Reserved

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW
O.O.S NO. 5 OF 1989

(R.S.NO. 236/1989

1. Bhagwan Sri Rama Virajman at Sri Rama Janma Bhumi, Ayodhya, also called Bhagwan Sri Rama Lala Virajman, represented by next friend, Sri Deoki Nandan Agrawal Senior Advocate/ Retired High Court Judge,56 Dilkusha, Allahabad is no more and in his place Sri Triloki Nath Pandey S/o Askrut Pandey, Karsewakpuram, Ayodhya, Distt. Faizabad is substituted as next friend of plaintiff nos.1 and 2.

2. Asthan Sri Rama Janma Bhumi, Ayodhya, represented by next friend, Sri Deoki Nandan Agrawal Senior Advocate/ Retired High Court Judge,56 Dilkusha, Allahabad is no more and in his place Sri Triloki Nath Pandey aged about 65 years S/o Askrut Pandey, Karsewakpuram, Ayodhya, Distt. Faizabad.

3. Sri Deoki Nandan Agrawal Senior Advocate/ Retired High Court Judge,56 Dilkusha, Allahabad is no more and in his place Sri Triloki Nath Pandey aged about 65 years S/o Askrut Pandey, Karsewakpuram, Ayodhya, Distt. Faizabad.

.........Plaintiffs

Versus

1. Sri Rajendra Singh, adult, son of Late Sri Gopal Singh Visharad, at present residing at Gonda, care of the State Bank of India, Gonda Branch Gonda.

2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya. (Dead)

2/1. Mahant Suresh Das aged about 55 years, Chela late Mahant Ram Chandra Das of Digambar Akhara, Ayodhya.

3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya, through its present Mahant Jagannath Das, aged about 54, years, Chela of Vaishnav Das Nirmohi resident of Mohalla Ram Ghat Nirmohi Bazar Pargana Haveli Awadh, Ayodhya, District Faizabad—Substituted by court dated 1.9.95.

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

5. Sri Mohammad Hashim, Adult, son of Sri Karim Bux, resident of Mohalla Sutahti, Ayodhya

6. Sri Mohammad Ahmad, Adult son of Sri Ghulam Hasan, resident of Mohalla Rakabganj, Faizabad.

7. State of Uttar Pradesh, through the Secretary, Home Department, Civil Secretariat, Lucknow.

8. The Collector & District Magistrate, Faizabad.

9. The City Magistrate, Faizabad.

10. The Senior Superintendent of Police, Faizabad.

11. The President, All India Hindu Mahasabha, New Delhi.

12. The President, All India Arya Samaj, Dewan Hall, Delhi.

13. The President, All India Sanatan Dharma Sabha Delhi.

14. Sri Dharam Das Adult, Chela Baba Abhiram Das, Resident of Hanuman Garhi, Ayodhya.

15. Sri Pundarik Misra, Adult son of Sri Raj Narain Misra, resident of Baham pur Sarai, Rakabganj, Faizabad.

16. Sri Ram Dayal Saran Adult, Chela Ram Lakhan Saran, resident of Ramcharit Manas Bhavan, Mohalla Ramkot, Ayodhya.

17. Sri Ramesh Chandra Tripathi Adult, son of Sri PARASH Ram Tripathi, resident of Village Bhagwan Patti, Pargana Minjhaura, Tehsil Akbarpur, District Faizabad.
Parties mentioned at serial Nos. 18 and 19 have been deleted vide order dated 20.09.1989.

20. Sri Umesh Chandra Pandey, Adult, son of Sri Uma Shankar Pandey, Advocate, resident of Ranopali, Ayodhya.

21. Sri Rama Janma Bhumi Nyas, a Trust, having its office at Sankat Mochan Ashram, Sri Hanuman Mandir, Rama Krishan Puram, Sector VI, New Delhi, through Sri Ashok Singhal, Managing Trustee.

22. Shia Central Board of Waqfs, U.P. Lucknow.
Party mentioned at serial No. 23 has been deleted vide order dated 27.01.1992.

24. Prince Anjum Quder, Prestrict, All India Shia Conference, Qaomi Ghar, Nadan Mahal Road, Lucknow.

25. All India Shia Conference, through Sri S. Mohammad Hasnain Abidi, Honorary General Secretary, Qaomi

Ghar, Nadan Mahal Road, Lucknow.

26. Hafiz Mohd. Siddiqui, aged about 46 years son of late Haji Mohd. Ibrahim, resident of Lalbagh Moradabad, General Secretary, Jamaitul Ulema Hind U.P. Jamait Building B.N. Verma Road, Kutchery Road, Lucknow—**Amended vide order dated 15.4.92 r/w order dated 21.4.92**

27. Vakeeluddin aged about 55 years, son of Ismail, resident of Madarpur Pergna and Tehsil Tanda District Faizabad.

……………..Defendants

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

This suit was initially filed by Bhagwan Sri Ram Virajman at Sri Ram Janma Bhumi, Ayodhya also called Bhagwan Sri Rama Lala Virajman represented by the then next friend, Sri Deoki Nandan Agarwala, Asthan Sri Ram Janma Bhumi, Ayodhya represented by next friend Sri D. N. Agarwal and Sri Deoki Nandan Agarwala for a declaration that the entire premises of Sri Ram Janma Bhumi at Ayodhya as described and delineated in Annexures 1 and 2 belong to the plaintiff's deities and for a perpetual injunction against the defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of the new temple building at Sri Ram Janma Bhumi after demolishing and removing the existing buildings and structures etc. situate there at, in so far as it may be necessary or expedient to do so for the said purpose. After the death of Sri Deoki Nandan Agarwal, Sri T. P. Verma was substituted as next friend and after his removal Sri Triloki Nath Pandey has been substituted as next friend of plaintiffs no.1 and 2 and defendant no.3 in place of Sri T.P. Verma.

According to the plaint allegations the plaintiffs no. 1 and 2

,namely, Bhagwan Sri Ram Virajman at Sri Ram Janma Bhumi, Ayodhya also called Sri Ram Lala Virajman, and the Asthan Sri Rama Janama Bhumi, Ayodhya, with the other idols and places of worship situate thereat, are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place. The plaintiff no.3 is a Vaishnava Hindu, and seeks to represent the Deity and the Asthan as a next friend.

The place Sri Rama Janma Bhumi is too well known at Ayodhya need not any description for purposes of identification of the subject matter of dispute in this plaint. Two site plans of the building premises and of the adjacent area known as Sri Rama Janma Bhumi, prepared by Sri Shiv Shankar Lal pleader in the discharge of his duty as a commissioner appointed by the Court of Civil Judge, Faizabad, in Suit No.2 of 1950: Sri Gopal Singh Visharad Versus Sri Zahur Ahmad and Others; along with his report dated 25.5.1950, are being annexed to the plaint and made part of it as Annexures I and II respectively. The Suit No.2 of 1950 was filed on 16.1.1950, by Sri Gopal Singh Visharad against Zahoor Ahmad and other persons. The plaintiff of that suit died recently and his name has been substituted by his son, who has been impleaded as plaintiff No.1/1 in this suit. The five defendants of the suit are dead and their names struck off under the order of this Court. Therefore, they have not been impleaded as defendants no. 7 to 10 respectively in this suit also. In the above suit relief claimed was for a declaration that the plaintiff was entitled to perform the Puja and to have Darshan of Bhagwan Ram Chandra and others Virajman at Asthan Janma Bhumi without any hindrance, dispute or interruption and the permanent injunction restraining the defendant and their successors from ever removing the idols of Sri Bhagwan Ram Chandra and others Virajman at Asthan Janma Bhumi from the place where they were, or closing the entrance gate or other passages of ingress and egress, and from interfering or disturbing the Puja or Darshan in any manner whatsoever, was also claimed.

Suit No.25 of 1950, was filed a few months later, by Paramhans Ramchandra Das. This suit has been withdrawn by the plaintiff and the third suit being suit no.26 of 1959 was thereafter filed in the Court of Civil Judge, Faizabad by the Nirmohi Akhara, Ayodhya, who has been impleaded as defendant no.3 in this suit, claiming the relief of removal of Babu Priya Dutt Ram, defendant no.1 thereto from the management and charge of the temple of Janma Bhumi with the idol of Lord Ram Chandra and others installed therein. Babu Priya Dutt was appointed as a Receiver in the year 1950 by the City Magistrate, Faizabad in a proceeding under Section 145 of the Cr.P.C. 1898. The defendants No. 2 to 5 of this suit are defendants no. 7 to 10 of this suit. The other defendants have died and their legal representatives have not been brought on the record obviously because the cause of action did not survive against them.

Suit no. 12 of 1961 was thereafter filed by the Sunni Central Board of Waqfs, U.P., and 8 other on 18.12.1961 in the Court of the Civil Judge, Faizabad. The reliefs claimed were (a) A declaration that the property indicated by the letters A B C D in the sketch map annexed to the plaint is a “public mosque commonly known as 'Babri Masjid', and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim “graveyard”, and (b) “for delivery of possession of the mosque and graveyard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship”. The Sunni Central Board of Waqfs, U.P. is being impleaded as Defendant No.4 in this suit and of the remaining plaintiffs of that suit, the only surviving plaintiffs No. 7 and 9 are being impleaded as Defendants No. 5 and 6 hereto. Of the defendants to that suit, the legal representatives of defendants no. 1, 13 and 15, who have been impleaded therein, are being impleaded as Defendants no.1, 14 and 16 respectively in this suit. The surviving defendants no. 2,3, 5, 6, 7, 8, 10, 11, 12, 14, 17, 18 and 19 of that suit, are being impleaded as defendants no. 2, 3, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18 and 19 respectively herein. Remaining defendants no.4 and 16 have died and have been left out.

It has further been averred in the plaint that the order dated 8.8.1962 of the Court of the Civil Judge, Faizabad, in Suit No.12 of 1961, the plaintiffs thereof were permitted to sue, on behalf of the entire Muslim community, the defendants no.1 to 4 therein as representatives of, and for the benefit of the entire Hindu community. Of them, defendant no.4 has since died. Defendants no. 10 to 19 were impleaded therein later, on their own request of themselves. Defendant no.16 has since died, their legal representatives have not been impleaded in that suit. They have, therefore, been left out in this suit. By an order dated 4.8.1951, suits no. 2 and 25 of 1950 were consolidated together and by an order dated 6.1.1964 all the suits were consolidated and Suit No.12 of 1961 was made the leading case. In suit no.2 of 1950 an ad-interim injunction was issued on 16.1.1950 in the terms prayed for but on an application made by the Defendant District Magistrate, the ad-interim injunction was modified on 19.1.1950 to read as under:

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

This order was confirmed by order dated 3.3.1951 in the following terms:-

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

A first appeal from that order, being F.A.F.O No. 154 of 1951, in the High Court at Allahabad, was dismissed by judgment dated 26.4.1955. The Interim injunction continues to remain in force, ever since down to the present day. The plaintiffs went on to aver that more than 25 years ago issues were framed but hearing has not yet commenced. The Sewa and Puja of the plaintiff Deities has in the meanwhile been looked after by a Receiver, to begin with by Babu Priya Dutt Ram, appointed by the City Magistrate and later by Sri K.K. Ram Verma, who worked upto 1970 onwards. He was discharged by the Court of the IIIrd Additional District Judge, Faizabad, by order dated 25.8.1988. Sri L.P.N. Singh was appointed Receiver, who functioned upto 22.11.1988, when by an order of that date Sri Jamuna Prasad Singh was appointed as a Receiver. It was expected that the suits would be disposed of soon after consolidation of the above suits. But for one reason or another, they continued to remain pending, and still continue to remain pending, with a dim prospect of their immediate hearing. Defendant no.20 moved an application in the interest of worshippers, with the prayers for allowing a closer Darshan in the Court of the Munsif Sadar, Faizabad, who refused to pass orders but on appeal therefrom, the court of the District Judge, Faizabad by an order dated 1.2.1986 directed the authorities to remove the barrier by opening the locks on the gates O and P shown in the map.

The plaintiff deities and their devotees are extremely unhappy with the prolonged delay in the hearing and disposal of the said suits, and are not satisfied with the working of the Receiver. It is believed that a large portion of the money offered by the worshippers is being misappropriated by the Pujaries and other Temple staff, and the receiver has not controlled the same. The devotees of the plaintiff's deities are desirous of having a new temple constructed, befitting of their pristine glory, after removing the old structure at Sri Ram Janma Bhumi, Ayodhya.

In order to improve the temple administration and to reconstruct a new temple at Sri Ram Janma Bhumi, the sacred duty of managing and performing the Sewa, Archana and Puja of the plaintiff's deities and the task of protecting, renovating, reconstructing and developing the Temple premises, in short, of managing all their estate and all their affairs, was entrusted, by unanimous public opinion, to Jagadguru Ramanandacharya Swami Shivaramacharaya of Kashi, who was the head of the Ramananda Sampradaya to which most of the Sadhus and Vairagis of Ayodhya belong. The Trust was formally declared by the Hindu public by a deed of trust dated 18.12.1985 and registered the same day by Sub-Registrar, S.D.No.1, at Delhi vide No. 16510 in Additional Book No.4, Volume 1156, at pages 64 to 69. A copy of the said Deed of Trust is annexed to and made part of the plaint as Annexure III.

The said Trust Deed apart from declaring himself to be the First Trustee for life and the Pramukh and Dharmakarta of the Trust, which was named Sri Swami Shivaramacharya, and other persons were also made trustees, Sri Vishnu Hari Dalmia, named the Treasurer and Sri Ashok Singhal the Managing Trustee, the power was given to the Marga Darshak Mandal of the Vishva Hindu Parisahd to nominate 4

Trustees who are Mahatmas from different parts of India, and to its Governing Council to nominate 10 Trustees from among eminent Hindu citizens of India, and in exercise of the said power four persons were appointed Trustees from among the Mahatmas and from among Hindu citizens of India. Sri justice Shiv Nath Katju, Retired Judge, High Court, Allahabad, Sri Justice Deoki Nandan Agarwala, Retired Judge of same Court, Allahabad, Rajmata Srimati Vijae Raje Scindhia of Gwalior, Sri Satish Chandra Dikshit, Retired Director General of Police, Uttar Pradesh, Lucknow and Sri Badri Prasad Toshniwal, Industrialist, New Delhi were made trustees. Further Jagadguru Ramanandacharya Swami Shivaramacharya of Kashi who was the Pramukh and Dharmakarta of the Nyas and Paramhans Mahant Ramchandra Dasji Maharaj of Digambar Akhara, Ayodhya are acting as a Pramukh and Dharmkarta of the Nyas. Sant Pravar Prabhu Duttji Brahamchari, of Sankirtan Bhawan Jhusi, died after the institution of the suit. Two vacancies among the trustees from among the Mahatmas have been filled up with Veetraag Sant Paramhans Pujya Swami Vamdeoji Maharaj and Mahant Dharma Dasji Maharaj were appointed trustees. From among the eminent Hindu citizens of India, four persons, namely, Moropant Pingle, Sri Brahma Deoji, Sri Surya Krishnaji and Sri Yashuvant Bhai Bhatt have been appointed trustees.

It has further been averred that Sri Rama Janma Bhumi Nyas is directly interested in the Seva, Puja and other affairs of the plaintiff deities. It is being impleaded as defendant no.21 in this suit.

Although the aforesaid suits have been pending trial for such an extraordinarily long number of years, they are inadequate and cannot result in a settlement of the dispute which led to their institution or the problems arising there from, inasmuch as neither the presiding Deity of Bhagwan Sri Ram Virajman nor the Asthan Sri Rama Janma Bhumi, the plaintiffs no. 1 and 2 herein, who are both juridical persons, were impleaded therein, although they have a distinct personality of their own, separate from their worshippers and sewaks, and some of the actual parties thereto, who are worshippers, are to some extent involved in seeking to gratify their personal interests to be served by obtaining a control of the worship of the plaintiff deities. The events which have occurred during these four decades, and many material facts and points of law require to be pleaded from the view point of the Plaintiff deities, for a just determination of the dispute relating to Sri Ram Janma Bhumi, Ayodhya, and the land and buildings and other things appurtenant thereto. The plaintiffs have been accordingly advised to file a fresh suit of their own.

It is manifestly established by public records of unimpeachable authority that the premises in dispute is the place where Maryada Purushottam Sri Ramchandra Ji Maharaj was born as the son of Maharaja Dashrath of the solar Dynasty, which according to the tradition and the faith of the devotees of Bhagwan Sri Rama is the place where HE manifested HIMSELF in human form as an incarnation of BHAGWAN VISHNU. The place has since ever been called Sri Rama Janma Bhumi by all and sundry through the ages.

The place itself or the ASTHAN SRI RAMA JANAMA BHUMI as it has come to be known, has been an object of worship as a Deity by the devotees of BHAGWAN SRI RAMA, as it personafies the spirit of the Divine worshipped in the form of SRI RAM LALA or Lord RAMA the child. The Asthan was thus deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the idol of Bhagwan Sri Rama thereat. It has further been stated that Hindus do not worship the stone or the metal shaped into the form of their ISHTA DEVATA or the stone of SALIGRAM which has no particular shape at all. They worship the Divine, which has no quality or shape or form, but can be known only when it manifests ITSELF in the form of an incarnation, and therefore, adopt the form of his incarnation as their ISHTA DEVA. They can meditate upon the formless and the shapeless DIVINE which is worshipped by most Hindus, and not its material form or shape in an idol. This SPIRIT of the DIVINE in an idol is invoked by the ritual of pranapratishtha. The SPIRIT of the DIVINE is indestructible and ever remains present everywhere at all times for any one to invoke it in any shape or form in accordance with his own aspiration. Different persons are at different levels of realization of the REALITY. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow BHAKTI MARGA, and BHAGWAN SRI RAMA or BHAGWAN SRI KRISHNA is their ISHTA DEVA.

According to the faith of the devotees of BHAGVAN SRI RAMA LALA, or Lord Rama the Child, it is the spirit of BHAGWAN SRI RAMA as the Divine Child which resides at Asthan Sri Rama Janma Bhumi and can be experienced by those who pray there and invoke that Spirit for their spiritual uplift. That Spirit is the Deity. An idol is not necessary for invoking the Divine Spirit. Another example of such a Deity is that of KEDARNATH. The temple of KEDARNATH has no idol in it. It is the undulating surface of stone which is worshipped there as the Deity. Still another example of such a Deity is the Vishnupad Temple at Gaya. Similarly at Ayodhya the very Asthan Sri Ram Janma Bhumi is worshipped as a Deity through such symbols of the Divine Spirit as the Charan and the Sita Rasoi. The place is a deity. It has existed in this immovable form through the ages, and has ever been juridical persons. The actual and continuous performance of Puja of such an immovable Deity by its devotees is not essential for its existence as a Deity. The deity continues to exist so long as the place exists, and being land, it is indestructible. Thus, Asthan Sri Rama Janma Bhumi is an indestructible and immovable Deity who has continued to exist throughout the ages.

According to the books of history and public records of unimpeachable authenticity, establish indisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya. That temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir Baqi, a commander of Baber's hordes. The material used was almost all of it taken from the Temple including its pillars which were wrought out of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. There was a great resistance by the Hindus and many battles were fought from time to time by them to prevent the completion of the mosque. To this day it has no minarets, and no place for storage of water for Vazoo. Many lives were lost in these battles. The last such battle occurred in 1855. Sri Rama Janma Bhumi, including the building raised during Baber's time by Mir Baqi, was in the possession and control of Hindus at that time. According to the 1928 Edition of the Faizabad Gazetteer published by the Government Press U.P. “Ayodhya is pre-eminently a city of temples. It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ayodhya and little else. These were the Janmasthan temple, the Swargaddwar and the Treta-ka-Thakur. The Janmasthan was in Ramkot and marked the birthplace of

Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation, they are of close-grained black stone, called by the natives kasauti and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit, both are in persian and bear the date 935 Hijri and again according to the same Gazetteer. “This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On many occasions the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janmasthan in force and then making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made counter-attack and stormed the Janmasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyr's resting place. Several of the king's regiments were present, but their orders were not to interfere. It is further averred that Maulvi Amir Ali of Amethi in Lucknow organized a regular expedition with the object of destroying the Hanuman Garhi, but he and his forces were stopped in the Barabanki district. (Gazetteer of Barabanki, P. 168). It is said that upto this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one.”

The disputed structure could not be a mosque as it was raised by force of arms on land belonging to the plaintiff deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindus gods carved thereon. According to para 24 of the plaint some salient points in this regard have been mentioned.

(a) According to the Koran, ALLAH spoke to the Prophet thus:-

“And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loved not transgressors. And kill them wherever you find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatory is more grievous than slaughter. Yet fight not against them in the holy temple, until they attack you therein”

(b) According to all the Muslim authorities and precedents and the decided cases also, ALLAH never accepts a dedication of property which does not belong to the Waqif that is, the person who purports to dedicate property to ALLAH for purposes recognized as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the temple after destroying it by force, Mir Baqi committed a highly un-Islamic act. His attempt to convert the Temple into a mosque did not, therefore, create a valid dedication of property to Allah, whether in fact or in law, and it never became a mosque.

(c) In respect of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and they never surrendered their possession over it. Their possession continued in fact and in law. The ASTHAN never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and SITA RASOI, and the idol of BHAGWAN SRI RAM LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the building except after passing through these places of Hindu worship. According to the Muslim religion and law there can be no idol worship within the courtyard of a mosque, and the massage to a mosque must be free and unobstructed and open at all times to the 'Faithful'. It can never be through Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of mosque. His possession must be exclusive.

(d) A mosque must be built in place of peace and quiet, but near to a place where there is a sizeable Muslim population according to the tenets of Islam, and as insisted upon by it, a mosque cannot be built in a place which is surrounded on all sides by Temples, where the sound of music or conch shells or Ghanta Ghariyals must always disturb the peace and quiet of the place.

(e) A mosque must have a minaret for calling the Azan.

(f) According to the claim laid by the Muslims in their Suit No. 12 of 1961, the building is surrounded on all sides by graveyard known as 'Ganj Shahidan'. The building could not be a mosque and could not be used as a mosque for the offering of prayers, except the funeral prayers on the death of a person buried therein.

(g) There is no arrangement for storage of water for Wazoo and there are the Kasauti pillars with the figures Hindu Gods and Goddesses.

It has further been averred by the plaintiffs that the worship of the plaintiff deities has continued since ever throughout the ages at Sri Rama Janma Bhumi. The place belongs to the Deities. No valid waqf was ever created or could have been created of the place or any part of it, in view of the title and possession of the plaintiff deities thereon. Neither ALLAH nor any person on his behalf had any possession over any part of the premises at any time whatsoever, not to speak of any adverse possession.

At any rate no prayers have ever been offered in the building at Sri Rama Janma Bhumi, which was recorded as Janmasthan Masjid, during the British times, and confined, after the annexation of Avadh through the area within the boundary wall raised by them adjacent to the arch openings, in the courtyard which is now enclosed by what may now be described as the outer boundary wall. The domes of the building and substantial parts of it were destroyed by the Hindus in the year 1934 during the communal riots which occurred by way of retaliation to cow slaughter by some Muslims at Ayodhya. Although the building was got rebuilt by the Government, no one dared to offer namaz therein. No action was taken by anyone for its use or management as a mosque. Neither of the two Boards of Waqfs in U.P., namely the Sunni Central Board of Waqfs and the Shia Central Board of Waqfs, created on the passing of the U.P. Muslim Waqfs Act in 1936, took any action or positive steps for the establishment of the building as a mosque. No one acted as Mutwalli or Khadim of the building as a mosque.

After independence from the British Rule, the Vairagis and the Sadhus and the Hindu public, dug up and levelled whatever graves had been left in the area surrounding Sri Rama Janma Bhumi Asthan and purified the place by Akhand Patha and japa by thousands of persons all over the area. Ultimately, on the night between the 22nd / 23rd December, 1949 the idol of Bhagwan Sri Rama was installed with the ceremony under the central dome of the building also. No resistance was offered by any Muslim to any of these acts, the local authorities found it difficult to get out of their old habits acquired under the British Rule, and a First Information Report was recorded by the Police on their own and proceedings were initiated by the Additional City Magistrate Under Section 145 of the Code of Criminal Procedure, 1898, by recording a Preliminary Order dated 29.12.1949. The Magistrate did not identify any Hindu or Muslim individuals as parties to the dispute, and merely said that he was satisfied on information received from Police sources and other credible sources "that a dispute between Hindus and Muslims in Ayodhya over the question of rights of proprietorship and worship in the building claimed variously as Babri Masjid and Janma Bhumi Mandir is likely to lead to a breach of the peace." Babu Priya Dutt Ram was appointed Receiver after his death in 1970 Sri K.K.Ram Verma was appointed in his place by the City Magistrate, although the City Magistrate had dropped the proceedings under Section 145 Cr.P.C. by order dated 30.07.1953, with the finding that there was no apprehension of the breach of peace any longer. The Receiver appointed by Magistrate was replaced by civil court Receiver. At the highest, the Receiver acted like a Shebait. He did not disturb the possession of the plaintiff Deities. The possession of deities over the building in premises is admitted by all the concerned parties. Ever since the installation of the first plaintiff's idol since the possession of deities continued all along , their possession places the matter of their title beyond any doubt or dispute. Even if there had been any person claiming title to the property adversely to the Plaintiff Deities that would have been extinguished by their open and long adverse possession, which created positively and affirmatively a proprietary title to the premises in the Plaintiff Deities.

Hindu Public and the devotees of the Plaintiff Deities, who had dreamed of establishing Ram-Rajya in Free India, that is, the rule of Dharma and righteousness, of which Maryada Purushottam Sri Ramchandra Ji Maharaj was the epitome, have been keenly desirous of restoring his Janma Asthan to its pristine glory, as a first step towards that national aspiration given to us by Mahatma Gandhi. For achieving this, they are publicly agitating for the construction of a grand Temple in the Nagar style. Plans and a model of the proposed Temple have already been prepared by the same family of architects who built the Somnath Temple. The plaintiff's suit no. 12 of 1961, could not represent the entire Muslims community. Some defendants no. 1 to 4 are not capable of representing the entire World of Hindus. Waqf created by a Shia Waqif would be a Shia Waqf and could not be a Sunni Waqf. Since according to the case of plaintiff other Suit No.4/89, the mosque was built by Mir Baqi and he was Shia, his heirs were Mutwallis one after the other. But the Shia Central Board of Waqfs, U.P. did not agitate the case any further, the judgment of civil court, Faizabad dated 30.03.1946 in Suit No.29/1945 is not binding.

According to the report dated 10.12.1949 of Mr. Mohammad Ibrahim, Waqf Inspector, and an office note signed by the Secretary of the Sunni Central Board of Waqfs, U.P. and dated 25.11.1948, Sri Javed Husain, the nambardar of village Sahanwa, and in the line of descent, Mir Baqi was the Mutwalli of the Waqf, although it appears, he was not acting as such and did not submit to the jurisdiction of the said Board of Waqfs. The persons of Shia are also being impleaded as defendant no. 22 to 25 in the present suit.

The saint assembled in a meeting held at Ujjain during May, 1992 resolved to start the KAR SEWA for the construction of New Temple at Sri Ram Janma Bhumi from the SHILANYAS site, on July 9, 1992 and that resolve was re-affirmed. In spite of all efforts to the contrary, the KAR SEWAKS climbed up the three domed structure and brought it down with their bare hands, about 5 hours after on 6.12.1992 and the debris was thereafter cleared and carried away by the KAR SEWAKS as holy mementos, leaving the place where the Deity of BHAGWAN SRI RAMA LALA was installed in the Central Dome of the demolished structure flat in the form of a CHABUTRA on which the Deity was immediately re-installed, the place was enclosed by a brick boundary wall and a canopy was also erected for the protection of the Deity, and PUJA was continued as of yore.

Owing full responsibility for the orders that firing shall not be resorted to by the security forces against the KAR SEWAKS and the inability to prevent the demolition, Sri Kalyan Singh, the then Chief Minister of U.P. resigned from that office by the evening of 6.12.1992. The President under Article 356 of the Constitution on the advice of Prime Minister dissolved the Legislative Assembly before midnight that day on 7.1.1993. The President promulgated the ACQUISITION OF

CERTAIN AREA AT AYODHYA ORDINANCE, NO. 8 of 1993 and simultaneously referred to the Supreme Court, under Article 143(1) of the Constitution for consideration and opinion, the following question:-

"Whether a Hindu temple or any Hindu religious structure existed prior, to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

The said Ordinance was replaced and re-enacted by Parliaments Act No. 33 of 1993, and was published the same day in the Gazette of India Extraordinary but was deemed to have come into force on the 7th January 1993, the day on which the Ordinance was promulgated. The plaintiff deities over the juristic persons in law could not have been, nor do they appear to have been acquired under the said enactment. Nor could the right of the Hindus in general and the devotees of Sri Ram in particular to worship them be acquired or taken away. But the right to manage their property including the arrangements to be made for maintaining their worship on the SHEBAITI rights which in themselves constitute heritable property under the Hindu law, would seem to have been taken away and entrusted for the time being to the Commissioner, Faizabad Division, Faizabad, ex-officio under Section 7 of the Act.

The Authorized person is required by sub-Section (2) of Section 7 of the enactment to maintain status quo as it existed on the 7th January, 1993, in the area in which the disputed structure stood. The validity of the said enactment was challenged in several writ petitions in the Hon'ble Court which were withdrawn by the Supreme Court for hearing and decision along with the hearing of the preliminary objection to the maintainability of the Presidential Reference under Article 143(1) of the Constitution. It was sought to be challenged in the connected O.O.S. No. 3 and 4 of 1989 in this Court as well, and in issue "whether the suit has abated or services" was raised thereupon. Notice was also issued thereafter to Attorney General of India, by the Hon'ble Court, but before the hearing of the issue could be taken up by it, it was stayed by the Supreme Court, while ordering the withdrawal of the writ petition against the acquisition from this Court to itself for hearing and decision.

In Dr. M. Ismail Faruqui Vs. Union of India and others case and the Special Reference No.1 of 1993 under Article 143(1) of the Constitution, the Supreme Court has declared the sub-Section 3 of Section 4 of the Act No.33 of 1993, to be unconstitutional and invalid, but upheld the validity of the other provisions thereof subject to the interpretation put thereon by it.

The cause of action for this suit has been accruing from day to day, particularly since recently when the plans of temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim Communalists. The map prepared by Shiv Shankar Lal, Commissioner has been made part of the plaint as annex Nayas Patrak has also been filed and is appended.

The defendant no.3 has filed written statement wherein it is stated that Sri Deoki Nandan Agarwal posing himself as the Next Friend has filed this long cumbersome suit embracing a wide range of matters and topics, mostly irrelevant collected from alleged many and various records and books and annals of history. The suit was initially instituted in the Court of Civil Judge, Faizabad on 1.7.1989 and has been transferred to this Court. It has further been stated that the present suit is malicious suit and is designed to damage the title and interest of the answering defendant. Sri Deoki Nandan Agarwal has no right to act as Next Friend of plaintiffs no. 1 and 2 and plaintiff no.2 is not even a juridical persons. The suit is liable to be dismissed summarily.

It is wrong to say that the Bhagwan Shri Ram is also called Ram Lala Virajman. Bhagwan Shri Ram is installed not at Janma Bhoomi but in the temple known as Janma Bhoomi Temple "Sthan Shri Ram Janma Bhumi" is meaningless phrase Sthan is not a juridical person. Sri Deoki Nandan Agarwal lives at Ayodhya and is not at all interested in Sri Ram Janma Bhumi Temple. The whole world knows that Lord Ram was born in Ayodhya where the temple Ram Janma Bhumi stands.

Denying the averments made in different paras of the plaint in his additional pleas. Defendant no.3 has further stated that the relief sought by the plaintiffs are imaginary and inconsistent. He has also filed additional written statement/supplementary written statement and averred that Annexure 2 attached with the plaint does not bear any plot nos. (settlement or Nazul) nor it is bounded as to give any definite identity of property. Temple Shri Vijay Ragho Ji Sakshi Gopal has never been subject matter of the any of the suit O.O.S. No. 4/1989. Panches and Sadhus of Akhara are living in the surrounding since before the human memory. The outer Sahan consisted little temple of Bhagwan Ram Lala along with other place which are regularly worshipped according to the customs prevailing amongst Rama Nandi Vairagies. The temple of Ram Lala Ji and other deities have ever been in management and charge of Nirmohi Akhara as Sheibait till outer portion with Bhandar was attached u/s 145 Cr.P.C.

On 18.2.1982 a receiver is appointed there vide order of Civil Judge, Faizabad in Reg. Suit No. 239/82. Sri Rama Nandi Nirmohi Akhara versus K.K. Ram Varma etc. due to lootpat committed by Dharam Das Mr. Deoki Nandan Agarwal has named himself to be witness of Dharam Das. Suit is barred by provision of Section 34 of Specific Relief Act for want of possession and is not maintainable as such.

The outer portion consisting of Bhagwan Ram Lala on Sri Ram Chabutra along with other deities, Chathi Pujan Sthan and Bhandar with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of wall carries the present municipal No.10/12/29 (old 506, 507 and older 647) of Ram Kot ward of Ayodhya City. The attachment made in 1949 is only in respect of main building of Garbh Grahya having three "Shikher" where in the deity of Bhagwan Sri Ram Chandra Ji is installed by Nirmohi Akhara from time beyond the human memory and are since then is management and possession of it till the said property attached. The suit is fully time barred. Sri Deoki Nandan Agarwal is office bearer of VHP. The outer portion with surrounding temples were illegally acquired by VHP. Backed BJP Government which is under challenge in writ petition. The suit is liable to be dismissed.

Second additional written statement has also been filed in which existence of alleged Nyas has been challenged.

Defendant No.4 has filed written statement wherein it is stated that disputed place has always been known as Babri Masjid and the idol in question was stealthily and surreptitiously kept inside the mosque in the night of 22nd /23rd December, 1949 by some mischief-mongers against whom an F.I.R. had also been lodged at the Police Station, Ayodhya on 23rd December, 1949. The report and map submitted by Sri Shiv Shankar Lal, Pleader and do not depict the correct portion of the spot and the same cannot be relied upon for identification and description of the property in suit. Denying different paras of the plaint it has been averred that suit no.12 of 1961 was filed in the representative capacity and the application for permission to sue in this capacity was allowed by learned Civil Judge, Faizabad. There is no question of Seva and Puja of the alleged deities as no such deities exist in the building in question and the idols kept therein could not be treated as deities. Defendant no.20 had no right or title or locus standi to move the said application for the opening of the gate of the mosque for closer Darshan. The order passed on 1.2.1986 of the District Judge, Faizabad was patently and manifestly illegal and without jurisdiction against which two writ petitions are pending in this Court.

The building in dispute is not the Janam Bhoomi of Sri Ram Chandraji and no idols of Sri Ram Chandraji were ever installed in the said building and as such there arises no question of any right or claim of the defendant no.20 or of anyone else to perform Pooja and Darshan over there. The property in suit is an old mosque known as Babri Masjid and the same was constructed during the regime of Emperor Babar. No idol was there prior to the incident of the night of 22nd /23rd December, 1949 in the mosque. Idols were surreptitiously and stealthily kept in the mosque by some mischievous elements as the plaintiff no.1 to 2 cannot at all be treated as deities. The receiver appointed by the Court is not taking proper interest in the maintenance of the building and in spite of the orders of the Court, no repairs of the building have been undertaken for the last several years. The desire of the plaintiff's of removing the mosque and of constructing a temple on the site of the said mosque is wholly uncalled for and unwarranted and mischievous and any such attempt will be fraught with very dangerous consequences.

Plaintiffs no.1 and 2 are not juridical persons and the suit filed on their behalf is wholly misconceived and not maintainable. The idol was surreptitiously and stealthily kept inside the mosque in the night of 22nd /23rd December, 1949 has neither been installed in accordance with the tradition and rituals of Hindu Law and nor there have been any ceremonies prescribed by Hindu Law for the installation of the idols and as such the idols kept in the mosque have got no legal entity and that being so there arises no question of impleadment of the same and moreover, the plaintiff no.3 has also got no direct right or title or concern with the property in suit and as such he is also not entitled to institute the present suit. In any case the instant suit having been filed after expiry of more than 39 years since after the attachment of the property in suit the instant suit is heavily barred by time and it is not maintainable.

In the present suit the booklets circulated at Ayodhya by Vishwa Hindu Parisahd and other Hindu organizations and other books of Hindu mythology describe the period of Sri Ram Chandraji as that of Treta Yug meaning thereby that he was born more than 9 lakh years ago. Goswami Tulsidadji had written book of Shri Ramchandraji known as Sri Ram Charit Manas at a place known as Datun Kund situate at a distance of about one kilometre from Ayodhya in District Faizabad and as such had there been any birth place of Sri Ramchanddraji in Ayodhya, Goswami Tulsidasji must have specifically mentioned about the same in his Ram Charit Manas and as a great devotee of Sri Ramchandraji Goswami Tulsidasji cannot be expected to have skipped over or concealed or kept quiet over such an important fact regarding the life history of Sri Ramchandraji and had there been any iota of truth in the story of Sri Ram Janam Bhoomi temple being there at Ayodhya at the site of the Babri Masjid prior thereto and had there been any incident of demolition of any such temple and construction of Babri Masjid over the same. Goswami Tulsidasji must have taken up this matter in the Court (Darbar) of Emperor Akbar and Emperor Akbar must have undone the alleged wrong specially so when the Court of Akbar was full of Advisors, councillors and ministers from Hindu community and his own Queen was also Jodha Bai. The description of Ayodhya given in the Balmiki Ramayan does not tally with the present Ayodhya. Mahant Raghubar Das in 1885 had filed a suit against the Secretary of State for India in Council and Mohd. Asgar Mutwalli of the said mosque in the Court of Sub-Judge, Faizabad in which a site plan was also annexed alongwith the plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the said suit was filed for permission to erect temple over the said Chabutra.. The said Mahant could not succeed even in that suit which was dismissed on 24.12.1885 by the Sub- Judge, Faizabad, and the appeal filed against the said judgment and decree dated 24.12.1885 was also dismissed by the District Judge, Faizabad and the second appeal filed against the same had also been dismissed by the Judicial Commissioner of Avadh. The aforesaid suit was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad. As such the plaintiffs cannot claim any portion of the Babri Masjid to have been defied or having become a juridical personality by the name of Asthan Ram Janam Bhoomi and specially so when neither there has been any installation of deity and nor any personification of the same in accordance with the tenets of Hindu religion or law. It is further submitted that the plaintiff are even estopped from claiming the mosque in question as the Janam Bhoomi of Sri Ram Chandraji as the plaintiffs' predecessors and specially Mahant Raghubar Das had confined his claim to the Chabutra (platform) of 17' x 21' outside the said mosque is being Janam Asthan of Ram Chandraji and also because there already exists another temple known as Janam Asthan temple situate at a distance of less than 100 yards only from Babri Masjid and on its northern side.

An F.I.R. was lodged about the incident of 22nd /23rd December, 1949 at the Police Station Ayodhya in the morning of 23.12.1949 by a Hindu Officer of the Police Station himself who had mentioned in the said F.I.R. that some mischievous element had kept the said idol in the preceding night in a stealthy and surreptitious manner by sheer use of force and the said building had been attached on 29.12.1949 and Receiver for the care and custody of the said building had also been appointed who had drawn up a scheme of Management and the same was submitted on 5.1.1950 by the Receiver. Sita Rasoi situate outside the premises of the said mosque. It is not correct to say that mosque was constructed after demolishing a temple. It is also not correct to say that the material used in the construction of the said mosque was almost all of it taken from any temple, and it is also incorrect to say that the pillars of the said mosque were wrought out of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. The fact is that such pillars are available at some other place also. Minarets or domes is not at all required for any mosque.An existence of minarets or domes are not at all required for any mosque and so also there is no necessity of any place for storage of water for VAZOO for any mosque although in the close vicinity of Babri Masjid a well is very much there for taking out water for the purpose of VAZOO. It is also incorrect to say that any life was lost in any battle fought in respect of Babri Masjid and no battle in respect of Babri Masjid had taken place till 1885.

The expedition of Maulvi Ameer Ali had no concern or connection with the Babri Masjid. Hindus and Muslims both were never in joint possession of the Babri Masjid, nor they worshipped jointly in the disputed structure. Emperor Babar was a Sunni Muslim and the vacant land on which the Babri Masjid was built lay in his State territory and did not belong to anyone and it could very well be used by his officers for the purposes of the mosque and specially so when the Emperor Babar himself consented and gave approval for the construction of the said mosque. Mir Baqi did not destroy any temple at any point of time. Demolition of temple by Mir Baqi has not been mentioned in any book of Mughal history or in any authentic book of history as such it is absolutely false and concocted to suggest that the mosque in question was constructed at the site of any temple and Mosque can not be built at a place which is surrounded by temples, where the sound of music and Konch shell, Ghanta Gharyal disturbs the peace and quiet of the place.

It is reiterated that the mosque in question has been used for offering regular five times prayers upto 22nd December, 1949 and even Friday prayers have been offered in the same till 16th December, 1949. The possession of the Muslims has remained uninterrupted and continuous in the mosque in question since its construction and up to 22.12.1949 any right of any person has ceased to exist. In view of these facts five times prayers used to be offered in the said mosque upto 22.12.1949 and Friday prayers were also offered upto 16.12.1949 and 23.12.1949 when the Muslims led by the Imam of the said mosque had approached the authorities of the district to offer Friday prayer in the said mosque. They were persuaded to offer Friday prayer on that date in some other mosque with the specific assurance that they will be allowed to offer Friday prayers in the mosque in question on the next Friday falling on 30.12.1949. But before that the mosque in question had been attached by the Magistrate under Section 145 Cr.P.C. and since then the attachment of the said mosque is continuing some Bairagees had damaged a portion of the mosque and as such the District Magistrate of Faizabad had got the said damaged portion of the mosque repaired through a Muslim contractor thereafter. There has always been Mutwalli or Moazin or Imam or Khatib or Khadim of the said Mosque. His name finds mention even in the Government Gazette of 1944.

The fact is that Muslims reside not only behind the mosque but also in the localities situated in the southern and eastern site of the mosque. It has further been mentioned in the written statement filed by Sunni Central Board of Waqf of U.P. that there is no justification for the present campaign being carried on for starting construction of Ram Janam Bhumi Temple at the site of the Babri Masjid w.e.f. 9.11.89. There is no question of construction of any such temple at the site of the mosque and Muslims will never permit any such attempt being successful. The judgment of Civil Judge, Faizabad in Suit No. 27 of 45 is binding upon the parties and controversy about the Shia or Sunni nature of the waqf in question has been set at rest by the aforesaid judgment. There is no bar for appointment of Shia

Mutwalli of a Sunni Waqf; so also a Sunni Muslim can very well be appointed as mutwalli of a Shia Waqf.

It is incorrect to say that any responsible Muslim has ever made a suggestion for the removal of the structure of the mosque to any other place as it is quite foreign to the Muslim law and there is no possibility of any such course being adopted by the Muslims in respect of the mosque in question. The concept of the mosque is that the entire area below as well as above the portion of the mosque remains dedicated to God Almighty and as such it is not the construction or structure of a mosque alone which is important but more important is the land on which the mosque stands constructed because the land also stands dedicated to God Almighty and the same cannot be removed. Suit is barred by time the property in suit has also not been properly described no valid notice under section 80 in C.P.C. has been given to defendants no. 7 to 10. Therefore, this suit could not be filed in absence of the notice. The subject matter of the instant suit is a waqf property and stands registered as a waqf in the Register of Waqf maintained by the Sunni Waqf Board under Section 30 of the Waqf Act and a Gazette notification in respect thereto has also been issued by the State Government in 1944 and the same stands recorded as a mosque even in the revenue record and other Government record and the same is even accepted as a mosque by the State Government and its officers in the written statement filed in Regular Suit No. 2 of 1950 as well in Regular Suit No.25 of 1950. The suit is barred for want of notice under Section 65 of the U.P. Muslim Waqf Act, 1960 and the reports of the Archaeological experts have been to the effect that there appear to be no symptoms of human habitation in the present Ayodhya of more than 700 B.C. and also the suit is barred by Section 34 of the Specific Relief Act and is also bad for mis-joinder and non-joinder of the parties.

Defendants no.4 and 5 have also filed additional written statement wherein all the facts mentioned in amended para 35 H I J K have been denied.

Defendant no.6 has adopted the written statement filed by defendant no.5. Defendant no.11 has filed written statement where it is averred that All India Hindu Mahasabha be also included in the trust created for protecting, renovating, reconstructing and developing the temple premises, in short, of managing all their estates and all their affairs. Defendant no.17 Sri Ramesh Chandra Tripathi has supported the plaint allegations.

Defendant no.23 Jawwad Husain has denied all the plaint allegations in his additional pleas. He has submitted that he has wrongly been impleaded as a party, plaintiff no. 1 and 2 has no right to sue. He has supported the plaint allegations and averred that there is Janma Sthan in the north side of disputed property in the north of the road.

Defendant no.24 has denied the plaint allegations in para-10. He has stated that Muslims of India has the highest regard for Lord Rama. These sentiments of the Muslims are best reflected in the poem entitled " Rama" composed by the greatest Muslim thinker of India of the present century Allama Dr. Sir Muhammad Iqbal, who had summed up in just one verse of the long poem what Muslims of India think of Shri Ram Chandraji:

> "Hae Ram ke wajood pa Hindostan ko naaz
> Ahl-e Nazar Samajht-e hain usko Imam-e- Hind."

Meaning- India is proud of the existence of Ram. The intelligentsia consider him as the leader of India.

Rest of paras of written statement he has supported the written statement filed by defendants no. 4 and 5. An important para 26 has been pertinent to be mentioned of this written statement where in it is averred that para 34 and 35 of the plaint, the answering defendant being a representative of the Shia Muslims of India is deadly against any form of sacrilegious actions. He is of the firm view that no place of worship of any religion should be destroyed and no place of worship should be constructed on the ruins of the destroyed one. The answering defendant firmly believes that the Babri Masjid was certainly not built after destroying the Vikramaditya Mandir or any temple. Yet, at the same time if it is unequivocally proved in this Hon'ble Court in the light of historical archaeological and expert scientific evidence that the Babri Masjid was really built after demolishing any Mandir on the Mandir land, only then this defendant will withdraw his opposition.

Defendant no. 25 has also filed written statement denying the plaint allegations in his additional pleas of General Secretary of India Shia Conference has averred that the premises in question has always been mosque and it is a mosque. In the night of 22nd /23rd December, 1949, certain persons forcibly entered into the mosque and put an idol in the same, against them an F.I.R. was lodged in the Police Station, Ayodhya in the morning of 23rd of December, 1949. A case was registered. A Receiver was appointed. There is no Hindu deity as juristic person in relation to the premises in question nor there is any Hindu deity with the name and style of Asthan Sri Ram Janam Bhumi Ayodhya. Sri Deoki Nandan Agarwal cannot be a next friend to the deity. The suit is not maintainable and is liable to be dismissed.

ISSUES:-

Following Issues arose for decision:-

(1) Whether the plaintiffs 1 an 2 are juridical persons?

(2) Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no. 3 as next friend?

3(a) Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.4.92 in their statement under order 10 Rule 2 C.P.C. ?

3(b) Whether the same idol was reinstalled at the same place on a chabutra under the canopy?

3(c) "Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated 14.8.1989, 7.11.1989 and 15.11. 91 ?

3(d) If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity?"

(4) Whether the idols in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no. 3 ?

(5) Is the property in question properly identified and described in the plaint ?

(6) Is the plaintiff No. 3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account ?

(7) Whether the defendant no. 3, alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no. 3 ?

(8) Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Rama installed in the disputed structure ?

(9) Was the disputed structure a mosque known as Babri Masjid ?

(10) Whether the disputed structure could be treated to be a mosque on the allegations, contained in paragraph-24 of the plaint ?

(11) Whether on the averments made in paragraph-25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute is as a mosque ?

(12) If the structure in question is held to be mosque, can the same be shifted as pleaded in paragraphs 34 and 35 of the plaint ?

Deleted vide court order
dated 23.2.96.

(13) Whether the suit is barred by limitation ?

(14) Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site.

15. Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only, regularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22nd December, 1949, as alleged by the defendants 4 and 5 ?

16. Whether the title of plaintiffs 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no. 4 ? If yes, have plaintiffs 1 & 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint ?

17. Whether on any part of the land surrounding the structure in dispute there are graves and is any part of that land a Muslim Waqf for a graveyard ?

Deleted vide this Hon'ble Court order dated 23.2.96.

18. Whether the suit is barred by Section 34 of the the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no. 3 and also as alleged in paragraph 47 of the written statement of defendant no. 4 and paragraph 62 of the written statement of defendant no. 5 ?

19. Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no. 3 ?

20. Whether the alleged Trust, creating the Nyas defendant no. 21, is void on the facts and grounds, stated in paragraph 47 of the written statement of defendant no. 3 ?

21. Whether the idols in question cannot be treated as deities as alleged in paragraphs 1, 11, 12, 21, 22, 27 and 41 of the written statement of defendant no. 4 and in paragraph 1 of the written statement of defendant no. 5 ?

22. Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama, as alleged in paragraphs 19 and 20 of the plaint ? If so, its effect ?

23. Whether the judgment in suit No. 61/280 of 1885 filed by Mahant Raghuber Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata, as alleged by the defendants 4 and 5 ?

24. Whether worship has been done of the alleged plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?

25. Whether the judgment and decree dated 30th March 1946 passed in suit no. 29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs ?

26. Whether the suit is bad for want of notice under Section 80 C.P.C. as alleged by the defendants 4 and 5?

27. Whether the plea of suit being bad for want of notice under Section 80 C.P.C. can be raised by defendants 4 and 5 ?

28. Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5 ? If so, its effect?

29. Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. state) of the Court of Munsif Sadar, Faizabad?

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

Annexure-I
Pages 215-316

Statement under Order X Rule 2 C.P.C. in O.O.S. No. 5 of 1989

At the instance of Sri R.L. Varma, Sri Deoki Nandan Agarwal makes the following clarification under Order X Rule 2 C.P.C.

In the early hours of December, 23, 1949 the idol of Bhagwan Sri Ram Lala, which was already on Ram Chabutra, was transferred to the place where he presently sits, that is, under the central dome of the disputed building. I was not personally present at that time at the place. This information was conveyed to me by Paramhans Ram Chandra Das of Digamber Akhara. This transfer of the idol was done by Paramhans Ram Chandra Das and Baba Abhi Ram Das and certain other persons whose name I do not remember at the moment.

I will have to look into the record to give their names.

The idol is Chal Vigraha (moveable idol).

Paramhans Ram Chandra Das had informed me that all the due ceremonies were performed when the idol was transferred.

Presently, the property in suit is bounded on three sides by a wall constructed by the State Government recently and on the north by public road.

The entire area enclosed by the aforesaid wall belongs to the deity.

30.04.1992 Sd/-illegible
MHS/- 30.4.92

FINDINGS

ISSUES NO. 9, 10, 14 & 22

9. Was the disputed structure a mosque known as Babri Masjid ?

10. Whether the disputed structure could be treated to be a mosque on the allegations, contained in paragraph-24 of the plaint ?

14. Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site?

22. Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint ? If so, its effect ?

FINDINGS

These issues are interrelated and can be taken up together. I have already recorded finding in leading case O.O.S. No.4 of 1989. Copy of the judgment be placed on record. In view of the finding on issues no. 1, 1(a), 1(b), 1-B(b), 11, 19(d), 19(e) and 19(f) no separate finding is required as the issues are identical issues in this case. These issues no. 9, 10, 14 and 22 are decided accordingly.

ISSUES NO.15, 16 & 24

15. Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only, regularly for offering Namaz ever since its alleged construction in 1528 A.D. To 22nd December 1949 as alleged by the defendants 4 and 5 ?

16. Whether the title of plaintiffs 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no. 4 ? If yes, have plaintiffs 1 & 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint ?

24. Whether worship has been done of the alleged plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?

FINDINGS

These issues are interrelated and can be taken up together. I have already recorded finding in leading case in O.O.S. No.4 of 1989. Copy of the judgment be placed on record. In view of the finding on issue no.1B-(c), 2, 4, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 and 28 no separate finding is required as the issues are identical issues in this case. Issues no. 15, 16 & 24 are decided accordingly.

ISSUES NO.23

Whether the judgment in suit No. 61/280 of 1885 filed by

Mahant Raghuber Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5 ?

FINDINGS

In view of the finding on issue no.8 in O.O.S. No. 4 of 1989, the leading case, the issue is decided against the defendants and in favour of the plaintiffs.

ISSUES NO. 1, 2 & 6

1. Whether the plaintiffs 1 an 2 are juridical persons?

2. Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no. 3 as next friend?

6. Is the plaintiff No. 3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account ?

FINDINGS

Since Issue Nos. 1,2 and 6 are inter connected, they can conveniently be disposed of at one place.

The instant suit has been filed by Bhagwan Sri Rama Virajman at Sri Ram Janma Bhumi, Ayodhya also called Sri Rama Lala Virajman and the Asthan Sri Rama Janma bhumi, Ayodhya through next friend with following reliefs ,

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

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

© Costs of the suit against such of the defendants as object to the grant of relief to the plaintiffs.

(D) Any other relief or reliefs to which the plaintiffs may be found entitled.

On behalf of the Plaintiff, it is submitted that Bhagwan Sri Rama Virajman at Sri Ram Janma Bhumi, Ayodha, also called Sri Ram Lala Virajman, Plaintiff no. 1 and the Asthan Sri Rama Janma Bhumi, Ayodhya with other idols and places of worship situate Plaintiff no.2 are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place. Plaintiff No. 3 is a Vaishnva Hindu and seeks to represent the Deity and the Asthan as a next friend.

The place itself,or the ASTHAN SRI RAMA JANMA BHUMI has been an object of worship as a deity by the devotees of BHAGWAN SRI RAMA as it personifies the spirit of divine worshipped in the form of SRI RAM LALA or lord RAMA, the child. The Asthan was thus Deified. According to the faith of devotees BHAGWAN SRI RAMA LALA or LORD RAMA, the child has spiritual uplift . It is further averred that at Ayodhya , the very Asthan Sri Ram Janmabhumi is worshipped as a deity. Thus, the place is deified . Thus, it is juridical person. Thus, Asthan Sri Ram Janmabhumi is indestructible and immoveable deity, who has continued to exist throughout ages .

On behalf of the defendants it is averred that the plaintiffs no. 1 and 2 are not juridical persons.

Persons are classified as a natural and juristic person. A natural person is a being to whom the law attributes personality in accordance with reality and truth. Legal persons are beings, real or imaginary, to whom the law attributes personality by way of fiction. Legal personality is an artificial creation of the law.

Sri K.N. Bhat, learned Senior Advocate has drawn attention of this Court on following passages of "Hindu Law of Religious and Charitable Trusts 5th Edition' by Mukherjea. The relevant extracts are quoted below;

.* "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition there of by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued." You should remember, however, that the juridical person in the idol **<u>is not the material image</u>**, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. (p.38.)

* From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. (p.39.)

* The early Vedic hymns make no allusion to idol worship, and Max Muller held that idolatry did not exist among them. 'The religion of the Vedas,' he declared, 'knows no idols.' The Jabala Upanishad says, 'Images are meant only as aids to meditation for the ignorant'. (p.149)

* The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else. (p.153.)

* "The idol, deity or religious object," observed West and Buhler in their *Digest on Hindu Law,* "is looked upon as a kind of human entity." It is a sacred entity and ideal personality possessing proprietary rights. The Judicial Committee has pointed out on more occasions than one that it is only an ideal sense that property can be said to belong to an idol and the possession and management of it must, in the nature of things, be entrusted to some person as Shebait or manager. The legal principle has thus been summed up in one of the pronouncements of the Judicial Committee:

"A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity.' It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which would, in such circumstances, on analogy, be given to the manager of the ***estate of an <u>infant heir</u>***. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."(pp.158)

* **Existence of idol is** (not) **necessary for temple.-** While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that to constitute a temple, it is enough **if it is a place of public religious worship** and if the people believe in its religious efficacy, irrespective of the fact **whether there is an idol or a structure** or other paraphernalia. ***It is enough if the devotees or the pilgrims feel***

that there is one superhuman power which they should worship and invoke its blessings. pp.158-159.

* Moreover, - and this was pointed out by Chatterjee, J., who was a member of the Full Bench – **the conception of Hindu jurists was not that the image of clay or stone constituted the juristic person**. The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated *thakur* become vested in the substituted *thakur*. Thus, a dedication to an idol is really a dedication **to the deity who is ever-present and ever-existent, the idol being no more than the visible image** through which the deity is supposed specially to manifest itself by reason of the ceremony of consecreation. The decision in *Bhupati Smrititirtha v. Ramlal* has been followed by other High Courts in India, and it has been held by the Allahabad High Court in *Mohor Singh v. Het Singh* that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu law. (pp.162-163)"

He has further invited the attention of this Court on paras 11,12 and 13 of AIR 2000 Supreme Court 1421 **Shiromani Gurdhwara Prabhandak committee Amritsar Vs. Shri Som Nath Dass and others .** They are as under:

11. The very words "Juristic Person" connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person.

Essentially, every human person is a person. If we trace the history of a "Person" in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman Law a "Slave" was not a person. He had no right to a family. He was treated like an animal or chattel. In French Colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute. Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel.

12. In Roscoe Pound's Jurisprudence Part IV, 1959 Ed. at pages 192-193, it is stated as follows:

> In civilized lands even in the modern world it has happened that all human beings were not legal persons. In Roman law down to the constitution of Antonymous Pius the slave was not a person. "He enjoyed neither rights of family nor rights of patrimony. He was a thing, and as such, like animals, could be the object of rights of property."....In the French colonies, before slavery was there abolished, slaves were "put in the class of legal persons by the statute of April 23, 1833" and obtained a "somewhat extended juridical capacity" by a statute of 1845. In the United States down to the Civil War, the free Negroes in many of the states were free human beings with no legal rights.

13. With the development of society, 'where an individual's interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like

corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognized in law to be a legal unit.

Corpus Juris Secundum, Vol. LXV, page 40 says:

> Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. definition 'Person' it is stated that the word "person," in its primary sense, means natural person, but that the generally accepted meaning of the word as used in law includes natural persons and artificial, conventional, or juristic persons.

Corpus Juris Secundum, Vol. VI, page 778 says:

> Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.

Salmond on Jurisprudence, 12th Edn., 305 says:

> A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feats of the legal imagination.... Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually

recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations. ... If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention...

> 1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members....1
>
> 2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself....
>
> 3. The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - a charitable fund, for example or a trust estate...

Jurisprudence by Paton, 3rd Edn. page 349 and 350 says:

It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-duty-bearing units - all entities recognised by the law as capable of being parties to legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties...

...Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationships, e.g., the signing of a contract: and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities." Analytical and Historical

Jurisprudence, 3rd Edn. At page 357 describes "person";

> We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed.

14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol, was recognised as a juristic person, it was known it could not act by itself. **As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act.** Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurudwara etc. The entrustment of an endowed fund

for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an Idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

Shri Ravi Shanker Prasad Senior Advocate has argued that the concept of deity is distinguishing feature of Hindu faith that the concept of deity in Hindu faith has been considered in this outstanding book. The concept of deity is a distinguishing feature of the Hindu faith. The deity is the image of Supreme Being. The temple is the home of the deity. It is enough that Supreme Super Human Being Power i.e. an idol or image of the Supreme Being installed in the temple. The worship of such an image of the Supreme Being is acceptable in Hindu law. Hindus have also the believe that idol represent dignity. In this context, para 1.33 pages 26 and 27 of the Hindu Law of Religious and Charitable Trust by B.K. Mukharjee, 1952 Edition is reproduced as under:-

4. The traditional and classical legal literature relating to Hindus has also duly sanctified such belief and faith which has been exalted to a juristic status requiring legal recognition. In this connection, "**the Hindu Law of**

Religious and Charitable Trusts" by B.K. Mukherjea lays down some of the relevant concepts relating to deity and the temple along with concerned page number which are consistently being recognized as judicial authorities, not only in India but also abroad. The concept mentioned therein along with concerned page numbers are being quoted below:

Page 26-27 – Para "1.33: Idols representing same divinity – One thing you should bear in mind in connection with image worship viz. That the different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. **The rationale of image worship is thus given in a verse which is quoted by Raghunandan:**

"*Chinmayasyaadwitiiyasya Naskalashariirina Saadhakaanaam Hinaathayi Brahmanii Roopakalpanaa."*

"**It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."**

Page 38-Para "1.50. The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests:- As you shall see later on the decision of the Courts of India as well as of the Privy Council have held uniformly that the Hindu idol is a juristic person in whom the dedicated property vests. "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued." You should remember, however, that the juridical person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests."

Page 38-39-Para "1.51. Deity owner in a secondary sense.-The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Asutosh Mookerjee in his judgment in Bhupati v Ramlal and I will reproduce such portions of them as are necessary for my present purpose."

Sulapani, a reputed Brahminical Jurist, in his discourse on Sraddha thus expresses his views regarding the proper significance of gift to God:- "in 'Donation' having for its dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz., the offer of the sacrifical fee etc. it has already been remarked in the chapter on the Bratis that such usage as Devagram, Hastigram, etc., are secondary”. Sree Krishna in commenting on this passage thus explains the meaning of the expression Devgram: “Moreover, the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas in the term Devagram) figuratively means abandonment for them (the Gods)”. Therefore, the expression is used in the sense of “a village which is the object of abandonment intended for the Gods”. This is the purport. According to Savar Swami, the well-known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use.”

Page 39-Para “1.52. These discussions are not free from obscurity but the following conclusions I think can be safely drawn from them:-(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense.

> (2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (Upchaar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. So far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person and the correct view is that in the capacity alone the dedicated property vests in it."

Thus, the Hindu concept of deity is worship of his image. It is an admitted case that deities were installed and are being worshiped in the structure. The time of installation has been seen in another issue but the factum is the same that the deities were available inside the structure and the plaintiff has sought the relief of the removal without arraying them as a party. It is not a matter of dispute that deity is a juristic person. The plaintiff is not in a position to say whether Pran

Pratishtha was performed or not. The Hindu concept is that deities had to be worshipped. Thus the idol is a juristic person but they did not recognize a temple to be so. It is also a settled proposition of law that no decree can be passed against the juristic person without arraying them as a party. Thus, in view of the decision of the Hon'ble Apex Court in 2**000 (4) SSC 146, Shiromani Gurudwara Prabandhak Committee Vs. Somnath Das,** the deities installed and admitted by the plaintiff are the juristic persons. In view of **AIR 1957 SC Page 133, Deoki Nandan Aggarwal vs. Murlidhar** endowment property in favour of an idol is possible as they are juristic persons. On the contrary, that the defendants Hindus' claim that deities were Pran Pratishthit and according to their faith they are being properly worshipped and Muslims cannot claim that the religious performance of Hindus were defective and accordingly they are not juristic persons. In view of **AIR 1966 Patna 235, Ram Ratan Lal Vs. Kashinath Tewari and others** that the actual Sankalp and Samarpan is not necessary. It is always possible that by worship also, the deities acquire divinity. it is admitted between the parties that the prayers were offered to the deities at least from December, 1949 and the suit was filed after a long time even then the plaintiff cannot, at this stage, suggest that there was no Pran Pratishtha in the temple of the deities. It is also a matter of common knowledge that deities are installed with Pran Pratishta. There is no difference between idol and deities. According to Hindu faith the worship is going on for the last 61 years. Accordingly at no stretch of imagination, at this stage, it can be said that without any Pran Pratishtha or Pooja the deities were installed.

Thus, in view of **AIR 1925 Privy Council 139 Pramatha Nath**

Mullick Vs. Pradyumna Kumar Mullick even idol is a juristic person and it can sue and be sued. It is not a property which can be shifted to other place. Thus in this case once the parties accept that idols were placed and the worship was going on in that event there is no difference between deities and idols. The worship/prayers were offered. They were properly being worshipped for the last many decades. Accordingly, at this stage there is no justification to hold that the idol should not be treated as juristic persons. There is no material available on record that deities cannot be supposed to be juristic persons. Thus on hyper technical grounds and for want of any evidence from the side of defendants that Pran Pratishtha of the deities plaintiff nos. 1 & 2 was not done and they are not juristic persons cannot be accepted.

I have given anxious thoughts to the facts in issue. In this context it appears that plaintiff no. 1 and 2 are juridical persons.

IDOL – JURIDICAL PERSON

A Hindu idol is a juristic entity and has a juridical status. The idol itself is not a legal person. The idol is representing and embodying the spiritual purpose of the donor and it is this purpose, which is the juristic person. The purpose of making a gift to person is not to confer benefit on God, but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. The Madras High Court in the case of *Vidyapurana Vs. Vidyanidhi [ILR Mad 435],* Justice Bhashyam Iyengar suggested that the community itself for whose spiritual benefit the Institution is founded or endowed may be more appropriately regarded as a corporate body forming the juristic person rather than the idol or presiding deity.

The Privy Council in the case of *Maharaja Jagadindra Nath Roy Bahadur Vs. Rani Hemanta Kumari Debi [ILR 32 CAL 129 : XXXI I.A. 203]* observed:

> "There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held. And probably this is the true legal view when the dedication is of the completest kind known to the law."

In this case it was argued that the period of limitation to file the suit expired when the Sebait was a minor and the Sebait was not entitled to claim the benefit of Section 7 of the Indian Limitation Act for the extension of period of limitation. By virtue of his minority the Privy Council observed that the possession and Management of the dedicated property belong to Sebait. The right to file the suit is vested with the Sebait and not in the idol. The right to sue accrue to the plaintiff when he was under aged and he was entitled to file a suit after attaining majority. In the case of Asthanjanamabhoomi, the claim of adverse possession does not arise for the simple reason that such claim for adverse possession can be made in respect of properties dedicated to a deity and not where the property itself is the deity. Such a claim also arise as the idol was not represented by a Sebait who was competent to take a decision on behalf of the idol. The Supreme Court in the case of *Bishwanath Vs. Sri Thakur Radha Ballabhji [AIR 1967 SC 1044]* has placed reliance on the observation of the Privy Council in the case of Jagad ***estate of an <u>infant</u>*** indra Nath Roy Bahadur. Thereafter it is observed as under:

> "Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that person who go in only for the purpose of devotion have according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage : See Kalyana Venkataramana Ayyangar Vs. Kasturi Ranga Ayyangar AIR 1917 Mad 112 at page 118".

Thereafter the Supreme Court has observed further that:

> "The question is, can such a person represent the idol when Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an adhoc interest. It is a pragmatic, yet a legal solution to a difficult situation. ……. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment."

The Supreme Court has placed reliance on the observation of B.K. Mukherjee in his book, "The Hindu Law of Religious & Charitable Trust" II Edition, wherein it is observed that, where the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interest of the idol, then there must be some other agency which must have the right to act for the idol. It is in this background, the Supreme Court has held the right of a worshipper is to file a suit representing the idol. The principle laid down in this case is applicable to the facts of the present case where the worshippers of Ashtanajanamabhoomi have filed the suit for safeguarding the interest of the deity. The ratio of the said case also supports of a view that a deity can be considered as a perpetual infant, which can only be represented by its next friend. A worshipper can file a suit on behalf of the idol where Shebait is in different or has an adverse interest (*Kissan Bagwan Vs. Suri Morati Sansthan [AIR 1947 Nagpur 253].*

The Supreme Court in the case of *Jogendra Nath Naskar Vs. IT Commissioner* has observed as under:

> "Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person".

The Supreme Court in the case of *Ramaraghava Reddy Vs. Seshu Reddy (AIR 1967 SC 436) observed that:*

> *"*Where the Shebait himself is negligent or where the Shebait himself is guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. In such a case suit can be filed by a next friend."

The Supreme Court relied upon the observation in the case of *Pramath Nath Vs. Pradyumna Kumar [AIR 1925 PC 139] wherein it is stated that:*

> *"Will* of the idol on that question must be respected, inasmuch as the idol was not represented otherwise than by Shebaits, it ought to appear through a disinterested next friend appointed by the Court."

It has been argued that deities are perpetual minors for the purpose of law of contract. However, this argument is not accepted in *Bhopal Shreedar Vs. Shasheebhusan [AIR 1933 Cal 109].* The deity is held to be person or individual for the purpose of Income Tax Act. However the minority status of the deity is not accepted in the matter of holding of property as held by the Full Bench of Madras High Court in *MA Manathounithai Desikar Vs. Sundar (AIR 1971 Mad 1)."*

Thus, there is difference between juristic and legal persons.

Juristic Person : Persons are classified or distinguished as natural and legal (or juristic). A natural person is a being to whom the law attributes personality in accordance with reality and truth. Legal persons are beings, real or imaginary, to whom the law attributes personality by way of fiction when there is none if fact. Legal personality is an artificial creation of the law. According to the Supreme Court in ***Som Prakash Rekhi V. Union of India, AIR 1981 SC 212*** "A legal person is any entity other than human being to which law attributes personality" Further, "the very words 'Juristic Person' connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognized in law as such vide ***SGPC V. Som Nath Dass, AIR 2000 SC 1421.***

Thus juristic or legal or artificial person is any subject matter to which the law attributes a fictitious personality. It is a legal creation either under a general law like Companies Act or by a specific enactment or by a decision of the court. Being the creation of law, legal persons can be of as many kinds structure as the law pleases. A legal person is holder of rights and duties, it can own and disposes of property, it can receive gifts and it can sue and be sued in its name in the courts.

The Privy Council in ***Pramath Nath Mullick V. Pradyunna Nath Mullic (1925) 52 Indian Appeals 245, 264*** consistently held this view in its words:

> "A Hindu Idol is, according to long established authority founded upon the religious custom of Hindus, and recognition thereof by the courts of law, a juristic entity. It has a judicial status with power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager."

The spiritual and legal aspects of Hindu idol need be distinguished. From the spiritual point of view idol is the very embodiment of the Supreme Being, but with this aspect of the matter law is not concerned, in fact it is beyond the reach of law. In law, neither God nor any supernatural being can be a person. But so far as the deity or idol stands as the representative and symbol of the particular purpose indicated by donor, it can figure as a legal person.

The plaintiffs have specifically pleaded and have given reasons as to why the place believed to be the birth place of Lord Ram is a deity. Reliance has been placed on paras 19,20 and 21 of the plaint. For convenience they are reproduced as below;-

"19. That it is manifestly established by public records of unimpeachable authority that the premises in dispute is the place where Maryada Purushottam Sri Ramchandra Ji Maharaj was born as the son of Maharaja Dashrath of the solar Dynasty, which according to the tradition and the faith of the devotees of Bhagwan Sri Rama is the place where HE manifested HIMSELF in human form as an incarnation of BHAGWAN VISHNU. The place has since ever been called Sri Rama

Janma Bhumi by all and sundry through the ages.

20. That the place itself, or the ASTHAN SRI RAMA JANMA BHUMI, as it has come to be known, has been an object of worship as a Deity by the devotees of BHAGWAN SRI RAMA, as it personifies the spirit of the Divine worshipped in the form of SRI RAMA LALA or Lord RAMA the child. The Asthan was thus Deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the idol of Bhagwan Sri Rama thereat.

21. That it may be here stated that the Hindus do not worship the stone or the metal shaped into the form of their ISHTA DEVATA, or the stone of SALIGRAM which has no particular shape at all. They worship the Divine, which has no quality or shape or form, but can be known only when it manifests ITSELF in the form of an incarnation, and therefore, adopt the form of his incarnation as their ISHTA DEVA. For some even that is unnecessary. They can meditate upon the formless and the shapeless DIVINE and aspire for a knowledge of him through his grace. It is the SPIRIT of the DIVINE which is worshipped by most Hindus, and not its material form or shape in an idol. This SPIRIT of the DIVINE in an idol is invoked by the ritual of pranapratishtha. The SPIRIT of the DIVINE is indestructible and ever remains present everywhere at all times for any one to invoke it in any shape or form in accord with his own aspiration. Different persons are at different levels of realisation of the REALITY. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow BHAKTI MARGA, and BHAGWAN SRI RAMA or BHAGWAN SRI KRISHNA is their ISHTA DEVA."

Shri K.N. Bhat Senior Advocate has further urged that plaintiff nos. 1 and 2 are juristic persons , He has placed reliance on "the

Hindu Law of Religious and Charitable Trusts” by B.K.Mukherjea. Relevant extracts are reproduced as under:-

“ A Hindu place of worship can be deemed to be a deity. Thus, on the basis of aforesaid contentions I hold that deities are juristic persons and they can sue or be sued. On behalf of Hindus it is urged that even by worship and chanting of Mantras Pranprathistha can be done. Accordingly the contentions that without any Pranprathistha deities are not juristic persons is not acceptable. Hindus claim that there was worship and Pranprathistha of the deities and they are juristic persons.

In view of above discussion, there is no doubt that plaintiff no. 1 is a deity and plaintiff no. 2 is worshipped from times immemorial and accordingly it is also a deity and they can sue the defendants through the next friend .

The aforesaid view is based on the decision of Hon'ble apex court in **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others AIR 1967 S.C.1044,** which reads as under**:**

8 . The second question turns upon the right of a worshipper to represent an idol when the Shebait or manager of the temple is acting adversely to its interest. Ganapathi Iyer in his valuable treatise on "Hindu and Mahomedan Endowments", 2nd Edition at page 226, had this to say in regard to the legal status of an idol in Hindu law :

> "The ascription of a legal personality to the deity supposed to be residing in the image meets with all practical purposes. The deity can be said to possess property only in an ideal sense and the theory is, therefore, not complete unless that legal personality is linked to a natural person."

It would be futile to discuss at this stage the various decisions which considered the relationship between the idol and its Shebait or Manager qua the management of its property, as the Privy Council in Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi, has settled the legal position and stated thus :

> "There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held."

Dealing with the position of the Shebait of such an idol, the Privy Council proceeded to state :

> "........ it still remains that the possession and management of the dedicated property belong to the Shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the Shebait, not in the idol."

This was a case where the Shebait filed a suit for eviction from the dedicated property within three years after attaining majority and the Board held that, as he had the right to bring the suit for the protection of the dedicated property, section 7 of the Limitation Act, 1877, would apply to him. The present question, namely, if a Shebait acts adversely to the interests of the idol whether the idol represented by a worshipper can maintain a suit for eviction, did not arise for consideration in that case. That question falls to be decided on different considerations.

9. Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of

an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have, according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage : see Kalyana Venkataramana Ayyangar v. Kasturi Ranga Ayyangar . In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple.

10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover

the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment.

11. There are two decisions of the Privy Council, namely Pramatha Nath Mullick v. Pradyumna Kumar Mullick and Kanhaiyat Lal v. Hamid Ali , wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edition, summarizes the legal position by way of the following propositions, among others, at page 249 :

> "(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said to be merged in that of the Shebait.
>
> (2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings

on behalf of the idol.

This view is justified by reason as well as by decision.

In view of the aforesaid judgement a Shebait or worshipper can file the suit as next friend for the reasons that an idol is in a position of minor and it has to act through human agency. Thus, in this case the plaintiff no. 3 is the next friend and accordingly he has a right to maintain the suit.

It may further be clarified that plaintiff no. 3 was a Senior Advocate and a retired Judge of the High Court, who filed the suit as next friend and there is no allegation on behalf of the defendant that he was acting adversely to the interest of plaintiff nos. 1 and 2. Consequently, looking to the case from all angles it transpires that plaintiff nos. 1 and 2 are juridical persons and plaintiff no. 3 as a next friend is entitled to maintain the suit on the basis of settled proposition of law as laid down in AIR 1925 Privy Council page 139 Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick and AIR 1933 Privy Council 198(1) KanhaiyaLal Vs. Hamid Ali

Reliance may be placed on following case laws and relevant portions of the judgements which are given below;

Official Trustee of West Bengal (For The Trust of Chitra Dassi) V. C.I.T., West Bengal, A.I.R.1974 S.C.1355 (para 3):

3. It was conceded before us on behalf of the appellant that if the word used had been a "person" instead of an "individual" the deity would be a person because a person will include a juristic person. That a Hindu deity is a juristic person is a well established proposition and has been so for a long time. In Maharanee Shibessouree Debia v. Mothooranath Acharjo it was observed:

> The Talook itself, with which these jummas were connected by tenure, was dedicated to the religious services of the Idol. The rents constituted, therefore, in legal contemplation, its property. The Sahabit had not the legal property, but only the title of Manager of a religious endowment.

In Prosunno Kumari Debya v. Golab Chand Baboo, the above observations were cited with approval. In Manohar Ganesh v. Lakhmiram, a Division Bench of the Bombay High Court observed:

> The Hindu law, like the Roman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations.... It is consistent with the grants having been made to the juridical person symbolized or personified in the idol....

The Madras High Court in Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami expressed the view:

> It is to give due effect to such a sentiment widespread and deep rooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned, the creation of a fictitious person in the matter, as is implied in the felicitous observation made in the work already cited: 'Perhaps the oldest of all juristic persons is the God, hero or the saint'.

In Pramatha Nath Mullick v. Pradumna Kumar Mullick

> A Hindu idol is, according to long established authority,

> founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a "juristic entity'. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on anology, be given to the manger of the estate of an infant heir. It is unnecessary to quote the authorities : for this doctrine, thus simply stated, is firmly established.

In **Shri Kalanka Devi Sansthan vs. the Maharashtra Revenue Tribunal, Nagpur and Ors., [A.I.R.1970 S.C.439]** Apex Court held as under:

4. Now it is well known that when property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. As pointed out in Mukherjee's Hindu Law of Religious and Charitable Trust at pp. 142-43, this view is in accordance with the Hindu ideas and has been uniformly accepted in a long series of judicial decisions. The idol is capable of holding property in the same way as a natural person. "It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir". The question, however, is whether the idol is capable of cultivating the land personally. The argument raised on behalf of the appellant is that under Explanation I in Section 2(12) of the Act a person who is subject to any physical or mental disability shall be deemed to cultivate the land personally if it is cultivated by the servants or by hired labourer. In other words an idol or a Sansthan

that would fall within the meaning of the word "person" can well be regarded to be subject to a physical or mental disability and land can be cultivated on its behalf by servants or hired labourers. It is urged that in Explanation (I) the idol would be in the same position as a minor and it can certainly cultivate the land personally within the meaning of Section 2(12). It is difficult to accept the suggestion that the case of the appellant would fall within Explanation (I) in Section 2(12). Physical or mental disability as denned by Section 2(22) lays emphasis on the words "personal labour or supervision". As has been rightly pointed out in Shri Kesheoraj Deo Sansthan, Karanji v. Bapurao Deoba and Ors. in which an identically similar point came up for consideration, the dominating idea of anything done personally or in person is that the thing must be done by the person himself and not by or through some one else. In our opinion the following passage is that judgment at p. 593 explains the whole position correctly :

> It should thus appear that the legislative intent clearly is that in order to claim a cultivation as a personal cultivation there must be established a direct nexus between the person who makes such a claim, and the agricultural processes or activities carried on the land. In other word disputed structure, all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control, or management of the landlord. It is in that sense that the word disputed structure "personal supervision" must be understood. In other word disputed structure, the requirement of personal supervision under the third category of personal cultivation provided for

in the definition does not admit of an intermediary between the landlord and the labourer, who can act as agent of the landlord for supervising the operations of the agricultural worker. If that is not possible in the case of one landlord, we do not see how it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person.

In other words the intention is that the cultivation of the land concerned must be by natural persons and not by legal persons.

In **Yogendra Nath Naskar v. Commissioner of Income-tax, Calcutta, (AIR 1969 SC 1089)** Apex Court held as under:

Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person. The true legal view is that in that capacity alone the dedicated property vests in it. There is no principle why a deity as such a legal person should not be taxed if such a legal person is allowed in law to own property even though in the ideal sense and to sue for the property, to realise rent and to defend such property in a court of law again in the ideal sense. Our conclusion is that the Hindu idol is a juristic entity capable of holding property and of being taxed through its Shebaits who are entrusted with the possession and management of its property. It was argued on behalf of the appellant that the word 'Individual' in Section 3 of the Act should not be construed as including a Hindu deity because it was not a real but a juristic person. We are unable to accept this argument as correct. We see no reason why the meaning of the word 'individual' in Section 3 of the Act should be restricted to human being and not to juristic entities.

In **Ram Jankijee Deities & Ors. v. State of Bihar and Ors, (AIR 1999 SC 2131)** Apex Court held as under:

One of the questions emerging at this point, is as to nature of such an idol, and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.

A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji J. in Rambrahma Chatterjee v. Kedar Nath Banerjee , "We need not describe here in detail the normal type of continued worship of a consecrated image - the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."

19. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of Bhupatinath v. Ramlal Maitra , wherein Chatterjee, J. (at page 167) observed:

> 'A Hindu does not worship the "idol" or the material body made of clay or gold or other substance, as a mere glance at the mantras and prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or according to some, the gratification of the deity.

20. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being. 'The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him - (see in this context Golap Chandra Sarkar, Sastri's Hindu Law: 8th Edn.). It is the human concept of the Lord of the Lords- it is the human vision of the Lord of the Lords: How one sees the deity: how one feels the deity and recognises the deity and then establishes the same in the temple upon however performance of the consecration ceremony. Shastras do provide as to how to consecrate and the usual ceremonies of Sankalpa and Utsarga shall have to be performed for proper and effective dedication of the property to a

deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with natural personality of the shebait, being the manager or being the Dharam karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The Deva Pratistha Tatwa of Raghunandan and Matsya and Devi Puranas though may not be uniform in its description as to how Pratistha or consecration of image does take place but it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa Mantra and upon completion thereof, the image is given bath with Holy water, Ghee, Dahi, Honey and Rose water and thereafter the oblation to the sacred fire by which the Pran Pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems to have been totally misread by the learned Single Judge.

I agree with the contentions of Senior Advocate, Sri Bhat, that plaintiff nos. 1 and 2 are like infants and in view of AIR 1925 Privy Council page 139 at page 140 **Pramatha Nath Mullick Vs Pradyumna Kumar** they are juristic entity and have juridical status.

In **AIR 1937 Calcutta, 338 Bimal Krishna Ghosh Vs. Shebaits of Sree Sree Ishwar Radha Ballav Jiu a** Division Bench of Calcutta High Court held that deities are perpetual infants and legal owner of the property and Shebait occupies the position of a Manager.

In celebrated case of Allahabad High Court **Jodhi Rai Vs Basdeo Prasad 1911 (33) Allahabad (ILR)page** 735 at page 737 the Full Bench of this Court held that deity is like minor and idol was held to be a juristic person, who can hold the property. If a suit is brought by or against minor it should be brought like a suit of minor. Thus, a suit on behalf of idol can be brought in the name of an idol represented by the Manager.

In AIR 1967 Supreme Court 1044 **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others** the apex court took a view that idols like plaintiff nos. 1 and 2 in the suit are minors and their interest cannot be left in a lurch and even the worshipper can sue on their behalf and he is clothed with an ad hoc power of representation to protect the interest of the deities. Thus, plaintiff no. 3 has rightly filed the suit on behalf of plaintiff nos. 1 and 2 , the deities. I do not find any justification to hold that the decision of Full Bench in the case of J**odhi Rai Vs. Basdeo Prasad 1911 (33) Allahabad (ILR)**(supra) requires any re-consideration for the reason that Full Bench of this Court considered a number of decisions including earlier Full Bench decision of different High Courts.

The decision is correct on the ground that Hon'ble Apex Court in **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others AIR 1967 Supreme Court page 1044** also considered the position of idols as minors. I do not find any flaw on the part of the plaintiff no. 3 to file the suit as next friend for the deities, plaintiffs no. 1 and 2. Action of plaintiff no. 3 is further justified by a Full Bench decision of Madras High Court as reported in **AIR 1971 Madras page 1(Full Bench) Manathu Maitha Desikr Vs. Sundaralingam** where their Lordships took the view that the deity, who is owner of the property, suffers from physical disability as a minor and its interest had to be looked after in perpetuity Thus, in the instant case plaintiff no. 3 ,who is next friend and senior Advocate and retied Judge of the High Court has filed the suit alleging that deities, who are minor, under physical disability are juridical persons and can maintain the suit for declaration and injunction .

In view of the discussion referred to above , I hold that plaintiff nos. 1 and2 are juridical persons and deities can be represented through plaintiff no. 3, as next friend, who is worshipper and he is also entitled and is competent to act on their behalf.

Issue nos. 1,2 and 6 are decided in favour of plaintiffs and against the defendants.

ISSUE NO. 5

Is the property in question properly identified and described in the plaint ?

FINDINGS

The property, in question, is said to have been not properly identified and described in the plaint. On behalf of the plaintiffs, the attention of this Court was drawn on paras 1,2,14, 18,20 and 24 of the plaint coupled with the statement of plaintiff No. 3, Sri Devki Nandan Agrwal, whose statement was recorded under Order X Rule 2 C.P.C. On 30.4. 1992. On 10.9.1992 the Court has also passed the order on Application No. 110-0 of 1992. Thus, the details of the property in suit have already been given and property is identified. Thus, at the time of filing of the suit the property was not vested in the Central Government. Undisputedly, the plaintiffs have clearly mentioned the land which is identifiable . The plaintiffs have attached the map along with the plaint. Out of such maps , the map prepared by Vakail Commissioner Sri Sheo Shanker Lal in Original Suit No. 2 of 1950, has also been attached. Thus, the land in question is identifiable. Issue No. 5 is decided in favour of the plaintiffs and against the defendants.

ISSUE NOS. 7 & 8

7. Whether the defendant no. 3, alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no. 3 ?

8. Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Rama installed in the disputed structure ?

FINDINGS

Since these issues are inter related, they can be conveniently decided at one place.

On behalf of the defendant no. 3, it has been claimed that plaintiff no. 3 is not entitled to file present suit on behalf of the plaintiff nos. 1 and 2 and in view of para 49 of additional written statement plaintiff no. 1 can only be represented by defendant no.3 and, therefore, plaintiff no. 1 should be transposed as defendant to be represented by defendant no. 3. It has further been submitted that defendant no. 3 Nirmohi Akhara has not come out with a case that they are Shabait of Bhagwan Shri Ram installed in the disputed property. In this context the attention of this Court was drawn to the averments of Original Suit No. 26 of 1959 Nirmohi Akhara Vs. Priya Dutt Ram which has been re-numbered as O.O.S.No. 3 of 1989. In the instant suit it has been stated that Nirmohi Akhara is of public character and Mahant Raghunath Das was the head and its Mahant and Sarvarakar. Thus, the case of the plaintiff in O. O.S.No. 3 of 1989, who is at present defendant no.3, before this Court is that they have claimed ownership of the property in suit as religious denomination . It has further been averred at paras 4-A and 4-B of the plaint of O.O.S. No.3 of 1989 that Nirmohi Akhara owned several temples and was managing the same. Thus, it is established that defendant no. 3 claimed his right over the disputed property as an owner. They have not contested the suit as Sarvarakar or Shebait of any deity referred to in O. O.S.No. 3 of 1989. It further transpires from the averments of plaint in O.O.S.No. 3 of 1989 that they have referred to the temple of Janambhumi which does not situate in the place in dispute where deities are installed. In O.O.S.No. 5 of 1989, the plaintiffs no. 1 and 2 are the deities and plaintiff no.3 as a next friend and worshipper has filed the suit in which defendant no. 3 has filed written statement to this effect that the suit should be dismissed. He has also requested that the plaintiff no. 1 should be transposed as defendant as stated in para 49 of additional written statement. Thus, in the property in suit, defendant no. 3 does not claim any interest or has not shown any inclination to protect the interest of infant deities, who are in the eyes of law minors . Thus, assertion of defendant no. 3 that the plaintiff no. 3 was not competent to sue on behalf of plaintiff nos. 1 and 2 appears to be misconceived. The defendant no. 3 has failed to adduce any evidence in support of his claim. He has not even referred to anywhere in the written statement or additional written statement filed before this Court in O.O.S.No. 5 of 1989 that he is Sarvarakar or Shabait of the deities and he is alone competent to contest the case. On the other hand, he claims ownership of a temple which is not in existence where the deities , the plaintiffs no. 1 and 2 are not installed. As regards the existence of plaintiff no. 2 is concerned, defendant no. 3 denies the existence. Even if for the argument sake it is presumed that he is Sarvarakar, he is Shabait or the Manager, even then it can safely be presumed that under the above circumstances he has ignored the interest of the idols and he has refused to act for the idols and he has acted as a Shabait against the interest of the idols. Thus, his action can be deemed to be pre judicial to the interest of the idols. Consequently, in such a situation in the light of the decision of Hon'ble the apex court in A.I.R.1967 Supreme Court 1044 **Bishwanath and another Vs. Shri Thakur Radhaballabhji and oth**ers , the plaintiff no. 3 alone is competent to represent plaintiff nos. 1 and 2 as a worshipper . The worshipper can also be permitted to institute the suit as idol or its beneficiaries in spiritual sense and its transpires from the averments of the plaint that plaintiff no. 3 has claimed himself to be the devotee of plaintiff nos. 1 and 2 and had shown deeper interest in plaintiff nos. 1 and 2 as worshipper and without any pecuniary advantage from plaintiff nos. 1 and 2. There are circumstances in which the interest of the idol can be protected even by appointing any disinterested person by the Court to represent the idol apart from Shabait, if his conduct is pre judicial to the deities. Hon'ble the Apex Court has clarified this situation in paras 8,9,10 and 11 of the view taken in ***Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others (Supra).*** For convenience para 10 is reproduced as under :

" 10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see **Radhabai v. Chimnaji (1878)ILR 3 Bom 27, Zafaryab Ali v. Bakhtawar Singh**, **(1883),ILR 5 All 497, Chidambaranatha Thambiran vs. P. S. Nallasiva Mudaliar, 6 Mad LW 666: (AIR 1918 Mad 464), Dasondhay vs. Muhammad Abu Nasar, (1911) ILR 33 All 660 at p. 664: (AIR 1917 Mad 112) (FB), Sri Radha Kirshnaji v. Rameshwar Prashad Singh : AIR 1934 Pat 584, Manmohan Haldar v. Dibbendu Prosad Roy Choudhury, AIR 1949 Cal 199. "**

Thus, defendant no. 3 Nirmohi Akhaa is not Shebait of Bhagwan Shri Ram installed in the disputed structure and also not competent to maintain the present suit in which as per his request plaintiff no. 1 should be transposed as defendant . On the contrary, the plaintiff no. 3 has proved before this Court that he may be permitted to represent the idols ,plaintiffs no. 1 and 2 as he is worshipper and idols are in the position of a minor and their interest cannot be left in a lurch. Opposite Party No. 3 is a person interested in the worship of the idols .Thus, at least he has ad hoc power of representation to protect the interest of the deities . Thus, in view of the submissions , plaintiff no. 3 is entitled to maintain the suit and defendant no. 3 is not competent to represent plaintiffs no. 1 and 2, the deities.

In view of the discussion referred to above issue nos. 7 and 8 are decided against the defendant no. 3 and in favour of the plaintiff nos. 1 to 3.

ISSUE NO. 19

Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no. 3 ?

FINDINGS

it has been urged on behalf of the defendant no. 3 that in view of the contentions raised in para 43 of the additional written statement, the suit is bad for non-joinder of the necessary party. Para 43 of the additional written statement is reproduced as under ;-

“That outer portion consisting of Bhagwan Ram Lala on Sri Ram Chabutra along with other deities, Chathi Pujan Sthan and Bhandar with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of wall carries the present municipal No. 10/12/29 old 506, 507 and older 647 of Ram Kot ward of Ayodhya City had been a continuous referred in main litigation since 1885 till Reg. Suit No. 239/82 of the Court of Civil Judge, Faizabad and in every case Nirmohi Akhara was held always in possession and ianagement of this temple so the Bhagwan Ram Lalaji installed by Nirmohi Akhara on this Ram Chabutra is a distinct legal entity owned by defendant no.3. That suit is bad for want of impleadment of necessary party as mentioned above.”

In view of the contentions in para 43 it transpires from it that defendant no. 3 has come out with case that Nirmohi Akhra always remained in possession and management of the temple of Bhagwan Shri Ram Lala installed by Nirmohi Akhara and the deities are distinct legal entity at Ram Chabutra. It is also claimed by defendant no. 3 that he contested the suit in the year 1885 and also contested the case no. 237/82 before Civil Judge, Faizabad.

In this context it transpires that this Court has already recorded finding on issue nos. 1,2,6,7 and 8. In view of the findings it transpires that plaintiff no. 3 was found entitled to represent plaintiff nos. 1 and 2 as next friend and defendant no. 3 was not found to be the Shabait of plaintiff nos. 1 and 2.

On the contrary, it transpires that in view of the decision of Hon'ble the apex court in AIR 1967 Supreme Court 1044 **Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others** and the law laid down by the apex court at para nos. 11 and 12 of the aforesaid ruling, the defendant no. 3 acted against the interest of the minor and file O.O.S.No. 3 of 1989 which is connected case in which he claims himself to be the owner of the property in suit and as referred to another temple of Ram Lala. Thus, he has not taken proper care for the interest of minor deities, plaintiff nos. 1 and 2. Thus, it is not open for him to raise a plea that he alone is competent to institute the suit on behalf of the plaintiff no. 1 Defendant No. 3 has even declined plaintiff no. 2 as a deity and thus, apparently he is not entitled to protect the interest of plaintiff no.2. Thus, from all or any angle the suit is not bad for non-joinder of defendant no 3. The plaintiff no. 3 as a worshipper has right to maintain the suit.

Issue no. 19 is decided accordingly.

ISSUE NO.20

Whether the alleged Trust, creating the Nyas defendant

no. 21, is void on the facts and grounds stated in paragraph 47 of the written statement of defendant no. 3 ?

FINDINGS

On behalf of defendant no. 3 it is submitted that in view of the averments in para 47 of the written statement no valid trust could be created and thus, the alleged trust cannot maintain the suit. It is further submitted that plaintiff no. 3 is associated with Vishwa Hindu Parishad and he is not worshipper of plaintiff nos. 1 and 2. At para 16 of the written statement it is submitted that alleged trust has no relevance at all to the present dispute. Mahant Ram Kewal Das is a simple Sadhu and he has been made as a trustee. Due to malicious plan of the alleged Trust he encroached upon the rights and interest of Nirmohi Akhara which is Pandhayati Akhra and is governed by panches of Akhara. The trust came into existence in 1985 to damage the interest of Akhara, defendant no. 3. The trust is not directly interested in the welfare interest and worship of Bhagwan Shri Ram and Nyas is not proper party. On the other hand, on behalf of plaintiff, it is suggested that in order to improve the temple administration and to re-construct a new temple at Ram Janam Bhumi and also Seva Archana and puja plaintiffs-deities and to protect their interest the trust has been created by the Hindus,who reposed the trust in Ramanand Sampradaya and Jagat Guru Mahant Ram Kewal Das is looking after the trust and the deed is also enclosed as Annexure No. 4 to the plaint. A perusal of annexure no. 4 to the plaint reveals that the trust was created for the betterment and for the protection of interest of deities and for the construction of the temple also to expand religious thoughts among the masses and also to provide proper facilities to the pilgrims. The deed is registered. Nirmohi Akhara has not filed any suit challenging the validity of the trust created in the year 1985. They have also not agitated before any competent court for the formation of the trust. Thus, the trust which came into existence in the year 1985 has filed the suit in 1989. In this reference it is pertinent to refer that defendant no. 3 now cannot challenge before this Court the formation of the trust. Unless trust deed is cancelled, it has to be presumed as registered document and no inference can be drawn that the deed was registered maliciously against the interest of defendant no. 3. Thus, no declaration can be given in this suit that trust deed is void on the ground referred to in para 47 of the additional written statement.

There is no evidence worth the name that the plaintiff was illegally playing in the hands of Vishwa Hindu Parishad and maliciously wants to usurp the property of defendant no. 3. Thus, looking to the averments of the plaint specially paras 15,16 and 17 and annexure no. 4 of the plaint, it transpires that trust deed may be created by Hindus for lawful purpose .

Thus, the object of the trust is not forbidden by law and the trust is valid. Issue no. 20 is decided in favour of the plaintiffs and against the defendant no.3.

ISSUE NO. 21

Whether the idols in question cannot be treated as deities as alleged in paragraphs 1, 11, 12, 21, 22, 27 and 41 of the written statement of defendant no. 4 and in paragraph 1 of the written statement of defendant no. 5 ?

FINDINGS

On behalf of the defendants, it is suggested that idols in question cannot be treated as a deity. In this reference written statements filed by defendant no. 4 and defendant no. 5 have been relied upon. The attention of this Court was drawn of paras 1,11,12,21,22,27 and 41 of written statement of defendant no. 4 and para 1 of the written statement of defendant no. 5.

I have gone through the averments made in the aforesaid paragraphs. It transpires that defendant nos. 4 and 5 have denied the contents of plaint. It has been averred that plaintiff nos. 1 and 2 cannot be treated as deities as the idols were kept inside the mosque in the night of 22/23 rd December, 1949. Thus, the idols were not placed in accordance with the tradition and ritual of Hindu law. It is further submitted that there is no comparison of Kedar Nath , Vishnu Pad temple of Gaya with plaintiff no. 2. It is also mentioned that Sita Rasoi and Charan situate outside the premises of the mosque. Ram Chandra Ji as divine Lord cannot be said to reside at any place or in any idols kept inside the said mosque. Such idols and the place inside the mosque cannot be said to be deity. They have denied the contents of para 27 of the plaint and averred that no Pranprathistha or purification of the alleged Asthan was done. The instant suit is not maintainable as plaintiff nos. 1 and 2 are neither deities nor they can be treated as juristic persons. On behalf of the plaintiffs it is submitted that according to concept of Hindu Law the deity is based on faith. The deity is is the image of Supreme Being. The temple is the home of the deity. It is enough that Supreme Being is installed in the temple. The worship of such images of Supreme

Being is acceptable in Hindu Law. The Hindus have also the belief that idols represent deity. Reliance has been placed on a book" The Hindu Law of Religious and Charitable Trust by B.K.Mukharjee on para 1.33 pages 26 and 27.

> The traditional and classical legal literature relating to Hindus has also duly sanctified such belief and faith which has been exalted to a juristic status requiring legal recognition. In this connection, "**the Hindu Law of Religious and Charitable Trusts" by B.K. Mukherjea** lays down some of the relevant concepts relating to deity and the temple along with concerned page number which are consistently being recognized as judicial authorities, not only in India but also abroad. The concept mentioned therein along with concerned page numbers are being quoted below:
>
> **Page 26-27 – Para "1.33: Idols representing same divinity –** One thing you should bear in mind in connection with image worship viz. That the different images do not represent separate divinities; they are really symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. **The rationale of image worship is thus given in a verse which is quoted by Raghunandan:**
>
> ***"****Chinmayasyaadwitiiyasya Naskalashariirina Saadhakaanaam Hinaathayi Brahmanii Roopakalpanaa."*

"**It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."**

Temples and mutts are the two principal religious institutions of the Hindus. There are numerous texts extolling the merits of founding such institutions. In *Sri Hari Bhaktibilash a* passage is quoted from Narsingha Purana which says that "whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated; what then shall be said of finishing the structure according to rule .... He who dies after making the first brick obtains the religious merits of a competed Jagna."

Other kinds of religious and charitable benefactions.- "A person consecrating a temple", says Agastya, "also one establishing an asylum for ascetics also, one consecrating an alms house for distributing food at all times ascend to the highest heaven."

Besides temples and mutts the other forms of religious and charitable endowments which are popular among the Hindus are excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit of travellers, establishment of *Choultries, satras or alms* houses and Dharamsala for the neefit of mendicants and wayfarers, Arogyasalas or hospitals, and the last though not the least, Pathshalas or schools for giving free education. Excavation of tanks and planting of trees are Purtta works well known from the earliest times. I have already mentioned that there is a mention of rest houses for travellers even in the hymns of the *Rigveda*. The Propatha of the Vedas is the same thing as Choultrie or sarai and the name given to it by subsequent writers is *Pratishraygrih*. They were very popular during the Buddhist tie. In *Dana Kamalakara*, a passage is quoted from Markandeya Puran which says that one should make a house of shelter for the benefit of travellers; and inexhaustible is his religious merit which secures for him heaven and liberation. There are more passages than one in the Puranas recommending the establishment of hospitals. "One must establish a hospital furnished with valuable medicines and necessary utensils placed under an experienced physician and having servants and rooms for the shelter of patients. This text says further that a man, by the gift of the means of freeing others from disease, becomes the giver of everything. The founding of educational institutions has been praised in the highest language by Hindu writers. Hemadri in his *Dankhanda* has quoted a passage from Upanishad according to which gifts of cows, land and learning are said to constitute *Atihaan* or gifts of surpassing merit. In another text cited by the same author, it is said that those excluded from education do not know the lawful and the unlawful; therefore no effort should be spared to cause dissemination of education by gift of property to meet its expenses".

Page 38-Para "1.50. The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests:- The Privy Council have held uniformly that the Hindu idol is a juristic person in whom the dedicated property vests. “A Hindu idol”, the Judicial Committee observed in one of its recent pronouncements, “is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued.” You should remember, however, that the juridical person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests.”

Page 38-39-Para “1.51. Deity owner in a secondary sense.-The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Asutosh Mookerjee in his judgment in Bhupati v Ramlal and I will reproduce such portions of them as are necessary for my present purpose.”

Sulapani, a reputed Brahminical Jurist, in his discourse on Sraddha thus expresses his views regarding the proper significance of gift to God:- “in 'Donation' having for its dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz., the offer of the sacrificial fee etc. it has already been remarked in the chapter on the Bratis that such usage as Devagram, Hastigram, etc., are secondary”. Sree Krishna in commenting on this passage thus explains the meaning of the expression Devgram: “Moreover, the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas in the term Devagram) figuratively means abandonment for them (the Godsputed structure)”. Therefore, the expression is used in the sense of “a village which is the object of abandonment intended for the Godisputed structure”. This is the purport. According to Savar Swami, the well-known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use.”

Page 39-Para “1.52. These discussions are not free from obscurity but the following conclusions I think can be safely drawn from them:-(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense.

> (2) Ownership is however attributed to the deity in a secondary or ideal sense. This is a fiction (Upchaar) but not a mere figure of speech, it is a legal fact; otherwise the deity could not be described as owner even in the secondary sense. (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. So far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person and the correct view is that in the capacity alone the dedicated property vests in it."

Thus, the Hindu concept of deity is worship of his image. It is an admitted case that deities were installed and are being worshiped. The time of installation has been seen in another issue but the factum is the same that the deities were available inside the structure and the plaintiffs have sought the relief as a juristic person. The defendants are not in a position to say that Pran Prathistha was not performed.

Further I find that Svyambhu symbols of deities do not need *pratistha* while *pratistha* of manmade symbols of deities can be done by single *mantra* of the divine *yajurved* for following reasons:-

1. According to Shastric (Scriptural) injunctions *Sri Ramajanmasthan Sthandil*, a *Svayambhu Linga (Symbol)* brought into existence and established by the Lord of Universe *Sri Vishnu Himself* as such in-spite of being decayed, or damaged, or destroyed It shall forever remain sacred place of Worship as it does not need purification or consecration or change. *Pratistha* is required only in respect of man-made Images/Idols/Symbols of Deities that can be done by chanting single *Mantra* XXXI.1 or II.13 of the Holy Divine *Sri Yajurved* (*Vagasaneyee Samhita* also known as *Sri Shukla Yajurved*) .A deity needs to be worshipped by providing all things which are required for leading a healthy and excellent life.

2. *Svayambhu* i.e. Self-built or Self existent or Self-revealed *Lingas* (symbols) of *Devatas* (Gods) or the Lingas (Symbols) established by Gods structure, or by those versed in the highest religious truths, or by *Asuras,* or by sages, or by remote ancestors, or by those versed in the m*antras* need not to be removed though decayed or even broken. Only decayed or broken *Pratisthita* Images/Idols require to be replaced with new one. In respect of renewal of the images Treatise on Hindu Law celebrated Jurist Golapchandra Sarkar, Sastri reproduces the *Shastric* injunction (Scriptural law) as follows:

> “Raghunanda’s Deva-Pratistha-Tantram, last paragraph reads as follows:
>
> “8. Now (it is stated) the prescribed mode of Renewal of Decayed Images. *Bhagwan* says – ‘I shall tell you briefly

the holy ordinance for renewing Decayed Images * * *'
"Whatever is the material and whatever size of the image of *Hari* (or the God, the protector) that is to be renewed; of the same material and of the same size, and image is to be caused to be made; of the same size of the same form (and of the same material), should be (the new image) placed there; either on the second or on the third day (the image of) *Hari* should be established; if, (it be) established after that, even in the prescribed mode, there would be blame or censure or sin; in this very mode the *linga* or phallic symbol and the like (image) should be thrown away; (and) another should be established, of the same size (&c.) as already described, - *Haya-Sirsha".*
"9. God said, -
'I shall speak of the renewal in the prescribed mode of *lingas* or phallic symbols decayed and the like &c * * *. (A *linga*) established by *Asuras,* or by sages or by remote ancestors or by those versed in the *tantras* should not be removed even in the prescribed form, though decayed or even broken.'

(*Agnipuranam* Chapter 103 Poona Edition of 1900 AD. p.143)
[There is a different reading of a part of this *sloke* noted in the foot-note of the Poona Edition of this *Puran* as one of the *Anandashram* series of sacred books: according to which instead of – " or by remote ancestors or by those versed in the *tantras*" –
the following should be substituted, namely].

"Or by Gods or by those versed in the highest religious truths."

"10. Now Renewal of Decayed (images is considered); that is to be performed when a *linga* and the like are burnt or broken or removed (from its proper place). But this is not to be performed with respect but a *linga* or the like which is established by a *Sinddha* or one who has become successful in the highest religious practice, or which is *anadi* i.e. of which the commencement is not known, or which has no commencement. But their *Mahabhisheka* or the ceremony of great *anointment* should be performed: - this is said by Tri-Vikrama" – Nirnaya – Sindhu – Kamalakar Bhatta, Bombay Edition of 1900 p.264.
The author of the *Dharma-Sindhu* says as above in almost the same words– see Bombay Edition of 1988 p.234 of that work. "

[Treatise on Hindu Law by Golapchandra Sarkar, Sastri (6th Edition, published by Easter Law House in 1927 at p.745-748]

3. Alberuni who compiled his book India in or about 1030 A.D. on page 121 of his book has written that the Hindus honour their Idols on account of those who erected them, not on account of the material of which they are, best example whereof is Linga of sand erected by Rama. In his book on pages 117, 209, 306-07 and 380 he has also narrated about the Lord Rama. Relevant extract from page 121 of his book Alberuni's India Translated by Dr. Edward C. Sachau. Reprint 2007 of the 1st Edn. 1910 published Low Price Publications, Delhi reads as follows:

> "The Hindus honour their idols on account of those who erected them, not on account of the material of which they are made. We have already mentioned that the idol of Multan was of wood. E.g. the linga which Rama erected when he had finished the war with the demons was of sand. Which he had heaped up with his own hand. But then it became petrified all at once, since the astrologically correct moment for the erecting of the monument fell before the moment when the workmen had finished the cutting of the stone monument which Rama originally had ordered."
>
> (*ibid* page 121)

4. According to the Hindus' Divine Holy & Sacred Scriptures there are two types of images one *Svayambhu* (self-existent or self-revealed or self-built) and other *Pratisthita* (established or consecrated). Where the Self-possessed Lord of Universe Sri *Vishnu* has placed himself on earth for the benefit of mankind, that is styled *Svayambhu* and it does not require *Pratistha*. As at *Ramajanamasthan* the Lord of Universe Sri Vishnu appeared and placed Himself on said sacred place said sacred place itself became *Svayambhu* for the reason that invisible power of the Almighty remained there which confers merit and salvation to the devotees. Consecrated artificial man-made *Lepya* images i.e. moulded figures of metal or clay; and *Lekhyas* i.e. all kinds of pictorial images including chiselled figures of wood or stone not made by moulds are called *Pratisthita*. . B. K. Mukherjee in his book on Hindu Law referring authorities describes *Svayambhu* and *Pratisthita* artificial Images as follows:

> "4.5 Images – their descriptions –
> images, according to Hindu authorities are two kinds; first is known as *Svayambhu* or self-existent, while the other is *Pratisthita* or established. The *Padmapuran* says : The image of *Hari* (God) prepared of stone, earth, wood, metal, or the like and established according to the rights laid down in *Vedas, Smritis* and *tantras* are called the established; …
> where the self possessed *Vishnu* has placed himself on earth in stone, or wood for the benefit of mankind, that is styled the self re-built." *Svayambhu* or self-built image is a product of nature, it is *anadi* or without any beginning and the worshipper's simply discover its existence. Such image does not require consecration or *Pratistha.* All artificial or man made images require consecration. An image according to *Matsyapuran* may properly be made of gold, silver, copper, iron, bronze or bell metal or any kind of gem, stone, or wood, conch shell, crystal or eve earth. Some persons worship images painted on wall or canvas says the says the *Britha Puran* and some worship the spheroidical stones known as *Salgran.* Generally speaking, the puranic writers classified artificial images under two heads; viz. (1) *Lepya* and (2) *Lekhya. Lepya* images are moulded figures of metal or clay, while *Lekhyas* denote all kinds of pectoral images including chiselled figures of wood or stone not made by moulds.
>
> [*Hindu Law of Religious and Charitable Trusts* of *B. K. Mukherjea* 5th Edition, Published by Eastern Law House at page 154.]

5. According to the Holy Scripture *Sri Narsingh Puranam (62.7-14 ½)* *Pratistha* of the Lord of Universe Sri Vishnu should be done by chanting 1st *Richa* of the *Purush Sukta* of *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXXI] and be worshipped dedicating prescribed offerings by chanting 2nd to 15th *Richas* of the *Purush Sukta*. And if worshipper so wish after completion of worship he may by chanting 16th *Richas* of the *Purush Sukta* pray to Sri Vishnu for going to his His own abode.

Above-mentioned verses of *Sri Narsingh Puranam* and Hindi translation thereof reads as follows:

तस्य सर्वमयत्वाच्च स्थण्डिले प्रतिमासु च।
आनुष्टुभस्य सूक्तस्य विष्णुस्तस्य च देवता॥ ७

पुरुषो यो जगद्बीजं ऋषिर्नारायणः स्मृतः।
दद्यात्पुरुषसूक्तेन यः पुष्पाण्यप एव च॥ ८

अर्चितं स्याज्जगत्सर्वं तेन वै सचराचरम्।
आद्ययाऽऽवाहयेद्देवमृचा तु पुरुषोत्तमम्॥ ९

द्वितीययाऽऽसनं दद्यात्पाद्यं दद्यात्तृतीयया।
चतुर्थ्यार्घ्यः प्रदातव्यः पञ्चम्याऽऽचमनीयकम्॥ १०

षष्ठ्या स्नानं प्रकुर्वीत सप्तम्या वस्त्रमेव च।
यज्ञोपवीतमष्टम्या नवम्या गन्धमेव च॥ ११

दशम्या पुष्पदानं स्यादेकादश्या च धूपकम्।
द्वादश्या च तथा दीपं त्रयोदश्यार्चनं तथा॥ १२

चतुर्दश्या स्तुतिं कृत्वा पञ्चदश्या प्रदक्षिणम्।
षोडश्योद्वासनं कुर्याच्छेषकर्माणि पूर्ववत्॥ १३

स्नानं वस्त्रं च नैवेद्यं दद्यादाचमनीयकम्।
षण्मासात्सिद्धिमाप्नोति देवदेवं समर्चयन्॥ १४

संवत्सरेण तेनैव सायुज्यमधिगच्छति।

अब पूजनका मन्त्र बताते हैं। शुक्ल यजुर्वेदीय रुद्राष्टाध्यायीमें जो पुरुषसूक्त है, उसका उच्चारण करते हुए भगवान्‌का पूजन करना चाहिये। पुरुषसूक्तका अनुष्टुप् छन्द है, जगत्‌के कारणभूत परम पुरुष भगवान् विष्णु देवता हैं, नारायण ऋषि हैं और भगवत्पूजनमें उसका विनियोग है। जो पुरुषसूक्तसे भगवान्‌को फूल और जल अर्पण करता है, उसके द्वारा सम्पूर्ण चराचर जगत् पूजित हो जाता है। पुरुषसूक्तकी पहली ऋचासे भगवान् पुरुषोत्तमका आवाहन करना चाहिये। दूसरी ऋचासे आसन और तीसरीसे पाद्य अर्पण करे। चौथी ऋचासे अर्घ्य और पाँचवींसे आचमनीय निवेदित करे। छठी ऋचासे स्नान कराये और सातवींसे वस्त्र अर्पण करे। आठवींसे यज्ञोपवीत और नवमी ऋचासे गन्ध निवेदन करे। दसवींसे फूल चढ़ाये और ग्यारहवीं ऋचासे धूप दे। बारहवींसे दीप और तेरहवीं ऋचासे नैवेद्य, फल, दक्षिणा आदि अन्य पूजन-सामग्री निवेदित करे। चौदहवीं ऋचासे स्तुति करके पंद्रहवींसे प्रदक्षिणा करे। अन्तमें सोलहवीं ऋचासे विसर्जन करे। पूजनके बाद शेष कर्म पहले बताये अनुसार ही पूर्ण करे। भगवान्‌के लिये स्नान, वस्त्र, नैवेद्य और आचमनीय आदि निवेदन करे। इस प्रकार देवदेव परमात्माका पूजन करनेवाला पुरुष छः महीनेमें सिद्धि प्राप्त कर लेता है। इसी क्रमसे यदि एक वर्षतक पूजन करे तो वह भक्त सायुज्य मोक्षका अधिकारी हो जाता है॥ ७-१४½॥

(Sri Narsingh Puranam 62.7-14 ½)

Be it mentioned herein that in the above *Sri Narsingh Puranam 62.13 Sloke* enumerates *Pradakshina i.e. Parikrama* (circumbulation) as 14th means of reverential treatment of the Deity and thereby makes it integral part of the religious customs and rituals of service and worship of a Deity.

6. 1st Holy Spells of *Purush Sukta* of the Holy Devine *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXXI] prescribed by the Holy *Sri Narsingh Puranam* for *Pratistha* of the Lord of Universe Sri Vishnu reads as follows:

सहस्रशीर्षा पुरुषः सहस्राक्षः सहस्रपात् ।
स भूमिꣳ सर्वतः स्पृत्वाऽत्यतिष्ठद्दशाङ्गुलम् ॥ १ ॥

मन्त्रार्थ—सभी लोकों में व्याप्त महानारायण सर्वात्मक होने से अनन्त शिर वाले, अनन्त नेत्र वाले और अनन्त चरण (पैर) वाले हैं । ये पाँच तत्त्वों से बने इस गोलकरूप समस्त व्यष्टि और समष्टि ब्रह्माण्ड को तिरछा, ऊपर, नीचे सब तरफ से व्याप्त कर नाभि से दस अंगुल परिमित देश, हृदय का अतिक्रमण कर अन्तर्यामी रूप में स्थित हुए थे ॥ १ ॥

(*ibid as translated by Swami Karpatriji and published by Sri Radhakrishna Dhanuka Prakasan Samsthanam, Edn. Vikram samvat 2048)*

Simple English translation whereof reads as follows:

> 'The Almighty God who hath infinite heads, infinite eyes; infinite feet pervading the Earth on every side and transgressing the universe installed Him in sanctum as knower of inner region of hearts'.

Be it mentioned herein in the Mimamsa Darshan as commented in Sanskrit by Sri sabar Swami and in Hindi by Sri Yudhisthir Mimamsak and Mahabhasya meaning of *"Sahasra"* has also been given "infinite" as also "one" apart from "thousand" and according to context one or other meaning is adopted.

7. *Nitya Karma Puja Prakash* has prescribed a *Mantra* of *Yajurved* [i.e. *Vagasaneyee Samhita* Chapter II.13] for *Pratistha* of Lord G*anesh*. Relevant portion of the said book reads as follows;

अनन्तर सर्वप्रथम गणेशजीका पूजन करे। गणेश-पूजनसे पूर्व उस नूतन प्रतिमाकी निम्न-रीतिसे प्राण-प्रतिष्ठा कर ले—

प्रतिष्ठा—बायें हाथमें अक्षत लेकर निम्न मन्त्रोंको पढ़ते हुए दाहिने हाथसे उन अक्षतोंको गणेशजीकी प्रतिमापर छोड़ता जाय—

ॐ मनो जूतिर्जुषतामाज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञ ँ समिमं दधातु। विश्वे देवास इह मादयन्तामो३ म्प्रतिष्ठ।

ॐ अस्यै प्राणाः प्रतिष्ठन्तु अस्यै प्राणाः क्षरन्तु च।
अस्यै देवत्वमर्चायै मामहेति च कश्चन॥

इस प्रकार प्रतिष्ठा कर भगवान् गणेशका षोडशोपचार पूजन (पृ० सं० १७४—१८५ के अनुसार) करे। तदनन्तर नवग्रह (पृ० सं० २१०), षोडशमातृका (पृ० सं० २०५) तथा कलश-पूजन (पृ० सं० १८६) के अनुसार करे।

[Nitya Karma Puja Prakash published by Gita Press Gorakhpur 32nd Edn. 2060 Vikram Samvat at page 244]

8. The Holy *Sri Satpath-Brahman* interpreting said *Mantra* II.13 of the Holy Sri *Shukla Yajurved* [i.e. *Vagasaneyee Samhita*] says that *Pratistha* of all Gods should be done by said *Mantra.* Be it mentioned herein that the Holy *Sri Satpath-Brahman* being *Brahmn* Part of Divine Sri *Shukla Yajurved,* interpreting *Mantras* of said *Vagasaneyee Samhita* tells about application of those *Mantras* in *Yajnas* (Holy Sacrifices). Said *Mantra* II.13 of the Divine *Sri Shukla Yajurved* (*Vagasaneyee Samhita*) as well as *Sri Satpath-Brahman* (I.7.4.22) with original texts and translations thereof read as follows:

मनो जूतिर्जुषतामाज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञꣳ समिमं दधातु ।
विश्वे देवास इह मादयन्तामो३म्प्रतिष्ठ ॥ १३ ॥

[४५] (जूतिः मनः आज्यस्य जुषतां) तेरा वेगवान् मन घृतका सेवन करे, (बृहस्पतिः इमं यज्ञं तनोतु) ज्ञानका स्वामी इस यज्ञको फैलावे, (इमं यज्ञं अरिष्टं सं दधातु) इस यज्ञको हिंसारहित करके सम्यक् धारण करे। (विश्वे देवासः इह मादयन्तां) सब देव यहां आनन्दित हों, (ओं प्रतिष्ठ) ऐसा ही होवे, प्रतिष्ठित होवे ॥ १३ ॥

(ibid Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn. Published by Swayadhyay Mandal pardi)

English translation of the above noted Hindi Translation reads as follows:

> "May your mind Delight in the gushing (of the) butter. May Brihaspati spread (carry through) this sacrifice ! May he restore the sacrifice uninjured. May all the Gods rejoice here. Be established/seated here."

Sanskrit text of *Sri Satpath-Brahman* (I.7.4.22) as printed in '*Sri Shukla Yajurvediya Satpath Brahman'* Vol. I on its page 150, Edn. 1988 Published by Govindram Hasanand, Delhi 110006 is reproduced as follows:

मनो जूतिर्जुषतामाज्यस्येति । मनसा

वाꣳइदꣳ सर्वमाप्तं तन्मनसैवैतत्सर्वमाप्नोति बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञꣳ
समिमं दधात्विति यद्विवृढं तत्संदधाति विश्वे देवास इह मादयन्तामिति सर्वं वै
विश्वे देवाः सर्वेणैवैतत्संदधाति स यदि कामयेत ब्रूयात्प्रतिष्ठेति यद्यु कामयेतापि
नाद्रियेत ॥२२॥ ब्राह्मणम् ॥ २.[७.४.] ॥ अध्यायः ॥७॥ ॥

English translation of *Sri Satpath-Brahman* (I.7.4.22) as printed in Volume 12 of the series "The Sacred Books Of The east" under title '*The Satpath - Brahmana*' Part I on its page 215, Edn. reprint 2001 Published by Motilal Banarasidass, Delhi 110007 is reproduced as follows:

22. [He continues, Vâ*g*. S. II, 13]: 'May his mind delight in the gushing (of the) butter[1]!' By the mind, assuredly, all this (universe) is obtained (or pervaded, âptam): hence he thereby obtains this All by the mind.—'May B*ri*haspati spread (carry through) this sacrifice! May he restore the sacrifice uninjured!'—he thereby restores what was torn asunder.—'May all the gods rejoice here!'—'all the gods,' doubtless, means the All: hence he thereby restores (the sacrifice) by means of the All. He may add, 'Step forward!' if he choose; or, if he choose, he may omit it.

(*Sri Satpath-Brahman* I.7.4.22)

9. 19th Holy Spells of *Nasadiya Sukta* of the Holy Devine *Shukla Yajurved* [i.e. *Vagasaneyee Samhita* Chapter XXIII] is also widely applied by the Knower of the Scriptures to invoke and establish a deity. Said Mantra reads as follows:

गणानां त्वा गणपतिꣳ हवामहे प्रियाणां त्वा प्रियपतिꣳ हवामहे निधीनां त्वा
निधिपतिꣳ हवामहे वसो मम ।
आहमजानि गर्भधमा त्वमजासि गर्भधम् ॥

English Translation of this *Mantra* based on Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn. Published by Swayadhyay Mandal pardi reads as follows:

> "O, Lord of all beings we invoke Thee. O, Lord of beloved one we invoke Thee. O, Lord of Wealth we invoke Thee. O abode of all beings Thou are mine. O, Sustainer of Nature let me know Thee well because Thee the sustainer of Universe as embryo are Creator of All."
>
> [*Shukla Yajurved* Chapter XXIII *Mantra* 19]

10. The vivified image is regained with necessaries and luxuries of life in due succession changing of clothes, offering of water, sweets as well as cooked and uncooked food, making to sleep, sweeping of the temple, process of smearing, removal of the previous day's offerings of flowers, presentation of fresh flowers and other practices are integral part of Idol-worship. These worships in public temple in olden days were being performed by Brahmins learned in Vedas & Agamas. B. K. Mukherjea in his book on Hindu Law writes as follows:

> "4.7 Worship of the idol – after a deity is installed it should be worshipped daily according to Hindu *Shastras.* The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always carried out by a pious Hindu either by personal performance of the religious right or in the case of *Sudras* by the employment of a Bramhin priest. The daily worship of a sacred image including the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the reciprocal obligation of rice with sweets and water and other practices." The deity in shout is conceived of as leaving being and is treated in the same way as the master of the house would be treated by him humble servant. The daily routine of live is gone through, with minute accuracy, the vivified image is regained with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest.
>
> [*Hindu Law of Religious and Charitable Trusts* of *B. K. Mukherjea* 5th Edition, Published by Eastern Law House at page 156.]

In view of the discussions, referred to above, it transpires that images, idols are the symbols of Supreme Being. They are worshipped as Supreme deity. In these circumstances Ram Janm Bhumi is also a deity. Thus, plaintiff nos. 1 and 2 are deities and the averments made in the written statement by defendant nos. 4 and 5 , contrary to the averments of the plaint, are not tenable in accordance with the provisions of Hindu Law, Hidu rituals and other Hindu sacred books. Thus, I hold that plaintiff nos. 1 and 2 are deities. Issue no. 21 is decided in favour of the plaintiffs and against the defendants no. 4 and 5.

ISSUE NOS. 26 & 27

26. Whether the suit is bad for want of notice under Section 80 C.P.C. as alleged by the defendants 4 and 5?

27. Whether the plea of suit being bad for want of notice under Section 80 C.P.C. can be raised by defendants 4 and 5 ?

FINDINGS

Since these issues are inter related , they can conveniently be decided at one place.

On behalf of defendant nos. 4 and 5 it has been urged that the suit is bad for want of notice under Section 80 C.P.C. This plea has not been raised on behalf of defendant nos. 7,8,9 and 10, who have not filed any written statement nor have contested the suit. It is not the case of defendant nos. 7 to 10 before this court that they wanted to any opportunity to re-consider the legal position or to settle the claim without any litigation. In this case the above defendants were proforma parties. No effective relief was claimed against them . Thus, the defendant no. 4 and 5 are not in a position to raise the plea that the suit is bad for want of notice under Section 80 C.P.C. Notice under Section 80 C.P.C. was to be given by the plaintiffs to defendant nos. 7 to 10, who have not contested the case and have not raised plea that the suit is bad for want of notice. Thus, legally defendant nos. 4 and 5 cannot raise the plea on behalf of defendant nos. 7 to 10 that the suit is bad for want of notice under Section 80 C.P.C. Further it has been urged on behalf of the plaintiffs that no application was ever made during the pendency of the suit by the defendant nos. 4 and 5 for the rejection of the plaint. Thus, it is not open for them at the stage of conclusion of the suit to raise the plea that the plaint should be rejected.

At best, names of defendant nos. 7 to 10 may be expunged, which is also not required for the reason that in the plaint itself it has been mentioned that in the construction of the temple, the defendants no. 7 to 10 were not causing any hindrance. Para 36 of the plaint is reproduced as under;

" *That the cause of action for this suit has been accruing from day to day, particularly since recently when the plans of Temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim Communal.ists."*

Thus, neither it is possible for defendant nos. 4 and 5 to raise the plea that the suit is bad for want of notice under Section 80 C.P.C. nor is barred by Section 80 C.P.C.

For the reasons referred to above, issue nos. 26 and 27 are decided against defendant nos. 4 and 5.

ISSUE NO. 25

Whether the judgment and decree dated 30th March 1946, passed in suit no. 29 of 1945, is not binding upon the plaintiffs as alleged by the plaintiffs ?

FINDINGS

On behalf of the plaintiffs, it is submitted that according to the documents filed by defendant nos. 4,5 and 6 Babri mosque was a Sunni Waqf. O.O.S.No. 29 of 1945 was filed in the Court of Civil Judge, Faizabad by Shia Central Waqf Board against Sunni Central Waqf Board of U.P. The judgment dated 30.3.1946 shows that the plaintiffs were not arrayed as parties . The plaintiff no.2 was already in existence but no care was taken to implead plaintiff no.2. It further transpires from reading of the above judgment and also from the plaint of O. S.No. 12 of 1961 I..e, O.O.S.No. 4 of 1989 that waqf of Babri mosque was Sunni waqf and its Mutwallis were Shias. This position seems to be in comprehensible in law in as much as a waqf created by Shia would be a Shia waqf and could not be a Sunni waqf. According to the Muslims, the mosque was built by Mir Baki and he was a Shia and that he being waqif, his heirs were Mutwallis . Shia Central Waqf Board U.P. did not agitate the case in any appellate court as the suit was collusive and this judgment is not binding on the plaintiffs. It appears from the reading of the judgement in O.O.S.No. 29 of 1945 that it was not in the capacity of the representative suit. Accordingly the judgment was not in rem but in personam. In view of the provisions of Section 41 and 43 of the Indian Evidence Act relevancy of the judgment can be seen. Under Section 41 the judgments passed are judgment in rem and they are having binding effect on every body including the persons, who were not arrayed as parties. Under Section 43 of the Evidence Act any other judgment which is not judgment in rem is a judgment in personam and is binding between the parties. Accordingly judgment in O.O.S. No. 29 of 1945 was not judgment in rem., accordingly it is not covered under Section 41 of the Evidence Act but is covered under Section 43 of the Evidence Act and is also binding between Shia and Sunni Central Waqf board and not on the plaintiffs, who were not arrayed as parties.

Issue no. 25 is decided in favour of the plaintiffs against the defendants.

ISSUE NO. 29

Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. state) of the Court of Munsif Sadar, Faizabad.

FINDINGS

It has been submitted on behalf of the defendants that in view of the dismissal of Suit No.57 of 1978 Bhagwan Sri Ram Lala Vs State the instant suit (O.O.S.No. 5 of 1989) cannot be filed by the plaintiffs. I have gone through the plaint of suit no. 57 of 1978 in which plaintiff no.1 was Bhagwan Ram Lala and plaintiff no. 2 was Sia Raghav Sharan.The suit was filed against State of U.P., Sunni Central Waqf Board against K.K.Verma, Receiver . The plaintiffs claimed relief against defendant no. 6 that Receiver be directed to hand over the possession of the property in suit . The suit was dismissed. It further transpires that defendant no. 6 was appointed in O.S. No. 12 of 1961 that is O.O.S.No. 4 of 1989 pending before this Court and accordingly

Sunni Waqf board urged that the Receiver could only be removed by the Court which appointed him .Suni Waqf Board had also referred that the property earlier was attached in a proceeding under Section 145 Cr.P.C. It was claimed that the suit be dismissed. Thereafter in non-compliance of the Court's order the suit was dismissed. In the plaint itself at para 3 it was mentioned that earlier the City Magistrate attached the property in the proceedings under Section 145 Cr.P.C.Thus, even if for argument sake, it is presumed that plaintiff no.1 filed the suit, it does not make difference for the reason that plaintiff no. 2 was not the party in the earlier suit and Trust was also not in existence.

The cause of action in O.O.S.No. 5 of 1989 is different. In this case injunction has been sought against the defendants not to interfere in raising the constructions of the new temple. Thus, the earlier suit was filed for removing the Receiver which has been the subject matter of O.O.S.No. 4 of 1989 and the same was dismissed. Consequently, O.O.S.no. 57 of 1978 was barred by Section 9 C.P.C. and it was not maintainable and cognizable because the Receiver was appointed by the Court in O.O.S.No. 4 of 1989. Thus, the suit no. 57 of 1978 was not decided and the judgment is not binding on the parties. Sunni waqf Board was defendant no.5 in O.O.S.No. 57 of 1978. They have filed the written statement to this effect that the suit was not maintainable and without recording any finding on merits the suit was dismissed for want of prosecution. Accordingly the suit does not fall within the ambit of Section 11 C.P.C. In view of Section 11 C.P.C. it further transpires that parties are not the same. The subject matter is not the same. The Court of Munsif Faizabad which entertained the suit no. 57 of 1978 was not competent to try the suit no. 57 of 1978 which was subsequently filed after filing suit no. 12 of 1961 (O. O.S.No. 4 of 1989 which was already pending.) Thus, in this case no decision was rendered by the Court and accordingly Section 11 C.P.C. does not come in play. Thus, the matter was heard and finally decided in the former suit (O.S.No. 57 of 1978). The matter is also not directly and substantially in issue. Thus, in view of the provisions of Section 11 C.P.C. the plea as raised by the defendants that the plaintiffs are precluded from bringing the present suit is not acceptable and they have failed to demonstrate before this Court the reasons that may preclude the plaintiffs from filing the present suit. They have also failed to establish that the case falls within the ambit of Section 11 C.P.C. Issue No. 29 is decided in favour of the plaintiffs and against the defendants.

ISSUE NO. 28

Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5 ? If so, its effect.

FINDINGS

On behalf of defendant no. 4 and 5 it has been submitted that the suit is bad for want of notice under Section 65 of the Muslim Waqf Act,1960. It has further been submitted that in the suit Waqf Board has been arrayed as defendant. On behalf of defendant nos. 4 and 5 it has been urged that without giving notice under Section 65 of U.P. Muslim waqf Act, 1960, the suit cannot be instituted. It is further submitted that the plaintiff has not stated any where as to what was the necessity to implead the Waqf Board as defendant without giving any notice. Thus, the suit fails on this count.

On behalf of the plaintiffs it is submitted that the notice was not required to be given and Waqf Board was formally joined in this case . Waqf Board was the proforma defendants and no notice was required to be given and at best the name can be expunged. I have gone through the contents of the plaint and the relief claimed by the plaintiff nos. 1 to 3. It transpires that the plaintiffs have not claimed any relief against the Waqf Board. They have been arrayed as party simply because of the fact that the plaintiffs have referred O.O.S.No. 4 of 1989 in the plaint. These suits have to be decided together. Consequently, whatever has to be said by the Waqf Board has to be said by the plaintiffs in O.O.S.No. 4 of 1989, the same can be led in this case also. The object of the notice is not required under this Section to give the Waqf Board a notice so that an opportunity may be provided to re-consider the legal position and to make amendment or to settle the claims even without litigation. The whole object of serving notice is to give sufficient warning and the case proposed to be instituted and matter can be settled by the Sunni Waqf Board. The plaintiffs have filed the suit subsequent to the filing of the suit by the plaintiff Sunni Waqf Board (OOS No. 4 of 1989) with the assertion that he was compelled to file the suit because the deities, who are minors, could not contest the case as they have not been arrayed as party by Sunni Waqf Board. It was further submitted that no valid Waqf was ever created or could have been created about the Janmbhumi which is plaintiff no. 2 and is a deity. It was further averred in the plaint that the deities are in possession of the property in suit and they are not party to any of the litigation. In para 31 of the plaint reference has been given to O.S No. 12 of 1961 filed by Sunni Central Waqf Board. It was further mentioned in the plaint that on account of delay in disposal of the case rights and duties are affected. Initially the plaintiffs claimed the relief that opposite parties be restrained not to interfere in the construction of the temple of Ram Lala. Thus, in this case the deities have come forward through next friend, alleging that Sunni Waqf Board was guilty of not arraying them as a party. Issue No. 21 in OOS No. 4 of 1989 was framed and was decided by this Court. Thus , looking to the case from all or any angle ,it transpires that without any valid notification under Section 17 the Waqf could not be registered,accordingly ,even if waqf has been arrayed as a party, the suit is not bad for want of any notice as no valid waqf could be created about the property in suit in which plaintiff no. 2 is a deity. Waqf Board was guilty in not arraying the plaintiff nos. 1 and 2 as party in O.S.No. 12 of 1961 Thus, in this case notice under Section 65 of Muslim Waqf Act was not required. Issue No. 28 is decided in favour of the plaintiffs and against defendants no. 4 and 5.

ISSUE NO. 18

Whether the suit is barred by Section 34 of the the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no. 3 and also as alleged in paragraph 47 of the written statement of defendant no. 4 and paragraph 62 of the written statement of defendant no. 5 ?

FINDINGS

It has been averred in additional written statement of defendant no. 3 at para 42 and also as alleged in para 47 of the written statement of defendant no. 4 and para 62 of the written statement of defendant no. 5 that the suit is barred by Section 34 of the Specific

Relief Act. On behalf of defendant no. 3 it is submitted that Nirmohi Akhara owns the property.

It is further submitted on behalf of defendant no. 3 that plaintiffs no. 1 and 2 had never been the subject matter of any suit in OOS No. 4 of 1989. It has further been submitted that as per revenue record also the property does not belong to plaintiff nos. 1 and 2. The property has already been attached and OOS No. 4 of 1989 was filed by Sunni Waqf Board and for the same properties the plaintiff no.3 cannot maintain the suit as it is barred by Section 34 of the Specific Relief Act.

On behalf of the plaintiff it is submitted that plaintiff nos. 1 and 2 are juridical persons and they have right to file the suit and they acquired the legal character. I have already referred while deciding issue nos.1 and 2 that plaintiffs no. 1 and 2 are juridical persons and plaintiff nos. 3 is the next friend, who can maintain the suit. Thus, the plaintiff nos. 1 and 2 have acquired the legal character as they are juridical persons and because of the legal character they can file the suit. It has been urged on behalf of the plaintiff nos. 1 and 2 that if there is cloud on the legal character of the parties against the law and defendants are restraining the plaintiffs for execution of any legal duty, the suit can be filed. In this case the plaintiffs have sought the relief of declaration and injunction. Thus, the plaintiff nos. 1 and 2 have the legal character and they have also proved that they are entitled to act as their rights are denied by the defendants. The plaintiffs have established that their right subsist on the date of filing of the suit . The defendants have failed to establish that the plaintiffs are not entitled for declaration and they have no legal character or right to hold property.

The plaintiffs have field the suit for declaration, claiming right to property and further sought relief of injunction on the ground that the defendants are denying the legal character or rights of the plaintiffs over the property in suit. This is a case in which the defendants deny a legal character and right of property of plaintiffs no. 1 and 2 with rival claims. Thus, in view of the provisions of Section 34 of Specific Relief Act there is no bar in filing the present suit and the defendants have failed to establish that the plaintiff is not entitled to legal character or any right to hold the property . The defendants have also failed to establish as to why the plaintiffs are not entitled to maintain the suit and the plaintiffs have not filed suit with clean hands. Thus, according to sound principles of law the grant of declaration and injunction under Section 34 is discretionary. Having regard to the circumstances of the case, the defendants have failed to demonstrate that the suit is barred by Section 34 of the Specific Relief Act. Issue no. 18 is decided in favour of the plaintiffs and against the defendants.

ISSUE NOS. 3-a, 3- b, 3-c , 3-d & 4

3a. Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.4.92 in their statement under order 10 Rule 2 C.P.C. ?

3b. Whether the same idol was reinstalled at the same place on a chabutra under the canopy.

3c. Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated

14.8.1989, 7.11.1989 and 15.11. 91 ?

3d. If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity?”

Issue as it stands now'

4. Whether the idols in question had been in existence under the “Shikhar” prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no. 3 ?

FINDINGS

Since these issues are inter connected, they can conveniently be decided at one place.

O.O.S. No. 4 of 1989 was filed in the year 1961 bearing R.S. No. 12 of 1961. This case was transferred for adjudication to High Court by an order of a Division Bench of this Court and the Hon'ble Chief Justice constituted the Full Bench which passed several orders including the orders dated 14.8.1989, 7.11.1989 and 15.11.1991 and directed to maintain status quo.

It has come in evidence and also this is the plaint case in para 27 that the idols in question were installed under the central dome of the disputed building (since demolished) in the intervening night of 22/23 rd December,1949. In O.O.S. No. 4 of 1989 the plaintiffs have also come out with this case that deities were installed under the central dome in the intervening night of 22/23 rd December, 1949. There is no dispute between the parties about the identity of the idols which amount to the deity also. It is also admitted to the plaintiffs in OOS No. 5 of 1989 that same deities were reinstalled at same place and Chabutra under the canopy. In this regard oral evidence was also adduced. O.P.W1 Param Hans Ram Chandra Das in his statement has stated that the same idols which were installed under the Central dome of the disputed building, which was demolished on 6.12.1992, were installed at the same place on Chabutra under the canopy on 6.12.1992 by certain worshippers. The names of worshippers have not been stated in the cross-examination and also no effort was made on behalf of the opposite parties to ascertain the names of those worshippers. There is no other evidence available on record to contradict or corroborate the statement of O. P.W.1, referred to above. It further transpires from the reading of the plaint that at para 27 of the plaint of OOS No. 5 of 1989 that the plaintiffs have come out with a case that the deities were installed with ceremonies under the central dome of the building with religious ceremonies and after purification of the place by Akhand Path and Jap by thousand of persons of the area. Thus, it is admitted to the plaintiffs of OO.S. No. 5 of 1989 that idols which were placed earlier were again reinstalled as per the manner referred to above. At para 35 J of the plaint it has been referred that at about 11 a.m. On 6.12.1992 after acquiring the debris at the same place ,i.e, surrounded previously by Central dome on Chabutra the deities were immediately re-installed and the place was enclosed by brick boundary wall and canopy was erected for the protection of the deity and Puja was continued as of yore.

In view of the aforesaid circumstances it transpires that deities were placed definitely in violation of the orders of the Court dated 14.8. 1989,7.11.1989 and 15.11.1991 by the Karsevaks, who were not the parties in any of the proceedings and plaintiffs of OOS No. 4 of 1989 have also not filed any application of contempt against them .

The plaintiffs of OOS No. 4 of 1989 have also not adduced any evidence to rebut the assertion that the deities were re-installed on the Chabutra after the demolition of the disputed structure on 6.12.1992. Thus, it is established from the record that the deities were installed under the Central Dome in the intervening night of 22/23-12-1949 or at the early hours of 23.12.1949 and the same idols were re-installed at the same place on the Chabutra under the canopy on 6.12. 1992.

It further transpires from the record that deities which were shifted from Ram Chabutra on 23.12.1949 were movables and the movable deities were re-installed at the disputed site, that is, on Chabutra under the canopy on 6.12.1992 to a place which was earlier known as central dome of the disputed building. Thus, the deities which were worshipped earlier and moved from one place to another have to be presumed as deities and their divinity cannot be presumed to be changed.

On behalf of defendant no. 3 it has been urged that attachment which was made in the year 1949 is only in respect of the main building of Garbh Grih carrying Shikhars wherein deity of Bhagwan Sri Ram was installed by Nirmohi Akhara from the times beyond human memory and since then is under the management and possession of defendant no. 3. It appears not to be based on record. Firstly, for the reasons that Sunni Waqf Board and others have filed O.O.S. No. 4 of 1989 alleging that the mosque was attached and deities were installed in the intervening night of 22/23/12/1949 and secondly, there is overwhelming evidence to this effect that in the disputed structure there was no deity installed at any point of time prior to 22/23/12/1949.

I have already perused the oral evidence of the witness D.W.3/ to D.W.3/ 20 on the basis of their testimony. They do not support the case of defendant no. 3. Thus, the defendant no. 3 has failed to establish that idols in question had been in existence under the Shikhar prior to 22/23.12.1949. It further transpires from the written statement of defendant no. 3 that he has set up different case in his written statement and has further failed to establish his claim alleged in para 44 before this Court.

Issue Nos. 3(a), 3(b), 3(c) 3(d) and 4 are decided accordingly in favour of the plaintiffs and against the defendants.

ISSUE NO. 11

Whether on the averments made in paragraph-25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute is as a mosque ?

FINDINGS

The plaintiffs have come out with a case that Ram Janm Bhumi is a deity. It has been worshipped throughout from the time immemorial and the place belongs to the deity. No valid Waqf can be created by Muslims as they were not owners of the property in suit and trespassed over the property. Accordingly no title could vest in any body except the deities at Ram Janam Bhumi and no valid Waqf could be created about it. The attention of this Court was drawn on following facts and law by Sri M.M. Pandey Advocate ;

Classification as SUNNI Wakf/Mosque and SHIA Wakf/Mosque: Statutory classification of Sunni & Shia Wakf is set out in U.P.Wakfs Act 13 0f 1936, Section 4(3)(a), to be decided principally on the basis of contents of the deed of Wakf. Section 6(2)(a) of U.P.Muslim Wakfs Act 1960 also speaks of

Shia Wakfs & Sunni Wakfs, and the *Proviso* thereof says that 'clear indications in the recital of the deed of Wakf as to the sect to which it pertains' shall be the basis of classification. Both Wakf Acts of 1936 & 1960 carry significant provisions that anything required or permitted by the Act to be done in respect of Shia or Sunni Wakfs shall be done by the Shia Central Board of Wakf or Sunni Central Board of Wakf, as the case may be. For the purposes of our case, Babri Masjid Wakf (besides being Un-Islamic) is Shia Wakf, hence Sunni Central Board of Wakf is not be entitled to file/maintain OOS 4 of 1989. If it is held in these suits that Babri Masjid was a Shia Wakf (if at all it was a valid Wakf), then OOS 4 of 1989 must fail because: (1) Plaintiff Sunni Central Board of Wakf would have no locus standi, (2) rest of the Plaintiffs have not sued for enforcement of their right, if any, of worship (3) and cannot seek relief (a) of Declaration or (b) & (c) of possession because those rights belong only to Mutawalli and none of them is Mutawalli. The Sunni Central Board of Wakf cannot be said to be a "Muslim Person having a right of worship" while all other functions which belong to it under the Wakf Act of 1960 (in force when OOS 4 of 1989 was filed) could be enforced by it only if the Babri Masjid could be held to be Sunni Wakf.There is no deed of Wakf relating to Babri Masjid; hence its nature shall have to be determined on the basis of evidence. To establish *Shia or Sunni* sect of a Wakf, it will be necessary for the parties to lead evidence: 2000 SC 1751, *A.P.State Wakf Board Hyderabad Vs. A.I.Shia Conference.* The Civil Judge had recorded at page 7 of the Judgment dt. 30.4.1946 mentioned in Para 88 below, that "It was also common ground between the Counsel of both sides that the determining factor whether the Mosque in suit was a Shia or Sunni Wakf would be the religion of its founder as neither Wakf Act 13 of 1936 nor the Muslim Law laid down any distinction between the two......" It has been held in 1957 SC 882, *U.O.I Vs. T.R.Verma* that the statement of a Court, recorded in a judgment, is generally taken to be correct. This admission is binding upon Sunni Waqf Board in these cases; it can, therefore, be safely held that the

Sect of Babri Mosque will depend upon the fact whether it was constructed by Mir Baqi or by Babar.

It has been held in 1988 All 1, *Shah Abdul Bagi & Others Vs. State of U.P.& Others* that Members of *any sect* of Muslim Community can file a suit for enforcement of their *right to Worship* in the Mosque of the other sect; but that would be a suit only for worship, and not for possession which belongs only to *Mutawalli*. No *Mutawalli* is a Plaintiff, and the Sunni Board cannot be said to be *worshipper.*

It is further urged by Sunni Waqf Board that certain Reports of the Wakf Commissioner under U.P.Wakf Act of 1936 are binding in these suits to establish that disputed structure is Babri Majid built by Babar and made Wakf for all Muslims. The Act, therefore, needs a close examination. The Preamble aims at providing better governance and administration of certain classes of Wakfs and supervision of Mutawalli's management. S. 3(1) does not create any 'new' class of Wakf and recognises only those known to the Mahommedan Law; the Statement of Objects & Reasons also says so and addisputed structure that the Act "is not intended to deprive the Mutawallis of any authority lawfully vested in them, nor it aims at defining all the powers, duties and liabilities of the Mutawallis..." S. 4(1) provides for appointment of a District Commissioner of Wakf "for the purpose of making survey of all wakfs". Procedural powers of Civil Court are conferred on the Commissiioner for summoning witnesses, production of documents, local inspection/investigation u/s 4(4) while making inquiries, but there are no guidelines how to 'initiate' an inquiry, what notices are required to be issued and to whom. S. 4(3) confers power on him to make 'such inquiries as he consider necessary'; there is no guideline for the manner in which he should proceed. This seems to be 'arbitrary' and violates the Constitutional requirement of fairness. The word '*necessary*' will make Wakf Commissioner's discretion to be *objective* and open to judicial review. The Act does not provide for framing Rules of procedure for the Wakf Commissioner to observe before initiating an inquiry. If on particular facts or situation, *Notice* to a particular person is essential in the interests of *justice and fairness*, the Wakf Commissioner cannot plead that he had unrestricted discretion whether or not to issue Notice; in law, every fair procedure is permissible unless specifically probited. The Act <u>does</u> <u>not</u> <u>prohibit</u> the Wakf Commissioner to issue notices for giving opportunity to persons interested while conducting the inquiry. The proceeding before the Wakf Commissioner is *quasi judicial* as held in the case of *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishen* (1979)2 SCC 468 (para 25). Further the SC has held in paras 37 to 39 that where a <u>stranger who is a **non-muslim**</u> is in possession of a certain property, his right, title and interest therein cannot be put to jeopardy merely because the property is included in the list prepared by the Wakf Commissioner under the U.P. Wakf Act. Although this decision concerns Section 6(1) of the Wakf Act of 1960, the SC has observed in para 35 that that Section "is based on Sub-section (2) of Section 5 of U.P. Muslim Wakf Act of 1936". This distinguishes the decision from that in 1959 SC 198, *Sirajul Haq Khan Vs Sunni Central Board of Wakf* where both Plaintiff and Defendants were *Muslims.* Thus Hindus, Nirmohi Akhara and any of the Defdts in OOS 4 of 1989, cannot be treated to be a 'person interested in a wakf' u/s 5(2) of the Wakf Act of 1936. It will also be appreciated that if Nirmohi Akhar & others were to be treated to be 'person interested in a wakf', it was incumbent upon the Wakf Commissioner to issue notices at that very time before deciding the issue. Even if it be treated to be administrative, an opportunity of hearing ought to have been given to Nirmohi Akhara & Hindu Community as held, after considering several decisions of Supreme Court, in the case of *Muzaffar Hussain Vs. State of U.P,* 1982 Allahabad Law Journal 909 (DB).

Wakf Commissioner submits his report of inquiry to State Government u/s 4(5). The State Govt. has to 'forward a copy' of the report to Shia as well as Sunni Board of Wakf u/s 5(1) and commanding the Board, as soon as possible, to 'notify in the *Gazette* the Wakfs <u>*relating to the particular sect to which, according to such report, the provisions of this Act apply*'.</u> This signfies that Shia & Sunni Board are required to publish notices, in the Gazette, of only those Wakfs which relate respectively to Shia and Sunni Wakfs; further, only the particulars of the Wakf, *without the report*, are required to be published. Mere publication of the particulars of Wakf *without the report* cannot constitute notice of Wakf Commissioner's finding/report to Public, much less to any particular individual.

Over and above the procedure contained in Ss 4 & 5 for the Wakf Commisioner in making survey and preparing lists of Wakfs and their publication by concerned Wakf Board, u/S. 38 authorises the Wakf Board concerned also to register a Wakf at its Office. This registration may be made on an application by Mutwalli under sub-section (2), or by wakif, his descendants, beneficiary or any Muslim of the sect under sub-section (3) or by 'any person other than the person holding possession' of wakf property under sub-section (6). In an application under sub-section (6), the Wakf Board is required to *give notice of the application to the person in possession and hear him.* The Board will make an inquiry and pass final orders. The question is that since the Act specifically provides for issue of notice by Wakf Board to a person in possession of wakf property (whoever he may be – even a stranger), why no provision is made for Wakf Commissioner to issue similar notice to person in possession for the purpose of inquiry u/ss 4 & 5? An essential distinction is that while Wakf Commissioner is an officer of the State, the Wakf Board is not; hence while Wakf Commissioner may be presumed to act in a fair and just manner, the Wakf Board may not be presumed so to act, hence specific procedural methodology is prescribed for it in the matter of deciding a matter. As mentioned above, the proceedings before the Wakf Commissioner are *quasi-judicial.* 'Natural justice' would require such notice to be given to person in possession; failure to do so would render Wakf Commissioner's findings and list of Wakfs to be ineffective against strangers. In this case, Wakf Commissioner did not issue notice to Nirmohi Akhara who were admittedly in possession of Eastern half of the platform of disputed structure itself as settled by the British Administration in 1885, in addition to Ram Chabutra, Sita Rasoi Chabutra and other portions of DA within the campus of disputed structure. Admittedly, in 1934 during Hindu-Muslim riots, Hindus had demolished certain portions of disputed structure, thereby exerting their rights over the property to the knowledge of everyone concerned with disputed structure. The Govt. of U.P. even imposed punitive fine on Hindus for demolishing portions of disputed structure which was repaired by the Govt. Thus the Hindu public in general (in addition to Nirmohi Akhara) was interested in disputed structure, and a general public notice for Hindu worshippers too was called for. None was given, hence the entire proceeding of the Wakf Commissioner, declaring disputed structure to be Sunni Wakf, was illegal.

Then follows the provision which is <u>most important</u> for the purposes of these cases: S. 5(2) and 5(3). According to S. 5(2), the Mutawalli of a Wakf, <u>*or any person interested in a Wakf*</u> may bring a suit in a Civil Court for a declaration that any transaction held by the Commissioner of Wakfs to be Wakf is not Wakf, but no such suit by a person interested in the Wakf shall be instituted "after more than one year of the notification referred to in subclause (1)". Sub-section (3) provides that subject to the final result of such suit "the <u>*report*</u> of the Commissioner of Wakfs <u>*shall be final and conclusive*</u>". Subsection (4) commands that the Commissioner shall not be made a Defendant to the <u>suit</u> and no <u>suit</u> shall be instituted against him for anything done by him in good faith under colour of this Act. This bar cannot be made applicable to Plaintiffs of OOS 5 of 1989. Firstly, there <u>is no valid Wakf of disputed structure</u>. Secondly, the Plaintiffs were neither Parties to the proceedings before, nor were given an opportunity by Wakf Commissioner to contest the claim of declaration of disputed structure to be Wakf. Thirdly, neither Nirmohi Akhara, who were admittedly in possession of almost half portion of Platform (Chabutra) of disputed structure lying towards East of a grilled partition wall erected by British administration in 1855 in addition to considerable portions of campus of disputed structure, including *Ram Chabutra*, was given notice of the proceedings, nor Hindu devotees/community were given general notice although since 1934 riots they were admittedly asserting rights over it. If the requirements of Section 5 of the Wakf Act of 1936 applied to Nirmohi Akhara/Hindu devotees on the ground that they were 'persons interested in the wakf', then that was all the more reason for the Wakf Commissioner to have given notice to these persons. The action and decision of Wakf Commissioner, or by Sunni Central Board of Wakf on its basis, therefore, could not be binding on Plaintiffs, Nirmohi Akhara or Hindu devotes/community.

Facts regarding action taken under U.P.Muslim Wakf Act 1936 may now be considered. Ext. A4 (filed by Muslim Defdts 1 to 5 in OOS 1 of 1989) is report dt. 16.9.1938 of Mohd Owais, District Wakf Commissioner Faizabad addressed and submitted to Chief Commissioner of Wakfs, U.P., and Ext. A5 is report dt. 8.2.1941 of A. Majeed, District Wakf Commissioner. Ext. A5 records that Ext A4 was returned in January 1939 to District Wakf Commissioner because before action thereon could be taken, the post of Chief Commissioner of Wakfs had been terminated. There is no evidence to show what action the Govt. took before 'returning' the report to Wakf Commissioner and what the latter was expected to do further. Thus, Ext. A4 became a 'dead letter'. Ext. A4 mentions that vide Cl (e) of WS of Syed Mohd Zaki, the Mutawalli, to which Flag 1C2 was attached, 'it appears that in 935 AH, Emperor Babar built this mosque and appointed one Syed Abdul Baqi as *Mutawalli and Khatib* of the Mosque'. So, the source of this inference of the Wakf Commissioner was Flag 1C2 to WS of Mohd Zaki; but that document, which was the *primary evidence* of those facts, has not been filed by Sunni Waqf Board, hence the basis of that finding is not established here. The report further mentions that the Wakf Commissioner had heard that Mohd Zaki was an opium addict and the Mosque had not been kept in proper repairs; this indicates a probability that the Mutawall was not taking due care of the affairs of the Mosque. In any case, Ext A4 stood rejected.

Neither Ext. A5, nor the record shows how A. Majeed, the new Wakf Commissioner, opened and proceeded with the inquiry; it is plain enough that inquiry by him should have been *de novo*. In the first paragraph of his report, he mentions that he made 'further inquiries and examined the *pesh-namaz* who filed certain papers'; but he has not mentioned a word about *pesh-namaz*'*s* papers. In the same paragraph, he recorded: "I entirely agree with the findings of my predecessor and I submit my report". Indeed, A. Majeed has basically reproduced the findings of Mohd Owais *verbatim,* including the final recommendation; the only change is addition of substance of statement of Abdul Ghaffar, the *pesh-namaz*. Ext A5 therefore suffers from the vice of <u>non-application of mind.</u> Certain interesting features of the statement of Abdul Ghaffar, mentioned in the report, are significant. Firstly, having admitted that Mohd Zaki, the Mutawalli, was Shia, he added that the 'ancestors of Mohd Zaki were Sunnis who later on converted to Shia'. The Civil Judge held in 1945-suit of Shia Central Board against Sunni Central Board and held that Abdul Baqi was Shia. This means that *some* descendant of Abdul Baqi must have converted to Sunni and again *some later* descendant must have converted to Shia so that Mohd Zaki could be Shia. Prima facie, this is highly improbale, specially when Mohd Zaki was not given an opportunity by the Wakf Commissioner to meet that allegation. Secondly, Abdul Ghaffar admitted that 'he did not receive his pay during the last 11 years. In 1936, the Mutawalli executed a pronote promising to pay the arrear of pay, by instalments, but up to this time nothing actually was done.' The <u>bias</u> of Abdul Ghaffar aginst Mohd Zaki is obvious. The proceeding before the Wakf Commissioner is *quasi judicial* as held in the case of *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishen* (1979)2 SCC 468 (para 25), and even if it be treated to be administrative, notice of hearing to affected persons was absolutely essential as indicated above in para 81. The entire proceeding leading to Ext. A5, thus, also stands vitiated.

Further it is apparent from the Notification (following Ext A5) of entry of Babri Masjid at Serial No. 26 of Faizabad-Wakfs, that no mention of the particulars or details of disputed structure has been made in the notification-column meant for the purpose; the column has been left blank. Thus, the Notification fails to establish the identity of disputed structure on its own. That omission could have been deliberate because Nirmohi Akhara and Hindus had been in possession not only of substantial portion of DA (the Campus inside the boundaries) but also the Eastern part of the Chabutra which had been part of disputed structure.

Next are the proceedings of Civil Judge in a suit between Shia & Sunni Central Boards of Wakf. It is necessary to consider findings and Judgment dt. 30.4.1946, Ext. 20 in OOS 4 of 1989 (also Ext A42 in OOS 1 of 1989), by Civil Judge Faizabad in R.S. NO. 29 of 1945; the suit was filed by Shia Central Board of Wakf against Sunni Central Board of Wakf (Plaintiff in OOS 4 of 1989). Shia Board claimed a right to manage disputed structure on the ground that disputed structure was a Shia Wakf because the Mosque was built by Abdul Baqi who was a Shia; Sunni Waqf Board contested the claim on the ground that it was Sunni Wakf because the Mosque was built by Babar who was a Sunni. The Civil Judge made a local inspection of disputed structure, Ext 53 in OOS 4 of 1989, in presence of Counsel for both Parties on 26.3.1945. The Judge recorded that the 1st Inscription fixed near the pulpit bore the construction year to be 923 Hijri, while the 2nd Inscription at the Central arch facing courtyard mentioned the year to be 935 Hijri. He also recorded that both Parties admitted that the 1st inscription 'was replaced anew in place of the original tablet which was demolished during the communal riots in 1934'. Obviously the 1st Inscription seen by the Civil Judge was not the original one; indeed the erroneous year 923 Hijri therein is inherent proof of that fact. The numberings of the Inscriptions correspond to Buchanan's numbering, but Buchanan's rendering was from the original, hence deserves greater weight than the one seen by the Civil Judge; the year in Buchanan's rendering is 935 Hijri, which is correct. The Civil Judge held (at pages 11-12) that inscriptions 'are inconclusive'. He observed in the Judgment that the 2nd inscription does not say that the Mosque was built by the order of Babar and only refers to the reign of Babar, whereas the 1st inscription 'clearly supports the theory that Babar had ordered the building of the Mosque as stated in the Gazetteer and settlement report'. On these premises, the Civil Judge held that the 'Mosque was founded by Babar and not by Abdul Baqi'. The Civil Judge clearly considered the mentioned 'order' to be enough proof of its erection by Babar. This is unacceptable for reasons recorded. It is also significant that at page 10 he recorded that the Gazetteer (on which he placed reliance) mentioned that Babar 'destroyed the Janmasthan Temple and its site built a Mosque using largely the materials of the old structure'. As shown earlier in these Arguments, erection of the Mosque by demolishing a Temple at its site is un-Islamic, hence the disputed structure is illegal abinitio and non-est (See Para 52), but this aspect did not figure before the Civil Judge.

The Civil Judge further held that Babar was Sunni while Mir Baqi was a Shia, hence the Mosque was a Sunni Wakf on the position agreed by both Parties that the Sect of the Wakf of Mosque depending structure upon the Sect of the Founder (vide page 7 of the Judgment). The SC has held that facts recorded by the Court (as admitted by the Parties there) must be held to be correctly recorded: 1957 SC 882, *U.O.I Vs. T.R.Verma.* The Hindu Parties case, here, is that the Mosque was built by Mir Baqi who was a Shia, hence the Sect of disputed structure is a Shia Wakf. The decision of the Civil Judge is that disputed structure was erected by Mir Baqi but under orders of Babar. As already pointed out, 'order' to Mir Baqi was only Babar's 'consent' and 'approval' to erect the Mosque as pleaded last by Sunni Waqf Board referred to above; the so-called 'order' could not constitute Wakf of the Mosque by Babar. The view of the Civil Judge, thus, that disputed structure is a Sunni Wakf is incorrect (without prejudice to the position that the Mosque was un-Islamic, hence ab initio illegal & non-est).

The contention of Sunni Waqf Board, further is that the decision of Civil Judge that disputed structure was founded by Babar, hence it is Sunni Wakf, is binding in these suits. It seems that the decision is binding between Shia & Sunni Central Board of Wakf, but is not binding upon the Hindu Parties to these suits. It must be appreciated that the Suit between the Shia & Sunni Central Boardof Wakf was instituted in a Civil Court under Section 9 CPC and not under any special Statute like Wakf Acts. In 1945, the relevant Wakf Act in force was UP Muslim Wakfs Act XIII of 1936; that Act did not provide for a special adjudicatory body to settle disputes relating to Wakfs. In contrast to 1936 Act, U.P.Muslim Wakfs Act XVI of 1960 provided for a Tribunal to settle disputes relating to Wakfs; Chapter IX provided for "Tribunals – Their Constitution, Powers and Functions". Section 75 lays down 'Bar to suits in matter to be decided by Tribunals' and says that 'No person shall institute any suit or other proceeding in any Civil Court with respect to any dispute or question or matter which is required or permitted under this Act to be referred to a Tribunal for adjudication'. There is no similar provision in Wakf Act of 1936. The decision dt. 30.3.1946 by Civil Judge Faizabad in the Suit between Shia Central Board of Wakf and Sunni Central Board of Wakf, therefore, has no binding effect upon persons who were not Parties to that suit, hence it is not binding upon Plaintiffs of OOS 1 of 1989, 3 of 1989 and 5 of 1989.

It is also important that Civil Judge Faizabad has held in these very suits while deciding Issue No 17 of OOS 4 of 1989 that the Notification published by the Wakf Commissioner under the Wakf Act of 1936 is invalid. That finding (dt. 21.4.1996) is final against Sunni Waqf Board. An attempt to get over the finding has been made by framing Issue No 18 to consider the effect of Supreme Court Judgment in the case of *Ghulam Abbas & others Vs. State of U.P. & others,* 1981 SC 2198 on the finding of the Civil Judge. It may be mentioned that the Civil Judge had also answered Issues No. 5(a) and 5(c) against Sunni Waqf Board. It does not appear to be open to Sunni Waqf Board to challenge these findings of the Civil Judge in the present suits; they will be open only before SC in Appeal. The High Court is not exercising any Appellate jurisdiction nor can enter upon a Review of the findings.

The decision in *Ghulam Abbas*'*s* case may be considered.

In respect of Doshipura Mosque and other properties, the Wakf Commissoner, after survey & inquiry, made a report dt 28/31.10.1938 u/s 4(5) of Wakf Act 1936 with Appendix VIII of Sunni Wakfs, excluding the Mosque, and Appendix X of Shia Wakfs including the Mosque; copies of the report were sent to both Shia & Sunni Boards of Wakf. On receipt of the report, Shia Board published Notification dt. 15.1.1954 of Appendix X in Gazette dt. 23.1.1954 u/s 5(1). Neither Sunni Board nor any person interested in the Wakf filed suit u/s 5(2), within the period prescribed, to challenge the omission of disputed properties from Appendix VIII. However, Sunni Board published Notification dt. 26.2.1944, u/s 5(1), including disputed properties, obviously not based on Appendix VIII (which had excluded the properties). Supreme Court held Sunni Board's Notification dt. 26.2.1944 to be invalid on the ground that it was not based on Appendix VIII while S.5(1) required the Notification to be 'in accordance with' Commissioner's report and that Wakf Commisioner's report with Appendix X became 'final and conclusive' in favour of Shia Wakf.

When Wakf Act of 1960 came into force, the Sunni Board made 'Registration' of some of the disputed properties as Sunni Wakf u/s 29 of 1960-Act. Supreme Court held that any Survey report made and Registration of Wakf thereon was "futile and of no avail" because Registration of Wakf under 1936-Act had been kept alive by 1960-Act and the latter Act permitted Registration of only those Wakfs which were 'other than' those already Registered under 1936-Act. The claim of Shia community was upheld and Sunni Community were restrained permanently from interfering with exercise of rights by Shias. Now, there is absolutely nothing in common between *Ghulam Abbas' case* and the present case.

Since there was not valid notification under the Waqf Act before registration, the procedure was not adopted in the manner prescribed under the law.

In ***the Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke and others, AIR 1975 SC 2238,*** Apex Court at paragraph No. 10 held that where Act creates an obligation, it should be enforced in a specified manner;

"Para-10 *In Doe V. Bridges, (1831) 1 B & Ad. 847 at page 859 are the famous and oft quoted words of Lord Tenterden, C.J. saying:*

"Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."

This passage was cited with approval by the Earl of HalSunni Waqf Boardury, L.C. In Pasmore V. The Oswaldtwistle Urban Disteict Council 1898, AC 387 and by Lord Simonds at ;. 407 in the case of Cutler V. Wands Stadium Ltd. 1949 AC 398.

Thus, in view of the decision of the Hon'ble Apex Court, it transpires that United Provinces Muslim Waqf Act, 1936 is an Act, which creates an obligation and enforces the performance in a specified manner. Thus in view of Section 5 of the aforesaid Act, it was necessary to make a publication before making any registration. Thus, it was incumbent upon the authorities to act in accordance with law and should have performed the duties in the manner provided under the law.

Thus, in this case the procedure as contemplated under Section 5(1) of Waqf Act was not complied with and the registration was made ignoring the provision, accordingly registration has no significance under the law. It may further be clarified that it makes no difference whether the registration was challenged or not. When it is apparent that the obligation to enforce the Act was not performed in the manner provided under the law by complying the provisions of

Section 5 by the Board, in that event the registration has no effect and it does not bind the parties. It may further be clarified that once the Board had tried to get the Waqf registered and after enquiry the registration was not completed, it makes no difference whether two other modes were applied or not for registration. Other modes of registration could have been applied in accordance with law only. It is not the case where it has been urged that besides two other modes, the 3rd mode was adopted. The sole mode that was adopted to register this Waqf as Sunni Waqf by holding an enquiry and without making any publication. Thus in view of the decision of the Apex Court, the registration is not in accordance with law.

On the contrary defendant nos. 4 and 5 have come out with a case that Waqf was registered . In this context I find that on 21.4.1966 learned Civil Judge has already decided issue no. 17 that no valid notification was made in respect of the property in dispute. Thus, without any valid notification the requirement of law was not complied with. Thus, in this case notification was not done which was required to be done under the Waqf Act before registration. Without any notification compliance of law shall not be presumed.

It further transpires that in O.O.S. No. 4 of 1989 the issue relating to waqf was also taken into consideration and attention of this court was drawn to the provisions of Section 87 of the Waqf Act,1985.

There is a bar of Section 87 of the Waqf Act to the enforcement of right on behalf of unregistered waqf which has been dealt while deciding issue nos. 5-F and 5-C of O.O.S. No. 4 of 1989 . Since the registration of the waqf was made in contravention of the provisions of Waqf Act, 1936 and there was no valid notification, accordingly the submissions of learned counsel for the plaintiffs are in accordance with law that no valid Waqf was created or could be created regarding the property of deities or about the deities as Ram Janm Bhumi, plaintiff no. 2 itself is a deity. Thus, no valid waqf could be created or was ever created with respect to the disputed property. Issue no. 11 is decided accordingly against the defendants and in favour of the plaintiffs.

ISSUE NO. 13

Whether the suit is barred by limitation ?

FINDINGS

The instant suit is for declaration and injunction. Plaintiffs no. 1 and 2, namely, Bhagwan Sri Ram Virajman at Sri Ram Janma Bhumi, Ayodhya also called Sri Ram Lala Virajman and the Asthan Sri Ram Janm Bhumi, Ayodhya with other idols and places of worship situate there have claimed themselves as juridical persons with Bhagwan Sri Ram as the presiding deity of the place. Plaintiff no. 3 is a Vaishnva Hindu worshipper and seeks to represent the deity and the Asthan as a next friend.

It has been urged on behalf of plaintiffs no. 1 and 2 that they are the deities and it has been urged on behalf of the plaintiffs that it is settled proposition of law that deities are like infant and they are not subject to limitation laws. The attention of this Court was drawn by Sri Ravi Shanker Advocate on this aspect while arguing in connected cases. Sri Ravi Shanker Advocate has relied upon following case;

(i) AIR 1925 Privy Council, Page 139, at Page 140 – Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick: "One of the questions emerging at this point, is as to the nature of such an idol and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quota the authorities; for this doctrine, thus simply stated, is firmly established."

(ii) AIR 1937 Calcutta, 338 (Division Bench) Bimal Krishna Ghosh v. Shebaits of Sree Sree Ishwar Radha Ballav Jiu – at Page 340 - "This observation is entitled to the highest respect and it is necessary, therefore, to look into the facts of the case closely to find out what their Lordships actually meant. It is clear from the facts set out in that judgment that in this case there was no gift of the idols but the property was given to one Udoy who was made a trustee in the legal sense of the word and upon whom were cast certain duties both religious and secular in their nature. He was to perform the worship of a certain idol with the income of a particular property and the remainder of the income was given to three people whose names were given in the will. In a case like this, where a private trust was created not of a purely religious character and the ownership of the property was vested in the trustee in the legal sense of the word, the Court could not possibly frame

> a scheme for the administration of the trust estate. In a religious endowment, however, where the deity who is a perpetual infant is the legal owner of the property and the Shebaits occupy the position of managers or guardians, the position is different. In Manohar Mookerjee v. Peary Mohan Mookerjee AIR 1920 Cal 210, it was held by Asutosh Mookerjee, J. sitting with Panton, J. that:

In respect of a Debutter in this country, the founder or his heirs may invoke the assistance of a judicial tribunal for the proper administration thereof on the allegation that the trusts are not properly performed.

6. Mookerjee, J. invoked the analogy of the rule of English law according to which in case of a charitable corporation where the founder was a private person he and his heirs became visitors in law and in case such heirs were extinct or were incompetent the visitatorial powers devolved on the crown. It is true that in England such trusts are regarded as matters of public concern and the Attorney-General who represents the Crown takes proceedings on his behalf for protection of these charities: vide Att.Gen. v. James Brown (1816) 1 Swans 265 at p. 291. In India, the Crown is the constitutional protector of all infants and as the deity occupies in law the position of an infant, the Shebaits who represent the deity are entitled to seek the assistance of the Court in case of mismanagement or maladministration of the deity's estate and to have a proper scheme for management framed which would end the

disputes amongst the guardians and prevent the debutter estate from being wasted or ruined. This principle was reiterated in Rabindra Nath v. Chandi Charan : AIR1932Cal117 . The Privy Council itself directed the framing of a scheme, in case of a private debutter in Pramatha Nath v. Pradhyumna Kumar Mullick and the case was remanded to the trial Court expressly for that purpose. The same directions were given by this Court in the case in Prasad Das Pal v. Jagannath Pal : AIR1933Cal519 which was also a case of private debutter and we are unable to uphold the extreme contention raised by Mr. Biswas that a civil Court is incompetent to entertain a suit the object of which is to have a scheme established for the administration of a private debutter.

7. Mr. Biswas's second argument which he put forward in the alternative is that even if such a suit was cognizable by a Court of law, the deity is a necessary party to such a proceeding and it should be represented by a disinterested person as was done in Pramatha Nath v. **Pradhyumna Kumar Mullick** referred to above."

(iii) 1911 (33) Allahabad (ILR), Page 735 (Full Bench) – Jodhi Rai v. Basdeo Prasad – Page 737 – *Deity described like a minor " With* great respect we are unable to agree with the learned Judges. An idol has been held to be a juristic person who can hold property. Therefore, when a suit is brought in respect of property held by an idol, it is the idol who is the person bringing the suit or against whom the suit is brought, the idol being the person beneficially interested in the suit. No doubt, in every suit the party bringing it or the party against whom it is brought must, when he is suffering from an incapacity, be represented by some other person, as in the case of an infant or a lunatic. Therefore, when a suit is brought on behalf of or against an idol, there must be on the record a person who represents the idol, such as the manager of the temple in which the idol is installed. The manager of the idol is not personally interested in the suit, any more than is the next friend or guardian of a minor. As a suit by a minor should be brought in the name of the minor and not of his next friend, so should a suit on behalf of the idol be brought in the name of the idol as represented by the manager, and in a suit against the idol the defendant should be similarly..... It is true that every pleading must be signed by a …. being; but this can be done by the manager, just in the same way as in the case of an infant the pleadings are signed by his next friend or guardian for the suit. The first defendant in this suit was, therefore, properly described in the plaint, and the view of the learned Judge in this respect is in our judgment erroneous. If there is any defect in the description of the defendants in suit of this kind, it is nothing more than an irregularity or mis-description. If, for instance, a suit on behalf of an idol is brought in the name of the manager of the idol that would not warrant the dismissal of the suit; but the plaint may be amended by correcting the description. Similarly, in the case of a defendant. Such an amendment would not have the effect to introducing a third party on the record, and no question of limitation would, in our opinion, arise. "

(iv) **AIR 1967 Supreme Court 1044, Vishwanath Vs. Radha Pal, Paragraph 10, at Page 1047 –** *An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest :*

"10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see Radhabai v. Chimnaji, (1878) ILR 3 Bom. 27, Zafaryab Ali v. Bakhtawar Singh, (1883) ILR 5 All 497, Chidambaranatha Thambiran v. P. S. Nallasiva Mudaliar, 6 Mad LW 666: (AIR 1918 Mad. 464), Dasondhay v. Muhammad Abu Nasar, (1911) ILR 33 All 660 at p. 664 : (AIR 1917 Mad. 112) (FB), Radha Krishnaji v. Rameshwar Prasad Singh, AIR 1934 Pat 584, Manmohan Haldar v. Dibbendu Prosad Roy, AIR 1949 Cal 199.

11. There are two decisions of the Privy Council, namely Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App 245 : (AIR 1925 PC 139) and Kanhaiya Lal v. Hamid Ali , 60 Ind App 263 : (AIR 1933 PC 198(1), wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edition, summarizes the legal position by way of the following

propositions, among others, at page 249 :

"(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol."

This view is justified by reason as well as by decisions.

(v) In **AIR 1971 Madras, Page 1 (Full Bench), Manathu Maitha Desikar Vs. Sundaralingam** it has been held that **s**ince deity who is the owner of property suffers form physical disability, its interests have to be looked after in perpetuity. Paragraphs 19 and 20 are reproduced as under :

"19. In Rajah Vurmah Valia's case, (1876-78) ILR 1 Mad. 235 (PC) just now referred to, the Judicial Committee having regard to the usage of the institution, would infer that the founder prescribed a method of devolution under which the senior most members for the time being of four different families should be managers or trustees of the temple. If the managership or the office of Urallars is regarded as right in property manifestly the rule of devolution prescribed goes against the principle laid down in Tagore case, 1872-73 Ind App Supp Vol. 47 and the succession to the office provided for is not according to the ordinary law of descent of private property. Mrishnaswami Pillai v. Mookayi Ammal, 31 Ind Cas 35 = (AIR 1916 Mad. 1143 (1) is a case where this court recognized the validity of an arrangement with reference to a charity wherein the family had no beneficial interests for the management of the charity by the head of the family in each branch, females being excluded."

"20. What strikes us as the governing principle behind these decisions is that in the scheme of devolution of the office for administration of a public, religious or charitable institution when the dedication of property is of the completed character, no rights in the property are dealt with, the Dharmakartha or manaver provided thereunder having no proprietary interest in the dedicated property or profits therefrom. Else it must be held that Hindu Law by usage invests the founder with power to lay down the scheme of succession he considers it best in the interests of the foundation he endows. The founder when the dedication is complete divests himself of all proprietary rights in the property endowed. The deity, a juristic entity is the proprietor who never dies but labours under physical disability which renders it necessary that its interests should be looked after in perpetuity. As a concomitant a power has been recognised in the founder to appoint and provide for a manager to look after the affairs of the deity which has become the owner of the property. The office which he creates for attending to the affairs of the deity is a thing of his own creation and if it is bare office without perquisites, there is no property in it in the Hindu Law sense of the term. There is one observation of their Lordships of the Judicial Committee in Tagore case, 1872-73 Ind App. Supp. Vol 47, which is significant in this context they stated:-

"The power of parting with property once acquired, so as to confer the same property upon another, must take effect either by inheritance or transfer, each according to law."

22. In 71 Mad. LJ 740 = (AIR PC 318) the Judicial Committee referred to the Full Bench decision with approval. Their Lordships said:-

"In (1900) ILR 23 Mad 271 it was held by this Board that the second ruling in the Tagore case, 1872-73 Ind App. Supp Vol. 47 above referred to is applicable to a hereditary office and endowment as well as to other immoveable property. This decision was followed in ILR 60 Cal. 452 = (AIR 1932 Cal. 791)

In Manohar Mukerji's case, ILR 60 Cal., 452 = (AIR Cal. 791) the question involved was as to the right to the shebaitship of two family deities and the validity of the Will of the founder who dies in 1840 providing for a life of succession providing for a life of succession to the shebaitship at variance with the ordinary Hindu law of inheritance. The case is clearly distinguishable as it proceeds on the premise that Shebaitship is property."

Mr. Bhat Senior Advocate has made following submissions ;

"Suit No.5/1989 is for obtaining a declaration that "the entire premises of Shri Ram Janmabhumi at Ayodhya described and delineated in Annexures I, II and III belong to the plaintiff deities". The prayer is now restricted to the land occupied by the disputed structure Babri Masjid that was demolished.

The suit filed in July 1989 is governed by the **Limitation Act, 1963** and **Art.58** is relevant. It deals with "to obtain any other declaration". The period of limitation is three years and the time from which the period begins to run is "**when the right to sue first accrues**".

The period prescribed is subject to the provisions contained in Sections 4 to 24. The plaintiffs are seeking the protection of Section 6(1) which deals with legal disability and the relevant provision reads: "Where a person entitled to institute a suit ...at the time from which the prescribed period is to be reckoned is a minor...he may institute the suit...within the same period after **the disability** has ceased".

The expressions "minor", "insane" or "idiot" have not been defined in the Limitation Act. Even the General Clauses Act does not define these expressions. Insanity may be for an indefinite period of time and so is the case with an idiot. Can a person lying in a coma following a stroke or accident be regarded as insane – he has lost his sanity. A state of coma can last for many years. The person surely is under a disability, but can he be brought under the protection of S.6

or is he to be denied the protection altogether? The dictionary meaning of any of these expressions may provide some guidance but do not provide tests for determining whether a person is insane or an idiot.

In the case of a **minor**, the dictionary meaning is “a person under the age of full legal responsibility”. The Majority Act of 1875 – S.3 defines the age of majority as 18 years. S.2 thereof makes some exceptions. However, the Legislature has the power to change this age. It is possible that the competent legislature may reduce the age of majority, say to 15 years, in which case the protection given under Sec.6 of the Limitation Act is reduced by that many years. In other words, the undefined expression “minor” occurring in Sec.6 cannot operate by its own force. Its meaning may depend upon sources outside the Limitation Act.

The expression “minor” for the purpose of Order 32 does not depend upon the age alone. The commentaries have noted that : “But if before the expiry of the age of eighteen a guardian for the person or for the property or for both, of the minor has been appointed or declared by a Court of Justice (apart from the provisions of O.32 of the Code), or the minor’s property is taken charge of by a Court of Wards, then the period of minority is extended till the completion of the age of twenty-one vide (1907) 29 All.672 (FB), AIR 1976 Mad.235 (236) (DB), (1907) 31 Bom. 590 (603), ARI 1925 Cal.513 (514) (DB)” (See AIR Manual 6th Ed. Page 1045).

It is also pointed out that a Muslim girl who has attained puberty can sue for dissolution of marriage without a next friend. A Muslim girl who is major according to her personal law, but is not a major according to the Majority Act may institute a suit, without a next friend, for a declaration that she is not the wife of the defendant vide AIR 1964 J&K p.60.

Once the Supreme Court has declared in the case of ***Vishwanath and Anr. V. Shri Thakur Radhaballabhji and Ors. AIR 1967 SC 1044,*** that an idol or a deity **<u>is in the position of a minor</u>**, that idol or deity is entitled to all the benefits that the minor gets under the laws including the Limitation Act. It may be noted that under many of the special Acts, the expression "minor" is defined. For example, the Hindu Minority and Guardianship Act defines a 'minor' as a person who has not completed the age of 18 years. However, the definitions under special Acts are meant for the purpose of those Acts.

The expressions "insane" and "idiot" also do not have any particular definition and the Courts will have to decide whether a person is insane or an idiot based upon external aid. The Law Lexicon by T.P. Mukherjee, 4th Ed. under the term "lunatic" based on a judgment of the Andhra Pradesh High Court defines the term as follows:-

> "The words "idiot" and "unsoundness of mind" both indicate an abnormal state of mind as distinguished from weakness of mind or senility following old age. A man of weak mental strength cannot be called an idiot or a man of unsound mind. The intellectual competency of the human mind is of varying degrees. It fluctuates between brilliance and dullness. Sometimes in the same individual brilliance in one field surprisingly appears in juxtaposition with sub-normal practical apprehension in an allied field. The Act is not intended to protect dull witted people but only those who suffer from a mental disorder on derangement of the mind. (See Lunacy Act, 1912, Sec.3(5)) – Ganga Bhavanamma v. Somaraju, AIR 1957 A.P. 938 at 939."

Lunacy Act of 1912 had some attempted definition of a lunatic –or insane. However, that Act has been repealed by the Mental Health Act of 1987 – the new Act has no fresh definitions. In any case, as already stated, the special definitions in any of these Acts are intended for the purpose of that particular Act.

Article 141 of the Constitution of India is categorical that the law declared by the Supreme Court is binding on all courts and tribunals. In Bishwanath v. Shri Thakur Radhaballabhji, AIR 1967 SC 1044, the Court has laid down as a matter of law the following proposition: "The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. **On principle** we do not see any justification for denying such a right to the worshipper. **An idol is in the position of a minor;** when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an *ad hoc* power of representation to protect its interest. **It is a pragmatic, yet a legal solution to a difficult situation."** The law declared, therefore, is that an idol is in the position of a minor. In that particular case it was for the purpose of permitting the worshipper to file a suit as a guardian or next friend - to safeguard the interest of the deity. It is submitted that by extending the benefit under Section 6 to a deemed minor –ie a deity - the cause of justice is not prejudiced; but only advanced. In a situation where the expression 'minor' is not defined, the deity who is in the position of a minor should receive the protection of S.6 – as if the deity is a minor. It may be that the duration of the disability could be long and indefinite - in the case of a insane or an idiot it could be life long.

There are no special provisions in the Limitation Act to deal with recognized juristic persons like a deity. Can it be the intention of the legislature not to apply the Limitation Act to a deity? Extending the benefit available to a minor to a deity can do no injustice to the world at large. It may be noted that in the majority of cases there is a shebait to take care of the idol or deity – in such cases S.6 does not come in to play. Cases dealing with the applicability of O.32 CPC have found that the said set of provisions may not be sufficient to protect the interest of a deity.

Thus, deity is a minor for the purpose of S.6 of the Limitation Act.

In the case of Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi – **31 IA 203, p.210**, it was held :

"And in the present case the right to sue accrued to the plaintiff when he was under age. The case therefore falls within the clear language of S.7 of the Limitation Act, which says that, "if a person entitled to institute a suit…. Be, at the time from which the period of limitation is to be reckoned, a minor," he may institute the suit after coming of age within a time which in the present case would be three years.

"It may be that the plaintiff's adoptive mother, with whom the settlement of 1877 was made as sebait, might have maintained a suit on his behalf and as his guardian. This is very often the case when a right of action accrues to a minor. But that does not deprive the minor of the protection given to him by the Limitation Act, when it empowers him to sue after he attains his majority."

Similarly, the law declared by a Division Bench of this Hon'ble Court Musi Imran v. Collector of Bijnore AIR 1934 All.434, Sulaiman, CJ, held at p.435 as under : "Now, if time began to run against the lunatic from the 29^{th} of August, 1920, when the defendant was discharged, then the three years would certainly have expired before the institution of the present suit. But it is admitted that the lunatic is still under a disability, and it must, therefore, be held that he is protected under Section 6 of the Indian Limitation Act. The mere fact, that there was a guardian on his behalf who could have sued earlier, would not deprive him of the protection given by that Section.”

In a decision reported in the Electricity Board, U.P. State v. Sheo Nath Singh AIR 1976 All. 118, it has been held : “The plaintiff Sheo Nath Singh was a minor both on the date of the accident and the date of the institution of the suit. Hence unless the provisions of Section 7 of the Limitation Act were applicable, the suit filed on his behalf during the continuance of the disability but after the expiry of the ordinary period of Limitation will be saved under the provisions of Section 6”.

In the case reported in AIR 1938 Pat.92, it has been held as follows : “ Section 6 applies **to every minor whether he has a guardian or not**, and the existence of a guardian competent to sue is immaterial. Under S.6(1) a minor is entitled to institute a suit or make an application for the execution of a decree within the statutory period of three years after attaining his majority and **it was never intended by the Legislature to restrict the protection given to a minor by the acts of his guardian in the matter of making an application for execution.[P 93 C2]**

Where therefore a guardian for minor applies for execution of a decree obtained on behalf of the minor, and the application is held to be barred by limitation, the minor is not precluded from applying for execution of the decree within the statutory period of three years from the date of attaining majority and the order in the previous execution proceedings is not binding on him : 7 CWN 594 and 32 Cal. 129 (PC), Rel. on; AIR 1935 Pat. 526

The above sample decisions have been cited to show that even if there was a guardian during the period when the plaintiff was a minor, he is entitled to protection of Sec.6 of the Limitation Act.

Under Art.58 of the Limitation Act, the period of three years is to start when the right to sue first occurs; in the long history of this case on what date according to the defendants the period began to run?. Unless the defendants prove otherwise the plaint averments as to the cause of action should be the basis for applying the provisions about limitation. Plaint paragraph 18 explains why the present suit was filed despite the pendency of several other suits. In paragraph 30, it is pleaded, among others, that the Hindus were publicly agitating for the construction of a grand temple in the Nagar style. “Plans and a model of the proposed Temple have already been prepared by the same family of architect who built the Somnath temple. The active movement is planned to commence from September 30, 1989 and foundation stone of the new temple building, it has been declared, shall be laid on November 9, 1989.” The plaint also sets out the details fo the pending proceedings under Sec.145 Cr.P.C. and before any of the steps mentioned in paragraph 30 could be taken like laying of the foundation stone, the title of the plaintiffs had to be declared. That is why on July 1, 2989, the suit was filed. Paragraph 36 of the plaint has to be read along with the other relevant averments. The defendant No.4 in response to the above paragraphs have asserted that the whole Rama temple was imaginary. It is no longer imaginary. It is a matter of public knowledge that the agitation for building a temple at the disputed area had gathered momentum throughout India, particularly from about the year 1989 culminating in the destruction of the structure on December 6, 1992. The averment that in 1989, there was a particular reason why the suit had to be filed is properly pleaded and justified.

Therefore the suit is within the prescribed period of limitation.“

Shri M.M. Pandey Advocate on behalf of the plaintiffs has submitted that plaintiff nos. 1 an 2 are juristic persons. They are infant in perpetuity and they are not subject of law of limitation. It is settled proposition of Hindu law that deities cannot be deprived of their properties and their claim cannot be barred by time and thus their title can not extinct by dispossession also. His submissions are as under;

Sri M.M. Pandey, counsel for the plaintiffs submitted as under:-

1. As a Juristic Person, the 'Hindu Deity' is a Class by Himself with no exact parallel. "The Deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy, the vivified Image is regaled with necessities and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and retirement to rest" [p. 156; 36 CLJ 478= 1923 Cal 60 (Mookerjee J.), *Ram Bramh Chatterji* Vs. *Kedar Nath Banerjea* – this observation was approvingly quoted by PC in 1925 PC 139, *Pramatha Nath* Vs *Pradyumna Kumar*; *see also,* ILR 8 Bom 432, *Thackersay* Vs. *Harbhum*].
2. Endowment in favour of Deity is a perpetual estate; it is capable of receiving and holding property, but it does not possess a power of alienation, hence endowment in favour of Deity is necessarily a tied up or perpetual estate; absolute gifts of lands or money *perpetually* to an Idol or for other religious purposes have been held to be valid in Hindu Law from early times (p.137). In *Thyrammal* Vs.*Kanakammal* (2005) 1 SCC 457 (para 15,16 & 17), the Supreme Court has held that a religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose *for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use* ***is itself raised to the***

category of a Juristic Person and such a property vests in the property itself as a Juristic Person. This special legal status *squarely applies to Asthan Ram Janma Bhumi,* Plaintiff No.2 in OOS 5 of 1989; the spot where Ram was born, and all properties appurtenant thereto belong to and vest in the spot itself as juristic person. No body else, not even the *Shabait* can become owner of the Deity or property of Deity (p. 248-249; ILR 12 Bom 247, *Manohar Ganesh Tambekar Vs. Lakhmiram Govindram* relied upon in ILR (1896) 23 Cal 645, *Girijanand* Vs. *Shailja* (at pages 655-656).

3. Since such vesting of the property *is a perpetual estate* and the Deity itself does not possess the power of its alienation (*Prosonno Kumari Vs. Golab Chand* LR 2 IA 145 at 150-151, & *Palaniappa Vs. Devasikamony,* 44 IA 147)), it follows that no law can divest the Deity of its property under any circumstance whatsoever. A *Temple is the 'house' of the Deity* (p.153 of B.K.Mukherjea's book); by destroying the house, neither the Deity nor Deity's property, on which the house stood, could cease to belong to Deity. Indeed, Section 18 of Transfer of Property Act recognises that the rule against perpetuity under that Act, does not apply to transfer of property for the benefit of public; such exclusion is in-built in Hindu Law itself.

4. Vide, page 19-20 of *Mulla's "Principles of Hindu* Law, 1958 Edn, some of the important recognised *Dharmashastras* are known as *Smritis* of *Manu* (200 BC)*, Yajnavalkya* (1st Century AD –p. 24))*, Narad* (200 AD –p. 26))*, Parashara, Brihaspati, Katyayana* (4th-5th Century AD – p.32) *etc*; they are of universal application, not in substitution for another but all treated as supplementary to each other (-p.20). At page 33, Mulla records: "*Katyayana* maintains unimpaired the distinctive qualities of *Smriti of Brahaspati* to which he freely refers. His exposition is authoritative and remarkable for its freshness of style and vigorous approach. There can be little doubt that this *Smriti* must have been brought into line with the current law. It must have commanded a wide appeal as may readily be gathered from the profuse manner in which it has been quoted in all leading commentaries.............The arduous task of collecting

all the available texts of Katyayana from numerous commentaries and digests was accomplished by Mahamahopadhyaya Kane who collated and published in 1933 about one thousand verses of the *Smrtiti* on *Vyavahara* (Procedure) with an English translation". As shall appear hereafter, statement of law in *Katyayana Smriti* is of special significance in these suits. The force, sanctity and King's duty relating to Temples has been strongly emphasised in the Hindu Law from ancient times. *Apararka* [held to be an Authority under Hindu Law by PC in *Buddha Singh* Vs. *Laltu Singh,* 42 I.A. 208 = ILR (1915) 37 All 604, *see Mulla* p.51-52 acknowledged by Banares School] says that King should not deprive Temples of their properties (*History of Dharam Shastra – Government Oriental Series - by P.V. Kane,* Volume II Part II page 913). At page 911 *Kane* quotes *Yagnavalkya* that it is part of King's duty to prosecute and fine persons interfering with or destroying the property of Temples; he cites *Manu* (IX/280) requiring the King to pronounce death sentence on who breaks a Temple, and him who breaks an image to repair the whole damage and pay a fine of 500 *pannas.* The Deity and Temple not only served the object of Worship of Divine, but also served social purpose. Historian *Romila Thapar* writes in 'A History of India' Vol.I (Pelican Books 1990, 13th Impression 2001), at Page 279 that the Temple had long been the centre of Hindu social life in the village, place where Hindus congregated; it 'was the Bank, the Landowner, the administrative centre for the village and place of major entertainment in the form of festivals'. Mentioning *Katyayana* (4th-5th Century AD – vide *Mulla* at page 14) on judicial process, Romila Thapar writes at page 154 that Judgments were based *either on legal texts or social usage or edict of the King which could not contradict the legal text or Usage;* at page 160, she writes *Social Law based on man-made* ***Tradition had already become the sacred law.*** That is why Temples were immune from influence of the King. Page 28 of B.K.Mukherjea's authority mentions *Yajnavalkya:* 'Customary Law as well as Usages established by Kings should be carefully upheld, if not inconsistent with the revealed law'. *Vijnaneswara* commented upon this text as follows: Duties arising under any Custom, such as preservation of pastures for cow and of water and *management of Temples* (Devgriha) and the like should also be carefully observed without infringing the duties prescribed by *Shrutis and Smritis ……….* The same view finds expression in *Shukra-Niti* *where the duty of protecting endowments has been spoken of as one of the primary duties of the King*. Thus the duty of Kings to protect endowments rested on the basis of immemorial customs which were as sacred as written texts". In Appendix I (Summary of Pran Nath Saraswati's "Hindu Law of Endowments") at page 507, mention is made that "*On conquest the Temples should be respected*". In *D.F.Mulla*'*s* 'Principles of Hindu Law', Chapter II on Sources of Hindu Law, Text No. 3 mentions: "Whatever Customs, Practices and Family Usages prevail in a Country shall be preserved intact *when it comes under subjection by* (conquest) – *Yajnavalkya* I, 343". At page 81 of "Yajnavalkyasmriti", translated by Manmatha Nath Dutt, published by Parimal Publications Delhi (1st Edn 2005), verse no.343 reads as follows: 'When a foreign kingdom is brought under subjection, he should observe the conduct, law and family practices obtaining in the same kingdom'. In Chapter 7 of the "Laws of Manu" (Penguin Classics, Edn 2000) at page 149, *Manu*'*s edicts* nos. 201 to 203 lay down that on conquest, the King-conqueror "should make authoritative their own laws (i.e. of the vanquished) as they have been declared……" In a very early decision, PC held: "The *important principle* to be observed by Courts in dealing with constitution and rules of religious brotherhoods attached to *Hindu Temples is to ascertain, if possible, the special laws and usages* governing the particular community whose affairs have become subject of litigation": *Raja Muttu Ramalinga Setupati Vs. Perianayagum Pillai*, 1 IA 209; at page 234, it goes on to say: "The subject of devastanum lands *is of a great importance to the happiness of the people,* and the attention paid to the interest of the pagodas …….. has been attended with *most beneficial consequences to the people* in different parts of peninsula" (i.e India).

5. Such has been the Hindu Law since ancient times. There has been no change of that law either by any Emperor or by any Legislature, hence the law as found originally in India relating to Hindu Deity must be applied. In the case of *S. Darshan Lal Vs. Dr. R.S.S Dalliwall,* 1952 All 825 (DB), it is stated in para 16: "In an inhabited country, obtained by conquest or cessation, law already prevailing therein continues to prevail except to the extent English Law has been introduced, and also except to the extent to which such law is not civilised law at all.........." The Court reiterated that view in para 18. This dictum which was laid down in the context of applicability of English Law in Indian territories conquered/ceded, constitutes a reasonable premise for application of then prevailing Hindu law at the time of conquest by Babar. Indeed, Privy Council held in *Mosque known as Masjid Shahid Ganj Vs. Shiromani Gurdwara Prabandhak Committee, Amritsar,* 1940 PC 116 at page 120 Col. 2, that "There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property". It is nobody's case nor any evidence that during the Muslim rule commencing from late 12th/early 13th Century (*Mohd Ghauri/Qutubbin Aibak* who established 'Slave Dynasty' from 1206 AD) modified any of these laws. Similarly, it is nobody's case nor any evidence that during Mughal rule from *Babar* till the advent of governance by East India Company (from 1757 with the Battle of Plassey) or that of *British* rule from 1858 (with Queen's Proclamation), any modification in these provisions of Hindu Law was made. The British had established regular COURTS to administer justice; it was by OUDH LAWS ACT 18 of 1876 that the British provided what laws were to be administered in OUDH which includes *Ayodhya* and Faizabad; that Statute holds good even today by virtue of Article 372(1) of Constitution of India. A number of Acts were framed governing various relationships and situations in the Hindu Society, like Hindu Women's Right to Property Act, Hindu Succession Act, Hindu Marriage Act, Hindu Minority & Guardianship Act etc., both during the British times and post-independence of India, but none was framed to set out the

rights, obligations and antecedents of Hindu Deity; hence Hindu Law as known to *Dharma Shastras* continue to apply to Hindu Deities. The Code of Civil Procedure covers a variety of Suits, e.g. relating to persons of *Unsound Mind*, *Minors*, *Corporations, State Agencies* but is <u>*totally silent on Hindu Deities.*</u>. The general provisions of Limitation Act could not over-ride the special & clear Hindu Law found in the *Dharma Shastras* which had ensured the rights of Deity to hold good in perpetuity, without interference by the State (King). Only those provisions of period of limitation laid down by *Dharma Shastras* could be affected by Limitation Act which were modified by any statute law on specific subjects of *Dharma Shastra provisions*; there has never been any statute law governing Hindu Deity & Deity's property including the Temple which is 'His house'*.* The rights of Deities, *Ram Janma Bhumi and Bhagwan Shri Ramlala*, have to be determined **exclusively/solely** on the basis of the Hindu Law as known to *Dharma Shastras* and not *imperfect analogies* drawn from *imperfect comparisons.* In *Bhyah Ram Singh Vs. Bhyah Ujagar Singh*, 13 MIA 373, PC ruled firmly that where there is a text of Hindu Law directly on a point, nothing from any foreign source should be introduced into it, *nor should Courts interpret the text by application to the* ***language of strained analogies*** (p. 41 of *Mukherji*).

6. It is pointed out at pages 67 to 69 of Mulla's "Principles of Hindu Law" that in a very early decision (4 MIA 97-98) Privy Council conceded that <u>*'it is quite impossible for us*</u> to feel any confidence in our opinion..........founded upon authorities (Hindu *Dharmashastras*) to which we have access only through translations, and when the doctrines themselves, and the reasons by which they are supported or impugned, are drawn from religious traditions, ancient usages and more modern habits of Hindoos, with which we cannot be familiar". These suits are very different from any litigation which figured in the past; they are admittedly of National importance and must be dealt with on a thorough scrutiny of what the true law is. With the adoption of Constitution of India, with promises contained in Articles 13, 14 and Preamble, the decisions of PC have only

'persuasive' rather than 'binding' effect: *See* 1968 SC 1165, *Nair Service Society Vs. K.C.Alexandar.* Full effect must be given to Hindu *Dharmashastras*, specially in the light of Oudh Laws Act in these cases.

7. Preamble to Oudh Laws Act of 1876, "declares and amends the laws to be administered in Oudh" and only in Oudh (Section1). So far as it goes, therefore, it is *exhaustive* of the Laws which the Courts of Oudh must apply in matters covered by the Act. This position continues even today by virtue of Article 372(1) of the Constitution of India. Section 3(b)(1) lays down what laws are to be applied in questions regarding 'any religious usage or institution, and requires the Courts to apply "any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, or has not been by this or any other enactment, altered or abolished and has not been declared to be void by any competent authority". Section 3(b)(2) requires to apply "the Muhammadan law in cases where parties are Muhammadans, and the Hindu law in cases where parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to". Reading the two clauses together, the Section sets out the laws which must be applied to '*parties concerned*'. In rights/obligations concerning Muhammadans, the Muslim law must be applied; in those concerning Hindus, the Hindu Law must be applied and after determination of those rights/obligations, if rights/equities have to be judged between Muhammedans and Hindus, then Equity, Justice and Good Conscience have to be applied for determination of the 'Relief'. Section 3(f) requires to apply ".......all enactments for the time being in force and expressly, or by necessary implication, applying to .... Oudh or some part of Oudh". This demands that the Statute Law in force for the time being must be applied. It would be appreciated that this provision itself is *Statutory,* so that the provision makes the Hindu/Mohammedan Law, so to say, to be a Statutory Law akin to '*referential legislation*'*.* Instead of incorporating specific provisions of Hindu/Mohammedan Law into the Oudh Laws Act,

it simply requires those laws to be applied, wherever they may be found. In the case of *Bajya Vs. Gopikabai,* 1978 SC 793, two categories of referential incorporation are recognised: (1) provision of another Statute is incorporated and (2) the 'law concerning a particular subject as a genus' is incorporated; in case (2), the legislative intent is to include all subsequent amendments made from time to time in the general law on the adopted subject. Oudh Laws Act belongs to 2nd category; the important point is that there has never been any legislation on Hindu Deities, hence the original *Dharmashastra* law continues to apply.

8. Section 3(g) requires that "in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience". Section 4 says that "all local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience........" Simply put, the provision accords primacy to 'personal law' (subject to any other law for the time being in force) and applies justice, equity and good conscience only when there is no personal law and that although local custom shall be deemed to be valid, yet Custom will have to stand the test of justice, equity and good conscience. Fundamentally, therefore, Hindu Law has to be applied on the rights/property and incidental matters concerning Hindu Deity and Temples unless such law has been modified by any statute or Custom; no such statute was ever enacted and no case of any modifying Custom ever arose in these cases.

9. However, Section 16 of Oudh Laws Act lays down the "Rule of Limitation" and applies Act XIV of 1859 to Oudh with effect from 4.7.1862. Act XIV of 1859 provided for one uniform law of limitation for all Courts in British India, but had not provided for extinction or acquisition of rights/title on the basis of possession. Section 16 of Oudh Laws Act goes no further. Even so, Section 3(f) mentioned that "all enactments for the time being in force and expressly or by necessary implication applying to the territories.......of Oudh or some part of Oudh"

will be applied by the Courts; Limitation Act of 1871 could fall within this category but for its exclusion as shall appear shortly. Extinction/acquisition of rights came to be provided for the first time by Sections 27 to 29 of Limitation Act IX of 1871 (vide page 8 of Vol. 1 of "Obhrai's Limitation and Prescription" on Limitation Act IX of 1908 published by Eastern Law House, Lahore and page 7 of Vol. 1 of Sanjiva Row's "Limitation Act 1963" Edn 1987 published by Law Book Co, Allahabad). Since the substantive rights of Deity under Hindu Law clearly provided that its rights are perpetual and cannot be extinguished under any circumstance, it must be treated to be a Statute Law under the Oudh Laws Act; it has only to be found out whether the provision for extinction under Act IX of 1871 is such as falls within the restrictive clauses of Section 3(b)(2) of the Oudh Laws Act. The only restrictive stipulation in that clause is: "except insofar as *such* *law* has been, by this or any other enactment, *altered or abolished*". Firstly, an Act of 1871 cannot *alter or abolish* any provision of 1876 Act. It is also significant that although Limitation Act 1871, which had provided for extinction/acquisition of ownership right on the basis of possession, was already on the Statute Book when Oudh Laws Act was enacted 4 years later and gave Statutory status to Hindu Law by 'referential legislation', Oudh Laws Act did not make a specific provision to curtail the *substantive right* of the Deity under Hindu Law. Secondly, the provision of 'altering/abolishing' enactment must alter or abolish *the Hindu Law*, it is not enough to provide for alteration/abolition of rights 'generally.' Limitation Acts of 1877 and 1908 similarly contained provison for extinction of rights similar to Act of 1871, which is not enough to alter or abolish the Hindu Law regarding *Hindu Deities.* The Hindu Law of Deities and law of limitation under these enactments need to be harmoniously construed. In this exercise, the procedure provided in a Statute for enforcement of substantive rights conferred thereby should be construed as far as possible so as to give effect to and not nullify those rights: 1941 Mad 158, *Palani Goundan Vs. Peria Gounden.* Procedural enactments should be construed in such a manner as to render the enforcement of substantive rights effective: 1959 SC 422 (426), *Velluswami Vs. Raj Nainar;* 1989 SC 2206, *M.V.Vali Press Vs. Fernandee Lopez.* Finally, stipulations of Hindu Law regarding Deity, recognised by Section 3(b)(2) of Oudh Laws Act are 'particular' and 'special'; they shall over-ride the 'general' stipulation of Limitation Acts. There is no essential Jurisprudential or Constitutional requirement that for every right/remedy a period of limitation must be enacted; more so in respect of Hindu Deity which is conceived of by Hindu *Dharmashastra Law* as Immortal, Indefeasible, Timeless, Omnipresent & Eternal. After all, Transfer of Property Act or Indian Trusts Act admittedly does not apply to Hindu Deity. Hence, provisions of extinguishing rights under any of the Limitation Acts would be ineffective over the perpetual rights of Deity under Hindu Law. Here, notice may be taken of *Manu's edict* no. 200 of Chapter 8 (at page 174 of "The Laws of Manu", Penguin Classics, Edn 2000) which lays down: 'If a man is seen to be making use of something, but no title at all is to be seen, then the title is the proof (of ownership), not the use; this is a fixed rule'. Thus, according to Hindu Law, 'title' not 'possession' establishes ownership and that concept cannot be disturbed summarily through vague interpretations of general provisions relating to Limitation.

10. Same result seems to flow from the principle of <u>*Reading Down*</u> a general provision in the context of the law as a whole, vide *All Saints High School* Vs. *Govt of A.P*. (1980) 2 SCC 478 para 112. Since the plain meaning of Section 3(b)(2) of Oudh Laws Act specifically confines the laws of Hindu religious institutions to the Hindu Personal Law, i.e., the *Dharmashastra Law*, which unmistakably confers absolute perpetual and indefeasible rights on Deity and His property, a mere general provision that the law of limitation would apply to any suit instituted in respect of 'any' property which may also include Deity and/or His property, thereby denying right of suit after expiry of a certain period of limitation will have to be '*Read Down*' to prevent deprivation of Deity's clear perpetual rights.

Sri M.M Pandey, Advocate, further submitted that *Ram Janmabhumi* continued to exist as a Swayambhu Deity, owning Itself and the Temple, hence no question of extinction of title by Limitation or dispossession could arise. The important aspect of Hindu Law relating to Deities, thus, is that the Deity is never divested of its rights in its property; in the case of self-revealed Idol, coupled with the faith of its followers, there is no independent consecration and the real owner of the property dedicated to a Temple, is deemed to be God Himself represented through a particular Idol or Deity which is merely a symbol: *Gokulnath ji Maharaj* Vs.*Nathji Bhogilal,* 1953 All 552. Alternatively, from the angle of Limitation Act, since the Deity who is the owner of the property, *suffers from physical disability, its interests have to be looked after* ***in perpetuity****, Manathu Naitha Desikar* Vs. *Sundarlingam* 1971 Mad 1(FB – para 20). In a bunch of WPs, decided by a DB of Rajasthan High Court, *Ram Lal & another Vs. Board of Revenue & Others,* 1990 (1) RLR 161, the DB held in para 8: 'It will not be out of place here to mention that there are series of judgments of Hon'ble Supreme Court and the Hon'ble Supreme Court has held that the Deity or Idol should ordinarily be considered as minor in perpetuity'. In para 10, the High Court again said: 'For the reasons mentioned above, we are of the view that the deity/idol should be treated as a minor in perpetuity.........When the offerings are offered to the deity, the offerings become the property of the deity and not of the temple. Deity owns the offerings and the Pujari or the Shebait shall not be the owner of the offerings and the property of the deity'. This decision was followed in *Temple of Thakurji Vs. State of Rajasthan & others,* 1998 Raj 85 (para 11). These decisions also laid emphasis on the obligation of the State to protect the interests of the Deity as a perpetual minor. In *Sri Banamali Neogi & others Vs. Sri Asoke Kumar Chattopadhyayay & others,* 96 CWN 886 (para 10), Calcutta High Court held Deity to be a perpetual minor. Similarly, in *Trilochan Das Adhikari & another Vs. Simanchal Rath & others,* 1994(II) OLR 602, Orissa High Court held Deity to be perpetual minor. In foot-note (j) at page 12 of *Mulla's Principles of Hindu Law*, it is stated that grounds of disability were recognised in Hindu Law, for instance *there was exemption from limitation in case of minors, property of King and deposits involving the element of Trust*;

obviously, dedication to Deity involves "Trust"; Indian Trusts Act does not apply, vide Section 1 of the Act. In *Bishwanath Vs. Radha Ballabh ji*, 1967 SC 1044, it was held that an Idol is in the position of a minor and when the person representing it leaves it in a lurch, a *person interested in the* ***worship*** *can certainly be clothed with an adhoc power of representation to protect its interests.*

11. According to *Katyayana,* Temple property is never lost even if it is enjoyed by strangers for hundreds of years (P.V.Kane Volume III page 327-328); even the king cannot deprive temples of their properties (*see* para 43 above). In *Ramareddy Vs. Ranga (*1925 ILR 49 Mad 543) it is held that managers and even purchasers from them for consideration could never hold the endowed properties adversely to the Deity and there could be never adverse possession leading to acquisition of title in such cases. The Idol/Deity which is an embodiment of Supreme God and is a Juristic Person, represents the 'Infinite – the Timeless' cannot be confined by the shackles of Time. *Brihadaranakya Upanishad* (referred to in Mulla's Principles of Hindu Law at page 8) lays down: *Om Purnam adah, purnam idam, purnat purnam udachyate; purnasaya purnam adaya, purnam evavasisyate* ['That is Full, this is Full. From the Full does the Full proceed. After the coming of the Full from the Full, the Full alone remains' – at page (v) of *Brihadaranyaka Upanishad by Krishnanand, pubished by the Divine Life Society, P.O. Shivananadanagar, District Tehri-Garhwal UP- 1984 Edn.*] In *Mahant Ram Saroop Das Ji Vs. S.P.Sahi, Special Officer-in-charge of Hindu Religious Trusts,* 1959 SC 951 (para10), it recognised that "a Deity is immortal and it is difficult to visualise that a Hindu private *debutter* will fail .... Even if the Idol gets broken, or is lost or is stolen, another image may be consecrated, and it cannot be said that the original object has ceased to exist". In *Idol of Thakurji Govind Deoji Maharaj Jaipur Vs. Board of Revenue Rajasthan, Jaipur,* 1965 SC 906 (para 6), it is laid down: "An Idol which is juridical person is not subject to death because the Hindu concept is that the Idol lives for ever ......" Timelessness, thus, abounding in the Hindu

Deity, there cannot be any question of the Deity losing its rights by lapse of time. Jurisprudentially also, there seems to be no essential impediment in a provision which protects the property rights of disabled persons, like a Deity, to remain outside the vicissitudes of human frailties for ensuring permanent sustenance to it and therefore to keep it out of reach of human beings, including the King. Every law is designed to serve some social purpose; the vesting of rights in Deity, which serve the social purpose indicated above since ancient times, is quite in order to serve social good (See Para 43).

12. A significant recent decision of English Courts has recognised the concept of Hindu Idol's disability and representation by 'next friend', namely (1991) 4 All E.R. 638, *Bumper Development Corporation Ltd Vs. Commissioner of Police of the Metropolis & Others (including Union of India and other Indian Parties)*; a decision rendered by the Trial Court was upheld by Court of Appeal and House Lords refused Leave to Appeal against CA decision, popularly known as *Nataraj Case.* In Tamil Nadu, near a 12th Century Temple which had laid in ruins since 13th Century, (called *Pathur Temple*), and remained un-worshipped since centuries (at pages 643 & 640), a bronze Hindu Idol, known as *Siva Nataraj*, was found by a labourer, Ramamoorthi, in 1976 during excavation of the ruins. The Nataraj Idol was sold through several hands and ultimately reached London market; criminal investigation for offence of theft of Idol was started and London Metropolitan Police seized it. *Bumper Development Corporation* laid claim to it as purchaser and sued for its possession and damages. Several *other* Claimants were impleaded to the suit: these included Union of India, State of Tamil Nadu, Thiru Sadagopan (Claimant No 3) as "*the fit person*" *of the Temple* and Temple itself (Claimant No. 4) through Claimant No3. (The concept of "fit person" is same as "Next Friend" at page 643). During pendency of the proceedings, a Sivalingam (which too was found buried in the ruins of the Temple) was reinstated as an object of worship at the site of the Temple. The Trial Judge, relying upon B.K.Mukherjea's Hindu Law of Religious and

Charitable Trusts (page 646 of Report) held that Claimant No4 (Temple) suing through Claimant No. 3 as 'fit person, or custodian or next friend' (page 643 of Report) had proved his title superior to that of *Bumper* and 'the pious intention of 12th Century notable who gave the land and built the Pathur Temple *remained in being* and was personified by the Sivalingam of the Temple which itself had a title superior to that of *Bumper*'. The Court of Appeal upheld the finding of the Trial Court Judge that under Hindu Law, the *Temple was a juristic entity* and Claimant No. 3 (next friend Thiru Sadagopan) had the right to sue and be sued on behalf of the Temple. The right of the Temple through the Next Friend to possess the *Nataraj Idol* was upheld (page 648 of Report); House of Lords refused Leave to Appeal (page 649 of Report). This 20th Century decision of English Courts has striking similarity with the present Ram Janmabhumi case: 12th Century Temple remained in ruins & un-worshipped through centuries (in our case it was 11th-12th Century Vishnu-Hari Temple which was demolished in 1528 and Babri Mosque, DS was erected at its place, so that the Temple/Deity 'remained in ruins with existing foundations'). During the pendency of *Bumper Development Corporation* case, a Shivalingam, found buried in the ruins of the Temple was 'reinstated'. In our case, ASI found an ancient 'Circular Shrine' embedded in disputed area, DS was destroyed on 6.12.1992, and at its place a make-shift Temple was erected at Ram Janma Bhumi with Bhagwan Shri Ramlala installed in it; so both Deities Plffs 1 & 2 of OOS 5 of 1989 got into position. In *Bumper* case, the 'pious intention of 12th Century' dedication was held by the Trial Court '*to remain in being*' as personified by the Sivalingam of the Temple, a juristic entity, which was represented by 'Next Friend. The same concept is laid down in the case of *Adangi Nageswara Rao Vs. Sri Ankamma Devatha Temple,* 1973 Andhra Weekly Reporter 379 (paras 6 & 8 – *see para 36 of these Arguments*). So also, in our case, Vishnu-Hari Temple of 11th-12th Century must be deemed 'to remain in being' on erection of make-shift Temple coupled with Circular Shrine and the Deity/Temple – Plaintiffs 1 & 2 must be held to be duly represented through

Plaintiff No. 3 in OOS 5 of 1989 as Next Friend.

13. As mentioned earlier, a Hindu Deity *is a Class by itself* (See Para 40), there is no exact analogy or parallel. Its affairs are managed by a *Shebait*, but the Shebait is neither owner nor trustee of the Deity or its property as known to Indian Trusts Act (Section 1). 'Beneficiary' of the dedication (actual or assumed) is the Deity and every *Worshipper/Devotee;* the latter has interest enough to force the Shebait to perform his functions duly even through a Court action, if necessary. Supreme Court has held in the case of *Bishwanath Vs. Sri Thakur Radha Ballabhji* (1967 SC 1044) that *worshippers* of an Idol are its beneficiaries, though only in a spiritual sense, and persons who go in only for the purpose of devotion have, *according to Hindu Law and religion,* a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage; it goes on to say: "That is why decisions have permitted a worshipper in such circumstances to represent the Idol and *to recover the property for the Idol*". It is the duty of the State (King) to protect the Deity and its property – a shade of this duty is found in Section 92 CPC. [In para 40 of *Guruvayur Devasom Managing Committee Vs. C.K.Rajan,* 2004 SC 561, the Supreme Court has held, "In any event, as a Hindu Temple is a juristic person, the very fact that *S. 92 of the Code of Civil Procedure, seeks to protect the same,* for the self-same purpose, Arts. 226 and 32 could also be taken recourse to."] Shebait cannot alienate the property of the Deity. In *Thyrammal* Vs.*Kanakammal* (2005) 1 SCC 457 (para 15,16 & 17), the Supreme Court has held that a religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose *for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use* ***is itself raised to the category of a Juristic Person and such a property vests in the property itself as a Juristic Person***. This special legal status *squarely applies to Asthan Ram Janma Bhumi,* Plaintiff No.2 in OOS 5 of 1989; the spot where Ram was born, and all properties

appurtenant thereto belong to and vest in the spot itself as juristic person. In *Acharya Maharaishi Narendra Prasad ji Vs. State of Gujarat,* (1975) 1 SCC 2098 (para 26), while upholding the right of State to acquire the property of Deity under Article 31 of the Constitution, laid down an exception by holding: "*If on the other hand, acquisition of property of religious denominations by the State can be proved to be such as to destroy or completely negative its right to own or acquire movable and immovable property for even the survival of a religious institution, the question may have to be examined in a different light*". This dictum was reaffirmed by SC in *Ismail Farooqui's case*, 1995 SC 605 (para 79); it was further held in para 77: "The protection under Article 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion"; the law stated in para 78 is: "While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential part of such religious practice *unless the place has a particular significance for that religion so as to form an essential or integral part thereof.* Places of worship of any religion having particular significance for the religion, **stand on a different footing and have to be treated differently and more reverentially**". This decision of the Supreme Court is *in this very case and has to be respected fully.* In the summary contained in para 82, the Supreme Court observed: "*Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger public purpose* ***keeping in view that such acquisition should not result in extinction of the right to practice the religion, if the significance of that be such***". Undoubtedly, *Asthan Ram Janma Bhumi* , Plaintiff No. 2 of OOS 5 of 1989, belongs to this very category of Deity – *Class entirely by itself*; hence the State can not acquire either the Deity or its property.

14. Oudh Laws Act has laid emphasis on application of principles of equity, justice and good conscience; but it is necessary to appreciate in what fields or areas, the Act requires

those principles to be applied. Clause (g) of Section 3, lays down the broad principle that "in cases not provided for by the former part of this section or by any other law for the time being in force", Court has to act in accordance with justice, equity and good conscience. Section 3(b)(2) clearly stipulates that in matters relating to Hindu religious institutions, the Hindu Law shall apply; hence Clause (g) will not apply. Justice, equity and good conscience is made applicable to 'Custom' under Section 3(b)(1), but the law regarding Deity is part of 'personal law' under Section 3(b)(2) as distinguished from 'customary law'. *Mulla* mentions at page 65, that principles of Equity, Justice & Good Conscience were invoked *only in cases for which no specific rules existed.* In *Gurunath Vs.Kamalabai* 1955 S.C. 206, it has been held that *in the absence of any clear Shastric text,* Courts have authority to decide on principles of justice, equity and good conscience.

15. It is a settled principle that 'Equity' follows 'Law', i.e. where Law is applicable, considerations of Equity do not come into play (vide, Halsbury's Laws of England 4th Edn, Vol 16, para 1204). Since Hindu Law specifically prescribes that the rights of Deity are not destroyed by another's possession howsoever long, 'equity' cannot be applied to deprive the rights of Deity on the basis of possession.

16. On facts in these cases, justice, equity and good conscience are in favour of Plaintiffs of OOS 5 of 1989 rather than Plaintiffs of OOS 4 of 1989. In para 1204 of Halsbury's Laws of England (*supra*) it is stated that 'equity implies a system of law which is more consonant than the ordinary law with opinions current for the time being as to just regulation of mutual rights and duties of men living in a civilised society. When Babar became Emperor as a conqueror and did not frame any law governing Hindu Deities/Temples, the Hindu Law prevailing at that time had to be applied by him as indicated above.

17. In general, when the word 'conscience' was used, this denoted the conscience of the Defdt., and the Court by decree *in personam* prevented him making an *unconscionable use* of

his rights at common law. The correction of Defendant's conscience was the ground of the interference of equity in case of fraud, breach of trust and '*wrong and oppression generally* (Ft.Note 1, HLE *Supra*). The special imperfections of medieval common law, as to its administration were that its judgments were not capable of being adapted to *meet special circumstances* or were *turned into a means of oppression*. The Court of Chancery, in so far as it remedied these defects, afforded an improved system of attaining justice, but this was the difference between law and equity. Law and equity have both the same end, which is to do right. Where it differed from the law, this was in order to moderate its rigour, to supply its omissions, to assist the legal remedy, or to relieve against the evasion of the law or *the abuse of legal rights*; it supplied its omissions *by exacting conscientious conduct from the defendant* when the law recognised no binding obligation (Ft. Note 3, HLE *Supra*). Babar could not be permitted, in equity or good conscience, arbitrarily to deprive the Deity of its rights and possession at the DA. (*See* also paras 50, 51 and 52 of these Arguments).

18. An application of these principles of equity to the present suits, entitles the Plaintiffs of OOS 5 of 1989 to the relief sought. The pith and substance of the plaint case in OOS 5 of 1989 is that DS/DA is the birthplace of Bhagwan Shri Ram, that before Babar's invasion, a *Temple* stood there, that worship of the birthplace and the temple by Hindu public had been going on since ancient/immemorial time, that the temple was destroyed by the hordes of Babar and at its site Babri Masjid was constructed, that a structure raised by force of arms on Deities' land after destroying their temple, could not be treated to be a legal/valid mosque according to *Islam,* and the *Quran* as shown above. In view of this command of Quran, conversion of Temple into Mosque did not create a valid dedication of the property to *Allah* in fact or in law (para 24 of Plaint). In reply to these pleadings, Sunni Central Boards of Wakf, Defdt. No 4, stated (in para 24 of WS) that the quotation of Quran was 'out of context', 'not correct' 'nor complete'; but SB *did not set out*

any context, nor the 'correct' or 'complete' quotation in WS or anywhere in evidence. Regarding Plaintiff's case of failed dedication to *Allah*, the reply is that Babar was the Emperor, "*the vacant land on which the Babri Masjid was built lay in the State territory and did not belong to anyone and it could very well be used for the purpose of the Mosque and specially so when the Emperor himself consented and gave approval for construction of the said Mosque*". This is incorrect. Babar never became Emperor – See Para 33A. The land was a Hindu Deity as birthplace of Bhagwan Shree Ram, hence was owned by the Deity, whose Temple was standing thereat, as Deity's *House in possession* of Bhagwan Shree Ram; therefore it could not vest in the Conqueror/Emperor. As conqueror, it was Babar's duty to protect the birthplace/temple. A significant fact stated by Supreme Court in *Ismail Farooqui's case,* (1994) 6 SCC 360 (para 11) is that in the *White Paper* (Chapter II, para 2.8) of the Central Government preceding the Acquisition of Certain Areas at Ayodhya Ordinance No. 8 of 1993, re-enacted as Central Act No. 33 of 1993, Muslim leaders had stated that if it was proved that a Hindu Temple had existed on the site of the Disputed Structure and was demolished on Babar's orders for construction of Babri Masjid, the Muslims would voluntarily hand over the disputed shrine to Hindus. It is also important that according to para 4 of the Supreme Court Judgment, the Acquisition "Bill was introduced in the Parliament leading to the above enactment and the said Reference to this Court *was made in the historical background set out in the White paper*". The legal effect is that since these facts stand proved, the Central Govt. itself would be *estopped* from denying the remedy sought by the Plaintiffs in OOS 5 of 1989, and would have to *feed the estoppel by grant* by the equitable doctrine of *Estoppel*, vide, *Renu Devi V. Mahendra Singh & Others* (2003)10 SCC 200.

19. Further, these very established facts would amount to "*wrong and oppression*" and "*unconscionable use*" of his rights as Emperor, if at all, in as much as he violated settled Usage/Custom of Hindu Community which Babar was bound to

protect as 'conqueror' enjoined by Hindu Law (the Law of the '*Subject*"). In the case of *S. Darshan Lal Vs. Dr. R.S.S Dalliwall,* 1952 All 825 (DB), it is stated in para 16: "In an inhabited country, obtained by conquest or cessation, law already prevailing therein continues to prevail except to the extent English Law has been introduced, and also except to the extent to which such law is not civilised law at all.........." Earlier, PC had ruled in *Mosque known as Masjid Shahidganj Vs. Shiromani Gurdwara Parbandhak Committee,* 1940 PC 116 at page 120, 'There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property'. It also constituted violation of injunctions of Babar's own religion contained in the Quran, and equity would require Babar to purge his own conscience of the 'wrong, oppression, and violation of Holy Laws of his own Subjects and those of his own religion'. Similar equities would prevail between the present parties to these suits in as much as 'wrongs' committed by Babar, could not become 'right' by mere lapse of time, and would continue to be wrongs even today. The 'general law' of extinction of rights contained in the Limitation Act is not enough to over-ride the substantive rights of the Deity under 'special' Hindu Law; no law of limitation can apply to the rights and property of Deity as discussed earlier.

As an independent special Class of person, there is no constitutional impropriety or illegality in having laws exclusively applicable to the Plaintiff-Deities of OOS 5 of 1989. A recent analogy is provided by The Public Waqfs (Extension) of Limitation Act, 1959 which accords a privilege to all the Muslim Public Waqfs in the period of limitation for certain types of civil suits upto 31st day of December 1970 for the only reason that in the wake of the partition of India Mutawallis of certain properties had migrated to Pakistan or those who stayed behind could not institute civil proceedings for recovery of possession of these properties. On this basis limitation has been extended in respect of all Public Waqfs. Similarly, laws exclusively applicable to Hindu deities could be had and read in the light of Oudh Laws Act, 1876, could apply the Hindu *Dharma Shastra Law*, which contains *substantive as well as provisions relating to Limitation qua Hindu Deities.* The legal position under the Hindu *Dharma Shastra Law* being as the one indicated above, destruction of Hindu Temple at the site of DS or erection of Babri Masjid over it could never deprive the two Deities, *Ram Janma Bhumi & Bhagwan Shri Ramlala* of their ownership of the disputed property/area; the Indian Law of Limitation is not applicable at all. Decision of Supreme Court in *Shah Bano*'s *case* was upset by the Parliament on the ground of sensitivities of Muslim Community for Muslim Personal Law. Muslim Personal Law (*Shariat*) Application Act, 1937 was framed to apply personal law to Muslims. Sensitivities of Muslims stand even today in the way of adoption of a Common Civil Code for India envisaged by Article 44 of Directive Principles of State Policy in our Constitution. The Constitutional protection, if any, for such laws should also support special laws in the case of Hindu Deity, on principles of equality, particularly in view of Oudh Laws Act 1876 and Article 372(1) of the Constitution.

On behalf of the defendants only this much has been said that plaintiff nos. 1 and 2 are not the deities. They are not infants. The suit for limitation has been filed beyond limitation and Section 6 of Limitation Act does not come in operation in this case. Accordingly the suit is liable to be dismissed being barred by limitation. In this regard.

At the cost of repetition, I would crave to refer that while deciding issue nos. 1 and 2 I have given findings that plaintiff nos. 1 and 2 are juridical persons. I have already referred extracts of Hindu Law on Religious and Charitable Trust on the point of Hindu idols, the deity and religious faith. In this regard certain cases have also been referred to establish that Asthan and Chabutra and deities,the plaintiffs (no. 1 and 2) are juristic persons and they will be deemed under the law law as child and for the reasons that deity is a child. It is not disputed that in view of the decision, referred to above, the idols are minors. Thus, I am referring the finding on issue nos. 1,2 and 6 for the sake of brevity. Thus, in view of the findings of this Court on issue nos. 1,2 and 6, plaintiff nos. 1 and 2 are the juridical persons.

I agree with the view of Sri Ravi Shanker and Sri Bhat Senior Advocates that no limitation runs against deities which are perpetual minors. In this context, I have also to add that the deities are perpetual infants and Hindu idol being juridical person is capable of holding properties. Thus, the benefit of Section 6 of Limitation Act is all the time available to minors I.,e, deities in this case. They are considered to be under disability . Under Section 6 of the Limitation Act the ground for extension of limitation are minority, lunacy, and idiocy of the person . In the instant case plaintiff nos. 1 and 2 will be deemed to be disable on account of of their minority. Even in England church has been regarded as under age. Right from 1903 to 1967 and thereafter also the Indian Courts have always treated idols as infants perpetually. In this regard decision of Hon'ble the apex court in AIR 1967 S.C. Page 1044 Bishwanath and another Vs. Shri Thakur Radhaballabhji and others which has considered the earlier decisions of Privy Council and different High Court of this country held that an idol is in a position of minor. Consequently, in view of Section 6 of Limitation Act for the purpose of Limitation Act provisions of Section 6 would be made applicable. In this case benefit of Section 6 is not limited to the period after the cessation of the disability but applies also to the period during which disability exists. The plaintiff can only sue through next friend . During the continuance of the disability whether the period of limitation expired or not, Section 6 applies to every minor including the deities. It is a settled proposition of law that a person entitled to bring the suit can claim benefit of Section 6. The plaintiffs have claimed this benefit. Section 6 of the Limitation Act prescribes that the plaintiff or applicant must be under the disability on the date from which the period of limitation is reckoned. In this case the defendants have not pointed out and have not opposed the claim of deities,i,e, plaintiff nos. 1 and 2 that they were not under the disability. Once it is proved that plaintiffs no. 1 and 2 are the deities, they are required to sue on behalf of the next friend either he may be Shebait or worshipper vide AIR 1967 Supreme Court 1044 Bishwanath and another Vs. Shri Thakur Radabhallabhji and others . Accordingly the worshipper P.W.3 , the next friend filed the suit on behalf of the deities. Thus, the disability is starting point of limitation. In this regard it would also be expedient to mention as a general rule the infancy is a personal privilege of which no one can take advantage but the infants themselves**.** In this context **AIR 1956 MADRAS 15 (V. 43 C. 6 JAN.), Thayammal vs. Rangaswami Reddy and others,para 9 i**s reproduced as under;

"It is well established that the special provision of Section 6, Limitation Act confers a purely personal exemption on a certain class of persons, and the exemption as such cannot be taken advantage of by the transferee from the person under disability. It is sufficient to refer to two of the leading authorities, the decision of the Full Bench of the Calcutta High Court in – 'Rudra Kant Surma Sircar vs. Nobo Kishore Surma Biswas', 9 Cal. 663 (FB) (A), and the decision of our Court in – 'Rangaswami Chetti vs. Thangavelu Chetti, AIR 1919 Mad 317 (B).”

Further **AIR 1962 PATNA 182 (V. 49 C 43), Lalji Sah & Others Vs. Sat Narain Bhagat & Others** Para 22 is reproduced as under. This view is based on the decision of Privy Council.

“This section provides that the period of limitation prescribed for a person who does not suffer from any legal disability shall be computed in the case of a minor, from the date of cessation of his minority : see Batuk Prasad vs. Rudra Das, AIR 1950 Pat 206. It is also well settled that the privilege given to a minor under this section is not one that could be availed of by him only, but while the minor's disability lasts his guardian or next friend also can bring a suit or make an application though the ordinary period of limitation for such a suit or application has run out (see Phoolbas Koonwar vs. Lala Jogeshwar Sahay, ILR 1 Cal 226 (PC): Khodabux vs. Budree Narain Singh, ILR 7 Cal 137; Jagadindra Nath Roy vs. Hementa Kumari Devi, ILR 32 Cal 129 (PC) and Satyendra Narain Sinha vs. Pitamber Singh, AIR 1938 Pat 92). Hence the plea of limitation fails.”

AIR 1971 MADRAS 1 (V 58 C 1), K. Manathunainatha Desikar Vs. Sundaralingam (Minor represented by his next friend M. Swaminathan) & Ors. Para 20 is reproduced as under:-

“The founder, when the dedication is complete divests himself of all proprietary rights in the property endowed. The deity, a juristic entity, is the proprietor who never dies but labours under physical disability which renders it necessary that its interests should be looked after in perpetuity. As a concomitant a power has been recognised in the founder to appoint and provide for a manager to look after the affairs of the deity which has become the owner of the property. The office which he creates for attending to the affairs of the deity is a thing of his own creation and if it is bare office without perquisites, there is no property in it in the Hindu law sense of the term. There is one observation of their Lordships of the Judicial Committee in Tagore case, 1872-73 Ind App. Supp. Vol.47, which is significant in this context. They stated:-

“The power of parting with property once acquired, so as to confer the same property upon another, must take effect either by inheritance or transfer, each according to law.”

On the basis of the aforesaid proposition of law the deities are entitled to the benefit of Section 6 by their next friend in this case and the suit will not be deemed to be barred by limitation.

Personal privilege given to the minor under Section 6 of Limitation Act has been availed in this case by the next friend, plaintiff no. 3. I further find that the defendants have failed to point out any circumstance under which the benefit of Section 6 should not be given to plaintiff nos. 1 and 2.

Hon'ble the apex court in Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others AIR 1967 S.C. 1044 recognized the rights of a worshipper and a person interested in the worship of idol was found to be clothed with an ad hoc power of representation to protect its interest. Thus, plaintiff no. 3 has come out with a case that as per trust deed the worshippers have decided in the interest of worship of idol to remove the disability of the idols as there is dereliction of deities by the person responsible not managing the affairs of the idols in their interest. Consequently, in view of the decision of the apex court in AIR 1967 SC 1044 (Supra) referred to above even this Court is competent to appoint a next friend to look after the interest of plaintiff nos. 1 and 2 by appointing next friend to safeguard the interest of the deity as some human being is required to represent the deity before the court of law. Thus, definitely plaintiff nos. 1 and 2 , the deities,the idol in person have properly been represented by next friend, plaintiff no.3 and plaintiff nos. 1 and 2 have proved their disability and sufficient cause of not filing the case within the time and have further proved that their case is not barred by Secretion 6 of the Limitation Act and against them being infants according to the principle of personal privilege the provisions of period of limitation do not apply.

To sum up I hold that plaintiff nos. 1 and 2 are infant juridical persons and they are entitled for the benefit of Section 6 of the Limitation Act. Accordingly the suit is not barred by limitation.

Issue no. 13 is decided in favour of the plaintiffs and against defendants.

ISSUE NO. 30

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

FINDINGS

In view of my findings on issues nos. 1 to 29, it transpires that in leading O.O.S. No. 4 of 1989 and also in this case it is manifestly established by public record, gazetteers, history accounts and oral evidence that the premises, in dispute, is the place where Lord Ram was born as son of Emperor Dashrath of solar dynasty. According to the traditions and faith of devotees of Lord Ram, the place where

He manifested Himself has ever been called as Sri Ram Janmbhumi by all and sundry through ages. Thus, the Asthan, Ram Janmbhumi, plaintiff no. 2 has been an object of worship as a deity by the devotees of Lord Ram as it personifies the spirit of divine worshipped in the form of Ram Lala or Lord Ram, the child. I have already observed that Ram Janmbhumi is also a deity and a juridical person. I am also of the opinion that the Hindus worship the divine place in the form of an incarnation and, therefore adopt the form of incarnation as their Ishtdeo. The Hindus can mediate upon the formless and shapeless divine, I,e, plaintiff no. 2. The spirit of Divine is indestructible. Birth place is sacred place for Hindus and Lord Ram, who is said to be incarnation of God, was born at this place.The Hindus since times immemorial and for many generations constantly hold in great esteem and reverence the Ram Janmbhumi where they believe that Lord Ram was born. It is established by tradition and classical legal literature relating to the Hindus and according to their belief and faith that the place is regarded as a deity. This place, according to Hindu religion is symbol and embodiment of spiritual purpose and the property is dedicated and vested with plaintiff no. 2. This place being worshipped as idol from times immemorial and dedicated property vests in idol as juristic person. According to the religious customs of Hindus and recognition established by courts of law, plaintiff no. 1 is a juristic entity and it has juridical status. Its interests are attended by the person ,i.e, next friend. According to the Smirit, if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity and properties vested in the lost or mutilated idol becomes vested in the substituted deity .Thus, the place according to the Smirit have to be considered as a deity like Agni and Vayu being worshipped. They are shapeless and formless but they attain the divinity. If the public go for worship and consider that there is divine presence then it is temple which has already been held by Hon'ble apex court in 1999(5) **SCC page 50 Ram Janki Deity Vs. State of Bihar.**

In view of the findings referred to above and the assertions in the plaint, the plaintiff no. 2 is the deity and public is going for worship from times immemorial with a feeling of presence of deity divine. Therefore, it is deemed to be a temple. Even if the temple is destroyed, it would not change the character of the deity and the place will remain a juridical person. Nature of Hindu religion is monism. It believes in one supreme being , who manifests Himself in many form. This is the reason why Hindus start adoring in deity.According to Hindu notion, what is worshipped in a temple , it is not stone image or image made of wood. It is the God behind image which is the object of worship. The real owner of the property dedicated to a temple is deemed to be God himself represented through a particular idol or deity which is merely a symbol vide **Gokul Nath Ji Mahraj Vs. Nathji Bhogilal AIR 1953 Allahabad 552.** Thus, after the length of time it is impossible to prove byl affirmative evidence that there was any consecration ever by faith and belief. It is believed that the place is the place which was considered by all time as a deity and is being worshipped like a deity. Accordingly Asthan is personified as the spirit of divine worshipped as the birth place of Ram Lala or Lord Ram as a child . Spirit of divine ever remains present every where at all times for any one to invoke at any shape or form in accordance with his own aspirations .

In view of the aforesaid circumstances, the plaintiffs are entitled for the relief claimed.

Order

Plaintiffs' suit is decreed but with easy costs. It is hereby declared that the entire premises of Sri Ram Janm Bhumi at Ayodhya as described and delineated in annexure nos. 1 and 2 of the plaint belong to the plaintiff nos. 1 and 2, the deities. The defendants are permanently restrained from interfering with, or raising any objection to, or placing any obstruction in the construction of the temple at Ram Janm Bhumi Ayodhya at the site , referred to in the plaint.

(D.V. Sharma)

S.P.Tripathi/Tanveer/Akhilesh
Padam P. Srivastava/Raghvendra