IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. … Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc. … Respondents

AND
OTHER CONNECTED CIVIL APPEALS

NOTE ON TITLE
BY DR. RAJEEV DHAVAN, SENIOR ADVOCATE

ADVOCATE ON RECORD: EJAZ MAQBOOL

NOTE ON TITLE

I. PRELIMINARY

1. The present suits concerning the disputed structure along with the inner and outer courtyard were all filed with different prayers. While Suit 1 was filed solely for claiming right to worship, Suit 3 was filed for '*management & charge*' of the alleged temple. It is only in Suit 4 and Suit 5 that the parties claimed title of the disputed property.

II. PLEADINGS

2. The relevant pleadings are as follows:-

   i. Suit No. 1 of 1989:

      a) The prayer herein was to seek a declaration that the Plaintiff is entitled to worship and darshan of by going near the idols and a permanent injunction restraining the defendants from removing the idols from the disputed structure. *Thus, it can be seen that this suit did not concern the issue of title.* **[See prayer of Suit 1 @ pgs. 5-6/Vol. 72-Pleadings Volume]**

   ii. Suit No. 3 of 1989:

      a) In this suit the prayer was for *"management and charge of the temple"*, however there was a casual statement made that the alleged temple always *belonged* to the Plaintiff- Nirmohi Akhara. *It is submitted that this point has already been answered while replying to Suit 3, and it is reiterated that the use of the word 'belong' in a casual manner does not lead to the conclusion that the same had been used to make a claim of ownership. In any event, the Nirmohi Akhara, claiming as a shebait, cannot assert title in the disputed site as the title always vests in the deity and not in the shebait.* **[See para 2 of the Plaint @ pg. 49 and Para 14(a) @ pg. 53 of Vol. 72 of the Pleadings Volume]**

      b) Further as recorded by the Hon'ble High Court in the Impugned Judgment, the Plaintiffs in Suit 3 have not produced even a single document to show their title and therefore their claim of title *(if any)* was negatived. **[Para 4481-82 @ pg. 2846 of Vol. III of the Impugned Judgment]**

   iii. Suit No. 4 of 1989:

      a) In this suit the following averments in the Plaint are relevant for the issue of title:

- The mosque and the graveyard vest in the Almighty. **(Para 2 of the Plaint @ pg. 86/Vol. 72-Pleadings Volume)**
- On the basis of admission in the 1885 suit, it has been established the building now being claimed by the Hindu Parties to be the temple of Janamasthan, was a mosque and not a temple. **(Para 6F @ pg. 88/Vol. 72-Pleadings Volume)**
- Assuming though not admitting, that at one time there did exist a Hindu Temple as alleged by the Hindu parties, since emperor Babur built a mosque on the site some 433 years ago, the Muslims have perfected their title by adverse possession **(Para 11(a) @ pg. 89/Vol. 72-Pleadings Volume)**
- Since it had already been stated in the Plaint that the title of the mosque vests in the Almighty, it is relevant to note that the mosque being a Sunni Wakf is covered within the supervisory sphere of the Sunni Wakf Board and therefore the Sunni Wakf Board in its suit prayed for a declaration that the disputed site was a public mosque. It was further prayed that the idols and other articles of Hindu worship be removed from the disputed structure and the possession of the disputed site (i.e. the disputed structure alongwith the inner and outer courtyard) be handed over the Plaintiffs. **[Para 24 (a) & (b) @ pg. 93/Vol. 72 – Pleadings Volume]**

iv. <u>Suit No. 5 of 1989:</u>

In this suit it was prayed that a declaration maybe given that the entire suit property belonged to the Plaintiff deities. **[Para 39(A) @ pgs. 258/Vol. 72]**

3. It is relevant to note that the pleadings show that Nirmohi denies existence of any mosque built at the disputed site by either Babur or anywhere else. Equally, some parties have given credibility to the possibility of destruction of the temple by Aurangzeb.
4. At this point it is relevant to stress that no destruction of Mosque has been noted even by the ASI in its report and this has been recorded in the Impugned Judgment at Para 3988 & 3990. **(Pgs. 2445-2446/Vol. II of the Impugned Judgment)**

III. <u>ISSUES</u>

5. The issues arising from this part are as follows:-

❖ Issue No. 1:- Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the Plaintiffs?

- ❖ Issue No. 2:- Whether the Plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?
- ❖ Issue No. 5:- Are the defendants estopped from challenging the character of the property in suit as a waqf under the administration of Plaintiff No. 1 in view of the provision of Section 5(3) of the U.P. Act 13 of 1936?
- ❖ Issue No. 7(c):-Whether in view of the judgment in the said suit (i.e. the 1885 suit), the members of the Hindu Community, including the contesting defendants are estopped from denying the title of the Muslim Community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?
- ❖ Issue No. 7(d):- Whether in the aforesaid suit, the title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit (i.e. 1885 suit)? If so its effect?
- ❖ Issue No. 10:- Whether the Plaintiffs have perfected their rights by adverse possession as alleged in the Plaint?
- ❖ Issue No. 15:- Have the Muslims been in possession of the property in suit from 1528 AD continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?
- ❖ Issue No. 19(a):- Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said deities?

Note: Although, the property vests in the Almighty, a legal vehicle to claim such property vests in the Wakf Board- as a matter of right to claim title and possession.

IV. FINDINGS IN THE IMPUGNED JUDGMENT:-

6. It is submitted that the majority judgment of the Hon'ble High Court proceeded to divide the premises in dispute into three portions – awarding 1/3rd each to the Muslim Parties, Plaintiffs of Suit 5 and Nirmohi Akhara. Justice Khan as well as Justice Agarwal, directed for a three-way partition of the property, while Justice Sharma decreed the entire property in favour of the Plaintiffs of Suit 5.

7. It is submitted that aforementioned three-way division by the Hon'ble High Court was done pursuant to a finding of joint possession.

8. Justice Khan has held that since both parties were in joint possession of the disputed property, and since according to Section 110 of the Evidence Act, title follows possession, both parties were joint title holders of the premises in dispute. **[Pg. 107 & 109 /Vol. I of the Impugned Judgment]**

9. The findings of Justice Sudhir Agarwal are as follows:-

   i. There is no evidence of possession by Muslims of the property in suit. They did not have possession of the outer courtyard at least since 1856-57, when the dividing wall was raised by the British. With respect of the outer courtyard, they could have at best only had a right of passage. **[Pg. 1745 @ para 3107/Vol. II]**

   ii. The possession of the Hindus over the Outer Courtyard was open and to the knowledge of the Muslims, which is evident from the documents of 1858 that the Mutawalli of the mosque in dispute made several complaints, however those structures continued in the said premises and the entry of the Hindus and their worship continued. **[Pg. 1745 @ para 3107/Vol. II]**

   iii. It cannot be said that the Muslims never visited the inner courtyard or no Namaz was offered there till 1949, but that by itself would not constitute 'possession' in law. This was a beneficiary enjoyment by Muslims shouldering with their Hindu brethren and visiting premises within the inner Courtyard worshipping in their own way. **[Pg. 1745 @ para 3108/Vol. II]**

   iv. On one hand there is a claim of the plaintiffs that since regular Namaz used to be held in the mosque, the requisite material like farsh, pitchers, broom etc. should have been recovered by the Receiver, but no such material was found by him, which leads to the inference that no such material existed. This weakens the claim of the Muslims with regard to exclusive possession, in the form of continuous worship. **[Pg. 1745 @ para 3108/Vol. II]**

   v. There was no abandonment by Muslims of the property in dispute. They continued to exercise the claim over it and got its recognition from Britishers in the form of grant. The maintenance of the building to extent of the disputed structure and Partition wall is also evident. The Hindus have not shown anything otherwise. The entry of the Muslims in the inner courtyard for Namaz is also evident. The Hindus and the Muslims both visited the disputed property as worshippers, the only difference was Hindus visited the entire property and the Muslims were confined to the inner courtyard. **[Pg. 1746 @ para 3109/Vol. II]**

   vi. Muslims have failed to prove that the property in Suit 4 was in their possession upto 1949. However, it can be said that the Hindus and Muslims alike were in possession of the inner courtyard, while the possession of the outer courtyard was lost by the Muslim community at least from 1856-57 onwards. **[Pg. 1746 @ para 3110/Vol. II]**

   vii. No question of dispossession of Muslims from outer courtyard since it was not in their possession in 1949 and prior thereto. So far as the inner courtyard is concerned they have discontinued with the possession at least from 23.12.1949. Prior to 23.12.1949, the possession of the inner courtyard was

enjoyed by the Muslims with Hindus. So far as dispossession is concerned, neither the Muslims have alleged that they were dispossessed at any point of time nor have proved the same. **[Pg. 1746 @ para 3110/Vol. II]**

viii. So far as outer courtyard is concerned, it is evident that the Hindu religious structures existed therein since last more than 150 years i.e. sometimes after 1856-57 and they are being managed and administered by the Priests of Nirmohi Akhara, therefore, to that extent, i.e. to the extent only upto outer courtyard, the disputed site can be said to be possessed by Nirmohi Akhara and the Muslims ceased to have possession of outer courtyard accordingly. So far as the inner courtyard, which is another part of the disputed site is concerned, it does not appear that the same remained in possession of any of the parties exclusively. The premises within inner courtyard remained to be visited by the members of both the communities meaning thereby there was no obstruction to anyone to enter the same. **[Pg. 1746 @ para 3113/Vol. II]**

10. The findings of Justice Sharma are as follows:-

i. A mosque loses its sacred character if adversely possessed by a non-Muslim. Muslims are not in possession over the suit property and there is no reliable evidence that the prayers were offered by Muslims from times immemorial. **[Pg. 2976/Vol. III of the Impugned Judgment]**

ii. The Muslims have not shown exclusive and continuous possession over the suit property from 1528 AD nor have they shown that they were offering prayers in the disputed structure from times immemorial. However, the Hindus have proved that they were in exclusive possession of the outer Courtyard and were visiting inner courtyard for offering prayers. **[Pg. 3378 & Pg. 3454/Vol. III of the Impugned Judgment]**

SUBMISSION ON FACTS AND EXHIBITS

I. 1528 - 1857

1.1 **1528**: Mosque built by Babur

In the year 1528, during the rule of Emperor Babar, a Mosque was constructed where the Muslim community started offering prayers. The said Mosque came to be known as Babri Masjid. The upkeep, maintenance and other expenses incurred in connection with the Mosque were realized by a grant (Cash Nankar) paid by the Royal Treasury during the rule of Emperor Babar.

II. GRANTS AND RECOGNITION:

❖ *Grants Continued by the British Government for the Upkeep of the Mosque*

2.1 Grants which were originally given during the time of Emperor Babur were continued by the British for the upkeep and maintenance of the mosque.

2.2 The extract of Register Mafiat bearing Government Orders dated March 13, 1860 and June 29, 1860 show the name of Babur as the donor/grantee.

- Further Column 13, which refers to the order of the Chief Commissioner, it has been stated that- *"So long the Masjid is kept up and the Mohammadans conduct themselves properly, I recommend the continuance of the grant."*
- Moreover, in column 14, headed 'Final order of Government' it has been mentioned that-*"Released so long as the object for which the grant has been made is kept up vide Government Order No. 2321 dated January 29, 1860."*

[See Paras 2389-2390/ pg. 1451 of Volume II of the Impugned Judgment]

2.3 The Register of Inquiry of rent free land records that Emperor Babar granted revenue grant of Rs. 302/3/6 to Mir Baqi for the purposes of construction and maintenance of Mosque namely Babri Mosque at village Shahnawa. The following points were recorded in the register:

- The name of Emperor Babur was noted as the 'Grantee'.
- The rent-free land is situated at village Shahnawa and that it generates an annual revenue of Rs. 302, 3 ana & 6 pai.
- This rent-free land grant was given as a Waqf at the time of construction of Babri Masjid by king Babar for meeting the expenses of the salary of Muezzin and Khatib.

- This land free grant was given to Saiyed Baqi for his lifetime and thereafter to his son for lifetime and thereafter to Saiyed Hussaini Ali.
- Decision of the Board (dated June 29, 1880) was that the grant will survive till the continuation of the purpose for which it was given exemption from land revenue.

[See Convenience Compilation @ pgs. 1-4; Also at. 30-33/Running Volume 3]

2.4 Copy of the excerpts of the Register No. 6(e), conditional land revenue exemption of Tehsil Faizabad dated June 29,1860. In this Register, the name of Mohd. Asghar and Mohd. Rajjab Ali is recorded as the name of the person who is holding the rent-free land (reflected in Column. 6 & 7) **[See Convenience Compilation @ pgs. 5-6; Also at Pgs. 1297-98/Running Volume 10; Pg. 1377 @ para 2333/Vol. II of the Impugned Judgment]**

❖ *Conversion of cash Nankar grant into grant of revenue free land*

2.5 In 1864, the British converted the cash Nankar grant into grant of revenue free land situate in village Sholapur and Bahoranpur in the vicinity of Ayodhya.

2.6 It is submitted that a certificate of grant was executed in favour of Rajjab Ali and Mohd. Asghar, bearing the seal of Chief Commissioner. The said certificate mentions that both Rajjab Ali and Mohd Asghar had received a cash nankar of Rs. 302-3-6 in rent free tenure from the former government. It was further stated that the Chief Commissioner, under the authority of the Governor General in Council was pleased to maintain the grant for so long as the object for which the grant has been made is kept up, subject to certain conditions mentioned in the certificate. **[Pg. 1379-80 @ para 2335/Vol. II of the Impugned Judgment]**

2.7 This grant was given after a detailed enquiry; certain important orders/correspondence during the course of this enquiry are as follows:

- On August 25,1863, Secretary Chief Commissioner of Awadh wrote to the Commissioner Faizabad Division mentioning that the Governor General has sanctioned Chief Commissioner's proposal for the commutation of the cash payment of Rs. 302-3-6 granted in perpetuity for the support of the Janamasthan Mosque to the grant of rent-free land near Ayodhya. It was further requested that a provision for the change be made by grant of some Nazul Land near Ayodhya. **[Pg. 1389 @ para 2339/Vol. II of the Impugned Judgment]**

- On August 31,1863, an order was passed by Deputy Commissioner regarding the rent-free land (fetching an annual rent of Rs. 302/3/6) which were sanctioned by the Government to the Masjid Janamshtan. It was ordered that the map of the proposed land marked for the purpose should clearly indicate boundaries and be sent by the Deputy Commissioner to the Commissioner. **[Pg. 1384 @ para 2338/Vol. II of the Impugned Judgment]**
- On September 13,1860, order was passed by the Deputy Commissioner, Faizabad, wherein it was stated that the map of the lands which had been selected for approval for giving in lieu of the lands of the Masjid had been sent. It was therefore ordered that the proceedings be presented before the Additional Assistant Commissioner for immediate action. **[See Convenience Compilation @ pg. 7; Also at Pg. 1570/Running Volume 11]**
- Thereafter several orders were passed to consider as to which lands were to be allotted for the purpose of the Masjid. **[Pgs. 1384-1392/Vol. II of the Impugned Judgment]**
- Ultimately on October 10,1865 it was ordered that possession of the lands should be immediately given and acknowledgment should be taken. **[Pg. 1392 @ para 2341/Vol. II of the Impugned Judgment]**
- Finally, on October 19,1865, it was reported that the proceedings regarding the handing over the land have been completed and the acknowledgement was also confirmed. **[Pg. 1393@ para 2341/Vol. II of the Impugned Judgment]**
- Subsequently, on October 30,1865, the file was consigned to the record. **[Pg. 1393@ para 2341/Vol. II of the Impugned Judgment]**

❖ *Grants of 1870*

2.8 The British Government having discontinued the annual cash grant, on repeated representations of Mohd. Asghar and Rajab Ali, granted fresh land in Muafi in the village of Bhuraipur and Sholapur in 1870. Later on, *Sanad* was issued by the Chief Commissioner clarified that the cash nankar of Rs. 302/3as/6pies received by Rajab Ali and Muhammad Asghar as rent-free tenure in village Shahanwa under the former Government (Rule of Nawab) was being maintained (as Muafi and in village of Bhuraipur and Sholapur) under the authority of the Governor General in-council so long as the object for which the grant had been made was kept up. **[Please see Pg. No. 3189/ Vol. III of the Impugned Judgment].**

2.9 On January/February 3,1870, an order was passed by the Settlement Officer in Case No. 5 *i.e. Mohd. Afzal Ali and Mohd. Asgar v. Government*, wherein it was decreed as follows:-

> *"The superior proprietary right in Mauza Bahronpur is decreed revenue free to Mohammad Asghar and Mohammad Afzal Ali"*

In the same order it was recorded that previously when in May 1863, the Chief Commissioner was enquiring about the endowment for support of mosques and other religious purposes in Faizabad, the D.C *vide* his letter dated July 2,1863 had informed him that a sum of Rs. 302/2 was paid annually from the imperial revenue for the support of the Janamshtan Mosque.

[See Convenience Compilation @ pgs. 8-10; Also at Pg. 48-50/Running Volume 3; Pg. No. 1398-1399 @ para 2349/Vol. II of the Impugned Judgment]

❖ *Nakal Khasra Abadi*

2.10 In 1931, the entry in the Nakal Khasra Abadi mentioned in the Nazul register records that presence of Babri Masjid at Plot No. 583 and notes that the same was a *"Masjid Waqf Ahde Shahi"*. It is relevant to note that this document also notes that the *Chabootra* was famous as the birthplace. **[See Convenience Compilation @ pgs. 11-12; Also at Pgs. 1710-1711/Running Vol.11; Pg. 1435 @ para 2372/Vol. II of the Impugned Judgment]**

❖ *Communal Riots (1934) and Application against the Bairagis & Hindus of Aydohya*

2.11 In 1934, due to communal riots, the domes of disputed structure and substantial part were destroyed. However, it was renovated at the cost of the British Government through a Muslim Thekedar (Contractor).

2.12 An Application was moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on March 27,1934. In this application it was mentioned that:-

- The Bairagis of Ayodhya and Hindu people attacked the Babri Masjid intentionally and have caused great damage.
- The repair of the masjid will require a huge sum of money.
- It was therefore prayed that the estimated cost of repairs, i.e. Rs. 15000 be recovered from the Bairagis and other Hindu people of Ayodhya as

per Section 15 of the Police Act,1861 **[See Convenience Compilation @ pgs. 13-16; Also at Pgs. 1627-1630/Running Vol. 11]**

2.13 The Dy. Commissioner Faizabad dated 6.10.1934 allowed the aforesaid amount of compensation to be paid for damages to the Babri Mosque subject to any other objections. **[See Convenience Compilation @ pg. 17; Also at Pg. 109/Running Vol. 3]**

2.14 Thereafter on 22.12.1934, Notice was published by District Magistrate, Faizabad with respect to fine imposed under section 15A(2) of the Police Act and for its realization from the Hindu resident of Ayodhya. **[Para. No. 3013 (G) at Pg. No. 1670 of Vol. II of the Impugned Judgment]**

2.15 Meanwhile, *vide* the Order dated May 12, 1934 the Mohammadans were permitted to start the work of cleaning of Babri Mosque from Monday i.e. May 14, 1934, so that it could be used for religious purposes. **[See Convenience Compilation @ pg. 19; Also at Pg. 124/Running Vol.3]**

III. DISPUTES AND CASES AFFIRMING POSSESSION & TITLE

3.1 From 1528 to 1857 there was no whisper and/or demand of any place called Sri Ram's birthplace within the precincts of Babri Masjid. For the first time a Chabutra was illegally constructed in the year 1857 within the boundary but outside the inner courtyard of Babri Masjid.

- The factum of construction of Chabutara in 1857 has been stated in the written statement of the Mohd. Asghar in the 1885 Suit. **[Pg. 1433 @ para 3/Vol. II of the Impugned Judgment]**
- However, later on application by the Muslims, an order for digging out the Chabutara was passed. This order is not on record, however, its reference can be found in the written statement of Mohd. Asghar in the 1885 suit. **[Pg. 1433 @ para 3/Vol. II of the Impugned Judgment]**

3.2 After the incident of 1855 , attempts were made by the Hindus to dispossess the Muslims from the disputed site, however these attempts were successfully repulsed, leaving the Muslims in title and possession, subject to certain prescriptive rights of the Hindus over Sita Ki Rasoi and Ram Chabutara, which also, were only recognized in the proceedings of the 1885 Suit.

❖ *Case 1: (Case No. 884 – Eviction of Nihang Singh Faqir from Masjid premises):*

3.3 On November 28,1858, Thanedar Sheetal Dubey filed an application stating that one Mr. Nihang Singh Faqir Khalsa resident of Punjab, organized Hawan and

Puja of Guru Govind Singh and erected a Symbol of Sri Bhagwan within the premises of the Masjid. It was requested that action, as deemed necessary, maybe taken. **[See Convenience Compilation @ pg. 22; Also at pg. 89/Running Volume 87]**

3.4 On November 30,1858, Syed Mohammad Khatib (Moazzin of the Babri Masjid) lodged a Complaint being case No. 884 before the Station House officer about installation of a Nishan by a Nihang Fakir and requested for its removal thereof. In the application it was stated that:

- Nihang Singh is creating riot in the Masjid.
- He forcibly made a Chabutara inside the masjid, placed a picture of the idol inside in the masjid and has lit fire and is conducting puja. Further, he has written "*Ram Ram*" with coal on the walls of the Masjid.
- Masjid is a place of worship of Hindus and not Muslims, and if someone constructs anything forcibly inside the Masjid, he should be punished.
- Previously also the Bairagis had constructed a Chabutara overnight of about 1 ballisht height (about 22.83 cms), until injunction orders were issued.
- It was therefore prayed that:
    - The spot maybe inspected and the new constructions be demolished
    - Hindus be ousted from the Masjid and the symbol and the idol maybe removed and the writing on the walls be washed.

      [See Convenience Compilation @ pgs. 24-25; Also at pgs. 93-94/Vol. 87 and at pg. 1365 /Vol. II of the Impugned Judgment]

- It is relevant to note that the translation of this application as on record is not correct (this point has already been argued by Mr. Pasha, Advocate). It is submitted that in the impugned judgment as well as in Vol. 87 wherein this exhibit has been annexed, the application has been wrongly translated as:

> *"You are the master of both the parties since the Shahi era (sic) if any person constructs forcibly he would be punished by your honour. Kindly consider the fact that Masjid is a place of worship of Muslims and not that of Hindus. Previously the symbol of Janamnsthan had been there for hundreds of years and Hindus did puja"*

The correct translation, however, is as follows:-

> *"It is evident from the clear words of the Shah that if any person constructs forcibly he would be punished by the government and your honour may consider the fact that Masjid is a place of worship of the Muslims and not the contrary position that previously the symbol of Janamsthan had been there for hundreds of years and Hindus used to perform puja"*

3.5 An order was passed on November 30,1858, pursuant to which Sheetal Dubey, Thanedar visited the disputed premises and informed Nihang Faqir about the order but he replied that the entire place is of Nirankar and the government of the country should impart justice. **[Pg. 1366 @ para 2319/Vol. II of the Impugned Judgment]**

3.6 On December 1,1958, Shri Sheetal Dubey, Thanedar submitted a report in case no. 884, describing that when he took the summon order dated 30.11.1858 addressed to Nihang Singh Faqir, for leaving the place, he received no reply. He reported what had actually transpired and sought instructions from the Higher Authorities. **[Pg. 1368 @ para 2321/Vol. II of the Impugned Judgment]**

3.7 An Order dated December 5, 1858 was issued in Case No. 884 wherein a direction was issued by the Court in furtherance of the Order dated November 30, 1858 (wherein it was directed that the Faqir sitting in Babri Masjid should be ousted) and directed the Police Sub-Inspector Avadh that in case the Faqir is not moved from the spot, he must be arrested and presented to Court. **[See Convenience Compilation @ pg. 26; Also at Pg. 153/Running Volume 3; Pg. 1370 @ para 2325/Vol. II of the Impugned Judgment**]

3.8 Thereafter, on December 6, 1858, a Report was submitted by Sheetal Dubey Thanedar Oudh recording the appearance of *Faqir* in court. **[See Convenience Compilation @ pg. 28; Also at Pg. 102/ Running Volume 87]**

3.9 On December 10,1858, an order was passed recording that Jhanda (flag) was uprooted from the Masjid and the Faqir residing therein was ousted. **[Pgs. 1370-71 @ para 2325-2326/Vol. II of the Impugned Judgment]**

❖ *Case 2: Case No. 223 filed on 5.11.1860 by Mir Rajab Ali*

3.10 On November 5,1860, an application filed by Mir Rajab Ali against Askali Singh in case no. 223 complaining about a new *Chabootra* being constructed in the graveyard. In this application it was stated that:-

- A small Chabootra had been constructed in the graveyard adjacent to Babri Masjid by one Nihang. He was told not to do so but he did not refrain and became violent.
- Previously, about half a year back, Hari Das (Mahant of Hanuman Garhi) tried to build his house forcibly and he made to execute a bond/undertaking for non-interference. The said undertaking is still available in the files.
- The Commissioner also found a flag which had been pitched within the lawn of Babri Masjid and the Commissioner, upon seeing it got the flag unpitched.
- Nowadays, when the Moazzin recites Azaan, the opposite parties begin to blow conch shells. (*It is relevant to note that Azan is the call for prayers, which shows that the prayers were continuing in the Babri Mosque*)
- Newly built chabootra should be directed to be demolished and an undertaking/ bond should be taken from the opposite party the he will not unlawfully and illegally interfere in the Masjid property and will not blow conch at the time Azaan.

[Para. 2329 at Pg. No. 1373-1376/ Vol. II of the Impugned Judgment]

3.11 On March 12, 1861, an application was filed by Muhammad Asghar, Rajjab Ali and Mohd. Afzal, in furtherance of the previous application, stating that Imkani Sikh had illegally occupied the lands of the plaintiffs and had erected a chabootra without permission near Babri Masjid. Even though on the previous application, orders were issued to evict Imkani Sikh from chabootra but the hut wherein he was staying still remained. It was submitted that whenever a Mahant will go there or will stay in the hut, the cause for dispute will arise. It was therefore prayed that the order be issued to the Sub-Inspector that after eviction of Imkani Sikh, the hut/kutir should also be demolished and precaution should be taken that no foundation of a new house is not allowed to be laid. **[See Convenience Compilation @ pg. 29; Also at Pg. 1712/Running Volume 11]**

3.12 On March 18,1861, Subedar tendered a report regarding the execution of an order dated 16.03.1861. It was stated that not only has Imkani Sikh has been evicted from the Kutir (hut) but the hut has also been demolished. **[See Convenience Compilation @ pg. 30; Also at Pg.1713/Running Volume 11]**

3.13 Thereafter on March 18, 1862, the application dated 12.03.1861 preferred by Mohd. Asghar, Mir Rajabali, and Mohd. Afzal was directed to be consigned to

the record office. **[Para. No. 2332 @ Pg. No. 1376/Vol. II of the Impugned Judgment]**

❖ *Bairagis (Included in Case No. 223 already decided on 18.03.1861)*

3.14 On 25.9.1866, an application was filed by Mohd. Afzal (Mutwalli Masjid Babri) against Tulsidas and other Bairagis, praying for demolishing the new Kothari which has been newly constructed by the Respondent for placing idols etc. inside the door of the Masjid where Bairagis have constructed a Chabootra. In this application it was stated that:-

- Babri Masjid, situated near Janamsthan in Oudh Khas was constructed by Shah Babur.
- For the last few days, Bairagis were attempting to build Shivalya near the Masjid, but due to vigilance of the Muslims and timely reporting of the matter, the authorities imposed restriction and prevented the dispute.
- Now about a month back, the defendants, Tulsidas/Bairagis etc. with the intention of placing idols have constructed a Kothri in the compound of the Mosque. This construction was done illegally within a few hours.
- The police had already been informed but no orders regarding the demolition of the Kothri have been issued by the Government. Owing to this Kothri, there is apprehension of daily clash.
- Previously they had constructed a Chabootra overnight and because of this construction, riots happened. Now a small Kothari has been constructed within a short span of time. They can increase such constructions gradually.
- Accordingly, it is prayed that the mosque maybe protected from the Bairagis and the orders for dismantling the Kothari maybe passed.

[See pg. 1397/Vol. II of the Impugned Order; See Convenience Compilation @ pgs. 31-32; Also at Pgs. 36-37/Running Volume 3]

3.15 On October 12,1866, Deputy Commissioner, Faizabad passed an order, on the application of Mohd. Afzal (included in Case No. 223) against Tulsi Das directing consignment of records. **[Pg. 1398 @ para 2348/Vol. II of the Impugned Judgment]**

❖ *Case 3: (Niyamat Ali and Mohd. Shah v. Gangadhar Shastri)*

3.16 On August 26,1868, an Order was passed by Major J. Reed Commissioner, Faizabad against the order dated 25.6.1868 passed by the Officiating Deputy Commissioner, Faizabad in the case of *Niyamat Ali and Mohd. Shah Vs. Gangadhar Shastri*. This case was filed by the Muslims against one Ganga Dhar

alleging that he was encroaching on the North West Corner of the Masjid. The order dismissed the appeal as no encroachment was proved, however the following observations were made:-

- The maps show that the house of Ganga Dhar touched the wall on the Masjid and nothing intervenes.
- There could be no encroachment until the wall of the Masjid itself had been dug into, however it has not been alleged so.
- Previous order of Commissioner Simsons dated 27.2.1864 directed that Hindus should not encroach on the boundaries of the Mosque and Chabutara. However, since no such encroachment has been proved, there is no reason to interfere.

[See pg. 1931 @ para 3406/Vol. II of the Impugned Judgment and See Convenience Compilation @ pg. 34; Also at Pg. 161/Running Volume 87]

❖ *Disturbance Continued: Case 4: (Mohd. Asghar v. Government)*

3.17 On February 22,1870, Plaint was filed by Mohd. Asghar (Mutawalli of Babri Masjid) praying to evict defendants (*Faqir*) from trees of *Imli*, (*Bagh Imli*), Khandhal and graveyard. It was stated that:-

- 21 Imli trees had always been in possession of the Applicants and their ancestors since ancient times.
- The Faqir was earlier residing there with the permission of the ancestors of the Plaintiffs. The Faqir was their servant.
- During Shahi period, Faqir became against the Plaintiff's ancestors and was therefore ousted from the premises.
- It was therefore prayed that a decree of eviction be passed to evict the Faqir from the trees of *imli* and the graveyard.

[See Convenience Compilation @ pgs. 35-36; Also at Pgs. 120-121/Vol. 87 and Pgs. 1401-1402 at para 2350/Vol. II of the Impugned Judgment]

3.18 On August 22,1871, an order was passed, dismissing the claim of Mohd. Asghar regarding ownership of Kabristan in the vicinity of Masjid Babar Shah Mauja Kot Ram Chandar while decreeing the claim over the tree of Tamarind (Imli), was passed wherein it was observed as follows:-

> *Possession of Plaintiffs over the tamarind trees was established, but right of ownership cannot be of the Plaintiffs as this is general graveyard and courtyard in front of the door of the Masjid Janamsthan. Therefore, such an Arazi (piece of land) cannot be private property.*

[See Convenience Compilation @ pg. 37; Also at Pgs. 115/Running Volume 87]

3.19 In 1873, The settlement record as accepted by the Court of Official of the settlement, Faizabad in the case of Mohd. Asghar v. Government reflects that in Plot No. 163 of the village Ramkot Pargana, Haveli, Awadh, land of Jama Masjid was located. **[See Convenience Compilation @ pg. 38; Also at Pg. 1301/Running Volume 10]**

❖ *Placing of Idol in 1873 [Case No. 5]*

3.20 In November 1873, an Appeal was filed by Mohd. Asghar against placing of an Idol on platform of Janamsthan. **[Pg. 2540/ Vol. II of the Impugned Judgment (11th line from the top)]**

3.21 On November 7,1873, an order was passed in the case of *Mohammad Asghar V Mahant Baldeo Das*, directing Mahant Baldev Das to remove the idol i.e. Charan Paduka which he failed to comply with. **[Pg. 1657 @ para 2978/Vol. II of the Impugned Judgment]**

3.22 Subsequently, on November 10,1873, Baldeo Das was ordered in writing by the Deputy Commissioner to remove an image placed on the Janam Asthan platform. A report was thereafter submitted stating that an officer had gone to the house of Baldeo Dass and found that he had gone to Gonda. Therefore, the order as explained to Gyandas and other priests who could not carry out the order. Thereafter another order was passed holding that if the other party (i.e. Complainant) would name a person on whom an order of removal could be served -such should be served. **[Para. 2353 (point no. 3) @ Pg. 1409/Vol. II of the Impugned Judgment]**

3.23 However, these orders were not complied with and the idol was not removed. **[See Convenience Compilation @ pgs. 39-40 (At pg. 40-Section 6); Also at Pg. 144 (section 6)/Running Volume 87 and Para. 2563 @ Pg. No. 1513 of Vol. II]**

❖ *North Gate (Singh Dwar) (1877) [Case No. 6: Mohd. Asghar v. Khem Dass]*

3.24 On April 3, 1877, Deputy Commissioner, Faizabad granted permission to Hindus to open a new door (*Singh Dwar*) in the northern outer wall of the disputed building. **[Para. No. 2978 at Pg. No. 1657 of Vol. II of the Impugned Judgment]**

3.25 This permission was challenged by Mohd. Asghar by filing an appeal (Misc. Appeal No. 56), wherein he stated that:-

- Each place within the boundary wall of the mosque is the mosque.

- General principle is that the matters relating to masjid should be handed over to the Muslims while matters relating to the temple should be handed over to the Hindus. Thus the permission accorded to the defendants for opening the gate is in contravention of this basic principle.
- Previously also on 7.11.1873, an order was passed directing the Hindus to remove the idols. Therefore, when there is no permission to install idols, how can a right over the wall of the masjid be given to the defendants.
- On the door of the outer wall of the masjid, the word – *Allah* is engraved.
- When the appellant himself had requested that he be permitted to open the said door on his own expenses and was ready & willing to open the said door, in such circumstances, the defendants- belonging to other religion could not have been accorded permission to construct the door.
- The defendant with the intention of occupying, continues to indulge in several activities on the wall and on being restrained by someone, he becomes aggressive and is bent to fight with him.

[See Convenience Compilation @ pgs. 39-40; Also at Pgs. 143-144/Vol. 87]

3.26 Thereafter on May 14,1877, a report was submitted by the Deputy Commissioner, who in his report stated that if the other door was not opened then human life would be endangered as there was great rush. **[See Convenience Compilation @ pg. 41; Also at Pg. 65/ Running Vol. 87; Pg. 1409 @ para 2353/Vol. II of the Impugned Judgment]**

3.27 Ultimately, on December 13,1877, the appeal was dismissed on the ground that the outer door was in the interests of '*public safety*'. **[See Convenience Compilation @ pg. 42; Also at Pg. 68/Running Vol. 87; Pg. 4151/Vol. III of the Impugned Judgment]**

❖ *Case 7: (Mohd. Asghar v. Musammat Humaira Bibi and Sunder Tiwari & Ors.,1878):*

3.28 On June 3,1878, a decree was passed in favour of Mohammed Asghar in Claim Petition No. 2775 of 1877 in the matter of *Mohd. Asghar v. Musammat Humaira Bibi and Sunder Tiwari and Bhola Tiwari and Kanshi Ram*, claiming 3/8th part of Zamindari rights of Mauza Bahoranpur Pargana Haveli Oudh, which was allowed in favour of Mohammad Asghar, the plaintiff who had prayed for evacuation and cancellation of sale deed dated August 10, 1876 for part of Mauza Zamindari Bahoranpur. **[Para. No. 2354 at Pg. Nos. 1409-1411 of Vol. II of the Impugned Judgment; See Convenience Compilation @ pgs. 58-59; Also at Pgs. 1293-94/ Running Vol. 10]**

❖ *Case 8: (Mohd. Asghar v. Raghubir Das Mahant and Nirmohi Akhara)*

3.29 On 8.11.1882, a plaint being Suit No. 374/943 of 1882 was filed by Mohd. Asghar (who was the Mutawalli of Babri Masjid) against Raghubar Das claiming rent for the user of Chabutra and Takhat situated near the door of Babri Masjid. It is relevant to note that in this plaint the Chabutara – has been described to have been situated *near the door of Babri Masjid* or *before Masjid.* **(See Convenience Compilation @ pgs. 62-63; Also at Pg. 110-111/Running Vol. 87)**.

3.30 Subsequently, *vide* order dated 18.06.1883 the Ld. Court of the Sub Judge Faizabad pleased to dismiss this suit. *Though the suit was dismissed, Mohd. Asghar's capacity as a mutawalli of the Babri Mosque was not challenged.* **(See Convenience Compilation @ pgs. 64-68; Also at Pgs. 69-79/Running Vol. 87 or Pg. 1419 @ para 2362/Vol. II of the Impugned Judgment)**

❖ *Case 9: (Mohd. Asgar v. Mahant Raghubar Das Case No. 19435):*

3.31 On November 2,1883 Sayyed Mohd. Asgar filed a case (being Case No. 19435) before Learned Assistant Commissioner stating that he is entitled to get the wall of the mosque white-washed but is being obstructed by Raghubar Das. The following points in the application are important:

- Plaintiff is unable to explain the complaints of defendant that the Birthplace Chabutara within the compound of the Masjid belongs to the defendant, even though the Defendant has no relation with the outer wall of Ahata, Kathera and Phatak and all these relate to the Masjid.
- Allah is written on the outer wall.
- Whenever any need for repairing/renovation/white-washing of the Mosque has arisen, at that time the applicant has only got the same done.
- Applicant/Plaintiff has purchased the whitewashing material but the Defendant came there for doing whitewashing and therefore a dispute has arisen.
- Defendant has no right whatsoever, except Chabootra and Rasoi. It is submitted that the stand of the Muslim parties has always been that the Hindus have nothing more than a prescriptive right over the Chabutara. **[See Convenience Compilation @ pgs. 69-72; Also at Pgs.83-85/Vol. 87]**

3.32 On January 12,1884 an order was passed to maintain *status quo* and to leave the outer door open. **[Pg. 1419 @ para 2364/Vol. II of the Impugned Judgment; See Convenience Compilation @ pg. 73; Also at Pg. 164/ Running Vol. 87]**

3.33 On January 22,1884, the Assistant Commissioner, Faizabad passed the order:-

- Restricting Raghubar Das from carrying out repairs etc. in the inner as well as the outer part of the compound.
- Mohd. Asghar was advised not to lock the outer door of the mosque as it was necessary that old existing orders be observed and complied with and there should be no interference in it**.[See pg. 1420 @ para 2365/Vol. II of the Impugned Judgment]**

3.34 Subsequently, on June 27,1884, Raghubar Das, filed an application in requesting the Assistant Commissioner, Faizabad to make spot inspection of the premises complaining that Muslims despite restraint from white washing the wall of the building are violating the same. **[See Convenience Compilation @ pg. 74; Also at 130/ Running Vol. 87]**

3.35 There is nothing on record to show if any action whatsoever was taken in respect of the above mention application of Raghubar Das.

IV. SIGNIFICANCE OF THE 1885 SUIT

- *SUIT TO CONSTRUCT TEMPLE DISMISSED SUIT NO. RS. 61/280 OF 1885 (filed by Mahant Raghubir Das against Secretary of State for India in Council)*

4.1 On January 19, 1885, a plaint being Case No. 61/280 was filed by one Raghubar Das against Sec. of State [Case No. 61/280(1885)] wherein it was averred that the place of birth situated in Ayodhya is a holy place of worship for Hindus. It was further clarified that a small Chabutara 17X21ft., wherein the Charan Paduka was affixed was being worshipped. It was therefore requested that a construction of temple maybe permitted on the said Chabutara. A perusal of this plaint reveals the following **[See Convenience Compilation @ pg. 75-77; Also at Pgs. 51-54/Vol. 3]**:

- The cause title of the suit states Mahant Raghubar Das, Mahant Janmsthan.
- Chabutara was being prayed as the place of birth.
- The map annexed to this suit shows the Masjid and it has been stated that only the outer courtyard is in the possession of Hindus while the inner courtyard along with the masjid is in the possession of the Muslims.

4.2 Gopal Sahai Amin's Commission was appointed by Court of Faizabad, in Suit No.61/280 of 1885 to prepare the map of the site by conducting spot inspection and was directed to submit a report. Accordingly, the Commission prepared the report dated December 6, 1885 which was submitted by the Commission alongwith a map of the disputed site. In this Map also, the Masjid was specifically

shown in the western side of the Chabutra (platform). **[Pg. 4196/Vol. III of the Impugned Judgment and Pg. 2889/Vol. III of the Impugned Judgment]**

4.3 On December 9, 1885, Report of spot inspection was submitted by the Commission appointed by the Sub-Judge Faizabad in Suit No. 61/280 of 1885, entitled as *Mahant Raghubir Sahai v. Secretary of State* stating that in compliance of the orders of the Court an inspection of the spot was carried out in the presence of the parties and a map was prepared on the basis of which the report is being submitted. **[See Convenience Compilation @ pg. 78; Also at Pg. 59/Running Vol. 3]**

4.4 On December 22, 1885, Written statement filed by Mohd. Asghar (Mutawalli of Babri Masjid) in Suit No. 61/280 of 1885, entitled as *Mahant Raghubir Das v. Secretary of State* stating that:-

- Babar got the said Babri Masjid constructed and above the door of the boundary of the Babri Masjid the word ALLAH was inscribed.
- Mere passage inside the courtyard of the Babri Masjid by plaintiff could not create rights in his favour.
- Since the construction of the Masjid till 1856 no Chabootra was in existence at its place and it came to be built in the year 1857, wherein the Muslims opposed the building of Chabootra and filed a suit, wherein order for digging of Chabootra was issued.
- A reference was also made to previous orders where restraint was imposed on the construction activities of the Plaintiff and whereby demolition of kutir, sita rasoi was ordered. Further, one such order i.e. Order dated February 23, 1857 was referred in particular to aver that such orders [regarding construction activities and restraint in Masjid Compound] gave rise to a cause of action, however the limitation has expired. **[Pgs. 1433-1434/Vol. II of the Impugned Judgment]**

4.5 The Government pleader in his written reply filed in Suit No.61/280 of 1885 submitted that since the Plaintiff was not evicted from the Chabutra therefore cause for claim/suit does not arise and the suit suffers from the bar of jurisdiction and the Plaintiff has no right to the remedies prayed for by him. **[Noted in the order of the Sub-Judge [See Convenience Compilation @ pg. 80; Also at pg. 64/Running Volume 3]**

4.6 On December 24,1885, the Sub-Judge rejected the prayer of construction of temple at the Chabutara. The following observations are relevant:-

- Muslims were praying inside in the Masjid and the Hindus were praying outside at the Chabutara. Between the Masjid and Chabootra is well built wall with railings.
- Before this a controversy had arisen both Hindus and Muslims were worshipping in the place and therefore in 1855, a wall in the form of railing was erected to avoid controversy, so that Muslims worship inside it and Hindus worship outside it.
- It was erroneously recorded that Chabutara was in the possession of the Plaintiffs and belonged to Hindus. However, this finding was set aside in the appeal.
- It is further relevant to note that this Judgment records the written proofs submitted by the Plaintiff and notes only the following:
    - Copy of the selection of Gazetteer of Avadh State page 7 printed by the order of the Government, May
    - Journal of the Asiatic Society relating to the translation of Ayodhya Mahant

  It is thus relevant to note that even in 1885, when a claim was made over the chabutara, the Hindus had no actual evidence to substantiate their pleas, except the abovementioned gazetteers. **[See Convenience Compilation @ pgs. 79-86 (at pg. 81,84-86); Also see pgs. 63-70 @ pgs.65, 68-69/Vol. 3]**

4.7 Subsequently, the appeal filed by Mahant Raghubar Das, was rejected on 18/26 March 1886. In this judgment, the Hon'ble District Judge made two important observations:-

- The entrance to the enclosure is under a gateway which bears the superscription "Allah"
- The Chabutara is said to indicate the birth place of Ram Chandra
- The finding that Chabutara belonged to the Hindus was set aside.

[See pgs. 4200-4201 (at pg. 4201)/Vol. III of the Impugned Judgment; Pg. 34/Vol. I of the Impugned Judgment]

4.8 Thereafter on 1.11.1886, even the Second Appeal (being Second Civil Appeal No. 122 of 1886) was dismissed. The following observations in this order are relevant:-

- This matter is simply that the Hindus of Ajudhia want to erect a temple over the *supposed* holy spot, said to be the birthplace of Lord Ram.
- This spot is now situate within the precincts of the grounds surrounding a mosque constructed some 350 years ago.

- According to Hindu Legend, this spot was purposely chosen by Babur as the site of his mosque.
- Hindus seem to have got very limited rights of access to certain spots within the precincts adjoining the mosque, and for years they have been persistently trying to increase their rights.
- The executive authorities have persistently repressed these encroachments and absolutely forbid any alteration of the 'status quo'.
- The pleas in the case are wholly unsupported by the facts in the case or by any document. There is nothing to show that the plaintiff is in any sense the proprietor of the land in question. **[Pg. 769 @ para 867/Vol. I of the Impugned Judgment]**

V. AFFIRMATION OF TITLE AND POSSESSION NOT DISLODGED BY ALLEGED CLAIMS OF ADVERSE POSSESSION [1934-1950]

❖ *Communal Riots (1934) and Application against the Bairagis & Hindus of Aydohya*

5.1 In 1934, due to communal riots, the domes of disputed structure and substantial part were destroyed. However, it was renovated at the cost of the British Government through a Muslim Thekedar (Contractor). Further upon an application moved by the Muslims, fine was imposed on the Bairagis and other Hindu persons of Ayodhya so as to recover the estimated cost of repairs of the Babri Masjid. *[This point has already been discussed above]*

5.2 It is relevant to reiterate that, *vide* the Order dated May 12, 1934 the Mohammadans were permitted to start the work of cleaning of Babri Mosque from Monday i.e. May 14, 1934, so that it could be used for religious purposes. **[See Convenience Compilation @ pg. 19; Also at Pg. 124/Running Vol.3]**

❖ *Claims by Tahavar Khan (contractor who repaired the Babri Masjid)*

5.3 On February 25,1935, an Application submitted by the contractor namely Tahavar Khan concerned complaining about non-payment of his claim despite repair work having been performed in the Contract of Babri Masjid, along with houses that were built after riots. **[See Convenience Compilation @ pgs. 87-88; Also at Pgs. 127-128/Running Vol. 3]**

5.4 On February 26, 1935, an Order was passed by the Dy. Commissioner, Faizabad dated 26.2.1935 on application of Tahavar Khan directing that payment of Rs. 7000 be made and further directing the SDM Sadar to put in detailed bills for the workers entrusted to him and to report what should be paid. **[See Convenience Compilation @ pgs. 89-90; Also at Pgs. 115-116/Running Vol. 3]**

5.5 Copy of estimated Cost of Repair of Babri Masjid was submitted by Tahavar/Zahoor Khan (approved contractor PWD) on April 15,1935. It is relevant to note that this estimate includes:- '*Domes Masonary Work'* (S. No. 3), '*Repairing Kabristan'* (S.No. 21*)* and *'Making guinni complete for Domes'* (S. No. 23). **[See Convenience Compilation @ pg. 91-94; Also at Pgs. 111-114/Running Volume 3]**

5.6 On April 16,1935 of Tahawar Khan wrote to the Tehseel Official, Faizabad explaining delay in submission of bill for the repairs of Babri Masjid. **[See Convenience Compilation @ pg. 95; Also at Pgs. 126/ Running Vol. 3]**

5.7 The Assistant Engineer PWD submitted his inspection report dated November 21,1935 stating that the work of repair of the Babri Mosque was done satisfactorily. **[See Convenience Compilation @ pg. 96; Also at Pg. 121/Running Vol. 3]**

5.8 On January 2,1936 an Application was moved by Tahavvar Khan, Thekedar (Contractor) for early payment of his dues in respect of repairs of Babri Mosque filed before the Tehsildar, particularly the dues relating to the repairs of the houses which were in the 1934 riots. **[See Convenience Compilation @ pg. 100; Also at Pg. 1170/Running Volume 78]**

5.9 On 27.1.1936, a report was submitted by Mubaraq Ali, Bill Clerk whereby the bill for the re-construction of mosque was put up. **[See Convenience Compilation @ pg. 101-102; Also at Pg. 117-118/Running Vol.3]**

5.10 On January 29, 1936, a Report was submitted by A.D. Dixon recommending a payment of Rs. 6825/12 for the repair work of Babri Mosque, Ayodhya. **[See Convenience Compilation @ pg. 103-104; Also at Pgs. 119-120/Running Vol. 3]**

5.11 Complaint by Tahavvar Khan, Contractor dated April 30, 1936 to the Deputy Commissioner, Faizabad complaining about the certain claim disallowed by the PWD. He stated that his bill pertaining to Babri Masjid was of Rs. 7229 out of which only Rs. 6825 was paid to him. **[See Convenience Compilation @ pg. 105-106; Also at Pgs. 129-130/Running Vol. 3]**

❖ *Payment of arrears of salary of Pesh Imam*

5.12 On July 25,1936, Agreement between Syed Mohd. Zaki and Abdul Gaffar with respect to payment of arrears of salary of Abdul Gaffar who is said to have worked as *Pesh Imam* in the Mosque Babri. **[See Convenience Compilation @ pgs. 107-108; Also at Pgs. 26-27/Running Vol. 3]**

5.13 Subsequently on August 20,1938, Abdul Gaffar (who was the Pesh Imam of Babri Masjid) submitted an application to the Waqf Commissioner stating that Rs. 389 was still payable to him as outstanding salary and requesting that an order be issued for payment of atleast the minimum amount. **[See Convenience Compilation @ pgs. 109-110; Also at Pgs. 137-138/Running Vol. 3]**

5.14 *It is submitted that a pesh Imam is the one who leads the prayers. These documents show that after the riots of 1934, the Mosque was handed over to the Muslims after repairs and that continuous prayers were being held therein. Needless to say, that the need for paying a pesh Imam wouldn't have arisen had there been no namaz in the mosque.*

❖ *Regular Suit No. 95/1941 filed by Mahant Ram Charan Das against Raghunath Das and Ors.:*

5.15 In 1941, a Regular Suit No 95/1941 was filed by Mahant Ram Charan Das against Raghunath Das & Ors. regarding properties of Nirmohi Akhara including said Ram Chabootra allegedly described as Janambhoomi Mandir. In the said suit, the existence of Babri Masjid was admitted in list A of the property provided in the suit as Item No. 2.

5.16 A report was called for from the Commissioner, who submitted his report on April 18,1942 **[See Convenience Compilation @ pg. 111-129; Also at Pgs. 57-76/Running Vol. 91],** in this report it was stated that:-

- Temple, popularly known as Akhara is situated in Mohalla. It is one of the holiest places in Ayodhya and is visited by every Hindu who comes to Ayodhya. From the Plan prepared, it appears to be nothing except a small chabutri worshipped by Hindus and a few chappers put by Pujaries. **[See Convenience Compilation @ pg. 118; Also at Pg. 64/Running Vol. 91]**
- Sita Koop is surrounded by graves. **[See Convenience Compilation @ pg. 119; Also at Pg. 65/Running Vol. 91]**

5.17 The said suit was ultimately disposed of in terms of the compromise *vide* order dated June 4, 1942. **[See Convenience Compilation @ pgs. 130-131; Also at Pgs. 15-16/Running Vol. 91]**

5.18 Subsequently on July 6,1942, a decree in terms of the compromise was drawn up. **[See Convenience Compilation @ pg. 132-135; Also at Pgs. 21-24/Running Vol. 91]**

5.19 The terms of compromise **[See Convenience Compilation @ pgs. 136-141(B); Also at Pgs. 38-45/Running Vol. 91]** record the following:-

- In Schedule A of the terms of compromise- the existence of Babri Masjid as well as the graveyard are noted. **[See Convenience Compilation @ pg. 139; Also at Pg. 41/Running Vol. 91]**

❖ *Shia-Sunni suit over title won by Sunnis. Suit No. 29/1945 decided on 30.03.1946.*

5.20 On April 11,1945, Shia Central Board of Waqf sent a notice to the Sunni Central Board of Waqf stating that the they were constrained to file a suit against the Sunni Wakf Board as the Commissioner of Waqfs had wrongly included the Babri Masjid in the list of Sunni Mosques. **[See Convenience Compilation @ pg. 142-143; Also at Pgs. 143-144/Running Vol. 3]**

5.21 Thereafter on July 4,1945, Suit No. 29 of 1945 was filed by Shia Central Board of Waqf against the Sunni Central Board of Waqf, claiming the rights on the Babri Mosque. In the translation of this plaint, it has been wrongly mentioned that the *Masjid was built at birthplace of Lord Ram*, when the original plaint notes that the *Masjid was located at Janamsthan, Ayodhya*- referring to Janamsthan as a locality. This plaint also mentions that there is an Eidgah adjacent to the Babri Mosque. **[See Convenience Compilation @ pgs. 144-149; Also at Pgs. 6-11/Vol. 73]**

5.22 This Suit was dismissed on March 30,1946 and it was held that the mosque in question is a Sunni Mosque. **[Pgs. 4202-4208/Vol. III of the Impugned Judgment]**

- In this judgment witnesses of both sides i.e. Shias as well as Sunnis have deposed to have offered Namaz in the Babri masjid. **[Pgs. 4205-4206/Vol. III of the Impugned Judgment]**
- A witness also deposed about the mosque being maintained out of its income. **[Pg. 4206/Vol. III of the Impugned Judgment]**
- *This shows that the mosque was always in possession of the Muslim parties and that even after 1934, continuous namaz was being offered therein.*

❖ *Change of Mutawalli- 1948*

5.23 On November 25,1948, Sunni Waqf Board sent a letter to Javvad Hussain stating that it had come to the knowledge of the Board that Javvad Hussain had been working as the Mutawalli of the Babri Mosque after the death of the previous Mutawalli. The Board therefore requested him to explain as to how he became

the Mutwalli after the death of the previous Mutawalli. **[See Convenience Compilation @ pg. 150; Also at Pg. 139/Running Vol.3]**

❖ *Custom Deed of Nirmohi -19.3.1949*

5.24 A deed which reduced into writing the customs of Nirmohi Akhara was executed by the Panches of Nirmohi Akhara and was registered in Sub Registrar's Office. **[See Convenience Compilation @ pgs. 151-177; Also at Pgs. 18-44/Running Vol. 90]**

5.25 *It is submitted that this deed is not a registration of a society or a trust but simply the start of a process.*

❖ *Surreptitious placing of idols (1949):*

5.26 On November 12,1949, A police picket was posted near the grave mounds (precincts of Babri Masjid). **[Pg. No. 37 of Vol. I of Impugned Judgment]**

5.27 On November 29,1949, Superintendent of Police, Faizabad - Sri Kripal Singh addressed a letter to Sri Nayar Deputy Commissioner/District Magistrate, Faizabad, communicating his fears that on purnamashi Hindus may try to force entry into the Mosque with the object of installing a deity. **[Pg. 36/Vol. I of the Impugned Judgment]**

5.28 On December 10,1949, Mohd. Ibrahim, Waqf Inspector submitted his Report dated December 12, 1949. The report recorded that Muslims were harassed by Hindus and Sikhs when they went to pray in the Babri Masjid. It was also stated that there was a temple of the Hindus outside the courtyard, where many Hindus lived. They abused any Muslims who go to the Masjid. **[See Convenience Compilation @ pg. 178-179; Also at Pg. Nos. 1330- 1331/Running Vol. 10]**

5.29 Shri KK Nayar (Deputy Commissioner & D.M. Faizabad) sent letter addressed to the Govind Narayan (Home Secretary, Government of Uttar Pradesh) dated December 16, 1949 wherein he stated that a magnificent temple at the site was constructed by Vikaramaditya and in 16th Century, it was demolished by Babur and the mosque known as Babri Masjid was constructed and in the said process, building material of the Temple was used, and that a long time before Hindus were again restored to possession of a site therein i.e. at the corner of two walls. It was further mentioned that Muslims who go to the mosque pass in front of the temple an there has frequently been troubles over the occasional failure of the Muslims to take off their shoes. Lastly, he requested the State Government to not give credence to the apprehensions of the Muslims regarding safety of the Babri mosque. **[Pgs. 36- 37/Vol. 1 of Impugned Judgment]**

5.30 As feared by the Superintendent of Police, Faizabad - Sri Kripal Singh (which is evident from his letter dated November 29,1949), on the intervening night of December 22/23, 1949, around 50-60 members of the Hindu Community trespassed into the Babri Masjid and placed idols below the Central Dome of the Babri Masjid.

5.31 After the said incident, of the night of December 22/23, 1949, Pandit Sri Ram Deo Dubey, Sub-Inspector In-charge, Thana Ayodhya was informed about the incident by Mata Prasad constable and then he had himself visited the site and lodged an FIR that in the intervening night of December 22-23,1949, a crowd of 50-60 persons had broken the locks of the compound of Babri Mosque and by climbing the walls by ladders illegally entered in the Mosque and had placed the idol of Sri Bhagwan and had written various slogans such as Sita Ram Ji etc. on the walls, inside and outside. This FIR has been marked as Exhibit 51 in OOS No. 4 of 1989. **[See Convenience Compilation @ pgs. 180-184; Also at See pg. 35/Vol. I of the Impugned Judgment and Pgs. 1201-1205/ Running Vol. 78]**

5.32 On December 26,1949, after the desecration of the mosque on the intervening night of December22/23,1949, Shri K.K. Nayar, D.M. wrote to Bhagawan Sahai (Chief Secretary Government of U.P.)noting that the news of desecration came as a great surprise as it had never been reported or suspected that there was any move to enter and occupy the masjid by force. Justice Khan has noted that in view of the previous communications, this surprise did not appear to be genuine. **[See Convenience Compilation @ pgs. 185-190; Also, at Pgs. 1758-1763/Running Vol. 11; Pg. 36/Vol. I of the Impugned Judgment]**

5.33 Further, in the same letter, Shri K.K. Nayar refused to carry out the orders of the Government to have the idols removed from the mosque and stated that if the government still insisted that the removal should be carried out he would request that he be replaced by another officer. It is submitted that the subsequent Intelligence Report dated 26.07.1961 records about the said D.C that "It is reliably learnt that Baba Ram Lakhan Sharan gets legal advice in this respect from Sri. K.K. Nayar (Ex- D.C. Faizabad) who is his supporter too...". **[See Convenience Compilation @ pgs. 185-190;Also at Pgs. 1758-1763/Running Vol. 11; Pg. 39/ Vol. I of the Impugned Judgment]**

5.34 Subsequently on December 27,1949, Shri K.K. Nayar again wrote to Shri Bhagwan Sahai stating that he had been informed by the Commissioner of the outline of a scheme for removing the idol from the mosque surreptitiously to Janambhoomi Temple, outside the mosque **[See Convenience Compilation @ pgs. 191-197;Also at Pgs.1764-1770/Running Vol. 11]**. He stated in his letter that he did not agree with the said idea. He further stated that:-

- He would be unable to find any Hindu, let alone a qualified priest who will be prepared on any inducement to undertake the removal of the idol. **(See Convenience Compilation @ pg. 192; Also at Pg. 1765/Running Vol. 11)**
- The installation of the idol in the mosque is certainly an illegal act, which has placed not only local authorities but also the Government in a false position. **(See Convenience Compilation @ pg. 193; Also at Pg. 1766/Running Vol. 11)**
- I have a solution to offer [**See Convenience Compilation @ pg. 194; Also at Pg. 1767/Running Vol. 11]**:-
    a) Mosque should be attached and both Hindus and Muslims should be excluded form it with the exception of minimum number of Pujaris.
    b) Parties will be then referred to the Civil Court for adjudication of rights and no attempt will be made to hand over possession to the Muslims until the Civil Court, decrees the claim in their favour.
    c) This solution is open to criticism that it perpetuates an illegal position created by force and subterfuge and that it does not immediately restore the *status quo* which existed before the illegal act.
    d) During the pendency of Civil Proceedings, it may be possible to reach a compromise. Muslims could be induced to give up the mosque voluntarily to the Hindus.

5.35 Thereafter, on December 29,1949, a preliminary order under Section 145, Cr. P.C. was issued by Additional City Magistrate, Faizabad-cum-Ayodhya and simultaneously attachment order was also passed treating the situation to be that of an emergency. Additionally, the disputed site (i.e. the inner portion of the mosque) was also directed to be given in the receivership of Sri Priya Datt Ram, Chairman, Municipal Board. **[See Convenience Compilation @ pgs. 198-200; Also at Pgs. 3-5/ Running Vol. 91]**

5.36 In pursuance of the aforesaid orders, on January 5, 1950, Sri Priya Datt Ram took charge and made an inventory of the attached properties. He also submitted the scheme of management (in accordance with preliminary order). **[See Convenience Compilation @ pgs. 201-203; Also at Pgs. 11-13/Running Vol. 91]**

VI. Stand of State of Uttar Pradesh in the present suits

6.1 The State Government clearly stated that property in suit is known as Babri Mosque, and it has, for a long period has been used as a mosque for the purpose of worship by Muslims. It has not been used as temple of Shri Ram Chandra Ji. [**Para 12 @ pg. 25, Running Volume 72; Para 12 @ pg. 33/ Running Volume 72]**

VII. 1985-Ram Janmabhoomi Nyas formed

7.1 Ram Janmabhoomi Nyas was formed by a deed of trust dated December 18,1985. **[Para 15 @ pg. 242/ Running Vol. 72]**

7.2 This Nyas was intrinsically connected with the VHP, which admittedly incited the crowd to demolish the Babri Masjid on December 6,1992. **[See para 6 at pg. 379 of *Ismail Faruqui v. Union of India* (1994) 6 SCC 360]**

7.3 VHP was entitled to nominate 14 trustees in the Ram Janambhoomi Nyas. It has exercised its powers to nominate, Shri Deoki Nandan Agarwal (the next friend) as a trustee of the Nyas. **[Para 16@ pgs. 241-242/ Running Vol. 72- Pleadings Volume]**

VIII. 1992- Demolition of Babri Mosque by Hindu miscreants

8.1 In view of the apprehension of the Muslims that a large crowd of Kar Sevaks was assembling in Ayodhya and they had the plan to demolish the Babri Masjid, Applications in the pending contempt petitions were filed against the State of U.P. for violating the orders of this Hon'ble Court and the High Court.

8.2 In one of the applications being I.A. No. 5 in Contempt Petition 97 of 1992, it was prayed that directions be issued to the Union Government to step in and prevent a violation of the orders of the Court and also place property in *custodia legis* by appointment of receiver who will act under the control and directions of the Union Government. The application was considered on 20.11.1992 [(1994) 6 SCC 751], 25.11.1992 [(1994) 6 SCC 752]. Ultimately on 28.11.1992, an order was passed [reported in Acchan Rizvi (III) Vs. State of U.P. and Others [(1994)6 SCC 756] wherein it was recorded that the State of U.P. filed an Affidavit and Undertaking emphatically ensuring that no constructional activity would be carried on or permitted to be carried out by anyone.

8.3 In view of the undertaking given, this Hon'ble Court abstained from granting the prayer in I.A. No. 5 but kept the application pending and observed that if the complexion of the problem changed then the application maybe considered. It was also directed that a Judicial Officer be appointed as an Observer of the situation.

8.4 On December 6,1992, Babri Masjid was demolished in utter violation of the solemn undertaking given to this Hon'ble Court. Consequently, the President of India issued a proclamation under Article 356 of the Constitution of India dismissing the U.P. Government.

ILLEGALITIES FORM THE BASIS OF THE CLAIMS OF HINDUS

1. As mentioned above, and as has also been elaborated in our previous submissions (Submission Nos. A 53 & A 68), the entire basis of the claims of the Hindus parties, rests on *inter alia* the following illegal acts:-
   - 1934: Hindus damaged parts of the Babri Mosque, for which fine was imposed on them.
   - 19.03.1949:A deed which reduced into writing the customs of Nirmohi Akhara was executed by the Panches of Nirmohi Akhara and was registered in Sub Registrar's Office.
   - 12.11.1949: A police picket was posted near the grave mounds (precincts of Babri Masjid).
   - 29.11.1949:The Superintendent of Police, Faizabad, Mr. Kripal Singh informed the Deputy Commissioner Shri KK Nayar that *"...there is a strong rumor that on puranmashi the Hindus will try to force entry into the Babri Masjid with the object of installing a diety..."*
   - 10.12.1949:Waqf Inspector submitted his Report recording that Muslims were harassed by Hindus and Sikhs when they went to pray in the Babri Masjid. It was also stated that there was a temple of the Hindus outside the courtyard, where many Hindus lived and abused any Muslims who go to the Masjid.
   - 16.12.1949: Letter of Shri KK Nayar (Deputy Commissioner & D.M.) mentioning that Muslims who go to the mosque pass in front of the temple and are frequently being troubled over the occasional failure of the Muslims to take off their shoes. He requested the State Government to not give credence to the apprehensions of the Muslims regarding safety of the Babri mosque.
   - 22/23.12.1949: Some members of the Hindu Community in the darkness of night surreptitiously placed idols inside the Babri Masjid. Pursuant to the incident, FIR No. 167 was filed alleging about the placement of idols inside the inner courtyard of disputed site in the night of 22/23/12.1949 u/s 147, 295, 448 I.P.C by the Hindu Parties.
   - At the time of the desecration a complete defacement of the entire mosque was done by members of the Hindu community *inter alia* by putting of vermillion on all pillars, hanging pictures inside the mosque and using the mosque as a residence etc.
   - 26.12.1949: Despite directions, the Deputy Commissioner refused to follow directions of removal of the idols and stated that the news of the desecration came as a great surprise. Justice Khan has note that this surprise did not appear to be genuine.

- 27.12.1949: Deputy Commissioner wrote to Chief Secretary suggesting that instead of removing the idols, the disputed site should be attached and only 4 pujaris should be permitted to carry on puja there. Further he suggested that the parties can thereafter file suits before the Courts, and during the pendency of the such suits, the Muslims can be induced to give up their claims on the site.
- 18.12.1985: Ram Janmabhoomi Nyas was formed by a deed of trust dated December 18,1985. This Nyas is intrinsically connected to VHP, which is entitled to nominate 14 trustees in the Nyas. *This was a new body which included politicians as well as Mahants.*
- 1989: Suit 5 was filed praying for removal and demolition of the existing structure so that a new structure could be built in its place.
- 6.12.1992: Babri Masjid was demolished in utter violation of the solemn undertaking given to this Hon'ble Court. This Hon'ble Court has recorded in the judgment of *Dr. Ismail Faruqui* that this crowd which had demolished the mosque was incited by members of VHP.

2. With respect, the opposite parties have virtually admitted the illegalities, this itself is a reason to deny any relief to the Hindus.

EFFECT OF EXISTENCE AND DESTRUCTION OF TEMPLE ON TITLE

1. Existence of temple below the Babri Mosque in an earlier time period, or demolition of an existing structure to construct the Babri Mosque, is irrelevant for the question of title

2. Without prejudice to the foregoing, it is submitted that even the ASI Report is inconclusive on the question of demolition. ASI report does not answer the question framed by the Court, inasmuch as, neither it clearly says whether there was any demolition of the earlier structure if existed and whether that structure was a temple or not.

3. In fact, though the Hon'ble High Court notes that the ASI has not answered the question of demolition:
   "ASI, in our view, has rightly refrained from recording a categorical finding whether there was any demolition or not for the reason when a building is constructed over another and that too hundreds of years back, it may sometimes be difficult to ascertain as to in what circumstances building was raised and whether the earlier building collapsed on its own or due to natural forces or for the reason attributable to some persons interested for its damage. Sufficient indication has been given by ASI that the building in dispute did not have its own foundation but it was raised on the existing walls. If a building would not have been existing before construction of the subsequent building, the builder might not have been able to use foundation of the erstwhile building without knowing its strength and capacity of bearing the load of new structure. The floor of the disputed building was just over the floor of earlier building. The existence of several pillar bases all show another earlier existence of a sufficiently bigger structure, if not bigger than the disputed structure then not lessor than that also."
   [See pgs. 2445-2446 @ para 3988 & 3990/Vol. II of the Impugned Judgment]

4. Further it has been averred that the Muslim Parties failed to raise the ground of an Eidgah or a Kanati Mosque in their plaint. It is submitted that it is incomprehensible as to how the Muslim Parties could have raised this ground in their Plaint, as :-
   - Certainly, Babur would not have caused an inquiry to be conducted before having a mosque constructed as to what lied beneath.
   - Further, only after the gazetteers and history books were unable to give a clear picture, did the Hon'ble High Court resort to excavation by ASI and needless to say that the findings revealed in the report could only be explained after the said report was made available.

SUBMISSION ON LAW ON TITLE

I. **PROPOSITION I:** POSSESSION CREATES A PRESUMPTION OF TITLE: If there is no better Title or any other Claim is barred by Limitation.

- *Nair Service Society Ltd vs Rev. Father K. C. Alexander & Ors , 1968 SCR (3) 163*

  "It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is for ever extinguished, and the possessory owner acquires an absolute title."

II. **PROPOSITION II:** WHERE A PERSON HAS POSSESSION WITH TITLE - this will continue with use or inability to use:-

- *M.S. Jagadambal vs Southern Indian Education Trust- 1988 (Supp) SCC 144*

  'Possession continues with the title holder unless and until the defendant acquires title by adverse possession. There would be no continuance of adverse possession when the land remains submerged and when it is put out of use and enjoyment. In such a case the party having title could claim constructive possession provided the title had not been extinguished by adverse possession before the last submergence. There is no difference in principle between seasonal submersion and one which continues for a length of time.'

  In this case the law relied upon by this hon`ble court has been applied by the Privy Council in *Kumar Basanta Roy v. Secretary of State, (1917) LR Vol. 44 IA 104*.

III. **PROPOSITION III:** POSSESSION ALONE CAN DECIDE TITLE IN CERTAIN CIRCUMSTANCES:-

- *State Of A.P. & Ors vs M/S. Star Bone Mill & Fertiliser Co (2013) 9 SCC 319* (at pr. 17-20)

  '17. No person can claim a title better than he himself possess. In the instant case, unless it is shown that M/s. A. Allauddin & Sons had valid

title, the respondent/plaintiff could not claim any relief whatsoever from court.

18. In Gurunath Manohar Pavaskar & Ors. v. Nagesh Siddappa Navalgund & Ors., AIR 2008 SC 901, this Court held as under:-"A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act.

19. In Nair Service Society Ltd. v. K.C. Alexander & Ors., AIR 1968 SC 1165, dealing with the provisions of Section 110 *of the Evidence Act, this Court held as under:-"15……Possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides."*

20. In Chief Conservator of Forests, Govt. of A.P. v. Collector &Ors., AIR 2003 SC 1805, this Court held that "Presumption, which is rebuttable, is attracted when the possession is prima facie lawful and when the contesting party has no title."

IV. **<u>PROPOSITION IV:</u>** THE BURDEN OF PROOF IS UPON THE PERSON WHO ASSERTS POSSESSION WITHOUT TITLE :-

- The Indian Evidence Act, 1872 section 110 :-

  '110. Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.'

- *State Of A.P. & Ors vs M/S. Star Bone Mill & Fertiliser Co (2013) 9 SCC 319* (at pr. 21)

  "21- The principle enshrined in Section 110 of the Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of Code of Criminal Procedure, 1973, and Sections 154 and 158 of Indian Penal Code, 1860, were enacted. All the afore-said provisions have the same object. The said presumption is read

under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It infact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even, a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act.'

V. **<u>PROPOSITION V:</u>** Even if a person concedes or acts in such a way to show lack of possession and /or -perform *such an act or omission,* will be estopped by way of estoppel apply to that person or representative.

- The Indian Evidence Act, 1872 section 115:

  '115 Estoppel. —When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.'

VI. **<u>PROPOSITION VI:</u>** POSSESSION IS SUSTAINED BY *ANIMUS POSSIDENDI :-*

- In *Supdt. & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja & Ors. (1979) 4 SCC 274,* the possession was described by the Court in paras 13, 14 and 15.

- *P. Lakshmi Reddy v. L. Lakshmi Reddy, 1957 SCR 195,* adverted to: (at pr. 4)

  '...the ordinary classical requirement that it should be nec vi, nec clam, nec precario that is the possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus.'

- *Karnataka Board of Wakf v. Government of India and Ors. (2004) 10 SCC 779,* it was observed: (at pr. 11)

  'Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature.'

- *Annakili v. A. Vedanayagam, 2007 (14) SCC 308,* (at pr. 24)

  'Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a wellsettled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act.'

Thus in this case, the defendants have never claimed alternatively title (except to build on chabootra on the alleged ground of title denied from 1934 to 1949 (22-29th -12 -1949) here was no *animus possidendior* challenge to possession and possesseory title, after which the property was custodia legis.

VII. **<u>PROPOSITION VII:</u>** THE ABSENCE OF PRAYER OR LESSER PRAYER IN A MOSQUE UNDER POSSESSION WOULD NOT RESULT

IN A LOSS OF TITLE, WHICH CAN ONLY BE LOST ON ADVERSE POSSESSION BEYOND LIMITATION.

Semble, it is not necessary to countermand any argument that a waqf can lose its mosque or title by abandonment of property by inadequate prayer as the only loss of title can be through limitation.

- *The Mosque Known as Masjid Shahid Ganj Vs. Shiromani Gurdwara Parbandhak Committee, (1940) 67 IA 251,* where the mosque in Lahore was dedicated in 1722, but the possession of the Sikhs was from atleast 1849. The Court observed: (at pg. 262)

  'It was for the plaintiffs to establish the true position as at the date of annexation. Since the Sikh mahants had held possession for a very long time under the Sikh state, there is a heavy burden on the plaintiffs to displace the presumption that the mahants' possession was in accordance with the law of the time and place. There is an obvious lack of reality in any statement of the legal position which would arise assuming that from 1760 down to 1935 the ownership of this property was governed by the Mahomedan law as modified by the Indian Limitation Act, 1908.'

  Also at pg. 263:

  '*But the Limitation Act is not dealing with the competence of alienations at Mahomedan law. It provides a rule of procedure whereby British Indian Courts do not enforce rights after a certain time, with the result that certain rights come to an end. It is impossible to read into the modern Limitation Acts any exception for property made waqf for the purposes of a mosque, whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with a religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Indian Limitation Act accept the contentions that such a building cannot be possessed adversely to the waqf, or that it is not so possessed so long as it is referred to as " mosque," or unless the building is razed to the ground or loses the appearance which reveals its original purpose.'*

VIII. PROPOSTION VIII: IF THE DOCTRINE OF LOST GRANT APPLIES TO THE PRESENT CASE, THEN IT CAN ONLY BE APPLIED TO THE MUSLIM WAKF & NOT TO ANY OF THE DEITIES BECAUSE THE

CONTINUITY OF THE TITLE OWNER MUST REMAIN THE SAME AND BE IDENTIFIABLE

See:

a. *Asrabulla & Ors. v. Kiamatullah Haji Chaudhary & Ors.* AIR 1937 Cal 245 (@ pg. 249)

b. *Lakshmidhar Misra & Ors. v. Rangalal & Ors.* (1949) Vol. 76 271 (@pg. 277)

c. *Raja Braja Sunder Deb v. Moni Behara & Ors.* (1951) SCR 431 (@ pg. 446)

d. *Sri Manohar Das Mohanta v. Charu Chandra Pal and Ors.* (1954) SCR 1168 (@ pg. 1172)

e. *Konda Lakshmana Bapuji v. Govt. of A.P. and Ors.* (2002) 3 SCC 258 (@ Para 67)

CONCLUSION

In view of the foregoing it is clear that:-

1. In 1528, the Babri Mosque was constructed under the command of Babur. The maintenance & upkeep of the mosque was realized by a cash grant payable by the Royal Treasury during the rule of Babur. Subsequently, the British continued the grant.

2. Several attempts of trespass and encroachment by Hindus and Sikhs were successfully resisted by Muslims. Even the state authorities protected the rights of the Muslims by directing:-

    a) Eviction of the Hindu/Sikh squatters from the mosque

    b) Removal of any construction made by them

3. The general belief of the Hindus, atleast in the year 1885 was that the birthplace of Lord Ram was at the Ram Chabutara. This belief as judicially noticed in the 1885 suit. However, despite noting the said belief, it was held that Hindus had no rights of title over the Chabutara and that their rights were at the most prescriptive rights.

4. Even the Hindus have always referred to the disputed structure as the mosque and have recognized it as such.

5. Muslims were continuously offering prayers in the disputed structure, as is evident from :-

    a) Agreement dated July 25,1936 for payment of arrears of salary of Pesh Imam

    b) Testimonies of witnesses as recorded in the Shia-Sunni suit of 1941.

    c) During the course of arguments, the Plaintiffs of Suit 5 have agreed that at least till 16.12.1949, namaz was being offered in Babri Masjid.

6. The Hindus have based their rights on only illegal acts:-

    a) Preventing, and indeed flaunting that they prevented/harassed the Muslims when they went to offer Namaz in the Babri Mosque.

    b) Destroyed part of the Babri Mosque in 1934, for the repairs which fine was imposed on Hindus.

c) Desecration of the mosque on December 22/23,1949

d) Demolition of the mosque on December 6,1992 in utter violation of the *status quo* orders of this Hon'ble Court.

7. In view of the foregoing, it is clear that the disputed structure has always been a mosque which has remained in the possession of Muslims since 1528 till the desecration on December 22-23,1949.