hon'ble Justice Sudhir Agarwal failed to appreciate that the fact that the various articles cited in support of the existence of an earlier temple at the site have their association with different sects rules out their having come from a single temple. An octagonal block with a floral motif has been compared by the ASI with a stone block at Dharmachakrajina Vihara, a twelfth-century Buddhist establishment at Sarnath (Report, p.56). If correct, this would be a piece taken from a Buddhist vihara not a Brahmanical temple. The 'divine couple', if it is such, would be of Shaivite affiliation; and amalaka has its associations with Brahma. The "circular shrine" has been judged to be a Shaivite shrine and if so it still does not bring us anywhere near to a Rama temple. None of these elements could ever be part of a single "Hindu" temple — for such a composite place of worship was unknown in Northern India in ancient and medieval times. There could have been no non-denominational non-Islamic religious structure, which Justice Agarwal postulates but which no "Hindu" party to the suit has ever suggested nor is sustainable by any historical example. To conclude: The sundry portable elements found in the Masjid debris, surface or late layers must have come from different sites for re-use as architectural items in Masjid construction, and thus cannot be invoked in support of a temple underneath the Babri Masjid.

(liii) That the finding of the Hon'ble Judge (D.V.Sharma, J) on Issue No. [1(b)] has been concluded on the basis of

excavation report of Archaeological Survey of India without properly appreciating the scientific and technical objections going to the root of the findings of the ASI report and the real issue as argued by the Plaintiff in Suit No.4 The Hon'ble Judge has only dealt with the issue of "bias" and "malafide" and that too not properly. Therefore, the finding of the Hon'ble Judge is erroneous and flawed.

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

(H) FINDINGS CONTRARY TO THE VIEWS OF HISTORIANS AND HISTORY

i. That Hon'ble Judge has wrongly observed that Tieffenthaler had noted the existence of Ram Chabutra at the time of his visit to the area in question between 1766 to 1771 AD and the finding that Chabutra must have been there since before the visit of Tieffenthaler is against the evidence on record. The said Joseph Tieffenthaler had referred to only 'Vedi' of very small dimension and not to 'Ram Chabutra' as existing in 1885. It is, therefore, totally incorrect to hold that the said Chabutra and Sita Rasoi had come into existence before the visit of Johseph Tieffenthaler (*See Page 249 - 250 of the Judgment of S.U. Khan J in Volume - II*).

ii. Because observations of Hon'ble Justice Sudhir Agarwal (in para 1611, page 1730) that ".....the Indian subcontinent was under the attack/ invasion by outsiders for almost a thousand and more years in the past and had continuously been looted by them. Massive wealth continuously was driven off from the Country ....." was based on total ignorance of the Hon'ble Judge about the economic history of Medieval India. As a matter of fact there is no such history of Medieval India that India was ever governed from outside during that period and as such there was no occasion for the wealth of the country being continuously driven off from the country during that period. In fact, whoever looted any part of India used to live within India except for one or two occasions during the said entire period of one thousand years. (See page 1730 of the Judgment in Volume - IX).

iii. That Hon'ble Justice Sudhir Agarwal has wrongly observed that from a reading of Babur Nama he found that Babur "*was truly religious but it means that he was a complete Islamic person and lacked tolerance at least to the Idol worshippers. He had no hitch in destroying Idols worshipped by the inhabitants of India at that time .....*". This inference drawn by the Hon'ble judge was not only incorrect and unwarranted but was also against the inferences drawn by the Historians of repute about Babur (See pages 1672-1673 of the Judgment in Volume - IX).

iv. That the observation of Hon'ble Justice Sudhir Agarwal that the missing record of Babur Nama of 935 Hijri being "only of 3 days", "non mention of anything about" the building of Babri Masjid "in Babur Nama does not sound to any reason" was also unrealistic and based on mis-appreciation of Babur Nama. Hon'ble Judge failed to appreciate that about the construction of buildings, Babur Nama refers only to those buildings for which construction orders were given by Babar himself, while inscriptions of the building in dispute clearly indicated that the same was constructed by Mir Baqi (See page 1628 of the Judgment in Volume - IX).

v. That Hon'ble Justice Sudhir Agarwal has wrongly observed that the counsel for Muslims had ever stated that amongst various Books translating "Baburnama" Mrs. Beveridge's translation is the "most authentic and complete." As a matter of fact neither any such statement was given by the counsel for Muslim parties and nor any such query was made by the court during the course of arguments (See page 1631 of the Judgment in Volume - IX).

vi. That Hon'ble Justice Sudhir Agarwal has wrongly observed that Dr. Radhey Shyam had ignored about the breaking of the wine couplets as mentioned on pages 554-555 of Beveridge's Babur Nama. In this respect undue and unwarranted inference was drawn that as if Babur was fond of breaking Idols and the Hon'ble Judge failed to appreciate that Babar had ordered for destruction of only naked parts of the idols of Urva Valley (See pages 1665-1666 of the Judgment in Volume - IX)

vii. Because the observations made by Hon'ble Justice Sudhir Agarwal about the averments in Babur Nama (in paragraph 1317 on page 1460 in Volume - VIII) is neither complete nor correct.

viii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that it was fully evident and established from the Books of History that during the Moghal regime also the King was the owner of the entire land of his kingdom except houses and gardens which were permitted to be occupied, retained, purchased or sold by his subjects. In this respect special mention was made to the books entitled as --

(i) Travels in the Moghal Empire, A.D. 1656-1668 by FrancoisBernier,

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

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

In this respect the Farman issued by Shahjahan in exchange of the land with Raja Man Singh whose house was taken by Shahjahan for

the construction of Taj Mahal, was misconstrued. (See pages 3221-3238 of the Judgment in Volume - XV).

ix. That there is no consensus among the religious persons as well as historians as to when Lord Ram was born. OPW.1 Mahant Ram Chander Dass has stated that there is no mention about the period of birth of Lord Ram in *Ram Charitmanas* reason being that he has been considered *Anadi*. The said witness has made the speculation that Lord Ram might have been born lacs of years before (Pages 81 and 82 of the evidence). Similarly, another witness being OPW 9 Dr. T.P.Verma has stated that Lord Ram's birth should be 15-16 lacs years before and has further proceeded to say that according to his belief Lord Ram was born 17 Lacs years before (Page 98 of evidence). The other witness OPW 12 Shri Kaushal Kishore Mishra has similarly stated that Lord Ram's birth should be lacs of years before and the first birth of Lord Ram should be at least 3 Crores years before and has further stated that the era of Lord Ram Chander Ji should be 10 lacs years before from today. (See Page 51 and 101 of evidence). The OPW 16 Ramanandacharya-Rambhadracharya have stated that Ram Chander Ji was born in seventh manu era and the era of Dashrat ji was 1 crore 50 lacs 80 thousand years before. Similarly, the other witnesses DW-2/1-1, Rajinder Singh, DW-3/1 Mahant Bhaskar Dass, DW-3/5 Raghunath Prasad Pandey, DW-3/6 Sita Ram Yadav. DW-3/7 Mahant Ramji Dass, DW-3/20, Raja Ram Acharya and other witnesses have deposed on the basis of their faith and belief stating that Lord Ram's era was in different periods. The statements based on belief and faith about the birth of Lord Ram is contradictory and self

destructive. This aspect of the matter creates serious issue with respect to the era of Lord Ram even on the basis of faith and belief of the followers of Lord Ram.

x. That Hon'ble Justice Sudhir Agarwal has given an erroneous and misconceived finding about the Muslim Rule. The Hon'ble Judge's observation in Para 4398 (at page 4962 in Volume - XXII) is not only perverse, unwarranted and misconceived but it gives an indication as if during the Muslim Rule the right to have belief or right to follow religion was taken away in arbitrary manner. The said observation and finding is contrary to the historical facts and evidence.

xi. That the reliance upon Gazetteers to prove that the disputed place was as per the belief, the most sacred and pious place, does not disclose which period such alleged faith and belief started from. The Gazetteers are subsequent development of the 19th Century and they are of no help to record the finding of alleged belief of 1528 AD etc.

xii. That Hon'ble Justice Sudhir Agarwal has erroneously relied upon the so called belief of Hindus regarding site of the Mosque being the alleged place of birth of Lord Rama even after holding that the contents of the Gazetteers "cannot be taken on their face value and cannot be relied to prove a particular aspect of the matter unless it is corroborated." (See pages 1794 - 1795 of the Judgment in Volume - X).

xiii. That the Gazetteer of Thornton was misread and mis-appreciated. The evidence placed on record about the year 1858 A.D itself shows that the premises was a Masjid. The Hon'ble

Judge has misread the evidence supporting the case of the Muslim Party and has given wrong interpretation, to support the case of the temple. The observation of Hon'ble Judge that the offering of Namaz, or possession of Muslims in 1858 A.D, or the inscriptions (page 1565 in Volume - IX) was not proved on the disputed site, is not proper and contrary to evidence. Further observation that the Muslims and Hindus freely and frequently were visiting the place in dispute for worship, is contrary to the records and the same appears to be mis-conceived.

xiv. Because on the one hand Hon'ble Justice Sudhir Agarwal has relied upon the Gazetteers to support the belief of a particular community and on the other hand the Hon'ble Judge has ignored that the Gazetteers of the province of Oudh, states in two places that the Babri Mosque was built in the year 935 H corresponding with 1528 A.D.

xv. That Hon'ble Justice Sudhir Agarwal himself has observed that the belief existed for last more than 200 years from the date when the property was attached (see pg 4414 in Volume - XX) whereas the Mosque was constructed in the year in 1528 AD i.e 225 years (appx) before the belief started, even if the observation of the Hon'ble judge is taken to be correct.

xvi. That the faith and tradition of followers of Lord Rama has to be linked from the time immemorial, as pleaded, about the actual birth of Lord Rama. The said belief of worshipping cannot start from a particular period after a gap of lacs of years between the birth of Lord Rama and starting of the belief about the place of

birth of Lord Rama. The finding of Hon'ble Judge in Para 4407 (at page 4964 in Volume - XXII) is flawed and erroneous. The belief/faith that has been relied upon by the Hon'ble Judge is not tenable.

xvii. That the observations of Hon'ble Justice Sudhir Agarwal with respect to the research of PW-18, Surva Jaiswal are misconceived and erroneous. The said statement of the witness is based upon the research done by her which was also manifested by her published work.

xviii. That the observation of Hon'ble Justice Sudhir Agarwal stating that several confrontations among Hindus and Muslims in respect to the property in dispute are not on record of history books but still making the reference to the same was uncalled for and unsubstantiated. The judicial pronouncement of the Hon'ble Judge has on the one hand passed highly objectionable remarks against the historians for recording the history in their respective books after their research and on the other hand the Hon'ble Judge is seeking to give an inference that several confrontations among Hindus and Muslims took place but they have not been recorded on the history books. The said observation (Para 4404 at page 4964 in Volume - XXII) is improper, uncalled for, without any justification and against the judicial discipline.

xix. That Hon'ble Justice Sudhir Agarwal has misconstrued the application dated 30-11-1858 (Ext. 20 of suit 1) in which the word 'Janam Asthan' was used for Janam Asthan temple

situated in the Northern side of the building in dispute. The Hon'ble Judge wrongly observed that from the aforesaid document it was clear that "even the Inner courtyard had some Hindu religious signs / Symbols therein and it used to be worshipped by Hindus for last several hundred years." In this respect the heresay observation of P. Carnegy was also misappreciated and it was wrongly observed that the dispute pertaining to this place was centuries old. It was also wrongly observed that several witnesses of the Muslims side had admitted that Hindus used to come to the disputed place for worship believing it the birth place of Lord Rama. In this respect the Hon'ble Judge failed to appreciate the well settled principle of construction of a document and appreciation of evidence that the document should be read as a whole and so also the statement of a witnesses should be read as a whole and not in piecemeal. (See page 1980 - 1982 of the Judgment in Volume - X).

xx. That Hon'ble Justice Sudhir Agarwal has wrongly treated the word Duago as a part of the name of "Mohammadi Shah" mentioned in Ext. 23 (Suit-1) and wrongly recorded that Ext. 31 (Suit-1) dated 15-11-1860 was the first document "going to the extent that in the inner courtyard, the Moazzin used to recite Adhan (Azzan)" (See pages 2310-2318 of the Judgment in Volume - XII).

xxi. That Hon'ble Justice Sudhir Agarwal has wrongly observed that there was not even a whisper in any of the documents (mentioned at pages 2298 to 2341 in Volume - XII) that the

Muslims visited the place in dispute and offered Namaz thereat whereas continuous visit of Hindus and worship by them at the disputed site was mentioned in a number of documents as well as in the historical records. In this respect the material on record was not only ignored and the other documents have been mis-appreciated and misread by the Hon'ble Judge. (See page 2341 of the Judgment).

xxii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that virtually all the parties, except defendant No. 20 of O.O.S. No. 4 of 1989, had contended that the building in dispute was constructed in 1528 AD and all the Historian witnesses produced before the court had supported the same stand of the parties and all the books of history and Gazetteers upto 1960 (except the book of Fuhrer) had given the period of construction of Babri Masjid as 1528 AD and as such there was no justification for the Hon'ble judge to have raised any suspicion about the genuineness of the inscriptions in question as well as about the period of construction of the building in dispute and the comments made in this respect against the witnesses of the Muslims side were totally unwarranted, incorrect and unjustified and the same depicted a kind of biased approach against the said witnesses of Muslims side (See pages 1468 to 1525 of the Judgment in Volumes – VIII and IX).

xxiii. That Hon'ble Justice Sudhir Agarwal had castigated and passed extremely uncharitable remarks against some of the expert witnesses of History / Archaeology produced by

Muslims while no such comments were made against the so called expert witnesses produced by the Hindu side stating about the same period of construction of the disputed building and giving much more self contradictory statements (See pages 1538 to 1551 of the Judgment in Volume - IX).

xxiv. That Hon'ble Justice Sudhir Agarwal failed to appreciate that there was absolutely no pleadings much less evidence of any expert who might have expressed any doubt or expressed any suspicion about the alleged forgery of the inscriptions in question and it was not at all appreciated that no parties had made any suggestion about the likelihood of the inscriptions having been affixed at any time between 1528 and 1889 AD when the same were published in the book of Fuhrer and in this respect it was wrongly observed that the same were subsequently implanted and it is also incorrect to say that the correct reading of the said inscriptions could in any way show that the said building was not constructed in 1528 AD (See page 1461 of the Judgment in Volume - VIII).

xxv. That Hon'ble Justice Sudhir Agarwal has erred in discrediting the historical works of Ashraf Husain and Desai by observing that there is fallacy and complete misrepresentation on the part of author in trying to give colour of truth to the text of alleged inscriptions, claimed to have existed on the disputed building, though it has been repeatedly said that the original text has disappeared. And that such blatantly fallacious material has been allowed to be published in a book under the

authority of ASI, Government of India, without caring about its accuracy, correctness and genuineness of the subject. The work of the historians tracing out the inscriptions of Emperor Babur which was inscribed in 8 Persian Couplets placed in the Central entrance of the Mosque and reproduced in a photograph of the said inscription which was brought out in the official publication of Archeological Survey of India; the Epigraphia Indica; Arabic & Persian Supplement (1964 and 1965). The said Book has reproduced a photograph of the inscription from which one can check his decipherment. The said inscription remained in situ position on the entrance of the Mosque until 6th December, 1992 when the Karsewaks, took away the same after their act of demolition. The said inscription has been demolished by the barbaric act of the Karsewaks. The proof of such inscription as published by the Archeological Survey of India has been castigated by the Hon'ble Judge in such a manner as if the work of historians and Archeologists are worth nothing and the Court will decide as to which history is correct and which needs modification.

xxvi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that there were no pleadings or evidence as to any suspicion of forgery of the said inscriptions and no party had made any suggestion about the likelihood of the inscriptions having been affixed at any time between 1528 and 1889 AD when the same were published in the book of Fuhrer. In this respect it was wrongly observed that the same were subsequently

implanted and it is also incorrect to say that the correct reading of the said inscriptions could in any way show that the said building was not constructed in 1528 AD (See page 1461 in Volume - VIII).

xxvii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the Second Book of A. Fuhrer referred on page 1617 of the Judgment also mentioned about the construction of the Mosque during the reign of Babar and as such finding given by the Hon'ble Judge about the construction of the building in dispute between 1608 and 1766 A.D. was totally unfounded and perverse (See page 1617 of the Judgment in Volume - IX).

xxviii. That Hon'ble Justice Sudhir Agarwal wrongly observed that the plaintiffs' counsel could not in any way co-relate "Mir Baqi" with "Baqi Shaghawal" or "Baqi Tashkandi" to show that they were the same persons (kindly see page 1619 of the Judgment in Volume - IX). In this respect it is relevant to mention that the Hon'ble Judge failed to appreciate that it was specifically pointed out to him by the plaintiffs' counsel Sri Zarfaryab Jilani that in different translations of Babar Nama including those of Beveridge and Athar Abbas Rizvi etc. there were several descriptions to show that Mir Baqi was a historical personage and actually Babur's Commandant of Awadh (Ayodhya). These entries make it clear that while Babur was on a campaign crossing the Gomti and then the Ganga, 'Baqi Tashkandi' joined his camp coming with the

Awadh (Ayodhya) troops on 13-6-1529. On 20th June, 'Baqi Shaghawal' was given leave to return along with his Awadh troops. These references make it clear that (1) Baqi was the commandant of troops at Awadh (Ayodhya), so here the Babri Masjid inscriptions stand confirmed; and (2) he was a native of Tashkant and bore the official title of Shaghawal. The 'Shaghawal' used to be an official of rank who could not be impeded when fulfilling royal orders by anyone howsoever high. It may also be relevant to mention that an explanation regarding the said "Shaghawal" was offered by Professor Shireen Moosvi (PW 20) also but the same appears to have been ignored by the Hon'ble judge. It is thus evident that the line of reasoning of the Hon'ble Judge about the name of Mir Baqi was based on untenable assumptions and conjectures. (See page 1764 of the Judgment in Volume - X).

xxix. That Hon'ble Justice Sudhir Agarwal has given undue importance to the misreading of the inscriptions by the person who had tried to read the 2 inscriptions in question in March, 1946 and who had read the words "Asaf-i-sani" as "Mir Baqi Isfahani" but simultaneously he had also read the word "Mir Baqi" as is given in Exhibit 53 (suit 4) (Register 12 page 355-358). It is also relevant to mention here that neither Exhibit A-42 (Register 8, P. 431 to 452) nor Exhibit 53 referred to above contained the exact language of any of the 2 inscriptions which is evident from the stumpages of the same, reproducing the original letters of the said inscriptions, given in Epigraphia Indica-Arabic and Persian Supplement 1965 (Plate XVII,

pages 58-62). Almost the same language has been given in paper No. 43-A filed by the defendant No. 20 (suit 4) which is an extract of Babur Nama by A.S. Beveridge, Volume.II, Appendix U (Register 18 P. 45-49). It is thus evident that there was no use of the word "Mir Baqi Isfahani" in any inscription of Babri Mosque- and the Hon'ble Judge has misdirected himself by relying upon the said incorrect reading of inscriptions. In this respect the argument of Mr. P.N. Mishra, Senior Advocate, was also given undue weightage while the same was totally against the pleadings and evidence on record including the pleadings and evidence of Defendant No. 20. It was also not appreciated by the Hon'ble Judge that there was no case of any party about the inscription placed in the outer wall of the middle dome to have been ever implanted after 1528 A.D. and as such there was no question of the language of the same being doubted for any reason whatsoever (See pages 1624-1625 of the Judgment in Volume - IX).

xxx. That Hon'ble Justice Sudhir Agarwal has wrongly observed that that the original text of the said inscriptions was not available at all while the fact is that the said text, as admitted by Historians of both the sides, was very much on record and there was no evidence to the contrary except some observations of Fuhrer which were based on misreading of one inscription. In this respect reference made to the books written in Urdu in 20th century (wrongly referred as 19th century) was unwarranted and these books were wrongly

relied upon as none of them was a book of History and it was not at all proved that the author of any of these books was a historian but rather the same were the books of fiction. (See pages 1762-1763 of the Judgment in Volume - X).

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

xxxii. That Hon'ble Justice Sudhir Agarwal wrongly castigated and made uncharitable and unwarranted remarks against the Historian and Archaeologist witnesses produced by the Muslims. In this respect it was wrongly observed in paras 3607 and 3620 (page 3604 and 3639 respectively in Volume - XVII) that the expertise and authority of PW-15 (Professor

Sushil Srivastava) and PW-18 (Prof. Suvira Jaiswal) was challenged by Professor Shirin Moosvi (PW-20). It was also wrongly observed that any part of the statement of PW-16, Professor Suraj Bhan, was in contradiction with the statement of PW-13 (Dr. Suresh Chandra Mishra) as stated on page 3633 (in Volume - XVII). The Hon'ble Judge appears to have been influenced by irrelevant consideration, also while dealing with the statements of witnesses of Muslim side and his observation made is para 3616 (at page 3634) about the testimony of PW-16 (Professor Suraj Bhan) is indicative of the same. Similar is the observation made by the Hon'ble Judge in para 3619 (page 3639 in Volume - XVII). In this respect the observations made regarding the reason of support said to have been given by PW-18 to PW-16, PW-20 and PW-24 was also wrongly doubted. The observations made in paras 3622, 3623, 3624 and 3626 were also totally unjustified, improper, unwarranted and not sustainable. So also the observations made about PW-24, Professor D. Mandal in para 3628 (at page 3646 in Volume - XVII) and in para 3629 (at page 3655) were also totally unjustified, improper and unwarranted. (Kindly see pages 3591-3655 of the Judgment in Volume - XVII).

xxxiii. That Hon'ble Justice Sudhir Agarwal has wrongly observed that the person who for the first time noticed the above inscription was Dr. F.C. Buchanan and it was also against his own finding given in para 1601 (at page 1720 in Volume - IX) that Montgomery Martin "was the first person to tell us about

inscriptions on the wall of the disputed building.....". This observation of the Hon'ble Judge was also totally imaginary and conjectural that as if the work of survey was not the field of expertise of Dr. Buchanan. (See page 1769 of the Judgment in Volume - X).

xxxiv. That Hon'ble Justice Sudhir Agarwal wrongly relied upon the alleged local belief said to have been referred by Buchanan about the so called demolition of temple by Aurangzeb and construction of Mosque at the site thereof. In this respect the reasoning given by the Hon'ble Judge that the period of Aurangzeb was only about 100 years back while the period of Babar was about 275 years more and therefore it was difficult to conceive that the local people were not conversant as to who was responsible for demolition or during whose reign the construction was made particularly when the matter was comparably recent. The criticism made by the Hon'ble Judge against the approach of Buchanan to ignore the alleged local belief that the building in dispute was constructed during the reign of Aurangzeb was totally unjustified and unwarranted. It was also wrongly observed by the Hon'ble Judge that from plain reading of the text of inscriptions the period mentioned therein was found to be 923 A.H. or 930 A.H. (See page 1770 of the Judgment in Volume - X).

xxxv. That the entire belief as reflected in the history is with respect to Ayodhya town and not the disputed place. The Hon'ble Judge has quoted the visit of Guru Nank Deoji of 1510-1511 AD (Para 4384 at page 4945 in Volume - XXII) which shows

that the city of Ayodhya was considered to be the place of birth of Lord Rama. In the next paragraph (4386) the Hon'ble judge has gone to the book of Joseph Tieffenthaler of 18th Century to justify the demolition of the alleged temple for construction of Mosque. Firstly, the Hon'ble Judge has omitted the historical part between 1511 to 1750 A.D which is very relevant in the facts and circumstances of the case. Secondly, the record of Joseph Tieffenthaler has been selectively used ignoring the other part of his account.

xxxvi. That Hon'ble Justice Sudhir Agarwal has wrongly observed that the Accounts of Tieffenthaler referred to worship of the so called 'Bedi' (cradle) by the Hindus inside the building in dispute. The said Bedi was reported to be situated like a square box of the height of about 5 inches only with a size of about 5 X 4 ells. This place was not described as a part of any temple but the belief mentioned about the same was that "once upon a time, here was a house where Beschan was born in the form of Ram." As such it is totally incorrect to say that Tieffenthaler had "noticed worship by Hindus" but was "conspicuously silent about worship by Muslims in the disputed building." (See page 1767 of the Judgment in Volume - X).

The Hon'ble Judge has dealt with Issue No.7/ Suit No.1, Issue Nos. 3 & 8/Suit No.3, Issue Nos. 2,4, 10, 15 and 28/Suit No.4

It is material to point out that the Hon'ble Judge has sought to decide the above issues in relation to adverse possession/possession while deciding the issue of limitation in Para 2620 (at page 2565 in Volume – XIII) stating, "...Moreover, as a matter of fact, the place in dispute continued to be visited by the Hindus for the purpose of worship, Darshan etc. The religious status of plaintiff-deities remained intact. We do find mention of the fact that despite construction of the building as Mosque, the Hindus visited there and offered worship continuously, but we find no mention, whatsoever, that the Muslims also simultaneously offered Namaz at the disputed site from the date it was constructed and thereafter till 1856-57. At least till 1860 we find no material at all supporting the claim of the Muslim parties in this regard. On the contrary, so far as the worship of Hindus in the disputed structure is concerned, there are at least two documents wherein this fact has been noticed and acknowledged. There is nothing contradictory thereto". In this respect, reliance has been placed upon the observations of Tieffenthaler and Edward Thornton as well as Ext. 20 of suit No. 1. (See pages 2566-2568 of the Judgment in Volume XIII) This finding of the Hon'ble Judge, while dealing with the issue of limitation, is on the basis of mis appreciation of evidence and is liable to be set aside. Similarly, the said observation is without legal basis in the context of deciding the issue of possession/adverse possession in view of cogent and material evidence placed on record by the Plaintiffs of Suit No.4 and for

the said purpose, the Appellant seeks to rely upon the statement of Counsel for the Plaintiff in Suit No. 4 as set out in Para 2772 at pages 2263/2265 in Volume – XII. The finding of Hon'ble Judge is misconceived and based on mis-appreciation and wrong interpretation of the evidence on record.

xxxvii. That Hon'ble Justice Sudhir Agarwal has wrongly observed that at the time of visit of Tieffenthaler the inscriptions in question were not there in the building in dispute as there was no mention of the said inscriptions in the Accounts of Tieffenthaler (See page 1767 of the Judgment in Volume - X).

xxxviii. That Hon'ble Justice Sudhir Agarwal wrongly drew the inference about the non existence of inscription on the disputed building, either inside or outside, during the period of visit of Tieffenthaler, merely on account of the reason that there was no mention about the same in the Traveler Accounts of Tieffenthaler. In this respect the Hon'ble Judge failed to appreciate that from the existence of 12 black stone Pillars it was said by Tieffenthaler that the building was constructed by Babar and he had referred to the existence of 12 of these Pillars supporting the interior arcades of the Mosque. In view of this categorical assertion made by Tieffenthaler there was no occasion for the Hon'ble Judge to have drawn the inference that there was no inscription on the disputed building at that time (See page 1769 of the Judgment

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

xl. That it has been erroneously observed by Hon'ble Justice Sudhir Agarwal that Travellers Accounts of Father Joseph Tieffenthaler (Austrian Priest) published in 1786 "mentions about the alleged temples at the birth place as well as its demolition ..... and construction of a Mosque thereat." It is also wrongly observed by the Hon'ble Judge that the said Tieffenthaler's work written between 1740-1760 and onwards could not be seen by subsequent Historians. Both these observations of the Hon'ble Judge stand belied by the extracts of the said book of Tieffenthaler filed as paper No. 107 C-1 / 96-107 C-1/104 (Ext. 133, Register 12, P.273-319) which was got translated by the court itself and the said translation is given in Annexure IV to the Judgment of D.V. Sharma J., on pages 148-154. On page 255 of the said book there is a reference of 1767 and as such there was no question of the book having been completed before 1767. Similarly, the said

book nowhere refers to any temple being situated at the alleged birth place of Lord Rama. The relevant extracts of the said Book of Tieffenthaler as given in Annexure IV to the Judgment of D.V. Sharma J. on pages 151-153 are being quoted as under:-

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"The most remarkable place is the one which is called Sorgadaori, which means: the celestial temple. Because they say that Ram took away all the inhabitants of the city from there to heaven: This has some resemblance/similarity to the Ascent of the Lord. The city, thus deserted, was repopulated and was brought back to its earlier status by Bikarmadjit-the famous king of Oude (OUDH).

There was a temple in this place constructed on the elevated bank of the river. But Aurengzebe, always keen to propagate the creed of Mohammed and abhorring the noble people, got it demolished and replaced with a mosque and two obelisks, with a view to obliterate even the very memory of the Hindu superstition. Another mosque built by the Moors is adjacent to the one towards the East.

Close to Sorgadoari is a building constructed lengthways by Nabalray-a Hindu, a formerly lieutenant of the Governor (propraetor) of this region (a).

But a place especially famous is the one called Sitha Rassoi i.e. the table of Sita, wife of Ram, adjoining to the city in the South and is situated on a mud hill.

Emperor Aurengzebe got the fortress called Ramcot demolished and got a Muslim temple with triple domes, constructed at the same place. Others say that it was constructed by 'Babor'. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there. Twelve of these pillars now support the interior arcades of the mosque. Two (of these 12) are placed at the entrance of the cloister. The two others are part of the tomb of some 'Moor'. It is narrated that these pillars, or rather this debris of the pillars skillfully made, were brought from the island of Lanca or Selendip (called Ceylan by the Europeans) by Hanuman, King of Monkeys.

On the left (K) is seen a square box raised 5 inches above the ground with borders made of lime, with a length of more than 5 ells and a (L) maximum width of about 4 ells. The Hindus call it

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Bedi i.e. the cradle. The reason for this is that once upon a time, here was a house where Beschan was born in the form of Ram. It is said that his three brothers too were born here. Subsequently, Aurengzebe or Babor, according to others, got this place razed in order to deny the noble people, the opportunity of practising their superstitions. However, there still exists some superstitious cult in some place or other. For example, in the place where the native house of Ram existed, they go around 3 times and prostrate on the floor, The two

spots are surrounded by a low wall constructed with battlements. (M) One enters the front hall through a low semi-circular door.

Not far from there is a place where one digs out grains of black rice, turned into small stones, which are said to have been hidden under the earth since the time of Ram.

On the 24th of the Tschet month, a big gathering of people is done here to celebrate the birthday of Ram, so famous in the entire India.

This vast city is a mile away from Bangla at the east towards E.N.E. such that its latitude also will be greater by about one minute than that of Bangla.

The fortress constructed in square form situated on the elevated bank of the river, is equipped with round and low towers. The walls need to be repaired. It is uninhabited and is not protected. Earlier, the Governors of the province had their residence here. Sadat Khan (N) frightened by a bad forecast got it transferred to Bangla. Today, it is destroyed from top to bottom.

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Bangla or Fesabad was founded by Sadatkhan, after he had abandoned the city of 'Oude'. A native of Persia, he was, the Governor of this province, more than 40 years ago. He constructed a place (a) cultivated a nice garden, in the Persian

style and established his residence here. Gradually, this place became a city, the length of which is more than a mile.

The Present Governor, grandson of that person, adorned the city with many buildings and gardens, after the entire province was returned to him by the British, in 1765. He also widened the passage which was narrow earlier and provided the fortress with a ditch, round towers and a rampart, so that the thick population could have a city with a big surrounding wall. (P) The geographical latitude of this place, observed in 1767, was situated at 26 – 29.

Goptargath is a place planted with thick trees, a mile away from Bangla, on the southern bank of Gagra. It is situated on a hill which is less steep and is provided with mud towers on four sides. An underground pit is seen in the middle, covered with a medium sized dome. Near it is a very old and big tamarind tree.

A portico extends around it. It is said Ram, after having defeated the Giant Ravan and having returned from Lanka, descended into this pit and disappeared. Deriving from this, this place was named 'Gouptar' which means 'Departure for the Air'. Therefore, you have Descent into the Hell, there, which is similar to 'Rising into the Sky' that you had in 'Oude'. One will be able to have an idea about the locality and shape/form of this place (b) from the figure."

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(Kindly See page 1766 of the Judgment).

xli. That while dealing with the issue relating to the existence and demolition of temple, specially Issues No. 1 (b) (Suit-4) and 14 (Suit-5) Hon'ble Sudhir Agarwal, J. erroneously observed that the oldest document mentioning about existence of temple and demolition of the same at the site of disputed structure is Tieffenthaler's Traveller's Accounts (Ext. O.O.S. 5-133). (See pages 3502-3509 of the Judgment in Volume - XVII).

xlii. That Hon'ble Justice Sudhir Agarwal has drawn absolutely wrong and unwarranted inferences from the account of William Finch and in this respect the plaintiffs' counsel Mr. Jilani has also been misquoted. It was never argued from the Muslims' side that the account of Willam Finch "lends no credence." As a matter of fact Muslims' counsel had contended that from the said account of William Finch it was evident that in 1608-1611 there was no place of significance known as the birth place of Lord Rama and there was no such belief of the local people that any alleged temple situated on any such alleged Janamsthan was demolished by Babar. It was also wrongly observed by the Hon'ble Judge that the plaintiffs' counsel could not suggest that in Ayodhya there was any other place than the disputed site which may be considered to be the Fort of King Dashrath or Lord Rama in ancient times. The description of Oude (Ajodhya) as given in the relevant extract of the Travels Account of William Finch (Ext. O.O.S 5-19 on page 271 of Register 21) refers to "ruins of Ranichand (s) castle and houses which the Indians

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

Mosque was undoubtedly of no historical significance at that time. The said Mosque could have been of any significance had the same been constructed at the alleged place of birth of Lord Rama after the destruction of any temple and had it been so, it would have been definitely taken notice of by William Finch. It was in this light that the said extract of the Travels Account of William Finch was placed by the plaintiffs' counsel Sri Jilani, Advocate with great vehemence to substantiate his argument that no incident of the alleged demolition of any temple had taken place in 1528 AD and else the same would not have gone unnoticed by William Finch (See pages 1686-87 and 1765 of the Judgment in Volumes IX and X respectively).

xliii. That Hon'ble Justice Sudhir Agarwal wrongly observed that P. Carnegi's Historical Sketch (published in 1870) was the first document which mentioned about the worship in the disputed structure by Muslims also and the Gazetteer of W.C. Benett (1877) and the report of A.F. Millitt etc. were also misappreciated and wrongly relied upon against the Muslims. (See pages 2568-2570 of the Judgment in Volume - XIII).

xliv. That Hon'ble Justice Sudhir Agarwal wrongly held that Muslims had completely failed to prove their possession, whether adverse or otherwise from 1528 A.D. and onwards and except of bare pleadings nothing has been brought on record to prove the same. In this respect also Travellers accounts of William Finch and Joseph Tieffenthaler,

Gazetteers of Walter Hamilton, Edward Thornton and P. Carnegi as well as Exts. A-13, A-14, A-16, A-17, A-69, A-70 and Exts. 15, 19, 20, 21, 22, 24, 25, 27, 28, 29, 30, 31 and 54 etc. (Suit-1) were either misread or misappreciated and as such the finding of Issue No. 7 (Suit-1) based on the misappreciation / misreading of aforesaid evidence was illegal and unsustainable. (See pages 2811-2829 of the Judgment in Volume - XIV).

(xlv.) That the observations of Hon'ble Justice Sudhir Agarwal about Martin and Buchanan etc. regarding the inscriptions in question were based on no material on record and the same were not at all justified (See page 1720 of the Judgment in Volume - IX).

(xlvi) That Hon'ble Justice Sudhir Agarwal while dealing with the arguments of Sri P.N. Mishra, Advocate about the so called attack and damage to the alleged temple at the time of Aurangzeb and construction of the Mosque in question during that very period failed to appreciate that there was no such pleading and evidence of the defendant No. 20 also who was represented by Sri P.N. Mishra, Advocate and no such issue was also framed and as such the argument of Sri P.N. Mishra, Advocate was liable to be rejected on this ground alone. It was also wrongly observed by the Hon'ble Judge that the Book of Niccolao Manucci (1653-1708) had made any reference to the so called Janam Asthan temple as he had not even included Ayodhya in the list of 7 places which were referred by him having principal temples. The said book had

not at all made any reference of the place of birth Lord Rama and by such omission in the said book it was evident that there was no belief / faith of Hindus at least upto that time about any alleged place of birth of Lord Rama or about the demolition of any alleged Janam Bhoomi temple and construction of Mosque at the site thereof. Out the so called 4 chief temples said to have been destroyed by King Aurangzeb one was said to be situated in Ayodhya, though not historically proved, it could also in no way be connected with the so called Janam Bhoomi temple. (See page 1752-1754 of the Judgment in Volume - X).

(xlvii) That while referring to the Book of Francois Martin dealing with the period of 1670-1694 A.D. Hon'ble Justice Sudhir Agarwal failed to appreciate that there was no mention of demolition of any temple of Ayodhya in the said description given in the aforesaid Book also. (See page 1754-1756 of the Judgment in Volume - X).

(xlviii) That while referring to the observations of Stanley Lane Pool, the Hon'ble judge has failed to appreciate that although there was specific mention of the alleged destruction of temple of Vishnu at Banaras, shrine at Mathura and bringing of Idols of the said temples to Agra and burial of the same under the steps of the Mosque but there was no description of the demolition of any temple at Ayodhya even in this Book written by a person who is said to be a staunch opponent of Aurangzeb. (See pages 1757-1758 of the Judgment in Volume - X).

(xlix) That while dealing with the above issues, Hon'ble Justice D.V.Sharma has failed to take into consideration the facts that during the period between 1653-1708 A.D , as reflected in the book "Moghal India" by Nicolao Manucci, there was no belief with respect to the said place being the birth place of Lord Ram and hence there is no question that prior thereto, the followers of Lord Ram would have believed that place to be the birth place of Lord Ram and accordingly there cannot be any presumption that the land could have been earlier used to be worshipped as the place of birth of Lord Ram. The basic foundation of the Hon'ble Judge is that since the said place was believed to be the place of birth of Lord Ram and hence prior to the construction of Mosque, a temple existed and the said Mosque was built after removing the structure which was a non-Islamic structure. It is reiterated that it was the case of the Plaintiff that before 19th Century there was no belief that Babri Masjid was constructed after demolition of any temple or Hindu structure and there was no association of the alleged birth place of Lord Ram with the land in question and without dealing this issue in proper perspective the Hon'ble Judge has erroneously proceeded on the basis of presumption that the place of birth of Lord Ram is the land in question. On the basis of faith and belief giving any relief of this nature is one issue which the Plaintiffs have challenged separately also the reliance of the Hon'ble Judge on the said belief and appreciate the evidence in that background becomes erroneous and misconceived. The Plaintiff had shown from the record that

during the period 1770-1870 A.D the tradition and belief/faith was in respect of Janamsthan temple situated in the northern side of Babri Masjid to be the place of birth of Lord Ram. The said belief as introduced in the Gazetteer in 1870 A.D is about the alleged temple said to have been demolished. It was however not noted by the Hon'ble Judge that the Hindu side witnesses and theologists produced in court stated in their examinations that the era of Lord Ram would have been about 9 lacs to 1 crore years before. On the basis of the Gazetteer of 1870 A.D, the belief could not have developed overnight about such ancient happening and tracing the place to be that very place where the Mosque existed.

(I) That the belief of Lord Ram having been born at the place of Mosque was not mentioned in the Gazetteer of Walter Hamilton 1815/1828 A.D. Neither the said Gazetteer had mentioned about destruction of temple and erection of Mosque in place thereof after demolishing the Temple.

(Ii) That it is evident from the grounds set out above that the Hon'ble High Court's findings that are premised on the historical evidence as well as the evidence of the historians is erroneous because these findings are not based on factual material on record but on assumptions that have been drawn by the Court on the basis of facts not having been stated by the historians. It is respectfully submitted that unless the historians had been cross-examined or the history rebutted, the Hon'ble High Court could not have drawn conclusions from facts not stated. For example, it is submitted that merely

because Tieffenthaler did not make any mention about the inscriptions could not lead to the conclusion that the inscriptions did not exists unless Tieffenthaler was cross-examined. Similarly, merely because the inscriptions may not have been set out at a prominent place on the structure of the Mosque would not mean that they were not made in 1528 AD, without any expert historical evidence being led to the contrary that in 1528 AD all inscriptions were always set out at prominent places in any Mosque that was built

(I) ERRONEOUS RELIANCE ON FAITH AND BELIEF

i. That even as per belief and faith of Hindu devotees of Lord Rama that Lord Rama, as described in Balmiki Ramayana, was born in Ayodhya, there is no description in Ramayana that at which specific place Lord Rama was born. The statement of the Counsel of Muslim Parties recorded on 22.04.2009 was to be read in the same background. In any case no definite knowledge about any specific place of birth of Lord Rama was possible in view of the fact that the Hindu side witnesses themselves have stated that the said birth of lord Ram had taken place at least more than 9 lakh years ago. OPW.1 Mahant Ram Chander Dass has stated that there is no mention about the period of birth of Lord Ram in *Ram Charitmanas* reason being that he has been considered *Anadi*. The said witness has made the speculation that Lord Ram might have been born lacs of years before. (Pages 81 and 82 of the evidence). Similarly, another witness being OPW 9 Dr. T.P.Verma has stated that Lord Ram's birth should

be 15-16 lacs years before and has further proceeded to say that according to his belief Lord Ram was born 17 Lacs years before (Page 98 of evidence). The other witness OPW 12 Shri Kaushal Kishore Mishra has similarly stated that Lord Ram's birth should be lacs of years before and the first birth of Lord Ram should be at least 3 Crores years before and has further stated that the era of Lord Ram Chander Ji should be 10 lacs years before from today. (See Page 51 and 101 of evidence). The OPW 16 Ramanandacharya-Rambhadracharya have stated that Ram Chander Ji was born in seventh manu era and the era of Dashrat ji was 1 crore 50 lacs 80 thousand years before. Similarly, the other witnesses DW-2/1-1, Rajinder Singh, DW-3/1 Mahant Bhaskar Dass, DW-3/5 Raghunath Prasad Pandey, DW-3/6 Sita Ram Yadav. DW-3/7 Mahant Ramji Dass, DW-3/20, Raja Ram Acharya and other witnesses have deposed on the basis of their faith and belief stating that Lord Ram's era was more than 9 lac years ago.

ii. That in the judgment itself, Hon'ble Justice S.U.Khan has recorded that the Counsel for Hindu parties failed to give specific reply to the query as to whether the "Janam Asthan" or "Janam Bhoomi" meant the exact place where Kaushalaya, the mother of Lord Rama, gave birth to him or it may be the room in which the birth took place or that meant the entire building where the mother of Lord Rama resided. It is also material that in the Plaint filed by *Bhagwan Sri Ram Lala Virajman (Suit No.5)* no efforts were made to identify or

specify the exact place of birth. The above stand and facts itself prove that Issue No.11 (Suit No.4) which states that "*is the property in suit the site of Janam Bhoomi of Sri Ram Chandra Ji*" should have been decided against the Hindus who claimed the disputed building being birth place of Lord Rama.

iii. That Hon'ble Justice S.U.Khan has observed that it was not possible that one of the favourite queens of Raja Dashrath would have resided in a mansion constructed only on an area of about 1500 Sq.Yds when the houses of even medium level people used to be of quite large area. The Hon'ble Judge has further observed that contemporary famous writer, Tulsi Dass (1532 to 1623 A.D) who wrote Ram Charitmanas, would have mentioned atleast something about the belief that Lord Rama was born on the disputed site, or that Babar demolished a temple to construct a mosque at the "Janam Asthan". However, these are material omissions in the Ramcharitmanas. Even on this ground it cannot be assumed that there was any such belief of the Hindu devotees about the birth place of Lord Ram being there on the disputed land in or around 1528 or 1570 AD. However, even after giving such findings the Hon'ble Judge has erroneously accepted the belief of Hindus, although for few decades before 1949, and has erroneously allotted the portion of middle dome to Hindus without any basis. This is without prejudice to the stand of the Appellant that the title and interest etc. of the property in suit

cannot be decided on the basis of belief and faith of any section of the people.

iv. That the observation of Hon'ble Justice S.U.Khan is wrong, baseless and without any merit that after construction of the Mosque, Hindus started treating / believing the site thereof as the exact birth place of Lord Rama. No material or tenable evidence about any such belief/ faith of Hindus has been placed on record. The Hon'ble Judge has further wrongly observed that in the oral evidence of some Muslims it had come that Hindus believed that the said birth place is beneath the demolished Central dome of the Mosque. Such statements, if any, referred to the belief of post 1949 period and not of pre 1949 period. (See pages 243 / 244 of the Judgment of S.U.Khan J. in Volume - II).

v. That the finding about the possibility of there being ruins of some Buddhist religious place on and around the land on which the Mosque was constructed was not based on admissible evidence and was simply a matter of conjecture, without any material basis and without any cogent evidence.(See page 246 of the Judgment of S.U.Khan J in Volume - II).

vi. That Hon'ble Justice Sudhir Agarwal himself has stated that the controversy in the instant case involved historical, religious, philosophical, social and sociological aspects and hence discussed about the features of Hindu religion and belief. The entire discussion made by the Hon'ble Judge with respect to

religious belief, as quoted from different parts of Vedas, Puranas, history, Hindu philosophy etc. is a way to support the belief of a particular religion without acknowledging the belief, religion and history of the other contesting party. The entire discussion on the basis of which the finding of this issue has been given in para 4418 at page 4999 (in Volume - XXII) is contrary to constitutional guarantee given to the followers of other religions in the country.

vii. That Hon'ble Justice Sudhir Agarwal's finding on belief and faith is itself self-contradictory since the Hon'ble Judge has himself raised questions with respect to belief and faith in para 4292 (at page 4743 in Volume - XXI) of the impugned judgment by raising question of an outsider as to whether Hindu religion is a museum of beliefs, medley of rites, or a geographical expression.

viii. That Hon'ble Justice Sudhir Agarwal has relied upon inadmissible and untenable evidence to prove the alleged belief of Hindus in relation to the building in dispute. The oral evidence with respect to the said belief is of no avail as the same could not prove the said belief of the followers of Lord Ram even for one hundred years while the era of Lord Ram, as stated by most of the witnesses of Hindu side was very old. The said witnesses have speculated that Lord Ram was born between more than 9 lacs to 17 lacs years earlier.

ix. That the issues relating to the belief/ faith of Hindus have been dealt with in the background of the constitutional scheme of

right to religion as contained in Articles 25 and 26 of Part-III of Constitution of India without appreciating that the said Fundamental Rights are available to all the persons equally.

The Hon'ble Judge without dealing with the said constitutional guarantee in proper perspective has relied upon the judgment given in the matter of *Commissioner of Police Vs. Acharya Jagdishwarananda Avadhuta and Another 2004 (12) SCC 770* to conclude about the belief upon which the religion is founded. This judgment is in relation to a question of law *"whether performance of Tandava Dance in public is an essential practice of the Anand Margi's"*. The entire premise of the judgment is to give a proper perspective, meaning and practice of a particular performance within a particular religious practice without involving the rights of followers of the other religion and without affecting the belief of the other religion. Placing reliance upon the said judgment is entirely misconceived, improper and without context leading to the perverse finding to frustrate, and take away the belief of the followers of other religions, thereby infringing upon the fundamental rights of the other communities as guaranteed in Constitution of India.

x. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the so called belief / faith of Hindus regarding birth place of Lord Rama being inside the disputed structure could in no way be said to be either centuries old or continuing for even one century as the said place had been described by the Mahants of Nirmohi Akhara even upto 1941 as a Mosque and not as a

place of birth of Lord Rama as was evident from the decree and Commissioner report etc. of Regular Suit No. 95 of 1941 as well as from the documents of 1885 suit. (See pages 1982 – 1983 of the Judgment in Volume - X)

xi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that by applying the test laid down by the Hon'ble Judge himself in paragraphs 1898 and 1899 etc. of his Judgment (at page 1978 in Volume - X) the site in dispute below the middle dome of the Mosque could in no way be held to be the place of birth of Lord Rama as there was no such belief / faith of Hindus coming down from times immemorial in the face of Hindus' own admissions made about the same in the Suit of 1885 as well as in Suit No. 95 of 1941 and in several other papers / documents etc. It was also wrongly observed that such an alleged faith and belief could not be scrutinized through any judicial scrutiny in order to examine as to whether such a belief / faith existed from time immemorial and could in any way be treated as a belief / faith of the entire community continuing for several centuries or even for one century (See pages 1986 and 3502 of the Judgment in Volumes X and XVII respectively).

xii. That the vagueness of the words "*Janam Sthan*" and "*Janam Bhoomi*" are writ large and nobody could give any definition to these words. It is relevant that in Suit No.5, no efforts have been made to identify, specify and pin-point the alleged place of birth.

xiii. That while dealing with Issue No. 16 (Suit-5) Hon'ble Justice Sudhir Agarwal wrongly observed that the question of loss of title would not arise as the premises in dispute was held to be the alleged birth place of Lord Rama. It was also wrongly observed that the idols kept in the building in the night of 22nd / 23rd December, 1949 continued to remain in possession of the property in dispute. In this respect it was not at all considered that the idols forcibly kept in the Mosque in the night of 22nd / 23rd December, 1949 could never be said to have come into possession of the property in dispute which was being treated as a Mosque till then. (See page 2965 of the Judgment in Volume - XIV).

xiv. That Hon'ble Justice Sudhir Agarwal has wrongly recorded that facts summarized by him in para 2618 were the facts as pleaded by all the parties (including Muslims), whereas the fact is that at the most these facts could be said to be based upon the pleadings of mainly Hindu parties. In this respect it has been wrongly recorded that so far as the plaintiffs in the present suit (Suit-5) are concerned "their status or their worship continued to be observed and followed in one or the other manner." To say that "no action or inaction in the meantime was such whereagainst the plaintiffs could claim a grievance and right to sue" is incorrect. It is further wrongly observed by the Hon'ble Judge that the religious status of the so called deities (plaintiffs 1 and 2 of Suit-5) remained intact. (See pages 2563-2566 of the Judgment in Volume - XIII).

Deity- Legal Person

xv. That Hon'ble Justice Sudhir Agarwal has erroneously held that crucial aspect about the existence of alleged deities under the central dome would be whether the idols kept therein in the night of 22nd / 23rd December, 1949 were placed in such a manner that the people who visit to worship, believe that there exists a divine spirit and that it is a deity having supreme divine powers. In this respect the Hon'ble Judge failed to appreciate that divinity / consecration of these idols was not to be decided merely on the basis of belief, especially so, when the divinity was being challenged by the members of another community who had been worshipping at the place in question as a Mosque. Therefore, the burden to prove the alleged consecration as well as divinity was greater upon the persons who wanted the court to believe that the idols in question were duly consecrated. In this respect, the statement of Sri D.N. Agarwal has wrongly been relied upon as admittedly he was not present at the site when the said idols were placed under the central dome of the disputed building in the night of 22nd / 23rd December, 1949 and it was also wrongly observed by the Hon'ble Judge that OPW-1 (Param Hans Ram Chandra Das) or any other witnesses had proved this fact. Further, it has wrongly been observed that it could not be said that the idols in question placed there in the night of 22nd / 23rd December, 1949 were not properly consecrated. It is submitted that the Hon'ble High Court has erred in not appreciating that the idols in question had been stealthily and illegally placed under the central dome. Further, the observation of the Hon'ble Judge

that the status of deity could not be assailed by those who had no belief in idol worship is improper and misconceived. Accordingly the findings given by the Hon'ble Judge on Issue No. 12 (suit 4) as well as on issue No. 3 (a) and issue No. 21 (suit 5) are erroneous and against the evidence on record and it is wrong that plaintiffs No. 1 and 2 of Suit No. 5 were juridical persons and enjoyed the status of deity under Hindu Law. (See pages 2172-2174, 2184-2185 of the Judgment in Volume - XI).

xvi. That Hon'ble Justice Sudhir Agarwal has failed to appreciate that the idols placed on the Chabutra were said to be looked after by the Nirmohi Akhara and as such if the said idols could be said to be a deity there was no justification to observe that there was nothing on record to show that any person claimed himself as shebait of plaintiff No. 1, (alleged deity). In this respect Issues Nos. 2 and 6 (suit 5) were wrongly decided and it was wrongly held that suit No. 5 could not be held as not maintainable on account of defect of pleadings with respect to the status of the next friend or Shebait (See pages 2185- 2186 of the Judgment in Volume - XI).

xvii. That Hon'ble Justice Sudhir Agarwal has erroneously made an unsubstantiated statement in Para 3969 (at page 4275 in Volume - XX) that animal sacrifices are made in certain Hindu temples and their flesh is consumed as 'Prasad' and their bones deposited below the floor at the site. It is submitted that no such temple at Ayodhya is evidenced presently or in the past.

It is further submitted that such sacrifices were offered either to Lord Shiva, or Yama, the God of the dead. Incarnations of Lord Vishnu are not connected with such rites. Besides, nothing is said of the worshippers eating the flesh of the sacrificial animals. The prevalence of the Kali cult in the Upper Gangetic basin where Ayodhya is situated is largely unknown. Therefore, the imaginary temple beneath the Babri Masjid containing animal bones ought to be a Kali or Bhairava Temple rather than a Rama Temple. Further, full skeletons should have been found instead of separate, scattered bones, as were actually found in the excavations, according to the ASI's records. It is submitted that it was never the case of the Hindus that there existed a Kali or Bhairava Temple at the disputed site.

(J) **ERRONEOUS CONCLUSIONS DRAWN FROM STATEMENT OF COUNSEL**

i. That Hon'ble Justice S.U.Khan has mis-interpreted the statement of counsel for the Waqf Board and other Muslim parties, which records that "*for the purposes of this case, there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth place of Lord Rama at Ayodhya as described in Balmiki Ramayana or existing today....*". It is clear that the statement of counsel for Muslims is based "*on the faith of Hindu devotees of Lord Rama*" and *"as described in Balmiki Ramayana", whereas* the Hon'ble Judge has proceeded on the premise that the said statement is based upon factual grounds and not on "*the faith of Hindu devotees*". This is a serious flaw and may give a wrong impression about

the stand of the Muslim Parties with respect to the entire controversy. The Hon'ble Judge has further recorded that, *"At this juncture, it may also be noted that Sri Zafaryab Jilani, Hon'ble counsel for Waqf Board and other Muslim parties had given his statement under Order X Rule 2,C.P.C on 22.4.2009 and categorically stated that his parties did not dispute that Lord Ram was born at Ayodhya (previously this was also an area of dispute between the parties). Sri Jilani during arguments repeatedly contended that it was not disputed that Lord Ram was born at Ayodhya, however he very seriously disputed the assertion that Lord Ram was born at the premises in dispute".* The said observation, without mentioning that the said statement was based on the faith of Hindu devotees of Lord Rama and on the basis of description of Balmiki Ramayana, is not correct and proper.

ii. That Hon'ble Justice Sudhir Agarwal has drawn absolutely wrong and unwarranted inferences from the account of William Finch and in this respect the plaintiffs' counsel Mr. Jilani has also been misquoted. It was never argued from the Muslims' side that the account of Willam Finch "lends no credence." As a matter of fact Muslims' counsel had contended that from the said account of William Finch it was evident that in 1608-1611 there was no place of significance known as the birth place of Lord Rama and there was no such belief of the local people that any alleged temple situated on any such alleged Janamsthan was demolished by Babar. It was also wrongly observed by the Hon'ble Judge that the

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

were on the river side and not at a distance of about more than 1 km. from the river where the disputed building existed. It was also evident from the aforesaid descriptions of William Finch that he had referred to Oude (Ajodhya) as the seat of Lord Rama and as such there was no occasion for him to have made any reference of any Mosque, including Babri Masjid or any other place of importance of Muslims. The said Mosque was undoubtedly of no historical significance at that time. The said Mosque could have been of any significance had the same been constructed at the alleged place of birth of Lord Rama after the destruction of any temple and had it been so, it would have been definitely taken notice of by William Finch. It was in this light that the said extract of the Travels Account of William Finch was placed by the plaintiffs' counsel Sri Jilani, Advocate with great vehemence to substantiate his argument that no incident of the alleged demolition of any temple had taken place in 1528 AD and else the same would not have gone unnoticed by William Finch (See pages 1686-87 and 1765 of the Judgment in Volumes IX and X respectively).

iii. That Hon'ble Justice Sudhir Agarwal has construed the comments of Sri Jilani, Advocate about the book of Lala Sitaram incorrectly, in as much as the contents of the said book regarding the offering of Namaz in the building in dispute were relied upon by the plaintiffs' counsel in order to show that even the evidence of Hindus supported the Muslims' contention about the offering of Namaz in the building in

dispute from 1528 to 1949, either partially or fully. (See pages 1623-1624 of the Judgment in Volume - IX).

iv. That Hon'ble Justice Sudhir Agarwal has wrongly recorded that "Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of Namaz in the disputed building at least till 1855." The factual position is that neither any such admission was made by Sri Jilani and nor there was non-availability of historical and other evidence on record to show possession and offering of Namaz even before 1855. In this respect documents referred by Hon'ble Judge from paragraph 2315 (at page 2298 in Volume - XII) to paragraph 2383 (at page 2418 in Volume - XII) have been misconstrued, mis-appreciated and misread leading to wrong observation that the said documents did not support the case of the plaintiffs (Suit-4) that the Muslims were offering Namaz in the building in dispute and the same was continuing in the possession of Muslims. In this respect it has also been wrongly observed that there was admission in some document which could "be treated as a sole conclusive evidence to prove that the disputed building and premises throughout has been in possession of Hindus and not of Muslims." It was also wrongly recorded that: "Had the building in dispute and the inner courtyard been in possession of Muslims," a Chabutra could not have been constructed in the inner courtyard in 1858. In this respect the Hon'ble Judge failed to appreciate that the said Chabutra referred to in the complaint

dated 30th November, 1858 (Ext. 20 of Suit No. 1-Page 2300) had been removed by Sheetal Dubey Thanedar as was evident from his report dated 12-12-1958 (Ext. A-69 of Suit No. 1) (See pages 2297, 2300-2305, 2309 and 2310 of the Judgment in Volume - XII).

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

payment of salaries to the Imam and Moazzin of the Mosque etc. fully established offering of the prayers in the said Mosque and possession of the Muslims. It is incorrect for the court to say that the expenses shown in the above document ex-facie do not appear to have any relevance with the building in dispute. (See pages 2365-2371 of the Judgment in Volume - XII).

vi. That Hon'ble Justice Sudhir Agarwal while dealing with Issue No. 1 and 2 (Suit-1), Issue No. 1 (Suit-3), issue No. 1 (b), 11, 13, 14, 19(b) and 27 (Suit-4) and Issue No. 14, 15, 22 and 24 (Suit-5) mis-appreciated and misread the pleadings as well as evidence of the parties, oral and documentary both, and the evidence produced by the parties regarding these issues was not taken into account in its correct perspective. In this respect it was also wrongly observed that Sri Jilani had placed documents mentioned on page 3488 in order to show the possession of the Muslims over the site in dispute at least from 1855 to 1885 and then from 1934 to 1949. (See pages 3414-3490 of the Judgment in Volume - XVI).

vii. That Hon'ble Justice Sudhir Agarwal wrongly observed that the plaintiffs' counsel could not in any way co-relate "Mir Baqi" with "Baqi Shaghawal" or "Baqi Tashkandi" to show that they were the same persons (see page 1619 in Volume - IX). In this respect it is relevant to mention that the Hon'ble Judge failed to appreciate that it was specifically pointed out to him by the plaintiffs' counsel Sri Zarfaryab Jilani that in different translations of Babar Nama including those of Beveridge and

Athar Abbas Rizvi etc. there were several descriptions to show that Mir Baqi was a historical personage and actually Babur's Commandant of Awadh (Ayodhya). These entries make it clear that while Babur was on a campaign crossing the Gomti and then the Ganga, 'Baqi Tashkandi' joined his camp coming with the Awadh (Ayodhya) troops on 13-6-1529. On 20th June, 'Baqi Shaghawal' was given leave to return along with his Awadh troops. These references make it clear that (1) Baqi was the commandant of troops at Awadh (Ayodhya), so here the Babri Masjid inscriptions, stand confirmed; and (2) he was a native of Tashkant and bore the official title of Shaghawal. The 'Shaghawal' used to be an official of rank who could not be impeded when fulfilling royal orders by anyone howsoever high. It may also be relevant to mention that an explanation regarding the said "Shaghawal" was offered by Professor Shireen Moosvi (PW 20) also but the same appears to have been ignored by the Hon'ble judge. It is thus evident that the line of reasoning of the Hon'ble Judge about the name of Mir Baqi was based on untenable assumptions and conjectures. (See page 1764 of the Judgment in Volume - X).

viii That Hon'ble Justice Sudhir Agarwal has wrongly observed in Paras 1657 to 1661 of his Judgment that the counsel appearing on behalf of Muslim parties, in their rejoinder arguments, could not give any substantial reply to the arguments in "this respect," i.e., perhaps about the genuineness of inscriptions, including the arguments

mentioned in Paras 1633 to 1656 (pages 1759 to 1785 in Volume - X) of the Judgment. As a matter of fact the inscriptions in question were noticed by Edward Thornton and by W.C. Benett, much earlier than Fuhrer and the dates were also correctly read by them as given in Thornton's Gazetteer of 1858 (P. 739) and in The Gazetteer of the Province of Oudh edited by W.C. Benett, published in 1877-78, Volume-1 at pages 6-7. In the Fyzabad District Gazetteer of H.R. Nevill (1905) also these inscriptions were specifically referred with similar description. Extracts of these Gazetteers were also filed before the High Court and were referred by Sri Z. Jilani, Advocate during the course of Rejoinder Arguments, apart from submission of a note pointing out the mistakes committed by A. Fuhrer in the reading of inscriptions in question. In this note the correct version of the said inscriptions was also given. In this respect the Hon'ble Judge wrongly observed that all the Historians "have proceeded mechanically and without properly scrutinizing the texts of the inscriptions, as reported from time to time. The things have been taken as granted." The Hon'ble Judge further wrongly observed that the local belief about the alleged destruction and construction by Aurangzeb "was so strong that it continued thereafter for the last 50 years and around 1810 A.D. when Dr. Buchanan visited Ayodhya he also found the same." His further observations that the "subsequent writers were mostly petty employees of East India Company" and that, "Nobody made any detailed investigation whatsoever. At least none tried to

find out the actual events which took place and correct historical facts" were also uncalled for and unwarranted and had no basis also. It was also wrongly observed by the Hon'ble Judge that "the view, which has prevailed for such a long time apparently, unbelievable and unsubstantialable(sic), followed by the concerned authors and Historians without a minute scientific investigation, we cannot shut our eyes to such glaring errors and record a finding for which we ourselves are not satisfied at all." His further observation that "the doubts created otherwise are so strong and duly fortified ... . that they surpass the required test to become cogent evidence....." were also totally unjustified, unwarranted and based on no material on record. (See pages 1786 to 1788 of the Judgment at Volume - X)

ix. That Hon'ble Justice Sudhir Agarwal wrongly observed that "Sri Z. Jilani Hon'ble counsel appearing on behalf of Sunni Waqf Board.....also tried to highlight that Babur never entered Ayodhya and did not command Mir Baqi for construction of any Mosque." As a matter of fact no counsel for the Muslims side including Sri Z. Jilani had ever argued that Babur did not command Mir Baqi for construction of any Mosque. This position is evident from para 10 of the Written Statement of Defendant no.10, in O.O.S No.1 of 1989, and pleadings of Muslim parties in other connected suits.

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

No. 5 of 1989. (Kindly see page 3288 of the Judgment in Volume - XVI).

x. That Hon'ble Justice Sudhir Agarwal has erroneously recorded that the counsel for plaintiffs in Suit No. 4 (Sri Jilani and Sri Siddiqi) had castigated the approach of the Hon'ble Magistrate in passing the order regarding consignment of the proceedings under Section 145 Cr. P.C. As a matter of fact the counsel for Muslims had relied upon the said order in order to show that there was no final order of attachment and hence the period of limitation could not be said to have come to an end but rather the same was continuing and in this respect the observations made by the Hon'ble Judge on page 2242 were incorrect. (See pages 2242-2243 of the Judgment in Volume - XI).

xi. That Hon'ble Justice Sudhir Agarwal has erroneously observed that much of the submissions in the Written Arguments filed by Sri M.A. Siddiqi, Advocate, have been taken for the first time and that the court had no occasion to seek any clarification regarding the same. As a matter of fact all these submissions had been repeatedly made before the court by Sri M.A. Siddiqi and the gist of these submissions were made by Mr. Jilani before the court especially with reference to the applicability of 12 years period of limitation and in this respect repeated queries were made by all the Hon'ble Judges during the course of arguments. On this issue Hon'ble Judge had himself observed during the course of arguments that it was the case of discontinuance of

possession at least from the date of attachment of the property in suit, if not from 23-12-1949. (See page 2291 of the Judgment in Volume - XII).

xii. That observation of Hon'ble Justice Sudhir Agarwal that the authorities cited by Sri Siddiqi, referred in para 2442 (pages 2446-2447) go against the plaintiffs is misconceived. After taking into account various rulings the Hon'ble Judge wrongly held that the suit in question (Suit-4) was barred by limitation under Article 120 of the Limitation Act, 1908 and has wrongly decided issue No. 3 (Suit-4) in the negative. (See pages 2446-2447 and 2453 the Judgment in Volume - XII).

(K) WRONGFUL RELIANCE ON HEARSAY EVIDENCE

i. That the finding of the alleged worshipping by Hindus in the inner courtyard for several hundred years, as stated by Hon'ble Justice Sudhir Agarwal in Para 4394 (at page 4960 in Volume - XXII), is completely misconceived and without any evidence. The finding of such a nature cannot be given on the basis of oral evidence of witnesses who have the life span of 80 or 90 years approximately. The search of birth place of Lord Rama on the specified disputed place, as stated in Para 4395, is a matter of evidence and cannot be said to be a matter of belief/faith.

ii. That the observation of Hon'ble Justice S.U.Khan with respect to the allotment of share of different portions to the Muslims, Hindus and Nirmohi Akhara is patently illegal and against the weight of evidence and not based on cogent material available

on record. There is no admissible evidence of possession of Hindus on any portion of the inner part of the building in dispute upto 22-12-1949. Even in the outer courtyard of the building, Nirmohi Akhara was in possession of only 17 X 21 feet area of Ram Chabutra and about 10 X 12 feet area of Sita Rasoi (See Page 275 of the Judgment of S.U. Khan J in Volume - II).

iii. It is respectfully submitted from the ground set out above that the Hon'ble High Court has erroneously relied on hearsay evidence in support of findings for the Hindu parties but has adopted a differentiating standard for the Muslim parties, who have been put to producing primary evidence in support of their case

(L) ERRONEOUS APPRECIATION OF DOCUMENTARY EVIDENCE

i. Because Hon'ble Justice Sudhir Agarwal has failed to appreciate the documentary evidence of the Plaintiff in proper perspective and has misconstrued the documents by giving incorrect and misleading interpretation to the said documents. Some of these documents in relation to possession are as under:-

1 Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey, Station Officer dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.

2 Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd.

Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

3 Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1858 regarding Nishan by Nihang Faqir.

4. Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey, 18 Station Officer dated 1-12-1858 against Nihang Sikh for installing Nishan.

5 Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.

6 Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey (dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989)

7 Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.

8 Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.

9 Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.

10 Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.

11 Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.

12 Ext. 30 (Vol. 5 P. 107-116-A,B.C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).

13 Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.

14 Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.

15 Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)

16 Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.

The above exhibited documents have been misread, misinterpreted out of context and ignored to a great extent by the Learned Judge leading to an erroneous and misconceived finding on this issue.

ii. That Hon'ble Justice Sudhir Agarwal has ignored the documents relating to Civil Suit of 1885 to show that the possession of the mosque was with the Plaintiffs/Muslim Parties.. The said exhibited documents have not been properly considered and have been given improper meaning contrary to the plain meaning of the said documents to see as to who had possession of the said premises. The said exhibited documents are as under:-

1. Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61

/ 280 of 1885 filed by Mahant Raghubar Das (also filed as Ext. A-22) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)

2. Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.

3. Ext.15 (Vol. 10, -P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as Ext. A-24 and A-25 in OOS 1/89-Volume 7, P. 271-281)

4. Ext.16 (Vol. 10 P. 79-85) Copy of Judgment of Pt. Shri Kishan dated 24-12-1885 (Also filed as Ext. A-26 in OOS 1/89-Vol. 7, P. 283-301)

5. Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgment of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323)

6. Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)

iii. That Hon'ble Justice Sudhir Agarwal has not taken into account the material documents of 1934-1936 A.D. in a correct perspective which show that the possession of the premises was with the Muslims. The said documents are exhibited in the Suit which are as under:-

I Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot

held on 27-3-1934.

2 Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.

3 Exhibit A-43 (Vol- 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

4 Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his bill regarding repair of Mosque.

5 Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

6 Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.

7 Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

8 Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.

9 Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and

houses.

10 Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.

11 Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.

12 Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque.

iv. Because Hon'ble Justice Sudhir Agarwal has not properly appreciated the material documents which show that the control and management of the mosque premises was with Muslims and hence the finding of Muslim Parties not being in exclusive possession of the premises is incorrect and perverse. The Learned Judge while dealing with these documents, has misconstrued and given wrong interpretation to the same. The said documents are as under:-

1 Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6- 12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

2 Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc.

3 Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil

dated 9-7-1925 regarding Babri Masjid etc.

4 Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.

5 Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding Babri Masjid etc.

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

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

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

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

10 Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf.

(copy filed as Ext. 21, in OOS 4 / 89 – Vol. 10, P. 117 - 123)

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

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

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

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

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

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

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

Hussain regarding Tauliat.

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

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

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

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

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

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

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

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

(M) OTHER GROUNDS

i. That the written arguments filed on behalf of the Plaintiffs of Suit No.4, reproduced in Paragraph 2297 (at page 2278 in Volume - XII), have not been appreciated in proper perspective and have even been wrongly interpreted.

ii. That Hon'ble Justice Sudhir Agarwal has failed to appreciate that great-grandfather of Mir Rajjab Ali may not be the same Mir Baqi who had constructed the Mosque and it was not appreciated that it was not unusual that the name of one person may be adopted by several persons of the same decent and in this respect the observations made by the Hon'ble Judge in paragraph 2336 were totally unwarranted and uncalled for. (See pages 2323-2324 of the Judgment in Volume - XII).

iii. That Hon'ble Justice Sudhir Agarwal failed to appreciate the distinction between a Book of History written by a Historian and a Historical Book written by a religious scholar and proceeding under the same misconception and wrong notion referred to the Book of Maulana Hakeem Syed Abdul Hai in detail. (See pages 2619-2634 of the Judgment in Volume - XIII).

iv. Finding that Nirmohi Akhara is a Religious Denomination

a) It is submitted that Hon'ble Justice Sudhir Agarwal erred in its findings regarding the status of Nirmohi Akhara being a religious denomination following a faith and further that it continued to exist in Ayodhya from 1734. It is evident from the

findings rendered by the Hon'ble Judge at paragraphs 781, 788 and 789 of the impugned judgment that the findings are based on inadmissible hearsay evidence which is sought to be corroborated by the statements of DW 3/4, 3/24 and 3/20. However, even the statements of DW 3/4, 3/24 and 3/20 are not based on personal knowledge of the said witnesses, a fact which is evident from the finding of the Hon'ble Judge at paragraph 788 of the impugned judgment where the Hon'ble Judge has held that the witnesses *"being integrally connected with Nirmohi Akhara may have occasion to possess the said information"*.(See pages 1115 and 1120 in Volume - VII).

b) Furthermore, it is submitted that Hon'ble Justice Sudhir Agarwal's finding that Nirmohi Akhara is a religious denomination because its status as such was not challenged is also flawed. It is submitted that apart from the fact that the status of Nirmohi Akhara was challenged, it is also a fundamental principle that the Plaintiff needs to prove its case and should the plaintiff lead inadmissible evidence to support its case, it becomes incumbent on the court to dismiss the plaintiff. In fact, it is respectfully submitted that in a civil proceeding the defendant can simpliciter adopt a stand that it has no case to answer because the very case of the plaintiff is based on inadmissible evidence which cannot be allowed in court. This is based on the fundamental principle that it is for the plaintiff to prove its case and not for the defendant to disprove the plaintiff's case. In this case, it being evident that the evidence led by to prove that Nirnohi Akhara was a

religious denomination was hearsay and inadmissible and there was no occasion for the Court to have accepted such evidence and rendered a affirmative finding.

Similarly, for the grounds set out above, it also becomes apparent that the finding of the Hon'ble Judge that Nirmohi Akhara's continuance in Ayodhya was proved to exist sometime after 1734 AD is also based on inadmissible evidence and an erroneous assumption of the burden cast on a defendant while defending a civil proceeding

v. That the impugned judgment and decree contains divergent findings/ decisions both in respect of fact and law. It is respectfully submitted that the Code of Civil Procedure, 1908 does not envisage such divergent findings, as are present in the impugned judgment. At the very least unanimous decisions should have been arrived at in respect of questions of fact which would form the basis of the ultimate decision. That while Order 41 of the CPC envisages eventuality of a dissent, Order 20 of the CPC does not make allowance for divergence in respect of the finding/ decision arrived at in respect of each issue. That in the instant case, there is a divergence even in respect of the operative part of the judgments, and there is no unanimous decree which has been formulated and can be relied upon. Therefore, it is submitted, the impugned judgment is without basis in law.

(II) ERRONEOUS FINDINGS OF LAW

(A) INAPPLICABILITY OF THE DOCTRINE OF RES JUDICATA, CONSTRUCTIVE RES JUDICATA & ISSUE ESTOPPEL

i. That Hon'ble Justice S.U.Khan has wrongly held that the judgment of the suit of 1885 did not decide anything substantially. It was also wrongly observed by him that ultimately in the final Judgment of 1885 suit only status quo was maintained. It is submitted that the claim of Mahant was based upon certain grounds which were adjudicated by the competent court of law and the relief claimed was refused. It has been wrongly observed that the court had simply refused to decide the controversy in the suit of 1885 while the fact is that in the Suit of 1885 the courts had given reasoned findings in their judgments of 1885 and 1886 (See Page 191 of the Judgment of S.U. Khan J.). The order passed by the judge in Civil Appeal No. 27 of 1886 filed against the judgment dated 24.12.1885 says that it was the 'chabutra' (within an enclosure) occupied by the Hindus which indicated the birthplace of Ram Chandra and it (the enclosure containing the 'chabutra') was separated from the platform of the Mosque by a wall.

Thereafter, in Second Civil Appeal No.122 of 1886 filed against the order dated 18/26.03.1886 in Civil Appeal No. 27 of 1886, the Hon'ble Judicial Commissioner observed that the Plaintiff-Mahant's claim has been rightly dismissed, and that there is nothing to show that he is the proprietor of the land in question.

ii. Because the Hon'ble Judge has wrongly observed that nothing was decided in the suit of 1885 (as per his assessment) and hence main part of Section 11 C.P.C. as well as Explanation IV and Explanation VI of the said section 11 C.P.C. were not applicable to the instant case. The said observations and interpretation of the provision on incorrect factual basis is completely misconceived and erroneous. (See Pages 191 / 192 of the Judgment of S.U. Khan J in Volume - II).

iii. The finding of Hon'ble Justice Sudhir Agarwal that the property engaging attention of the High Court in O.O.S. No. 1 of 1989 was not involved in suit No. 61 / 80 of 1885 was based upon the misconception that since the suit of 1885 was not filed in respect of building of the Mosque, it was not involved in the suit of 1885. In this respect the Hon'ble Judge failed to appreciate that it was mainly on account of the existence of the Mosque that the suit of 1885 was dismissed (See para 860 at page 1158 in Volume - VII).

iv. That issue No. 5 (b) and 5 (c) of O.O.S. No. 1 of 1989 have been wrongly decided by Hon'ble Justice Sudhir Agarwal and it has also been wrongly observed by him that no material or evidence had been placed on record to support the contention that Mahant Raghubar Das had filed the suit on behalf of other Mahants and Hindus of Ayodhya and in this respect the pleadings, evidence and judgments of the Suit of 1885 were not correctly appreciated. It was also wrongly observed by the Hon'ble Judge that the assertion about knowledge of Hindus

in general and their interest in the subject matter was very vague, uncertain and unreliable in law (See pages 1162 / 1163 / 1164 - Paras 868 and 870 of the Judgment).

v. That it has been wrongly observed by the Hon'ble High Court that it could not be said that the suit of 1885 was filed on behalf the whole body of persons having faith in Ram Chabutra. It has not been pointed out by the Hon'ble High Court that in terms of the then applicable CPC of 1883, it was mandatory requirement for the persons to file a representative suit. It is clear from a mere reading of the plaint of the Civil Suit that the relief could not have been sought by the Mahant in his personal capacity but on behalf of the Hindu community at large, in a representative capacity. Therefore, issue No. 7 (a) of O.O.S. No. 4 of 1989 was wrongly decided (Kindly see page 1165 of the Judgment).

vi. That while dealing with issue No. 7 (d) of O.O.S. No. 4 of 1989 it has been wrongly held by the Hon'ble Judge that Mahant Raghubar Das at any point of time had admitted the title of Muslims on the disputed Mosque. In this respect the plaint map and the Ameen Commissioner map etc. were also not correctly appreciated. (Kindly see page 1166 of the Judgment in Volume - VII). Further, even if there were any such admission, it would not stop the Hindu community from raising the same issues before the High Court. (See pages 214-215). Holding that the suit would not operate as res judicata against Hindu community, the court decided issue No. 7(d) against

Muslims, contrary to the law and facts. Such a finding is misconceived and erroneous and liable to be set aside.

vii. That Hon'ble Justice Sudhir Agarwal has wrongly observed that it cannot be said that the issues engaged in the present suits were directly and substantially involved in the earlier suit of 1885, or, anything in the suit of 1885 may be construed or taken to operate as res judicata or estoppel in the present suits. (Kindly see pages 1225 and 1282 of the Judgment in Volumes VII and VII respectively). It is submitted that the judgment in Suit of 1885 does not operate as res judicata for the purpose of the present suits.

viii. That Hon'ble Justice Sudhir Agarwal has wrongly observed that there remained virtually no decision or finding on the issue pertaining to ownership of suit property in the suit of 1885 and therefore the plea of res judicata or estoppel will have no application in O.O.S. No. 1 and 5 of 1989, as the indicia for attracting the plea of res judicata were wanting. (See pages 1237 and 1243 in Volume VII). In rendering the said above-noted finding, it is respectfully submitted that the Hon'ble Judge committed, amongst others, the following errors:

(a) The Hon'ble Judge erroneously held that the properties in the said suit were different, when it was a fact that, in essence, the dispute was over the same property. It is submitted that merely because in the first suit the property in question was limited to smaller extent and in

the second suit the property was a larger property which comprised of the smaller property did not mean that the essence of the dispute, which related to the same smaller property would not be barred by res-judicata. In such a case, the doctrine of res-judicata would operate to dismiss any litigation in relation to the smaller property.

(b) The Hon'ble Judge's finding that the first suit was an injunction suit whereas the subsequent suits sought different relief thereby not resulting in the invocation of the doctrine of res-judicata is also erroneous. It is submitted that principles of res-judicata and constructive res-judicata operate not on the relief claimed but on the basis of the issues which arise and/or issues which emanate from an earlier proceeding. That is the reason why the CPC makes a provision whereunder a party cannot be vexed twice with the same litigation either through clever drafting and penmanship.

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

in the plaint that the suit was being filed in his individual capacity.

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

(d) This is also supported by Hon'ble Justice Sudhir Agarwal's finding at paragraph 2134 (at page 2182 in Volume - XI) where it has been held that should an idol or the deity seek to file a suit it can do so through the Mahant or the Shebait. Therefore, clearly, Mahant Raghubir Das's 1885 suit was filed on behalf of the Hindu community at large.

ix. That while dealing with the question of applicability of the plea of res judicata in public interest litigation the Hon'ble judge has wrongly observed that the cases referred on pages 1245 to

1250 have no application to the facts of the cases in hand (See page 1250 in Volume VII).

x. That Hon'ble Justice Sudhir Agarwal has failed to appreciate the meaning of the words "might and ought" used in explanation IV to Section 11 C.P.C. in its correct perspective and in this respect it was wrongly observed that the cases referred by the plaintiffs' counsel did not lend support to attract the plea of res judicata (See pages 1251 / 1256 of the Judgment in Volume - VIII)

xi. That Hon'ble Justice Sudhir Agarwal has wrongly held that there was no substance in the submission of the plea of estoppels and abandonment based on the Acquisition notification dated 7-10-1991 (See pages 1260 - 1261 of the Judgment in Volume - VIII).

xii. That Hon'ble Justice Sudhir Agarwal has wrongly held that the admissions made by the plaintiff of the suit of 1885 as well as observations made by the courts in the suit of 1885 / Appeals of 1886 were not binding on the parties and the submissions made in this respect were extremely far-fetched and too remote to be accepted and applied in the case in hand (See page 1284 of the Judgment in Volume - VIII)

xiii. That Hon'ble Justice Sudhir Agarwal has failed to appreciate that the plea of some of the Defendants in Suit No.4 that they were not aware of the adjudication of dispute in the Suit of 1885 cannot come on the way of application of principles of res judicata. In the previous Suit being Suit No.61/280 of

1885, the plea of belief was available to the Plaintiff and that could have been used as a ground of attack and accordingly the said issue of belief shall be deemed to have been a matter directly and substantially in issue in the previous suit. The said previous suit was dismissed and first and second appeals were decided against the followers of Lord Rama and hence the said issue could not have been a fact in issue to be decided by the High Court. Even if it is assumed that the belief existed at that time, then the said belief remained confined to the Chabutra in the outer courtyard and not to the inner courtyard. The said plea taken in the previous suit vindicates the fact that the belief of followers of Lord Rama was not related with the inner portion of the Mosque in dispute.

xiv. That Hon'ble Justice Sudhir Agarwal has failed to appreciate that in the judgments given by the three courts in 1885 Suit, categorical finding was recorded that the Mosque in question was constructed by Babar and none of the parties had disputed this position. While dealing with the issue of faith/belief regarding the alleged birthplace of Lord Rama and the erection of the Mosque, the observations in the judgment dated 18/26-3-1886 of the Hon'ble District Judge (Vide Exhibit A-27, Suit-1–Register No. 7 P. 320), and the observations of the Hon'ble Judicial Commissioner in his judgment dated 02-09-1886 were also not appreciated by the Hon'ble Judge. (See page 1161 in Volume - VII).

xv. That Hon'ble Justice Sudhir Agarwal wrongly decided Issue No. 8 (Suit-3) in the negative even after holding that the plaintiff of suit No. 3 had failed to establish the title by adverse possession. In this respect the Hon'ble Judge not only misread and mis-appreciated the evidence on record including the Judgments of 1885 and 1945 suits but also wrongly observed that the case set up in the instant suit was wholly different and inconsistent to what was pleaded and decided in the Judgment of 1946 (See pages 2851-2853 / 2861 in Volume - XIV).

xvi. That it was not appreciated by Hon'ble Justice Sudhir Agarwal that Hindu parties of the present suits had not disowned the stand taken by Mahant of Janam Asthan in 1885 suit and it was also not a case of the Hindu parties that the said suit of 1885 was filed by the Mahant of Janam Asthan either in a collusive manner or he had remained in any way negligent and as such the aforesaid Judgments of 1885 suit and appeal were fully binding upon Hindu parties of the instant suit. (See pages 3290-3297 in Volume - XVI).

xvii. That the finding of Hon'ble Justice D.V.Sharma while deciding Issue No.7(b) in Suit No 4 stating that Mohd. Asgar was not contesting the said Civil Suit of 1885 in the capacity of Mutawalli, is erroneous and contrary to the pleadings of the parties in the said Civil Suit. The pleading itself conclusively established that the said Mohd. Asgar was contesting the said Civil Suit in the capacity of Mutawalli. The finding of Hon'ble

Judge on this issue is devoid of reasons and without discussion of the pleadings in the said Civil Suit.

xviii. Submissions on Res Judicata

a) It is evident that the critical finding in the 1885 Suit was the failure of Mahant Raghubir Das to be able to prove ownership over the Chabutra in the outer-courtyard, a fact noted by the Hon'ble Judge at paragraph 989 (at page 1236 in Volume - VII) of the impugned judgment. Given that it was a suit filed to benefit the Hindu community at large against the interest of the Muslim community and the use of Waqf land and had been decided by a court of competent jurisdiction, makes it apparent that all the subsequent suits were barred by the doctrine of res-judicata. Therefore, it is respectfully submitted that had the Hon'ble Judge correctly applied the doctrine of res-judicata and constructive res-judicata, it would have disentitled the plaintiffs, including Nirmohi Akhara, from getting any relief, including any relief in relation to the inner courtyard and the outer court yard.

b) It is further submitted that Hon'ble Justice Sudhir Agarwal erred in holding that there was no estoppel against any of the parties from challenging the factum of the domed structure being a Mosque. It is submitted that a plaint, expressly setting out the characteristic of a property, supported by an affidavit results in a positive affirmation of the characteristic of that property and should such a plaint be filed on behalf of or for the benefit of one particular community, the affirmation would be binding on that community, except perhaps in instances of

fraud etc. Therefore, it is evident that for the Hon'ble Judge to have held that there was no estoppel regarding the affirmation of the domed structures being a Mosque is incorrect.

c) Apart from the fact that Hon'ble Justice Sudhir Agarwal erroneously applied the doctrine of estoppel, it is evident that the Hon'ble Judge failed to appreciate the applicability of the doctrine of cause of action estoppel. It is submitted that under cause of action estoppel a party is estopped from espousing the same cause of action in subsequent proceedings. In the 1885 suit, there was a denial by the Court regarding the construction of a temple on the disputed property, despite the plea having been raised that the land was the Janam Sthan of Lord Rama. However, based on the same cause of action, the defendants in the present appeal file subsequent suits, which the Court below has decreed in a manner which enables the construction of a temple on the same piece of land where relief was previously denied by a competent court.

d) It is further submitted that the plaint in the 1885 suit was also admissible evidence in the subsequent proceedings and for the Hon'ble Judge not to have regarded it as such was erroneous.

(B) **SUIT NOT BARRED BY LIMITATION**

i. That it is evident from record that Suit No.4 was instituted on 18.12.1961, as admitted by all the parties. It is also the finding of all the Hon'ble Judges that the idols were placed in the

night between 22nd or 23rd December, 1949. According to the Plaintiffs of Suit No.4, Muslims used to offer Namaz till that date when the idols were placed under the Central Dome. Accordingly, the cause of action accrued on 23rd December, 1949 and continued thereafter as the Muslims were stopped from offering Namaz inside the Mosque. It is also clear from the records that an order was passed by the Hon'ble Magistrate on 29.12.1949 whereby an order of attachment was passed and receiver was appointed in terms thereof. On 05.01.1950, the Receiver had assumed the charge of the inner courtyard including the portion of Mosque with idols placed inside. In view of the said order having been passed attaching the inner courtyard and giving its possession to the Receiver, the cause of action of the Plaintiff in Suit No.4 after having started on 23rd December, 1949 and remained continuing thereafter.

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

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

iv. That Hon'ble Justice Sudhir Agarwal has made incorrect observation by stating that the Chabutra said to have been "constructed in the outer courtyard in 1857" was "never interfered or obstructed by Muslims at any point of time" and in this respect wrongly applied the law of limitation for giving alleged rights to the Hindus whereas on the plea of adverse possession based on Section 27 of the Limitation Act the claim of adverse possession made by the Muslims was not accepted by the Hon'ble Judge by relying upon the rulings of this Hon'ble court and by observing that since it was not pleaded that who was the real owner, the plea of adverse possession could not be entertained. Regarding the alleged rights of Hindus, the findings recorded by the Hon'ble District Judge and Judicial Commissioner in 1886 has also not been taken into account. (See pages 2522-2524 in Volume - XIII).

v. That in relation to the issue of limitation, the following issues were framed by the Hon'ble Trial Court:-

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

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

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

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

The issue of limitation has been decided by the Hon'ble Judge in Suit No.4 holding that the said Suit is barred by limitation. However, the finding on the issue of limitation with respect to Suit No 5 has been held not barred by limitation. Appellant is aggrieved by the finding of the Hon'ble Judge given on Issue No.3 in Suit No.4, Issue No 10 in Suit No 1, and Issue no 13 in Suit 5 and accordingly the appellant is challenging the said findings on grounds which have been set out in the present appeal.

vi. That the suit for declaration under normal circumstances is filed after final order under Section 145 Cr.P.C. The present Suit No.4 was filed after attachment and during the pendency of the proceedings under Section 145 Cr.P.C.Therefore, terming the Suit No.4 as barred by limitation is arbitrary and without any legal basis.

vii. That Hon'ble Justice Sudhir Agarwal has failed to take into consideration the subsequent event of demolition of the Mosque in 1992 and addition of the relief (bb) in pursuance of the judgment and order passed by the constitution bench judgment of this Court in Dr. Ismail Farooqui's case whereby the parties were permitted to amend their pleadings in view of the subsequent events.

viii. That the contention of the Defendants that the Suit was barred by limitation because the Plaintiff in Suit No.4 was ousted on 16.12.1949 rather than 23.12.1949 and even for the purpose of Article 142 of Limitation Act, 1908, the Suit was barred, is frivolous and without any basis.

ix. That the finding of Hon'ble Justice D.V.Sharma stating that *"it is the clear contention of the defendants that the plaintiffs' suit is barred by limitation being a suit for right to worship and not a suit for immoveable property as is being made out by the plaintiff and therefore is governed by Article 120 of the Limitation Act, 1908 and not Article 144 or 142 of the Limitation Act, 1908 therefore suit can only be filed within 6 years"*, is misconceived and based on mis-appreciation and misconstruction of facts and law and hence liable to be set aside. (*See pages 151 and 159, Vol. 1*)

x. That Hon'ble Justice Sharma has wrongly made the observation stating that: *"Accordingly, Article 142 and 144 of the Limitation Act have no application in this case. Moreover, Article 142 applies only where the plaintiff while in possession has been dispossessed or discontinued possession. In this case since the property was attached, the question of dispossession does not arise. The reference of dispossession by the plaintiffs after the attachment and to file thereafter a suit for declaration of the right to property is not a suit for possession in case of custodia legis. Article 142 and 144 do not apply where the relief of possession is not the primary relief claimed. Here in this case the primary relief is of*

declaration. Consequently, Article 120 of the Limitation Act would apply". This finding is flawed and without considering the fact that the attachment of property was made on 29.12.1949 while the discontinuance of possession of the Plaintiffs of Suit No.4 from the said property had started on 23.12.1949. The above quoted findings are illegal and improper and are liable to be set aside. (*see pages 148-149 Vol. 1*)

xi. That the judgments relied upon by Mr. Justice D.V.Sharma and Mr. Justice Sudhir Aggarwal on this issue from various High Courts, Privy Council and this Hon'ble Court, do not at all lay down the law on the basis of which Suit no. 4 can be said to be barred by limitation and Suit 5 can be said to be within limitation.

xii. Submissions regarding Limitation

a) It is submitted that Hon'ble Justice Sudhir Agarwal's finding and observations on the issue of limitation are factually and legally erroneous. In particular, the Appellant states that the following findings are erroneous:

(i) That the order of attachment passed by the Magistrate did not give a cause of action (paragraph 2244 at page 2242 in Volume - XI);

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

and/or the deprivation of the use of the Mosque for the purpose of offering prayers;

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

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

b) The Appellant respectfully submits that it is evident that the finding of the Hon'ble Judge was incorrect given the finding at paragraph 2283 (at page 2271 in Volume - XII) that the plaint in Suit No. 4 never set out that the Plaintiff had been dispossessed of the property by the placing of the idols because the case set out was that placing the idols had the effect of obstructing and interfering with the plaintiff's right of worship. It is submitted that the only reason why the plaintiff's right of worship had been obstructed after the placing of the idols was because the plaintiff's no longer had access to the Mosque thereafter and this led to the Plaintiff's being dispossessed. Therefore, clearly, there was no occasion for the Hon'ble Judge to hold that the Plaintiff had not pleaded dispossession.

Furthermore, it is submitted that Hon'ble Justice Sudhir Agarwal's finding that the claim against the outer-court yard being barred by limitation is also not correct. Firstly, it is

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

(C) **WRONGFUL REJECTION OF ADMISSIBLE EVIDENCE**

i. That Hon'ble Justice Sudhir Agarwal wrongly recorded that Ext. A-8 (Suit-1) had not been proved while the said document was covered by Section 90 of the Evidence Act as it was more than 30 years old and it was filed in an earlier suit also and its coming from a proper custody was beyond doubt. It has further been wrongly recorded by the Hon'ble Judge that, "Sri Jilani Hon'ble counsel for Sunni Waqf Board could not tell as to how the contents of the said document can be said to have been proved or treated to be correct in the absence of any

witness having proved the same." It was also wrongly observed by the Hon'ble Judge that it was not the case of the defendants 1 to 5 (Suit-1) that any legal presumption can be drawn in respect of correctness of the contents thereof under law. As a matter of fact Sri Jilani had strenuously contended that the said document being of the period around 1299-1307 Fasli (around 1900 A.D.) it was almost impossible to produce either the scribe of the said note book or any witnesses of that period and the rule of evidence enshrined in Section 90 of the Evidence Act was fully applicable regarding proof of the said document. It was also vehemently argued by Sri Jilani Advocate, that the details of expenditure regarding lighting in the Mosque, rent of Chandni etc. expenses of making payment of salaries to the Imam and Moazzin of the Mosque etc. fully established offering of the prayers in the said Mosque and possession of the Muslims. It is incorrect for the court to say that the expenses shown in the above document ex-facie do not appear to have any relevance with the building in dispute. (See pages 2365-2371 in Volume - XII).

ii. That Hon'ble Justice Sudhir Agarwal has wrongly observed that Ext. A-6 (Suit-1) of 1934 was not a 30 years old document when it was exhibited and in any case it was wrongly observed that the said document could not be held to be proved even in 2010. Similarly Ext. A-11, A-10 and A-21 (Suit-1) etc. have also not duly considered while there was specific mention about the maintenance of Mosque and inspection of the same by the Government Officials. It has

also been wrongly observed that none of these documents throw any light on the fact whether the Muslim public visited the said place for offering Namaz. In this respect the Hon'ble Judge failed to appreciate that the use of Mosque by the Muslims cannot be said for any other purpose except for the offering of Namaz. (See pages 2421-2423 in Volume - XII).

iii. That Hon'ble Justice Sudhir Agarwal has failed to appreciate that the testimony of the witnesses of Muslims side referred on pages 2455-2507 fully proved the case of the plaintiffs (Suit-4) about the offering of regular prayers in the disputed building upto December 1949 and the testimony of none of these witnesses could be said to be either uncorroborated by other witnesses or based on hearsay information or self contradictory or unreliable. It has further been wrongly observed that the evidence produced by the plaintiffs (Suit-4) was not credit worthy so as to believe what they had said. The Hon'ble Judge is not justified in making adverse inferences against the witnesses merely on the basis of some minor contradictions and the observations made about the age of certain witnesses being less than what was told by them, especially in respect of PW-2 (Haji Mahboob) etc. is also completely unjustified and the comments made by the Hon'ble Judge against these witnesses specially on pages 2450, 2457, 2459, 2460, 2461, 2463, 2467, 2470, 2475, 2490, 2494, 2495 and 2507 etc. are totally misconceived and unwarranted.(See pages 2503, 2507, 2515- 2521 in Volume - XIII).

iv. That Hon'ble Justice Sudhir Agarwal has improperly and wrongly observed that by a perusal of Ext. A-63 and A-64 (Suit-1) it could not be said that regular prayers were being held in the property in dispute. It is submitted that this observation is in violation of the basic principles of appraising evidence by not appreciating the documents as a whole, otherwise, the Hon'ble judge would not have observed on the basis of these two reports mentioned above that regular prayers could not have been held in the property in dispute. (See pages 2515-2521 in Volume - XIII).

v. That the finding of Hon'ble Justice Sudhir Agarwal that the claim of Muslims about the daily prayers being held in the building in suit could not be believed or that the inner courtyard had "remained open for all," is not based on reliable evidence. Rather the said finding has been recorded by ignoring and mis-appreciating the oral and documentary evidence produced by the Muslims and Hindus. (See page 2522).

vi. That Hon'ble Justice Sudhir Agarwal has wrongly stated that the entire evidence of the Muslims did not touch upon the area covered by the outer courtyard except the use of passage and it is wrong on the part of the court to observe that the plaintiffs were never in possession thereof. In this respect the documentary evidence adduced by the Muslims for the period from 1858 A.D. onwards as well as the oral evidence adduced by the Muslims and also some documentary evidence

adduced by the Hindu side has been ignored. (See pages 2522-2523 in Volume - XIII).

vii. That Hon'ble Sudhir Agarwal failed to appreciate the law laid down by this Hon'ble court as well as by Privy Council and the High Court of Allahabad and Oudh about the evidentiary value of Revenue entries in its correct perspective and the certified copies of the Accounts etc. submitted by the then Mutawalli to the Tahsildar / Collector as well as to Waqf Board were also not properly appreciated and it was wrongly observed that the documents referred on pages 2898 to 2921 had not been proved. In this respect one observation made in one auditor's report (Ext.A-58) was also misappreciated and the provision contained in Section 26 of the U.P. Muslims Waqf Act, 1960 (now substituted by the Waqf Act, 1995) was also not appreciated in which it was specifically mentioned that all copies issued by the Waqf Board shall be received as prima-facie evidence of the record and be admitted as evidence. As such there was no requirement of proving the contents of the said documents by any oral evidence and especially of the documents which were more than 30 years old. (See page 2898-2821in Volume - XIV).

viii. Because even after referring to the cases of *Ballabh Das v. Noor Mohammad* (1936 Privy Council page 83) at P.3142 and *Wali Mohammad Versus Mohd. Buksh* (1930 Privy Council page 91) at P.3144, Hon'ble Justice Sudhir Agarwal did not appreciate the value of the extracts of Khasra filed by the Muslims although the aforesaid cases laid down the law that

Khasra entries were the instrument which conferred and embodied the right and they were instrument of title and as such the title of the Mosque was proved by the said Khasra entries relied upon the Muslims side. (See page 3142-3144 in Volume - XV)

ix. That Hon'ble Justice Sudhir Agarwal has made perverse and misconceived remarks stating that the contents of the revenue records etc. cannot be relied to prove the title of the parties concerned but they have to prove the same by producing relevant evidence. The said observation of the Hon'ble Judge is improper and misconceived in view of the fact that innumerable properties of Waqf are set out in the revenue records only. The observation/finding of the Hon'ble Judge, in Para 2944, stating that the Waqf Board should have based the claim of adverse possession against the particular owner of the property is not correct. The claim of Waqf Board or any of the Muslim Party's adverse possession is against all those who claim their rights and beliefs attached to the said piece of land and not the specific owner of the said land as nobody else except the Muslim party could claim title. The Muslim Party's claim on the land is that they had the right to offer Namaz on the said land based upon their Waqf and/or continuance of possession of the premises and nobody else except Muslims could carry out their religious activities on the said land. The Hon'ble Judge has misread and misinterpreted the stand of Muslim parties and has misdirected the entire

issue and hence the observation in Paras 2944 and 2945 is improper and incorrect. (See page 2802 in Volume - XIV)

x. That Hon'ble Justice Sudhir Agarwal wrongly recorded that, "The reading of the entire plaint (suit-4) nowhere shows an averment that the plaintiffs were dispossessed of a property which they already possess." It was also wrongly observed by the Hon'ble judge that, "The plaintiff's cause of action and relief, therefore, are quite divergent." In this respect the Hon'ble Judge did not at all take into account the averments of paragraphs 11, 11(a), 13 and 20 of the plaint from a perusal of which it is evident that the plaintiffs had clearly mentioned that Muslims were in full possession of the Mosque till 22-12-1949 when a large crowd of Hindus had entered the Mosque in the night of 22nd /23rd December, 1949 and desecrated the same by placing idols inside the Mosque. Again it was stated in para 11 (a) that Muslims' possession beginning from the time Mosque was built had continued right up to the time some mischievous persons had entered the Mosque and desecrated the same. In para 13 of the plaint it was mentioned that by order dated 29-12-1949 the Mosque was attached and possession was handed over to Sri Priya Dutt Ram as Receiver who still continues in possession and averments about the building in suit being in possession of Receiver was made in para 20 also. It was also wrongly observed by the Hon'ble Judge that the plaintiffs had contended that it was an assumption on the part of the defendants that the plaintiffs are

dispossessed of the property in question. (See pages 2271-2272 in Volume- XII).

xi. That Hon'ble Justice Sudhir Agarwal has wrongly observed that the pleadings were extremely vague and that the Hon'ble counsel for the plaintiffs (Suit-4) found it difficult to bring out the requisite pleadings so as to attract Article 142 of the Limitation Act in the present case. In this respect the Hon'ble Judge ignored the cumulative effect of the pleadings contained in paragraphs 11, 11 (a), 13 and 20 etc. and wrongly held that the assertions made in the aforesaid paragraphs were insufficient to constitute a case of "dispossession" or "discontinuance of possession" of the Muslims over the property in dispute. The Hon'ble Judge failed to consider the plaint in its right perspective and in the manner in which pleadings are to be interpreted. (See page 2274 in Volume - XII).

xii. That Hon'ble Justice Sudhir Agarwal has wrongly reached his findings that neither Article 142 and nor Article 144 of the limitation Act, 1908 were applicable in the instant suit and that the suit was covered by Article 120 of the said Act. It has been further wrongly recorded that the prayer of restoration of possession was superfluous and "a mere suit for declaration was necessary" (See pages 2424-2427, 2440-2442 in Volume - XII).

xiii. That Hon'ble Justice Sudhir Agarwal has incorrectly held that in respect of the outer courtyard, the claim of the plaintiffs

(Suit-4) is clearly barred by the limitation and hence the suit in its entirety was to be held barred by limitation and wrongly decided Issue No. 3 (Suit-4) against Muslims. (See pages 2532-2533 in Volume - XIII).

xiv. That Hon'ble Justice Sudhir Agarwal's observation that nobody had pressed Issue No. 10 (Suit-1) and that nobody advanced any argument to suggest that suit No. 1 was also barred by limitation is improper. In this respect the argument of the Muslim side was that the alleged right of Darshan and Puja at the site in dispute, if any, stood extinguished in 1528 itself when the building in dispute was constructed as a mosque and as such the alleged right of plaintiff of suit No. 1 was barred by limitation as no action was taken upto 1950. (See page 2533).

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

law of the land. (See pages 2538, 2548, 2552 and 2553 in Volume - XIII).

xvi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that no reliance could be placed on the extracts of Books like "Hadiqa-E-Shohda" by Mirza Jan, "Amir Ali Shaheed Aur Marka-E- Hanuman Garhi" by Sheikh Mohd. Azmat Ali Kakorvi (1987) and "Tarikh-e- Avadh" by Najmul Ghani Khan Rampuri etc. Placing reliance upon the same was totally against the settled principles of evidence as the said books could neither be said to be books of history nor there was any information about the status and qualifications etc. of the authors of the same, and in any case, they could not be said to be Historians. Similarly, the books published after 1950, when the dispute was already pending before the court, could not be relied upon as admissible piece of evidence, including the extracts of 'Encyclopedia Britannica' (1978 edition) and 'Ayodhya' by Hans Baker (published in 1986). (See pages 3511-3563 in Volume - XVII).

xvii. That Hon'ble Justice Sudhir Agarwal wrongly observed that "law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened" and wrongly relied upon Section 114 of the Evidence Act for such discretion. In this respect the Hon'ble Judge failed to appreciate that the presumption could be drawn only from facts and not from other presumptions as was observed by the Hon'ble Judge himself that "Presumption is an inference of a

certain fact drawn from other proved facts." (See page 2078 in Volume - XI).

xviii. That Hon'ble Justice Sudhir Agarwal, even after holding that "It is well settled that evidence which are totally contrary to the pleadings ought not be entertained by the court" has proceeded to rely upon such evidence and so called belief / faith which was totally contrary to the pleadings of most of the Hindu parties. (See page 2139 in Volume - XI).

xix. That Hon'ble D.V.Sharma has acted illegally in brushing aside the evidence placed by the Plaintiffs in Suit No.4 merely by saying that the said documents were not reliable evidence. The Hon'ble Judge has failed to give any reasoning of whatsoever nature while reaching to this conclusion. It was also incorrect to say that averments in the Plaint were contrary to the documents. The judgment of Hon'ble Judge on this issue is misconceived, based on misappreciation of evidences of plaintiffs and not in terms of the judicial principles and is liable to be set aside.

xx. That the finding as recorded by Hon'ble D.V.Sharma stating that *"it transpires that even after the conquest, the Ramjanamsthan Temple could not be demolished, even if demolished, the erection of Babri Mosque is illegal and against the tenets of Islam. Accordingly, the disputed site cannot be deemed to be a mosque. He has further submitted that there is no reliable evidence that it was constructed by Babur or Mir Baqi. According, Ramjanamsthan Temple even*

under the Islamic law shall retain its existence, which is not vanished by any illegal action of Aurangzeb, Babur or any ruler. No valid Waqf can also be created. It is further submitted that since there was no Islamic Mosque, accordingly question of offering prayers does not arise and even if the prayer was offered, it is immaterial" is without any basis and evidence and is simply based upon the argument of one side. The Hon'ble Judge has converted the submission of the counsel for the Defendants into the finding of its own. The said observation/finding of Hon'ble Judge is quite erroneous and perverse. The said observation is not based upon the evidence. The Islamic laws that have been stated before the said observation are out of context and have no application to the facts and circumstances of the present case. The Hon'ble Judge has even failed to consider the evidence in its right perspective and has misconstrued the report of Archaeological Survey of India in this respect.

(D) **DEPRIVATION OF CONSTITUTIONAL RIGHTS OF THE APPELLANT**

i. That the issues relating to the belief/ faith of Hindus have been dealt with in the background of the constitutional scheme of right to religion as contained in Part-III of Constitution of India without appreciating that the said fundamental rights are available to all the persons equally. Articles 25 and 26 of the Constitution of India read as under:-

Article 25: "Freedom of conscience and free profession, practice and propagation of religion (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and t he right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I: The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26: Freedom to manage religious affairs: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

to establish and maintain institutions for religious and charitable purposes;

to manage its own affairs in matters of religion;

to own and acquire movable and immovable property; and

to administer such property in accordance with law".

The Hon'ble Judge without dealing with the said constitutional guarantee in proper perspective has relied upon the judgment given in the matter of *Commissioner of Police Vs. Acharya Jagdishwarananda Avadhuta and Another* 2004 (12) SCC 770 to conclude about the belief upon which the religion is founded. This judgment is in relation to a question of law *"whether performance of Tandava Dance in public is an essential practice of the Anand Margi's".* The entire premise of the judgment is to give a proper perspective, meaning and practice of a particular performance within a particular religious practice without involving the rights of followers of the other religion and without effecting the belief of the other religion. Relying upon the said judgment is entirely misconceived, improper and without context leading to the perverse finding to frustrate, and take away the belief of the followers of other religion whereby infringing upon the

fundamental rights of the other community as guaranteed in Constitution of India.

ii Because the other judgment reported at *(2002) 8 SCC 106* relied upon by Hon'ble Justice Sudhir Agarwal is similarly without any basis and out of context for the present case. The said case raised the question of law as to whether the appointment of a person, who is not a Malayala, Brahmin as Shantikaran or Pujari of the Temple is violative of constitutional and statutory rights of the Appellant therein or not? The finding of the said judgment as quoted in the impugned judgment herein is in that background as to whether Brahmin or non-Brahmin or Malayala Brahmin would be appointed as Priest in a particular Temple. The said judgment has no relevance in the present case and the said reliance is bad in law.

(E) **MISAPPRECIATION OF CONCEPT OF WAQF AND MOSQUE**

i. That Hon'ble Justice Sudhir Agarwal wrongly observed that there was no recorded history for the period of 1528 to 1855 A.D. stating in black and white that the building in dispute was constructed by Babur and then dedicated to Muslims as a public Waqf. The Hon'ble Judge failed to consider that once a public Mosque was constructed and Muslims in general were allowed to offer 5 times prayers in the same and if such user had continued for a long time there was no requirement of law for any express dedication or Waqf deed being there to prove the said dedication to God Almighty. Further, it is

submitted that Issue No. 5 (e) of O.O.S. No. 4 of 1989 is vague and not in accordance with law. (See page 1364 and 1368 / 1369 in Volume - VIII).

The Hon'ble Judge further failed to appreciate that the dedication is made to God Almighty and not to the Muslims as observed by the Hon'ble Judge and the law laid down by this Hon'ble court as well as by the High Courts about the implied dedication was either ignored or misunderstood. In this respect also the Books of History as well as the Books relied upon by the Hindu side and the statements of Historian / Archaeologist witnesses of the Hindu side admitting the construction of the building as a Mosque in 1528 A.D. were ignored. Even the Gazetteers published before 1855 A.D. were not taken into account although 2 historical books were mentioned in the same sequence (See pages 3286-3287 in Volume - XVI).

ii. That the order dated 21-4-1966 given by the Civil Judge Faizabad on issues No. 17, 5 (a) and 5 (c) was not in accordance with law and the same is liable to be set aside (See pages 1286 - 1298 in Volume - VIII)

iii. That the finding recorded by the Hon'ble judge on Issue No. 9 (a) of O.O.S. No. 1 of 1989 and on Issue No. 5 (a) of O.O.S. No. 4 of 1989 is not in accordance with law and the same is liable to be set aside (See page 1299 in Volume - VIII).

iv. That it has been wrongly observed by Hon'ble Justice Sudhir Agarwal that Section 5 of Waqf Act, 1936 would have no

application qua rights of Hindus in general and plaintiffs of suit No. 1 in particular and in this respect the law laid down in 1967 Rajasthan page 1, 2006 (6) ADJ-331 and 1996 supplement AWC 189 was wrongly relied upon and it was not appreciated that the same was against the law laid down by the Hon'ble Supreme Court in-1979 Supreme Court 289 and 1992 Supreme Court 1083 etc. (See page 1348 to 1359 in Volume - VIII)

v. That Hon'ble Justice Sudhir Agarwal has wrongly observed that "even the counsel for the Waqf Board do not claim that till Issue No. 17 was decided by the Civil Court Judge except of the notification dated 26-2-1944, there was any procedure or method followed by the Sunni Waqf Board to enlist or register the concerned Waqf in the Register of the Waqf Board" and it was also wrongly observed that neither it was pleaded nor there was any material on record to substantiate the same. In this respect the pleadings made by the Waqf Board were mis-appreciated and the documents pertaining to the record of the Waqf Board concerning the said Waqf were also not appreciated (See page 1166 in Volume - VII).

vi. That it has been wrongly observed by Hon'ble Justice Sudhir Agarwal that the pleadings with respect to registration of the Waqf in question in the register maintained u/s 30 of the Waqf Act had no relevance. It was not appreciated that there being no denial of the said registration, there was also hardly any occasion or necessity to bring on record other documents, including the order of the Waqf Board etc. regarding the

registration of the said Waqf and it was also wrongly observed that the pleas taken in this respect in the Written Statement of the Board were wholly baseless and not attracted in these matters (See page 1167 in Volume - VII).

vii. That the finding recorded by Hon'ble Justice Sudhir Agarwal on Issue No. 18 of O.O.S. No. 4 of 1989 is not in accordance with law and the same is liable to be set aside (See page 1377 in Volume - VIII).

viii. That Hon'ble Justice Sudhir Agarwal has wrongly held that the Waqf Act, 1936 did not apply to non-Muslims (See page 1380 in Volume - VIII)

ix. That Hon'ble Justice Sudhir Agarwal has wrongly observed that it was only Mutawalli of the Waqf who could claim possession of the property in question according to Islamic Law and that Plaintiff No. 1 of suit 4 (Sunni Waqf Board) had no power, on its own, to claim the possession or custody of any Waqf and that worshippers or beneficiaries of a Waqf also could not claim possession and it was also wrongly observed that the attachment of the property will have no effect upon limitation. (See pages 2247-2248 in Volume - XI).

x. That Hon'ble Justice Sudhir Agarwal wrongly observed that although dedication may be inferred from user as a Waqf property but the question of long user may not be relevant when the issue was whether a particular person made the dedication or not. This observation of the Hon'ble Judge was against the settled principle of 'implied dedication' and Hon'ble

Judge appears to have proceeded on an absolutely incorrect notion of law regarding dedication. (See page 3289 in Volume - XVI).

xi. That Hon'ble Justice Sudhir Agarwal failed to appreciate the spirit of Waqf by user and inference of implied dedication by long user and as such wrongly observed that the claim of Muslim parties that they came in possession as a result of dedication by Babur was "baseless and falls on the ground." Under this very misconception the Hon'ble Judge observed that there was no evidence that Babar or any of his agents made any Waqf or dedicated any property for public use or that the Muslims in general or in particular were placed in possession of any part of the land comprising the disputed site. In this respect the law laid down by this Hon'ble court about implied dedication was totally ignored while observing that no direct evidence was available for the possession of Muslims on any part of the disputed site. It was also wrongly observed that in a issue relating to the title no presumption can help and it was also wrongly observed that it would also not be a matter of public history for which the court may resort to books and documents u/s 57 of the Indian Evidence Act, 1872. The pleadings of the Muslim parties were also wrongly held to be much short of the requirement of such a claim of title and possession. It may also be noticed that such observations were made even though it was admitted on page 3376 that the building in suit was being termed, called and known as a Mosque at least for the last more than

2 and half centuries. (See pages 2800-2803 in Volume - XIV).

xii. That Hon'ble Justice Sudhir Agarwal while dealing with Issue No. 3(Suit-3) wrongly observed that it was admitted by the parties that the land in dispute was mentioned as Nazul since 1861 and there was no change in its status. In this respect the Hon'ble Judge failed to appreciate that the entire land in dispute was covered by the building / boundary of the Mosque and the same could never be treated as the property of any Nawab or Taluqedar for being vested in Nazul and moreover none of the parties had either pleaded or lead any evidence and no issue was ever framed to the effect that the property in question was Nazul property. (See page 2841 in Volume - XIV)

xiii. That Hon'ble Justice Sudhir Agarwal misinterpreted another Hadith regarding the Mosque not to be used "as a home" and in this respect has wrongly drawn adverse inference against the building in dispute that the same cannot be inferred to be a Masjid simply because the ASI had found a Chulha (oven) on the suit premises and merely from the existence of the said Chulha the Hon'ble Judge has wrongly drawn inference that as if the said structure was being used as home of Hindu deity and Chulha was being used for preparing food for the deity. As a matter of fact there was no prohibition for the stay of Imam and Moazzin in a portion of the Mosque building and for preparing their food also in the same building and as such it could not be said that simply by the presence of Chulha the

building in dispute could not be treated as a Mosque. (See page 3010 in Volume - XV).

xiv. That Hon'ble Justice Sudhir Agarwal misinterpreted even Hadith 229 of Jami At-Tirmidhi (Vol. I) and wrongly observed that the building in dispute was not fit for offering prayer as there were columns in the said building and offering of prayers between two column was unavoidable. (See pages 3010-3011 in Volume - XV).

xv. That Hon'ble Justice Sudhir Agarwal wrongly observed that there cannot be a Mosque in a place surrounded by graves. In this respect also, the Hon'ble Judge misinterpreted the Hadith and failed to appreciate that facing the graves does not mean that graves cannot be there even after the western wall and in this respect the Hon'ble Judge did not appreciate that the building in dispute was surrounded by the walls on all the 4 sides and there were no graves inside the said walls and there was no question of Namaz being offered facing any grave. The graves referred to in the Commissioner's report of 1950 were also not situated inside the building in dispute but rather the said graves existed outside the boundary walls of the building in dispute. (See pages 3015-3018 in Volume - XV).

xvi. That Hon'ble Justice Sudhir Agarwal failed to appreciate that when the Mosque in question was constructed there did not exist any place in the vicinity where bells were being rung or conch shells were being blown and all the references of Hadith and Quran given in this respect were either not

applicable at all or the same were mis-appreciated. Moreover, it was also not appreciated that a Mosque does not cease to be a Mosque merely because a temple was erected in the adjacent area or any place had come up in tne vicinity of the Mosque where bells are rung. (See pages 3019-3023 in Volume - XV).

xvii. That Hon'ble Justice Sudhir Agarwal wrongly observed that there was any injunction in Quran or Hadith requiring for Wazu being performed in the Mosque. All the references of Quran and Hadith made by the Hon'ble Judge in this respect were either irrelevant to the matter in issue or were misconstrued. (See pages 3023-3031 in Volume - XV).

xviii. That Hon'ble Justice Sudhir Agarwal failed to appreciate that the references of Holi Quran and Hadith given on pages 3032 to 3097 as well as extracts of the Book of Syed Ameer Ali were either not relevant at all to the matter in issue or the same were in respect of the matters already covered by the earlier citations of Holi Quran and Hadith and none of them could give any strength to the contention of the other side about the alleged requirement of place of Wazu etc. in every Mosque. However, it was also not noticed and properly appreciated by the Hon'ble Judge that there was ample evidence to prove that the Mosque in dispute had sufficient arrangement of water and a place was also earmarked for the performance of Wazu. (See pages 3032-3109 in Volume - XV)

xix. That Hon'ble Justice Sudhir Agarwal failed to appreciate that there was no dispute to the proposition of law that a Waqf could be validly created only by the owner of the property and it was specifically argued from the Muslims side that King used to be the owner of all the vacant land. And as such the Mosque in dispute constructed on a vacant site could not be said not to have become a Waqf by user simply because there was no document to prove any express dedication as this Hon'ble Court has already approved the law that, "if land has been used from time immemorial for the religious purpose..... then the land is by user Waqf although there is no evidence of an express dedication (Mulla's Mohammedan Law, Edition 14, page 173)." This observation of Mulla was quoted with approval in para 16 of the case reported in A.I.R. 1956 Supreme Court 713 (*Mohammad Shah Versus Fasihuddin Ansari*). It was also wrongly observed by the Hon'ble Judge that there was no pleading "that it was a vacant site and the mosque was built thereat for the benefit of Muslims." It was also not appreciated that the previous ruler of Ayodhya was no Hindu King but it was Ibrahim Lodi or his forces and the words "for the use of the Muslims in general" were mentioned in the very first para of the plaint. Similar was the statement of the plaintiff's counsel (Mr. Mohd. Ayyub) dated 8-8-1962 (See P. 274). In the statement of Mr. Mohd. Ayyub, Advocate, dated 20-1-1964, it was also mentioned that no construction existed at the site where Babri Mosque was built. (See pages 3109-3144 in Volume - XV).

xx. That Hon'ble Justice Sudhir Agarwal wrongly observed in para 3295 about some of the features, treating them to be permissible or impermissible for believer of Islam, while offering Namaz in the Mosque or, for the construction of a Mosque. A special mention may be made to the so called features mentioned at serial No. v, vii, ix, x, xiii, xiv, xvii, xviii and xix etc. Similarly in para 3296 it was wrongly observed that for a public Waqf, the delivery to Mutawalli or anyone else on his behalf was one of the essential requirements of a valid Waqf whereas the Muslim law permits that after dedication the owner himself may be the first Mutawalli and in that event delivery of possession will be only notional. Similarly it was also wrongly observed in para 3297 that the religious experts produced by the Muslims have made statement which are not in conformity to what has been said in the texts referred in the Judgment and at times is contrary thereto. (See pages 3218-3220 in Volume - XV).

xxi. That Hon'ble Justice D.V.Sharma while deciding Issue No.5(b) in Suit No 4 stating that Muslim side has not advanced any argument against the submissions of non-application of the provisions of U.P.Act No.13 of 1936 is incorrect. It is submitted that the Muslim parties argued the issue of Waqf and the said Waqf has to be determined not on the basis of submission of other side but the said issue of "Waqf" is to be determined as per the Law of Waqf as applied by the courts in India. The interpretation given to the Law of Waqfs by Mr. Justice Agarwal and Mr. Justice Sharma may amount to infringement

of fundamental rights of Muslims. The Hon'ble Sharma, J. stating that, *"It does not affect the right of worship of Hindus. It does not deal with the right of Hindus about their worship. Consequently, U.P.Act No.13 of 1936 has no application to the right of Hindus about their worship. Issue No.5(b) is decided against the Plaintiff and in favour of the Defendants"*, is contrary to the constitutional guarantee of Muslims in relation to their Personal Laws. The very foundation of this finding is misconceived and extraneous in view of the fact that no legislative enactment of this nature requires any consideration of other religion and its implications. The said finding is also devoid of reasons and baseless and liable to be set aside. (*See page 160, Vol. 1*)

xxii. That Hon'ble Justice D.V.Sharma while deciding Issue No.5 (e) & (f) in Suit No 4 has given a wrong finding that, *"I have given my anxious thought to the facts of the case, I am of the view that since there is no valid notification under Section 5(1) of the Muslim Waqf Act, 1936 in respect of the property in dispute. The registration though is not disputed and pleadings can be looked into by this Court. It further transpires that the registration was done by adhering to the provisions of the Act and accordingly it cannot be deemed to be a valid registration. The registration does not confer any right to the Waqf Board to maintain the present suit without complying with the valid required notification. The registration can be done in accordance with law after adhering to the provisions of the Waqf Act, 1936. Thus the registration was not made in*

accordance with the provisions of Section 5(1) of the Muslim Waqf Act, 1936. It cannot be deemed to be a valid entry, the Board has no right to maintain the suit and the same is barred by time". This finding is given on the basis of erroneous considerations and on the basis of irrelevant facts inadmissible in the eyes of law. The registration of Waqf can be sought by any member of Muslim community and registration of the said Waqf does not require a notification. A Waqf can be registered by the Board suo-moto also. In the present case, the Defendants in suit No. 4 have not denied that the property in question was registered under the provisions of law and in view of such pleadings of the parties, it was not open for the Hon'ble Judge to proceed with the issue to give a finding in a perverse and misconceived manner to non-suit the plaintiff in Suit No.4 and hence the above findings are liable to be set aside. (*See page 204 & 205, Vol 1*)

xxiii. Because the issue of Waqf and any property dedicated to Waqf by any one can only be considered as per the Islamic law unless the title of the property is proved to be otherwise than that of the person who made the Waqf. In the present case, the alleged title of the temple having not been proved at all the Hon'ble Judge has erroneously placed onus upon the Plaintiffs in Suit No.4 to prove their title on the land. The very basis of placing the onus on the plaintiff in Suit No. 4 is incorrect and improper in view of the fact that the Mosque existed on the said land for more than 400 years and Muslims

had continuously offered their Namaz in the said Mosque premises. In that view of the matter the onus of proving the title must have gone to the persons claiming it to be place of Lord Ram's birth. In that view of the matter, the above findings cannot be sustained in the eyes of law.

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

xxv. Because Hon'ble Justice D.V.Sharma while deciding Issue No.19(b) in Suit No. 4 has reached to a wrong conclusion by citing irrelevant legal propositions. The Hon'ble Judge has

ignored the fact that the Mosque existed with its outer courtyard in which certain Chabutra, later on named as Ram Chabutra, was made around 1857 only. Instead of giving a finding that whether the Ram Chabutra was unauthorized or not, the Hon'ble Judge has perversely proceeded to dislodge the claim of Mosque on the basis of bells to be rung on and around the Chabutra. The legal proposition cited from the Islamic law is not in dispute but the Hon'ble Judge has proceeded to cite the said legal proposition by misconstruing and mis-appreciating the same and without appreciating that the same had no application in the present facts and circumstances. The Mosque existed and later on if the bells are rung, due to such subsequent ringing of bell, the Mosque itself cannot be directed to be replaced even if ringing of bells could not be relocated which had come up subsequently. The finding of Hon'ble Judge that the building was land locked and it was possible to reach inside the disputed place only through the places of Hindu worship is also incorrect and improper, and, it could not be said that the premises was land locked merely on account of the existence of the said Ram Chabutra of 17' x 21' in the east and another Chabutra of about 10 x 12 feet known as Sita Rasoi in the south.

xxvi. That Hon'ble Justice D.V.Sharma's finding on Issue No.19(b) in Suit No 4 stating that *"Since the structure has already been demolished but the report of Commissioner is available on record. Accordingly, the disputed structure cannot be deemed to be a Mosque according to the tenets of Islam. Thus, issue*

No. 19 (b) is decided in favour of the defendants and against the Plaintiffs", is also erroneous and unjustified, without discussing the reasons as to why the said finding has been arrived at except quoting the Islamic laws , out of context which is irrelevant in the facts and circumstances of the present case.(Page 245, Volume I)

xxvii. That Hon'ble Justice D.V.Sharma's finding on Issue No. 19(d) in Suit No 4 that *"According to the tenets, minarets are acquired to give Azan. There cannot be a public place of worship in mosque in which Provision of Azan is not available, hence the disputed structure cannot be deemed to be a mosque"*, is also wrong and erroneous. It is not necessary that minarets must be there for Azan and there is no such mandate of Islam. It is also not mandatory that provision of Azan with a separate specification is a must for any structure to be called 'Mosque'. The Hon'ble Judge's finding that the place of Wazoo is a must, is also similarly misconceived and incorrect. The Hon'ble Judge has wrongly held that such provisions are necessary for a mosque as per the tenets of Islam. *(See pg 245 –volume I)*

xxviii. That Hon'ble Justice D.V.Sharma's finding on Issue No. 19(e) in Suit No 4 stating that, *"Since there was no provision of water reservoir in the disputed premises, the question of performing wazu by huge crowd for Friday's prayer did not arise at all in other words the said structure could not be used as Masjid for offering congregational prayer on Friday. In view of Islamic tenets, the property cannot be deemed to be a*

mosque", is also improper, incorrect and wrong as stated in the preceding grounds. The quoted Hadis have been misconstrued and applied out of context. Wazu is necessary to offer Namaz, is one part and making a place for Wazu inside the Mosque is another part. The Hon'ble Judge's finding about the necessity of a place for Wazu in a mosque is not at all in terms of the Islamic Law cited by him. Wazu could be made at any place and Wazu can also be performed at home before leaving for Mosque to offer Namaz. *(See Page 255, Vol.1).* The Hon'ble Judge's finding that structure having images/idols and designs cannot be termed as Mosque is also based on mis-appreciation and misconstruction of Islamic laws. Prohibition against placing of images and pictures on curtain etc. is quite different from the existence of some images on pillars in a structure of Mosque which could not be detected and identified as images at least by the Muslims and hence relying upon the quoted Hadis and Quranic Injunctions are misconceived and out of place and has no relevance to decide the present issue. However, relying upon the said out of context texts, the Hon'ble Judge has misdirected himself and has reached a wrong finding to declare that the building cannot be legally a Mosque. The said finding is liable to be set aside. These findings were not even covered by the Issue No. 19(e) quoted on Page 246.

xxix. That Hon'ble Justice D.V.Sharma's finding on Issue No. 19(f) in Suit No 4 is also incorrect and not based on correct appreciation of the Law of Shariat. The Hon'ble Judge has

quoted the religious law out of context. In any case, without admitting the existence of images of gods/goddesses on the said pillars it is mentioned that even, if the pillars had any image of Hindu God and Goddess it cannot convert the structure into Temple and neither on that basis the Hindus get any right to trespass inside the Mosque and start worshipping the said images. The finding of Hon'ble Judge is erroneous and out of context and is liable to be set aside. In this respect the oral evidence of Religious Experts of Islam as well as the documentary evidence and the contradictory statements of Hindu side witnesses have been totally ignored.

(F) **ERRONEOUS FINDING ON LOCUS OF APPELLANT / NON-JOINDER OF PARTIES**

i. That Hon'ble Justice D.V.Sharma's finding on Issue Nos. 20(a) & (b) in Suit No 4 is improper and incorrect. The Hon'ble Judge has misdirected himself and proceeded to challenge the maintainability of the Suit on incorrect and irrelevant consideration. The Hon'ble Judge's observation that as per order dated 21.04.1966 the suit cannot be maintained by Sunni Waqf Board, is incorrect and improper and is liable to be set aside. The Hon'ble Judge has not taken into consideration the fact that apart from the Sunni Waqf Board, there were many Muslims as co-plaintiffs in the Plaint. Neither Sunni Waqf Board ceased to have locus to maintain the suit, on account of the Order dated 21.04.1966 and nor other co-plaintiffs were in any way not competent to institute and prosecute the said Suit. The Hon'ble Judge's findings on these issues are erroneous and misconceived and without taking

into consideration the entire facts of the case specially the judgment of R.S. No. 29 of 1945 and the scope of powers and functions of the Waqf Board given under Section 19 of the Waqf Act, 1960. *(Please see Pages 264-265 Vol.I).*

ii. That Issue No. 21 in Suit No 4 that "whether the suit is bad for non-joinder of alleged deities?", has been decided on the wrong premises and law. Hon'ble Justice D.V.Sharma has ignored the material facts and the pleadings in Suit No.4 and decree prayed for in the said suit. The Hon'ble Judge failed to appreciate that the plaintiffs (Suit No. 4) had prayed for removal of the idols placed inside the Mosque in the intervening night of 22nd and 23rd December, 1949 in a forcible and stealthy manner without any "Pran Pratishtha". In the present set of facts and circumstances, the idols cannot be treated as Deity/ juristic person. The Hon'ble Judge has recorded his finding without considering the material facts which support the contention of Plaintiffs in Suit No.4. The finding on this issues is also perverse and without any legal basis. It was also not appreciated that the so called deity was already before the Court in OOS No. 5 of 1989 and all the suits were consolidated and hence there could not be said to be any effect of the alleged non-joinder. (Please see P. 287 of Volume I)

iii. Because Issue Nos. 23 and 24 in Suit No. 4 relate to competence of the Board to file the suit which has been accepted by the court. However, Hon'ble Justice D.V.Sharma has still reached the additional finding that the suit is not

maintainable for want of valid notification under Section 5(1) of the Waqf Act, 1936 and on that illegal basis has decided Issue No's 23 and 24 against the plaintiff, against his own observation made in the earlier part of the same paragraph. (Please see Page 288 of Volume 1)

(G) Section 80

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

(a) The Hon'ble Judge's finding that a private party could not take the plea under section 80 of the CPC pre-supposes that such a plea was not take by the State. In the present case, it is evident that the Written Statement filed by the State raised an objection under section 80 of the CPC and the private parties, who were arrayed as co-respondents in the Suit, could support such a stand in order to non-suit the plaintiff.

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

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

4. That without prejudice to the detailed Grounds as stated in the present Appeal, it is also material to state that the Learned Judges have proceeded to mould the facts and reasoning towards a solution which is neither based on facts nor based on law which was outside their domain so as to force a solution on one Community or the other without consent of the parties and without examining any alternative at all.

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. 4 of 1989 challenging the judgments in the present appeal.

6. That only this Hon'ble Court has appellate jurisdiction with respect to the judgment/ decree impugned herein in view of the fact that a Full Bench (comprising of three Hon'ble Judges) of the Hon'ble High Court of Allahabad has exercised original civil jurisdiction and passed a final order/ preliminary decree. The impunged judgment/ preliminary decree cannot be challenged in any other court except this Hon'ble Court. Even the Hon'ble High Court has observed in a separate order passed on 30.9.2010 that Appeal is maintainable in this Hon'ble Court under Section 96 CPC.

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

PRAYER

i) Call for the records of the case relating to Other Original Suit No. 4 of 1989 and other connected Suits decided by the Special Bench of three Hon'ble Judges of the Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow and allow the present Appeal by setting aside the judgment, order and preliminary decree dated September 30, 2010 passed in terms of separate judgments of three Hon'ble Judges;

ii) Decree the Civil Suit of the Appellant bearing O.O.S. No. 4 of 1989 and pass appropriate orders in terms of the decree prayed thereof;

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

iv) Award costs to the Appellant as against the contesting respondents

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

FILED BY:-

EJAZ MAQBOOL
Advocate for the Appellant

DRAWN BY:-
Mr. Ejaz Maqbool, Advocate
Mr. Nakul Dewan, Advocate
Mr. M.R. Shamshad, Advocate
Mr. Mrigank Prabhakar, Advocate
Mr. Karan Lahiri, Advocate

SETTLED BY :
Mr. Zafaryab Jilani, Advocate

RE-SETTLED BY :
Mr. Yusuf Hatim Muchhala, Senior Advocate

New Delhi

Dated : January 6, 2011

8773

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Misbahuddin ...Appellant

Versus

Mahant Suresh Das and others ...Respondents

AFFIDAVIT

I. Misbahuddin, aged about 41 years son of late Ziauddin, Resident of Mohalla Angoori Bagh, Faizabad City, Faizabad, State of U.P., do hereby solemnly affirm and declare as under:-

1. That I am the Appellant in the above mentioned Civil Appeal and as such I am well conversant with the facts and circumstances of the case and competent to swear the present affidavit.

2. That I have been explained the contents of the list of Dates from running pages B to N and of the Civil Appeal and state that the statement of facts and grounds of appeal, except the facts as to what transpired during the course of arguments in the court, stated from paragraphs 1 to 7 from running pages 1 to 222 and 225 to 227 and the contents of the application for interim relief / order are

true and correct to my knowledge and as per the documents, records and the historical books.

3. That the statement of facts in relation to the arguments advanced by the learned counsels in the High court are true and correct on the basis of what has been communicated to me by the counsel for the appellant and the same are believed to be true and correct.

4. The Annexures attached to the present Civil Appeal are true and correct copies of their respective originals.

DEPONENT

Verification:

I, the above named deponent, do hereby verify that the contents of Paras 1 to 4 of the above affidavit are true to my knowledge and nothing material has been concealed therefrom.

Verified at Lucknow on this 1st day of January, 2011.

DEPONENT

8775

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I A _____of 2011

IN

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Misbahuddeen ...Applicant/Appellant

Versus

Mahant Suresh Das and others ...Respondents

APPLICATION FOR INTERIM RELIEF / ORDER

To
The Hon'ble Chief Justice of India
And His Companion Justice of the
Hon'ble Supreme Court of India.

The humble Application of the Applicant/Appellant named above.

MOST RESPECTFULLY SHEWETH

1. That the Appellant is filing the accompanying Appeal against the impugned judgment, order and preliminary decree dated 30.09.2010 passed by the Special Full Bench of the Hon'ble High Court of Allahabad (Lucknow Bench), Lucknow in Other Original Suit No. No.4 of 1989 and other connected suits.

2. That the Appellant has set out the detailed facts and circumstances in the accompanying Appeal in the Statement of Facts and the grounds. The said facts and the grounds of Appeal are not being repeated for the sake of brevity and entire grounds of appeal may be treated to be part of the present Application for interim relief prayed in terms of the present Application.

3. That the Appellant submits that the entire judgment in Appeal is based upon unsustainable and erroneous findings arrived at by the Hon'ble Court below and accordingly the effect of the said judgment is liable to be stayed during the pendency of the present Appeal.

4. That this Hon'ble Court while passing its judgment and order dated October 24, 1994 in the case entitled as *Dr. M. Ismail Faruqui and Others v. Union of India and Others* reported in (1994) 6 SCC 360 had directed status quo to be maintained which was further clarified in the judgment and order passed by this Hon'ble Court on March 31, 2003 in the case entitled as *Mohd. Aslam Alias Bhure v. Union of India and Others* reported in (2003) 4 SCC 1 and the same status quo as directed by this Hon'ble Court in the aforesaid judgments needs to be maintained during the pendency of the present Appeal.

5. That it will be in the interest of justice that the status quo orders passed by this Hon'ble Court as stated above dated 24.10.1994 and 31.3.2003 are continued during the pendency of the present appeal.

6. That the balance of convenience is in favour of the Appellant and against the contesting respondents in view of the fact that the mosque was in use of the Muslims upto 22-12-1949 and Muslims were forcibly ousted from the same w.e.f. 23-12-1949 and since 29-12-1949 the property in suit is continuing in the custody of the court.

7. Irreparable loss will be caused to the appellant if status quo is not maintained.

8. Prima facie case is in favour of the Appellant and against the contesting Respondents. This Hon'ble Court had directed to

maintain status quo in terms of the judgment and order dated 24.10.1994 and 31.01.2003 and same order is prayed before this Hon'ble Court till the pendency of the present appeal.

PRAYER

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

i) pass ad-interim ex-parte stay, staying the operation of the impugned judgment, order and preliminary decree dated 30.09.2010 passed in O.O.S No. 4 of 1989 by the Special Full Bench of the High Court of Allahabad (Lucknow Bench) till the final disposal of this Appeal and maintain status quo as per Judgments and orders dated 24.10.1994 reported in (1994) 6 SCC 360 and 31.3.2003 reported in (2003) 4 SCC 1 passed by this Hon'ble Court.

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

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

Filed by:-

EJAZ MAQBOOL
Advocate for the Applicant/Appellant

New Delhi

Dated : January 6, 2011

8778

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL NO. OF 2011

IN THE MATTER OF:-

Misbahuddeen ... Applicant / Appellant

VERSUS

Mahant Suresh Das and others ...Respondents

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION

To

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

The humble application of the above named Applicant/Appellant

MOST RESPECTFULLY SHEWETH :

1. That the Applicant/Appellant above named has filed the present Civil Appeal in this Hon'ble Court under Section 96 of the Code of Civil Procedure, 1908 read with Section 109 of the Code of Civil Procedure, 1908 and also read with Articles 133/134A/136 of the Constitution of India against the impugned, judgment, order and preliminary decree dated 30.9.2010 passed by the three Judges Special Bench of the Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow rendered in O.O.S. No.4 of 1989 and other connected suits vide their separate judgments

2. That the Applicant/Appellant submits that at several places in the impugned judgment there are Hindi, Urdu, Arabic, Persian and Sanskrit languages have been used which have not been translated in the impugned judgment by the Hon'ble High Court. The Applicant/Appellant

has got the translation done privately because the official translation would have taken a much longer time.

3. That the Applicant/Appellant, therefore, most respectfully prays:-

PRAYER

a) exempt the Applicant/Appellant from filing official translation of Hindi, Urdu, Arabic, Persian and Sanskrit languages mentioned at the several places in the impugned judgment which have not been translated by the Hon'ble High Court; and/or

b) pass such other and further order(s) as this Hon'ble Court may deem just and appropriate in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE APPLICANT/APPELLANT AS IN DUTY BOUND SHALL FOR EVER PRAYS.

Filed by:-

EJAZ MAQBOOL
Advocate for the Applicant/Appellant

New Delhi

Dated: 10.2.2011