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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION,
ORDER XVI RULE 4 (1)(a)]

CC3600/11

SPECIAL LEAVE PETITION NO. (CIVIL) OF 2010

CA 4739/11

(SPECIAL LEAVE PETITION ARISING out of the Final Judgment dated 30th September 2010 passed by the High Court of Judicature At Allahabad Lucknow Bench Lucknow in OOS No. 5 of 1989 [RS No. 236 of 1989 IN connected suits No. OOS No. 1 of 1989, OOS No. 2 of 1989 IN OOS No. 4 of 1989])

WITH

(PRAYER FOR INTERIM RELIEF)

IN THE MATTER OF:-

Akhil Bharat Hindu Mahasabha,
through Kamlesh Tiwari ----- Petitioner

VERSUS

Bhagwan Sri Ram Lala Virajman and others----Respondents

With

IA NO. OF 2010 APPLICATION FOR PERMISSION TO FILE S.L.P.
WITHOUT CERTIFIED AS WELL AS TRUE/PLAIN
COPY OF IMPUGNED ORDER

IA NO. OF 2010 APPLICATION FOR PERMISSION TO FILE LENGTHY
LIST DATES.

PAPER BOOK

[FOR INDEX PLEASE SEE INSIDE]

VARINDER KUMAR SHARMA ADVOCATE FOR THE PETITIONER:

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2010

IN THE MATTER OF :

AKHIL BHARAT ...Petitioners

Versus

BHAGWAN SRI ...Respondents.
RAM LALA

OFFICE REPORT OF LIMITATION

- ✓ 1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of ____ days in filing the same against order dated 30.9.10 and petition for condonation of ____ days delay has been filed.
3. There is delay of ____ day in refiling the petition and petitioner for condonation of ____ days delay in refiling has been filed.

BRANCH OFFICER

NEW DELHI

DATED: 22/12/10

LISTING PERFORMA

IN THE SUPREME COURT OF INDIAN

- 1. Nature of the matter Civil
- 2. Name of the petitioner /appellant Akhil Bharat Hiondu Mahasabha
- 3. Name of the Respondent (s) Bhagwan Sri Ram Lala Virajman and ors
- 4. Number Of Case
- 5. Advocate for the Petitioner Varinder Kumar Sharma
- 6. Advocate for the respondent
- 7. Section dealing with the matter
- 8. Date of Impugned order /judgment ... 30.9.2010

8A. Name of the Honourable Judge Mr Mr. Justice S.U
 Khan and Mr. Justice Sudhir Agarwal whereas the
 third Judge i.e Hon'ble Mr. Justice Dharam Veer
 Sharma

- 8B In land acquisition matter :-
 - i) Notification / Govt . order no. (u/s 4,6).....NA
 Datedissued by centre/state of.....
 - ii) Except purpose of acquisition and Village involved
 NA...

- 8C . In civil matter :-
 - i) Suit no. ,name of Lower Court NA
 Date of Judgment NA

8D In writ Petition :-
 "Catchward" of other similar matter NA.....

8E In case of Motor Vehicle Accident Matters:-
 Vehicle No.....NA.....

- 8F In service matter
 - i) Relevant Service Rule if any . notification, if applicable
 or in question.....NA.....

- 9 Nature of Urgencystay
- 10. In Case Tax Matter :-
 - a) Tax amount involved in the matterNA.....
 - b) Whether reference /statement of case was called for or
 rejectedNA
 - c) Whether similar tax matter of same parties filed earlier (may
 be for earlier /other Assessment
 Year)?.....NA.....
 - d) Exemption Notification/circular no.....NA.....

- 11. Valuation of the matterNa.....
- 12. Classification of the matter :
 (Please fill up the number and name of relevant category with sub
 category as per list circulated .)

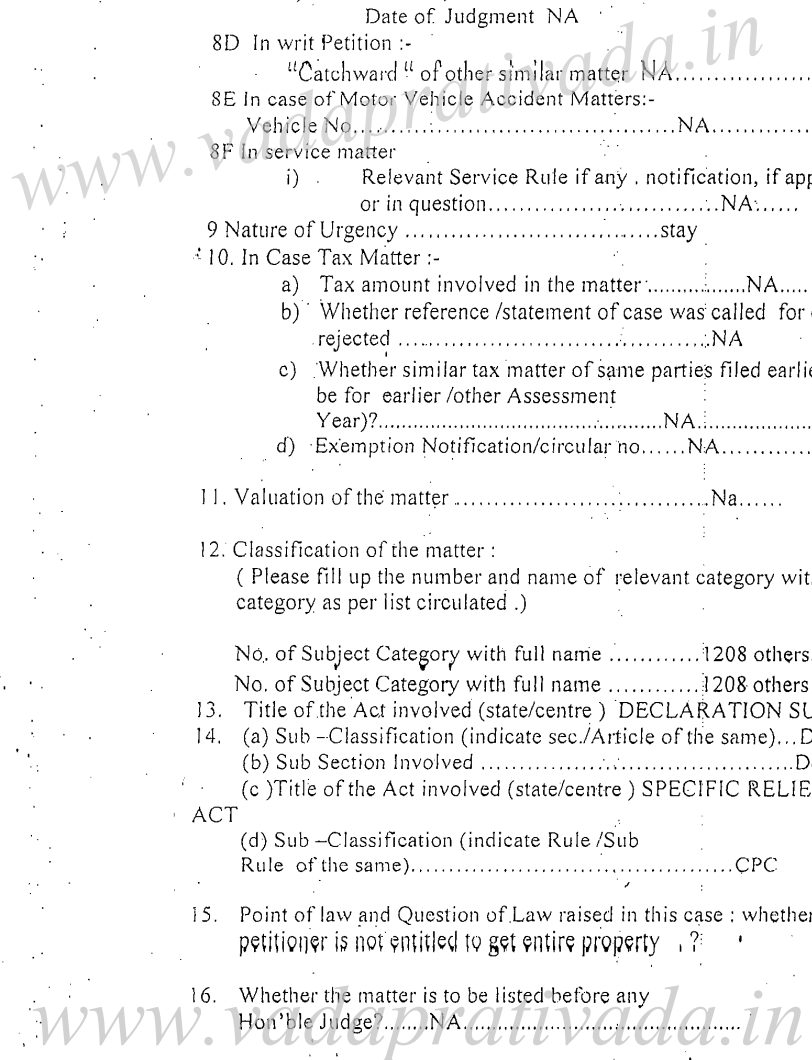
No. of Subject Category with full name1208 others.
 No. of Subject Category with full name1208 others

- 13. Title of the Act involved (state/centre) DECLARATION SUIT
- 14. (a) Sub -Classification (indicate sec./Article of the same)... Do
 (b) Sub Section InvolvedDo
 (c)Title of the Act involved (state/centre) SPECIFIC RELIEF

ACT
 (d) Sub -Classification (indicate Rule /Sub
 Rule of the same).....CPC

- 15. Point of law and Question of Law raised in this case : whether
 petitioner is not entitled to get entire property ?

- 16. Whether the matter is to be listed before any
 Hon'ble Judge?.....NA.....



Mention the name of Honourable Judge

- 17. Particular of Identical Case ,if any
 - a) Pending caseNA.....
 - b) Decided case with citationNA.....

17A. Was S L P/ Appeal/Writ filed against same impugned judgment /order earlier ,if yes, particular Na.....

18. Whether the petition is against interlocutory /final order/decree in the caseFinal Order

19. If it is a fresh matter , please state the name of the High Court and the coram in the Impugned Judgment /order High court of Judicature At Allahabad at Lucknow

- 20. If the matter was already listed in this Court :
 - a) when it is listed ...NA.....
 - b) What is the Coram...NA.....
 - c) What was the Direction of the Court

21. Whether a date has already been fixed, either by court or being mentioned , for the hearing of the matter , if so please indicate the date fixedNA

22. In there a Caveator ? if so whether a notice has been issued to himNA

23. Whether date entered in computer.....NA

- 24. If it is a criminal matter please state
 - a) Whether the accused has surrenderNA
 - b) Nature of Offence i.e convicted under section with Act
 - c) Sentence awardedNA
 - d) Sentence already undergone by the accused

- 24. i) FIR /R C /etc.....NA.....
Date of registration of FIR etc.....NA
- ii) Name and Place of TrialNA
Case no. in trial Court and date of Judgment...NA
- iii) Name and Place of First Appellant Court & date of Judgment

Sir the matter is not commercial

Dated 22.12.10

Varinder Kumar Sharma
Advocate for
Petitioner/Appellant
/Respondent
CODE 1237

Synopsis and List of Dates:

This Special leave Petition arising out of final judgement and order dated 30.9.2010 passed by the Full Bench of the Allahabad High Court, Lucknow Bench in OOS No. 5 of 1989 ¹⁰⁷ other connected civil suites nos. OOS Nos. ~~1/89~~, ~~2/89~~ ¹⁰⁷ ~~4/89~~ by a common judgment, commonly known as Ayodhya Dispute decreeing one third of the suit land in favour of Muslims, making a division of the deity's property of Asthan- Shri Ram Janma Bhoomi.

The history of the present litigation starts from 1528 when the Army of Islam led by Babur demolished temple existing at the site of Shri Ram Janma Bhoomi, the deity, being worshipped by Hindus from thousand of years. The purpose of demolition of the temple was to tease the Hindu community and make them understand that they have come under Islamic rule. In fact, the demolition work was carried out to show the might of Islam over idolaters. According to Baburnama, written in Turkey language, translated by Ms. A.S.Beveridge in 1921, Babur had declared that he had hatred with Paigans i.e. Hindus and took a vow to destroy idols.

It is well established that Lord Ram was born during Treta age i.e. more than 8 lakh years ago. Shri Ram Janma Bhoomi is a Swayambhu deity, as recognized by Hindu scriptures as Lord Vishnu,

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the Lord of Universe took incarnation in the shape of Lord Rama at the palace of King Dashrath in Ayodhya, commonly known as Ram Kot i.e. Rama Fort. The practice of worship of Asthan Shri Ram Janma Bhoomi is prevalent from thousands of years due to the belief of the incarnation of Vishnu in the form of Lord Ram and the said practice has become the integral part of Hindu religion. According to Hindu law, the property vesting in the deity cannot be taken even by the king for any purpose.

Lord Ram has been recognized as cultural heritage of India by the Constitution by picturizing Him on the pages of the Constitution. The Hindus are fighting to restore the cultural heritage of India and for the cause of saving the cultural heritage of India i.e. birthplace of Lord Rama for a considerable long time and are giving sacrifices of their men, wealth and energy, to see a glorious temple as it was before demolition; and to wipe out the sign of slavery in independent India. This issue has been a burning topic in political arena creating political turmoil, changing the governments at Centre and the States and this pivot point has haunted the minds of Indian people time and again. When the matter flared up, Muslims at national level agreed that if it is proved that the structure was raised after demolition of a Hindu temple, they would have no claim over the property in dispute. Keeping in view the consciousness on the said issue between two litigating communities, the Central Government enacted the

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Acquisition of Certain Area at Ayodhya Act, 1993 (Act No.33 of 1993), hereinafter referred to as the 'Act' and the same was challenged before the Apex Court. The President of India also referred the single question to the Apex Court, as referred to above. The Apex Court has decided the reference and the validity of the Act in case of *Ismail Farooqui vs Union of India*, reported in (1994) 6 SCC 360, striking down sub-section (3) of Section 4 of the Act, reviving the suits after setting aside abatement, directing for disposal of the suits, to decide the title of the parties over the structure (inner and outer courtyards). Thus the High Court was required to decide the question of title between the litigating parties. The High Court was required to record a finding determining the title/ownership of the party found entitled to over the property in question by applying appropriate law for deciding the said issue.

The Hindus have proved their case by overwhelming evidence supported by historical facts, reports of ASI, the facts mentioned in the gazetteers and other sources that Hindus were in absolute possession over the entire area of Ram Kot including the place in question, and they have been worshipping the Asthan as deity from ages, as per Hindu law and such practice continued even after the construction in question was raised, as Hindus reoccupied/recaptured the building standing at the place in question. It is relevant to point out that even the Muslim historians throughout have asserted that Babur after demolishing the temple at birth place of Lord Ram constructed

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the alleged mosque. There is not a single Muslim historian who has differed from this view. No Muslim author having a contrary view has been cited by the Muslims before the High Court. This fact is also corroborated by the inscriptions found by Francis Hamilton Buchanan between 1810-1814, preserved in the British Library at London and the fact published in Epigraphia Indica in 1965 under the authority of ASI, written by Maulvi Ashraf Hussain being relied upon by Muslims to establish that Babur after conquering India had got constructed the mosque in question. From the narrations of facts made from Francis Hamilton Buchanan (1810-1814) to M. Ashraf Hussain (1965), it has also been mentioned that the alleged mosque was constructed after demolition of Hindu temple standing at the site of birth-place of Lord Ram.

In view of the facts existing on record and mentioned in the judgment of the High Court, it is crystal clear that Hindus have proved their ownership and title at the site in question, as the temple was existing at the site in question before construction of structure in question. Therefore, there is no iota of evidence of any kind regarding right, title or ownership of Muslims over any part of the land in suit. Even then, the High Court has decreed 1/3rd of the land of suit property to Muslims, giving rise to the filing of the present petition.

The following questions remain untouched by the High Court and there is no finding thereon, even though arguments at length were advanced on said questions:

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1. Whether any law or order affecting or infringing the right to religion guaranteed under Article 25 of the Constitution of India to Hindus can remain in operation after 26th January, 1950 in view of the injunction embodied in Article 13(1) of the Constitution of India?
2. Whether Muslims can claim any right, title or interest over a property belonging to deity, on the basis that a building was constructed by a Muslim ruler over the said property?
3. Whether in case of conflict between the native law and the foreign law operating in the same field, native law will prevail?

Deity's property:-

This aspect of the matter is being divided into two parts viz. (A) period upto 1855 and (B) period from 1856 onwards.

(A) Period upto 1855:

From historical facts, it is established that Shri Vishnu Hari temple was constructed by King Vikramaditya and it was reconstructed/renovated lastly by King of Gaharwal dynasty between 1114 to 1154. The King of Gaharwal dynasty, namely, Raja Chandradev had visited the place on 23rd October, 1093 and after taking bath in Saryu performed rituals at Swarga Dwar temple and also Shri Vishnu Hari Temple (Rama Temple). It also comes out from History that Guru Nanak Ji visited Ayodhya sometimes in the

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year 1510 A.D and took Darshan of the temple and Ram Janma Bhoomi at the place in question.

The continuity of worship by Hindus, performing rituals at the Asthan is going on uninterrupted even after construction of the disputed structure and there is overwhelming evidence that Hindus were all along been in possession and were performing rituals at the Asthan within which the structure in question stood; despite the construction being forcibly raised by the army of Islam in 1528. The continuity of exclusive worship at the place in question by Hindus is borne out from the earliest historical record written by Abbul Fazal Almi, a minister of Emperor Akbar's Council. He had compiled a gazetteer and administrative Manual of Akbar's empire and past history of India and published under the title Ain-e-Akbari, written between 1580-1590 in Persian language and translated by Colonel H.S. Jarrett, wherein it has been clearly mentioned that (i) Lord Ram was born during Treta age on the 9th of the light half of the month of Chaitra (March-April) in the city of Ayodhya, of Kaushalya, wife of Raja Dashrath, (ii) Ayodhya commonly called Avadh- on the 9th of the light half of the month of Chaitra a great religious festival is held i.e. the anniversary of birth of Rama which is celebrated as Ram Navmi.

In the said book, there is no mention that any mosque was existing at the place in question, or that any mosque was constructed at the time of Babur or that Muslims were performing any worship at the place in question. It shows that after departure of Babur from the place in

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question, the Hindus reoccupied the place and continued to worship in the building and the Asthan Shri Ram Janam Bhoomi unfettered and unaffected.

After **Ain-e-Akbari**, we get the position of the spot from the traveller's account of William Finch between 1608-1611 contained in the book, titled as '**Early Travels in India- by William Foster**'. Finch has clearly mentioned that Rama castle was in ruins and Hindus were worshipping at the place, treating the same as birth-place of Lord Ram. From the words of William Finch it appears that the ruins of Rama castle were telling its own story but still the worship at the same very place was going on. It shows the existence of a demolished structure at the place Ram Janma Bhoomi at that very time and worshipped by Hindus and there is no reason to differ from the facts mentioned by Finch, unaffected at that time of any litigation and having no prejudice against any party to the litigation.

AFTER 1611

After 1611, there is a complete blank upto 1765 when Triphentheller, a traveler visited Ayodhya, remained for quite some time, knowing the local language, having a conversation with local people, clearly mentioned that Hindus were worshipping the place, believing that it was the birth-place of Lord Rama, and other places of worship at that very site, namely, Sita Rasoi, the Bedi etc. and the Parikrama being

undertaken by Hindus at the place in question. It is remarkable to mention that there is no mention of existence of any mosque or any other worship by Muslims at the place in question, i.e. within the site of disputed structure. Thus it is very clear that upto 1775, the Muslims were not in possession over the disputed structure in any manner and no Namaz or worship was being performed by Muslim community at the site of Asthan and the disputed structure in question. Over the entire area, it were the Hindus who were in possession de facto and de jure.

The history written subsequently also confirms the exclusive Hindus possession and worship over the structure in question standing at the site i.e. Asthan Shri Ram Janma Bhoomi, the Swayambu deity, recognized by Hindu law.

1807 to 1814

The East India Company had deputed one Francis Hamilton Buchanan to have survey of entire area of Oude and accordingly, he took survey between 1807 and 1814 and collected materials from Oude including the structure in question and submitted his report to East India Company. In his report, he has mentioned that he found one of the inscriptions inscribed at the walls of disputed structure, wherein it was clearly mentioned that at the instance of Fakir Musa Ashiqan, emperor Babur got demolished the existing Rama temple through his general and a mosque was constructed. This report has been maintained by the British Library at London. On getting a copy of said report from

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said Library, plaintiff No. 3 (late Deoki Nandan Agrawal) had placed before the Court through an affidavit. The genuineness and credibility of the said document has not been challenged by Muslims or any other party to the suit. Said affidavit has been reproduced in the judgment of Justice Sudhir Agarwal. But no reliance has been placed on the same on technical grounds. It may be mentioned here that the said document is to be read as evidence, as no party either challenged, or made a request to cross-examine Sri D.N.Agrawal. Therefore, the said document has to be read in evidence in accordance with the provisions contained in Order 19 of C.P.C. It is relevant to point out that even the Muslims are placing reliance on the said document for the purpose that it was emperor Babur under whose orders the mosque in question was constructed at the place in question. However, the said document has to be read in its entirety and it is established on record, in the manner stated above that it was Babur, under whose orders the existing Rama temple at the place in question was demolished and a building was constructed, which was termed as a mosque, though it was not and could not be either in law or by any stretch of imagination or under the prevalent Islamic law applicable to the point in question.

1828

The first Gazetteer was published under the authority of East India Company, composed by Francis Hamilton Buchanan in 1828. In the Chapter Oude, in the said Gazetteer it has been mentioned that Oude

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is one of the largest cities of Hindusthan..... the town is esteemed one of the most sacred places of antiquity. And further that "pilgrims resort to this vicinity where the remains of ancient city of Oude, the capital of Great Rama, are still to be seen; but whatever, may have been its former magnificence, it now exhibits nothing but a shapeless mass of ruins..... But in land it is a mass of rubbish and jungle, amongst which are the reputed sites of temples dedicated to Rama, Sita, his wife, Lakshman, his general, and Hunimaun (a large monkey), his prime-minister. The religious mendicants, who perform the pilgrimage to Oude are chiefly of the Ramata set, who walk round the temples and idoia bath in the holy river-Pooja and perform the customary ceremonies."

Thus, it is very clear that it were the Hindus, particularly the devotees of Lord Rama, who were in actual physical possession over the entire area and worship of Lord Rama was going on at the place in question. It is also very clear that no Muslim worship in any manner was prevalent or was being performed in the entire area of Ram Kot. Therefore, it is very clear that Muslims were not in any manner performing prayers/Namaz at the place in question.

Then comes the work done by Montgomery Martin including the Oude, published in the book titled as 'History, Antiquities, Topography and Statistics of Eastern India.' At page 335 of the said book, Martin has said that "the begot by whom the temples were destroyed, is said to have erected mosque on the situations of the most

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remarkable temples; but the mosque at Ayodhya which is by far the most entire and which has every appearance of being the most modern, is ascertained by an inscription on the walls (of which a copy is given) to have been built by Babur, five generations before Aurangzeb..... I am inclined to suppose that it was a part of building actually erected by Rama." Martin has further exhibited the black Kasauti pillar in his book and has confirmed that these pillars were belonging to a temple and now fixed in the alleged mosque built by Babur. In his report, Martin has also not mentioned the presence of Muslims inside the site in question, their prayers or worship being performed by them at that time within the structure in question.

Actually the purpose of Babur was to demolish the Hindu temple to humiliate Hindus, to pinch their idol worship and make them understand that they have been overpowered by army of Islam and it is Islam which is supreme and all its worshippers must follow the Islam which was all powerful. It is noteworthy that Buchanan also did not find any worship or Namaz being performed by Muslims at the place in question, or that they were in possession over the structure in question.

Thus, it were Hindus and only Hindus, who were managing all the affairs of the temples in the area in question and the Pooja worship etc. was in full swing at the time of the composition of gazetteer i.e. 1828 and the survey made by Martin, published in 1938.

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After 1828.

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Edward Thornton, published gazetteer in 1858 of the territories under the Government of East India Company, wherein it has also been mentioned that more than five hundred Bairagis were all present in the vicinity of Ram Kot and they were not allowing any Muslim to come within and walk there. It has also been confirmed that the worship of the Asthan was going on, treating the place at Janma Bhoomi within the fort, and due to Rama Fort, the area was famous as Ram Garh or Fort of Rama. The falsehood of the tradition was that people were attributing the work of demolition of temple at the site on Aurangzeb whereas on the basis of inscription, it was proved that the demolition was carried out by Babur after conquer.

From the gazetteer of 1858, it is proved that Hindus had become powerful by time and they were holding the entire area, from Hanumangarhi to Asthan Shri Ram Janam Bhoomi and area of Ram Kot in their possession and Muslims were not being allowed to enter that area. Thus, there is no question of any worship being made by Muslims within the disputed structure or within the entire area of Ram Kot.

(B) Period after 1855:

Ayodhya was annexed with East India Company with effect from 1st November, 1856. In the year 1855, a riot took place at large scale between Hindus and Muslims, in which several Hindus gave their

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lives. After the riot, Hindus continued to be in possession over the structure in question and Hanumangarhi as well. The Britishers wanted to keep the issue alive, hence a new theory was developed saying that Muslims and Hindus both were performing worship in the structure in question, and as such the disputed structure was partitioned by putting an iron-railing between inner and outer courtyards, asking the Muslims to offer their prayers in the inner courtyard and the Hindus to remain upto the outer courtyard. The Britishers with a view to keep the Muslims with them also granted Nan-kar grant of Rs.302 and 2Anas in favour of Razab Ali and Asghar Ali for upkeep of the mosque, termed as Babri mosque at Sahanwa, at a distance of 5 kms from the place in question, on the condition to be loyal to the British Government and render help to the military and police, as and when asked for. However, the said arrangement could not be implemented and Hindus continued their worship within the inner courtyard of the building in question.

From the facts mentioned above, it is clear that after annexation of Oude with the East India Company, it were the Britishers who had sown the seeds of the present litigation and had allowed Muslims to come within the inner courtyard for performing prayers. Thus, Muslims at the most became licensee of the British Government for the purposes of offering prayers. Therefore, the right of the Muslims has to be seen from the point of view that they were allowed to come inside the premises by the Britishers for the first time in the

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temple/building in question belonging exclusively to Hindus for their worship. Thus, the lis starts from this point.

1856 . In 1856, Mirza Jaan's published his book Hadiqa-i-Shahda, reproducing the work of daughter of Bahadur Shah Alamgir titled as Sahifa-i-Chihal Nasaih Bahadur Shahi, comprising 40 sermons, wherein it has been said the Hindu temples situated at Mathura, Banaras and Avadh i.e. the birth place of Lord Krishna at Mathura and at the birth place of Lord Ram at Ayodhya, were demolished by Muslim rulers to show the might of Islam and at those places, mosques have been constructed.

1862-1865

Four reports were published by ASI prepared by A.Chunningham CSI, appointed by Governor General in Council to prepare reports on the antiquities of upper India. In Part 7 of the said report, Ayodhya has been discussed, clearly mentioning that Ram temple was at the place in question and that the Asthan of Janmabhoomi was being worshipped by Hindus. There is no mention of any Muslim worship or their presence in any manner at or near the property in question.

1870

There is another report prepared by P.Carnegi in the year 1870 in the capacity of Officiating Commissioner and Settlement Officer,

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Faizabad, publishing under the heading of 'Historical Sketch of Tahsil Faizabad'. He has written that after Mohammedan conquest, three important Hindu shrines at Ayodhya, namely, the Janmasthan, the Swargadwar Mandir and Treta Ke Thakur, were demolished and mosques were constructed.

1877

In 1877, Gazetteer of Oudh prepared by W.C.Bennet, CS/Assistant Commissioner was published, in which it has been stated that 'the only record remaining in ancient mosque, which preserves the invaders name on the holiest spot of all the Birth Place of Rama'. It has also been mentioned that the "Janamsthan, Swargadwar Mandir and Treta Ke Thakur temples were existing at the Mohammedan conquest. The first temple was demolished by Babur and the other two by Aurangzeb.

1880

In the year 1880, a report on the settlement of the land revenue of Faizabad district written by A.F.Milley CS, officiating settlement officer was published, containing partly the reports and notes of P. Carnegi, the late Settlement Officer and J. Woodborn, late officiating settlement officer.

1885

In 1885, a suit was filed against the State by Mahant Raghubar Das, in his individual capacity and for raising construction of a small temple at the Chabutra in the outer courtyard of the disputed structure. In the

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said suit, Mohammed Asghar claiming himself to be the Mutavalli was also impleaded later on. In the said case, the commissioner appointed by the court, submitted his report showing the various places within and outside the disputed structures where Hindus were worshipping. After dismissal of suit by the Civil Judge, an appeal was filed before the District Judge, which was dismissed and second appeal was also dismissed. The District Judge in his judgment has held it is true that Babur had constructed the structure claimed by Muslims as mosque after demolishing the Hindu temple at the same very site, but it was too late to provide remedy to the Hindus against the said wrong. Thus the very fact of demolition of a Hindu temple and construction of a structure over the said land had been noticed by court of law for the first time. The Muslims did not prefer any appeal against the said finding and thus the same is binding on the Muslims.

1891

In 1891, under the authority of ASI a report under the title 'Monumental Antiquities and Inscriptions' prepared by A. Fuhrer was published. In the said report, Fuhrer has also mentioned about the inscription found by him on the walls of disputed structure. He has also written that it was Babur who had constructed a mosque at the birth place of Lord Ram, after destroying a Hindu temple.

1904

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In 1904, district Gazetteer of Barabanki under the authority of H.R.Nevil was published, wherein it has been asserted that the alleged mosque was constructed after demolishing a Hindu temple at the birth place of Lord Ram. The fourteen black Kasauti pillars had also been noticed and the opinion of existence of temple was formed on the basis of relevant material.

1905

In 1905, district Gazetteer of United Provinces of Agra and Oudh was published, wherein in Volume XLIII, the facts relating to district Faizabad have been mentioned. In the said gazetteer, the facts mentioned in earlier gazetteers and reports have been reiterated.

1908

In 1908, Imperial Gazetteer of India, with a chapter 'United Provinces of Agra and Oudh' was published, in which in volume II, the facts relating to Ayodhya and Faizabad were mentioned and the view found earlier in the gazetteers and reports regarding demolition of temple at the place in question and construction of mosque thereon have been confirmed.

1928

In 1928, a Gazetteer of districts of United Provinces of Agra and Oudh, including Faizabad, prepared by H.R.Nevil was published. Nevil published the said gazetteer after making survey and collecting other relevant materials which were not available to him till 1828. In

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judgment became final between the parties to the suit. The finding of this suit is being relied upon by Muslim in both capacities as plaintiff and defendant, in suits decided by the High Court. Thus, the finding regarding demolition of Hindu temple and construction of alleged mosque at the site i.e. the structure in question is binding upon Muslims, parties to the suits decided by the High Court.

Thus, the principle of Eatoppal is applicable against the Muslims and they cannot contend that alleged mosque was constructed on a barren land. Once it is established from the material on record and the finding recorded by the court in earlier suits is binding upon the Muslims that the disputed structure has been constructed after demolition of Hindu temple at the site, the Hindus cannot be denied their right of ownership over the property in question.

1960

In 1960, gazetteer of districts of Uttar Pradesh were published under the authority of the U.P. Government, prepared by Smt. Isha Basanti Joshi. In this gazetteer also, the demolition of Hindu temple and construction of the disputed structure at the site in question by Babur has been admitted. In this gazetteer, it has also been mentioned that in the middle of 19th Century, Ayodhya was regarded as strong hold of Hinduism. At the time of annexation of Avadh with East India Company, Hindus were strong enough to preserve their holiest places at Ayodhya. In this regard, an application submitted by alleged Mutwalli/Muazin/Khatib on 30th November, 1858 may be referred to, wherein it has been admitted that Hindus have been worshipping at

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the said place from a number of years. It also establishes that Muslims were not performing any worship/prayer within the disputed structure.

1965

In 1965, ASI published a book under the title 'Epigraphia Indica' containing the report prepared by late Maulvi M. Ashraf Hussain, edited by Z.A.Desai, who claimed that inscriptions found in 1934 riot was found by him and the same was refitted in the structure and further asserted that the said structure/mosque has been constructed by Babur after demolishing a Hindu temple at the site of Ram Janma Bhoomi. This document is also being relied upon by Muslims, confirming the Hindus' case. Thus the title of Hindus over the entire area of the disputed structure cannot be in doubt. On the other hand, Muslims had no possession of any kind in any manner over the structure in question and their occasional appearance, if any, within the structure will not confer any right or title under any law. Thus the High Court committed manifest error of law in decreeing 1/3rd of disputed land in favour of Muslims.

1990

In 1990, under the orders of the High Court, Dr. Rakesh Tiwari, Director of U.P. Archeological Organization with his team took photographs of the structure from different angles and videography was also done. The photographs were placed before the High Court alongwith cassettes of videography in black and white, and coloured photographs. The said photographs were also displayed and

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visualized by Judges. From those photographs, it is clear that the images of Hindu god and goddesses were engraved on black Kasauti pillars, fixed in the inner part of the building. In the northern side, Singhdwar is visible and on the outer wall, the image of Lord Varah is also applicable. All these signs cannot be found in any mosque. Therefore, Muslims had no occasion or right to enter into the premises for offering Namaj. It cannot be disputed that Muslims cannot offer their Namaz within a structure where a number of Hindu images are present, where Pooja, rituals and other practices of worship are going on. Simple appearance of some Muslims occasionally for a few minutes by force will not confer any right to property on them, nor can they contend that the building was a mosque by usure.

1992

After demolition of the building in the year 1992, a big stone was discovered, wherein verses in Sanskrit language are inscribed, showing the said stone to have been part of disputed structure, confirming that a Shri Hari Vishnu temple was constructed by the king of Gaharwal dynasty in 12th Century i.e. between 1114-1154 at the place in question.

5.3.2004

On 5th March, 2003, the High Court passed an order, considering that archaeological evidence will be of importance to decide the issue 'whether there was any temple/structure, which was demolished and mosque was constructed on the disputed site?' directing the ASI to

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conduct GPR survey and to submit its report. In compliance of the aforesaid order, the ASI submitted its report on 22.8.2003, inter alia mentioning that during the early medieval period (eleventh-twelfth century A.D.) a huge structure, nearly 50m in north-south orientation was constructed which seems to have been short lived as only four of the fifty pillar bases exposed during the excavation belong to this level with a brick crush floor. On the remains of the above structure was constructed a massive structure with at least three structural phases and three successive floors attached with it. The architectural members of the earlier short lived massive structure with stencil cut foliage pattern and other decorative motifs were reused in the construction of the monumental structure having a huge pillared hall (or two halls) which is different from residential structure, providing sufficient evidence of a construction of public usage which remained under existence for a long time during the period VII (Medieval-Sultanate level – twelfth to sixteenth century A.D.). It was over the top of this construction during the early sixteenth century, the disputed structure was constructed directly resting over it.

The report further said that there is sufficient proof of existence of a massive and monumental structure having a minimum dimension of 50 x 30 m in north-south and east-west directions respectively just below the disputed structure. In course of present excavations nearly 50 pillar bases with brick bat foundation, below calccrete blocks

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topped by sandstone blocks were found. The pillar bass exposed during the present excavation in northern and southern areas also give an idea of the length of the massive wall of the earlier construction with which they are associated and which might have been originally around 60 m (of which the 50 m length is available at present). The centre of the central chamber of the disputed structure falls just over the central point of the length of the massive wall of the preceding period which could not be excavated due to presence of Ram Lala at the spot in the make-shift structure.

At last, the report mentions that now viewing in totality and taking into account the archaeological evidence of a massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure alongwith the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, *amalaka*, *kapotapali* doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having *pranala* (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India.

as has been opined by so many thinkers that sign of slavery should not continue after independence. At this juncture, it is relevant to mention that **Dr. Ambedkar**, in his book, titled '**Thoughts on Pakistan**', Vol. II, Part IV, at page 296, has quoted the ideas of George Bernard Shaw, as follows:

"A conquered nation is like a man with cancer; he can think of nothing else..... A healthy nation is as unconscious of its nationality as a healthy man of his bones. But if you break a nation's nationality it will think of nothing else but getting it set again. It will listen to no reformer, to no philosopher, to no preacher, until the demand of the nationalist is granted. It will attend to no business, however, vital, except the business of unification and liberation."

In view of the historical background, Article 13(1) of the Constitution of India was enacted to ensure that any law violating fundamental rights be not allowed to continue any further.

The Muslims' case throughout in the suit filed by them as plaintiff as well as defendants in other suits is that the alleged mosque had been constructed by Emperor Babur, who granted non-kar grant for the upkeep of the mosque, and they are in continuous possession over the said structure since then. The Muslims' assertion is totally demolished from the documentary evidence on record. It is proved to the hilt that Muslims had never been in possession in any manner and no worship was being performed by them at the site in question and the building itself has not been used as mosque in any manner. It were the Hindus who have been in continuous possession, performing

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It is relevant to point out that under the proclamation issued by the Governor General Lord Canning on 15th May, 1858, the properties of the subjects of Avadh were confiscated to the Crown w.e.f. November 1, 1858.

In the year 1861, the first settlement of land was conducted and the entire land in dispute was shown as Nazul land. The Government is the owner of Nazul land. Thus the Government became the owner of the land in question.

Since the Government became absolute owner of the disputed land due to vesting in it by virtue of proclamation of the Governor General dated 15th May, 1858, the right of Muslims, if any, to claim the property as waqf property ceased to exist and the right of Muslims stand extinguished. It is well established that mosque can be constructed over a waqf property, which vests in the Almighty and it cannot vest in the Government. The Muslims accepted the provision made by Britishers relating to confiscation of property of Avadh to State, the theory of waqf or waqf by usure or existence of any mosque over the site in question ceased to exist, resulting in extinction of rights of Muslims over the land in dispute.

It is relevant to point out that Muslims never raised any objection in regard to declaration of land as Nazul land and they have themselves relied upon on Nazul Khasra, admitting that structure in question was existing at Nazul Khasra No. 583. They have no right to claim any part of the suit land in view of the legal proposition referred to above.

That in revenue records, the place was described as Janmasthan but by way of interpolation, the words 'Va Masjid' or 'Va Juma Masjid' were introduced in those records, which has been confirmed from the reports, submitted by the competent officer and the same is on record. Therefore, in revenue records also, the possession of Muslims has not been established at any point of time over the land in question. On the other hand, the Hindus' possession and the existence of temple is borne out from the revenue records in respect of the property in question.

In view of the facts referred to above, it is clear that the entire area i.e. the palace of King Dashrath known as Rama fort comes within the ambit of Swayambhu (self-created) Deity, where Lord Vishnu took incarnation in human form as Ram. The self-manifestation of the Supreme Being is used for Swayambhu Deity. Under Hindu Shastric law, the place of incarnation is treated to be sacred even if there is no structure or a temple. As such, the entire place i.e. Rama fort, is being worshipped by the believers from ages.

No part belonging to deity can be partitioned even by the King and the deity cannot be deprived of its property by any authority. The High Court has adopted a novel procedure in comparing Lord Ram with ordinary human being to hold that a small area is required for a child to take birth against the own finding recorded on the issue and after holding that Asthan Ram Janma Bhoomi is a Swayambhu deity. The High Court was required to decide the ownership or title over the land in question between the litigating parties but it was not required

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at all to decree 1/3rd of the land to Muslims, partitioning the deity's property on the presumption that a small place could be the birth place of Lord Ram. Under Hindu mythology, the entire building where Lord of Universe took incarnation is pious and the same cannot be partitioned and no other person or any other religion can be allowed to perform his religious practice at deity's place. Thus the judgment of the High Court is erroneous.

Constitutional aspects:

The framers of the Constitution were aware about the atrocities, tyrannies and barbarous acts suffered by the majority community of this nation at least from 1100 A.D onwards till 1947.

It is not out of place to mention that Islam has spread through sword. After converting so many nations into Islam, the army of Islam captured entire Iran and also Hindustan. Few Muslims ruled the country for several years and mass conversions took place. The population was increased and mother India was partitioned, adopting two-nation theory based on religion. The question is as to whether we have to follow the same suit and we have to concede even a part of the birth-place of Lord Ram to Muslims even though there is no evidence of creation of any valid waqf in respect of the land in question, no basis to claim right, title and interest over the property in dispute.

This tendency should not be allowed to develop and in a free country, the majority community should not be forced to lead the life having a cross on their chest, the sign of slavery forever. At international level,

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rituals, Darshan, Pooja etc. of the Asthan- Shri Ram Janma Bhoomi and temples standing thereon, witnessed and understood by the travelers, historians and writers, referred to above. It is also clear that alleged mosque if any constructed in 1528 was abandoned by Muslims and was not used as mosque and it lost its sanctity for every purpose for claiming the said structure as a mosque under the law applicable to the matter in issue.

It is worth to mention that in majority opinion, the High Court has also held that the Muslims have failed to prove their possession over the disputed structure and any worship being performed by them in the same for more than 300 years. It has held that the Hindus were in actual physical possession and Hindu's worship was being performed therein.

The majority opinion of the High Court simply on the point that Muslims were allowed to enter in the premises by Britishers and they termed the building as mosque, has allowed 1/3rd of the disputed area to them without holding that a valid waqf was created in respect of the property in question by Babur or any other Muslim ruler or that any waqf could be created over the property of the deity under law, applicable to an invader; and possession of the Muslims, if any, could entitle them to claim title or ownership right over the property/building/structure in question.

The Muslims cannot maintain the suit on the ground that any mosque was constructed over deity's property after the enforcement of the Constitution of India, as they cannot take benefit and derive

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title of the barbarous and illegal acts committed by any Muslim ruler. They cannot derive title on the basis of such illegal construction infringing the fundamental rights of Hindus guaranteed by Article 25 of the Constitution of India.

The birth-place of Lord Rama is a place of great antiquity, pride for nation and cultural heritage of the country. The citizens of the country have fundamental right to worship and pay homage to such sacred places and it is their to ensure that cultural heritage remains unaffected.

At this juncture, the International conventions and treaties, of which India is also a signatory, may be referred to. It is not out of place to mention here that international law has also developed in respect of cultural heritage of a country being conquered by ruler of the foreign country to the effect that cultural heritage must be maintained and in case of any damage caused to it, the same has to be restored. In this respect, the Hague Convention of 1954 and the Convention of 1999 was placed before the High Court, but the same has not been discussed in the judgment.

It has been held by the Apex Court that in case of vacuum on a particular point, the international law developed on the said point can be taken into consideration, if it is not violating the municipal law and the Constitution.

In view of various aspects of the matter, it is clear that Muslims have no right, title or interest over suit property. The High Court has recorded a finding on the basis of the material on record that after

demolishing the temple existing at the Asthan Shri Ram Janma Bhoomi, the disputed structure was constructed. In view of the finding on various issues, recorded by the High Court, the Muslims have no claim over any part of the suit land. Muslims are estopped from taking any benefit or claim any title on a property, over which any Muslim ruler after demolition of Hindu temple had raised any construction.

Thus the High Court has committed manifest error of law in decreeing 1/3rd of the suit land in favour of Muslims.

Now relevant dates are being given hereinafter in a chronological order:

Treta Yug

Lord of Lords Vishnu took incarnation in the form of Shri Ram Lala and manifested himself in human form in Avadhपुरी, in the palace of King Dashrath of Solar Dynasty as is found in Valmik Ramayan which was composed in Treta Yug. Valmik Ji is considered contemporary to Lord Ram.

23.10.1093

King Chandra Dev of Gaharwal Dynasty visited Ayodhya and after bathing in Saryu performed rituals and took Darshan of Shri Vishnu Hari and Swarg Dwar Temple at Ayodhya.

- 1114-54 King of Gaharwal Dynasty renovated/
constructed Shri Vishnu Hari (Rama) Temple
at Ayodhya which was existing at the time of
invasion of Babur in 1528.
- 1510-11 According to Sikh literature Guru Nanak Dev
Ji visited Ayodhya at Shri Ram Janam Bhoomi
took Darshan and performed worship in the
temple thereon.
- 28.03.1528 According to Babur Nama Babur encamped at
river Saryu with his army which is at a
distance of about 6-7 Kms from Ramkot, the
place in question.
- 1574-1577 Tulsi Das Ji composed Shri Ram Charitra
Manas and thereafter other literary work,
Kavitawali, Tulsi Shatak etc. In the aforesaid
literary work Tulsi Das Ji has expressed his
pain against the Barbarous action of Babur and
his generals vis a vis Shri Ram Temple at
Janam Bhoomi in Ayodhya and also that
Avadhपुरी was a sacred place for devotees in
view of the 'Sarman' of Lord Ram as reflected
in Uttar Kand.
- 1580-90 Abul Fazal Almi a minister of Akhbar wrote a

Gazetteer in the form of a book known as Ain-e-Akhbari in persian language which was later on translated in English.

Abul Fazal has clearly mentioned about the performance of worship and puja at Ram Janamstan in Ayodhya and also the celebration of Birth Day of Lord Ram on the Ram Navami Day in Chaitra. There is no mention of any Mosque at the place in question.

1608-1611

William Finch travelled Ayodhya and his travel account has been composed by William Foster in the book 'Early Travels in India'. Finch has clearly mentioned that Rama Castle constructed about 400 years ago at the birth place was in ruins and that devotees of Lord Ram were performing puja worship at the said place. There is no reference of any Mosque/ Baburi Mosque or any muslim worship in the said travelers account.

1786

Trifenthellor an Australian Priest travelled Ayodhya between 1765 to 1775 and the book of his travels account in French was published in 1786. In the said book there is clear

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mention that Hindus were performing puja, worship etc at the place in question and further that the Temple standing thereon was demolished either by Aurangzeb or by Babur. He has also confirmed the existence of Bedi i.e Cradle, Sita Rasoi etc at that time and also that Ram Navami day was being celebrated. There is no mention of any Muslim worship or offering Namaz at the place in question.

1807-1814

Doctor Francis Hamilton Buchanan under the authority of East India Company visited Ayodhya, and after visiting the place in question noticed an inscription in the disputed structure. The work of Buchanan has been preserved by British Library at London from where plaintiff no.3 of suit no.5 after obtaining copy placed before the court as has been quoted from para no. 1602 to 1607 in the judgment of Mr.Justice Sudhir Agarwal. The document establishes the demolition of a Hindu temple before construction of a structure.

1828

Under the authority of East India Company Walter Hamilton published the Gazetteer in

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respect to Indian subcontinent which includes Avadh. The gazetteer proves the worship of Lord Rama being performed by the devotees in Ayodhya and the sanctity of Ayodhya as a religious place.

1838

Mont Gomery Martin published a report under the caption 'The History, antiquities, topography and statistics of Eastern India'. In volume ii of the said book under the Chapter of Gorakhpur the situation of Ayodhya has been described mentioning that Babur an invader after demolishing a Hindu temple constructed a Mosque through his general.

20.05.1845

Board of Revenue issued an order in reference to Nazul Land mentioning that Government is the proprietor of the lands and no valid title to them can be derived but from the government.

1848

The Governor of North Eastern Provinces issued orders in respect of Nazul property using for the word Nazul in English as "Escheats to the Government".

1854

Edward Thomson's Gazetteer of the 'East India Company' and of the natives State of

subcontinent of India was published in 1858 mentioning about Avadh according to which Ayodhya is closely connected with Rama and that Babur had constructed the Mosque after demolishing a Hindu Temple and That both Hindus and Muslims were performing worship in the inner courtyard and by putting a railing structure was divided permitting the Muslims to offer Namaz within inner courtyard and Hindus to perform puja in the outer courtyard.

1855

Muslims tried to oust the Hindus from the structure in question and riot took place which flared up to a great extent.

Thereafter the British Government with a view to pacify Muslims orally permitted them to offer Namaz in the inner Courtyard directing the Hindus to worship in the outer Courtyard and a iron railing was also put between inner and outer courtyard. This fact has been narrated in some gazetteers but no written order if any passed by the British Government has been quoted in any of the Gazetteer or in any book. There is no proof of such an order in existence.

- 1856 Mirza Jaan published an Article written by Grand daughter of Aurangzeb and daughter of Bahdur Shah Zafar in between 17th -18th Century under the title Sahifa -i-Chihal-Naaih-Bahadur-Sahi fourty advices were published and the same had been deposited in 1816 A.D with a library at Rampur. In the said work the writer has clearly mentioned that Mosque in question had been raised on the same spot of demolishing a Hindu temple by Babur.
- 1856 The area of Avadh was annexed with East India Company.
- 15.05.1858 Governor General Lord Canning issued a proclamation confiscating proprietary rights in the soil with the exception of five or six persons who have been supporting of British Government at the time of 1857 revolt.
- 01.11.1858 Under the Government of India Act the entire Indian Territory under the control of East India Company was placed under the crown including the area of Avadh.
- 1861 The first Land Settlement Operations were

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initiated. Khasra Plot No. 163 was shown as 'Abadi' and the word 'Janamsthan/Janambhoomi' was mentioned, but latter on by way of interpolation the word 'va Masjid', or 'va Masjid Shah Babur' was introduced.

1862-65

A. Cunningham CSI published a report relating to Archaeological Survey of India containing in part XVII the report relating to 'Saket or Ajudhia'. The report confirms the Hindu puja, worship at Ram Janam Sthan and also the sanctity of the place for Hindus.

1870

P. Carnegi officiating Commissioner and Settlement officer Faizabad published historical sketch of Tehsil Faizabad mentioning that at the Mohammedan conquest out of the three Hindu shrines the Janamsthan temple was demolished by Babur and other two namely 'Swarg Dwar and Treta ke Thakur' temples were demolished by Aurangzeb.

1877

W.C Benett CS/ Assistant Commissioner published Gazetteer reiterating in substance the report published by P. Carnegi and earlier

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gazetteers.

1880

A.F Millet CS/Officiating Settlement officer also published a report on the Settlement of the Land Revenue of District Faizabad reiterating and confirming the report of P.Carnegi.

1885/1886

The suit filed by Mahant Raghubar Das in his individual capacity seeking permission for construction of a Temple over Chabutra/plaitform was rejected by Trail Court on 24.12.1885. In the said case Gopal Sahai Amin was also directed to submit report after inspecting the spot and from his report it is clear that every sign of a Temple was found at the place in question.

Appeal was preferred by Mahant Raghubar Das which was dismissed by District Judge holding that it was true that Babur after demolishing a Hindu Temple had got constructed a Mosque at the same very place but it was too late to undone the wrong. It appears that permission to construct a Temple was refused on the ground of law and order situation.

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Second Appeal filed against the Appellate judgment also failed.

1891

The Archeological Survey of India published a report in respect of monumental antiquities and inscriptions prepared by A. Fuhrer containing the report relating to Ayodhya. In the said report the fact of demolishing a Hindu Temple at the place in question and the construction of a Mosque over it as narrated in previous Gazetteers and reports have been reiterated and confirmed on examination of relevant facts and Archeological Evidence and also the words occurring on the inscription found at the walls of the disputed structure.

1893

The Second Land Settlement Operations were initiated. Khasra No. 163 with sub plots were shown as Abadi and over such plots the word 'Janamsthan/ Janambhoomi' was mentioned, but latter on by way of interpolation the word 'va Masjid' was introduced.

1904/1905/

Gazetteers relating to Ayodhya were published. In each Gazetteer after verifying the facts relating to demotion of a temple and construction of a Mosque over it existing at

1908/1928

the place in question was confirmed. In preparing the gazetteer the facts have been mentioned each time after verifying the same on the basis of record and local belief and sayings of the people of the place in question.

1931

The Nazul Department prepared its own amended Khasra Records of the Abadi of the 'Abadi Settlements' were in Mahant Charan Das and thereafter Mahant Raghunath Das have been declared under proprietor of the entire plot of Khasra Plot No. 583 where disputed structure according to muslims existed.

26.03.1934

A riot took place between 'Hindus and Muslims and disputed structure was badly damaged. The British Government appointed a Muslim contractor for repair of the damaged structure. It was the Muslim contractor who while carrying out repair works constructed the dome of the structure giving Islamic outlook for the first time.

However the Muslims could not enter into the structure after repairs.

- 1936 U.P. Waqf Act No. 13 of 1936 was passed. Under the Act the waqf Board was required to Notify the property if it was a Waqf property making provision that only waqf Board was competent to file and defend the suit relating to the waqf property.
- 26.02.1944 The waqf Board has issued a notification under Act of 1936 notifying a property at Village Sahanava which was at a distance of about 5 Kms from Ramkot the property in question. The Notification was vague and it did not include the property in question.
- 30.03.1946 In suit Shia Central Board of Waqf vs Sunni Central Board of Waqf it was held by the Civil Judge that it was proved on record that Babur was a Sunni Muslim and under his order the Mosque was constructed and relying the Gazetteer's held that the mosque was constructed after demolishing a Hindu Temple at the same site.
- 22/23.12.1949 The Idol placed under the Central Dom of the disputed structure known as 'Sanctum Sanctorum'.

- 16.01.1950 One Gopal Singh Visharad filed Civil suit no. 2/1950 as a devotee of Lord Ram for restraining the defendants from interfering in his right to worship and from removing the idol from the place in question. Injunction was granted protecting the puja and worship.
- 1950 Paramhans Ram Chandra Das filed Civil suit no. 25/1950 with a same prayer as was made in the earlier suit with an exception that notice u.s 80 of the C.P.C was given before filing the suit.
- 1959 Nirmohi Akhara filed a Civil Suit no. 26/ 1959 praying for handing over the management of the Temple to the receiver.
- 1960 A Gazetteer was published under the authority of the U.P Government, giving facts concerning Ayodhya and the property in dispute on the basis of material it has been pointed out that at the time of annexation of Oudh Hindus were strong enough to control atleast over one of the holiest places of worship i.e Shri Ram Janam Sthan at Ayodhya.

- 1960 The U.P. Legislature passed the Muslims Waqf Act repealing 1936 Act.
- 18.12.1961 U.P Sunni Central Board of Waqf along with some Muslims filed a suit seeking declaration of the disputed structure as Baburi Mosque with alternative prayer for possession.
- 20.03.1963 Under the order of the Civil Judge three more defendants including Hindu Mahasabha were impleaded in the representative suit to defend the Hindu community.
- 06.01.1964 All the pending suits were clubbed and Muslims suit was made the leading suit.
- 1965 The Superintendent of Persian and Arabic Inscriptions under the authority of the Archaeological Survey of India published a report captioned 'Epigraphia Indica' with a report prepared by Maulvi M. Ashraf Hussain which indicates that the writer was claiming to have installed the inscription in the structure after 1943 riot and further confirming that the mosque had been constructed at the same very place constructing a Temple at the Janamsthan of Ram Chandra Ji.

- 21.04.1966 The Civil Judge declared notification dated 26.02.1944 and ultra vires holding that Notification was vague and it does not include the property in question.
- 01.07.1989 Shri Ram Lala Virjman and Asthan Shri Ram Janambhoomi through his next friend filed suit no. 236/1989 praying that the entire property mentioned in Annexure no. 1 to 3 attached to the plaint be declared the property belonging to the plaintiff deity and the defendant be restrained from interfering in construction of a new Temple after demolishing the old structure.
- 10.07.1989 The High Court while allowing an application filed under Section 24 of the C.P.C directed to transfer all suits from the Court of Civil Judge Faizabad to the High Court to be tried by a three Judge Bench.
- 1990 Under the order of the High Court Black/White Coloured photographs were taken and vidoegraphy was done by Shri Rakesh Tiwari Director U.P Archaeology. And the albums and vidoegraphy report has

been placed in Court and the same has been proved by Shri Tiwari.

1991

U.P Government acquired 2.77 acres of land outside the without including the property in suit for development of the area for pilgrimage. The said acquisition was challenge by Muslims.

06.12.1992

A Karsewa was organized over the acquired land.

Which was outside the property in suit. Till then the judgment could not be pronounced. The patience of the Karsewaks busted and they demolished the disputed structure even Sita Rasoi, Charans, Ram Chabutra etc over which Hindu puja was going on uninterruptedly.

After demolition of the structure artifacts were recovered in which a number of Hindu idols images and articles of worship have been found including a Shila Lekh with inscription of the Temple of Shri Hari Vishnu. Under the orders of the Court these materials were kept under the custody of the government in Ram Katha Kunj. A list has been prepared under the

direction and supervision of the Archaeological organization of U.P and Shri Rakesh Tiwari the Director in his statement made before the Court as a witness has proved the artifacts as mentioned above. It has been proved that those articles belong to Hindu worship and that they were part of the demolished structure confirming the stand of the Hindus that the disputed structure has been raised after demolishing a Hindu temple employing the material of such Temple.

1.08.2002/

05.03.2003

The High Court directed the Archaeological Survey of India to make Survey beneath the disputed structure and report on the basis of such Survey. The High Court required a ASI report to resolve the paramount question regarding the fact as to whether the structure had been raised after demolishing a Hindu Temple at the same very site.

22.08.2003

The ASI has submitted its report and with the opinion that the structure in dispute did not have its foundation but it was raised on the existing walls. The floor of the disputed building was just over the floor of the earlier

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building. The existence of several pillar bases all show another earlier existence of a sufficiently bigger structure.

From the report it is also clear that the ASI team has also got a number of Hindu Structures cellular shrines and proof of habitation starting from the stone age.

30.09.2010

On the basis of overwhelming evidence i.e historical, religious, archaeological reports by majority judgment the High Court has held that disputed structure had been constructed after demolishing a Hindu temple at the same very site.

It has also been held that there was no proof that any Waqf was created in respect of the property in suit and that Waqf Board could not file a suit as the disputed property has not been notified by the Waqf Board. Mutawalli of the alleged Waqf also did not come forward to file/contest the suit. But despite all these findings High Court has granted one third of Deity's land to the Muslims.

It is well established proposition of law that any property in the name of the Mosque cannot be possessed by any private individual

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and as such decree in favour of the Muslims is in violation of law and is not sustainable.

In any case after independence the Hindus of the country are entitled for restoration of the Birth place and Temple standing at Asthan Shri Ram Janam Bhoomi at Ayodhya and the invaders action cannot be endorsed and cannot be allowed to continue.

The Courts are under constitutional obligation to protect the cultural heritage of India and to restore back the Ram Janam Bhoomi which was trampled by Mughals and Hindus right to religion was abridged. Thus the judgment of the High Court decreeing one third of the disputed land to the Muslims is not only erroneous but against the spirit of the constitution and also violative of the right of the Hindus to pay homage and to do worship of the Deity Asthan Shri Ram Janam Bhoomi.

22.12.10

HENCE THIS PETITION.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION.
ORDER XVI RULE 4 (1)(a)]

SPECIAL LEAVE PETITION NO. (CIVIL) OF 2010

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

Special Leave Petition arising out of the Final Judgment dated 30th September 2010 passed by the High Court of Judicature At Allahabad Lucknow Bench Lucknow in OOS No. 5 of 1989 [RS no.236 of 1989 with connected suits no.OOS No.1 of 1989, OOS No.2 of 1989 and OOS No.4 of 1989])

WITH

(PRAYER FOR INTERIM RELIEF)

POSITION OF PARTIES
IN OOS NO.5 OF 1989

IN THE HIGH
COURT

IN THIS COURT

Akhil Bharat Hindu
Mahasabha, through Kamlesh
Tiwari aged about 34 years,
s/o Shri Deoki Nandan Tiwari,
r/o 26 Kurshedbag Hindu
Mahasabha Bhawan,
Lucknow Chairman, High
Level Committee.

Defendant No.11 Appellant/
Petitioner

..... Appellant/ Petitioner

AND

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1. Bhagwan Sri Ram Lala Plaintiff No.1 Respondent No.1
Virajman at Sri Rama Janam Bhumi, Ayodhya also called Bhagwan Sri Rama Lala Virajman, represented by next friend, Sri Deoki Nandan Agarwal Senior Advocate/ Retired High Court Judge, 56 Dilkusha, Allahabad is no more and in his place Sri Triloki Nath Pandey, s/o Askrut Pandey, Karsewapuram, Ayodhya, Distt.Faizabad is substituted as next friend of plaintiff no.s 1 and 2. (Proforma).
2. Asthan Sri Rama Janma Bhumi, Plaintiff no.2 Respondent No.2
Ayodhya, represented by next friend, Sri Sri Deoki Nandan Agarwal 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, Karsewapuram, Ayodhya, Distt. Faizabad. (Proforma).
3. Sri Deoki Nandan Agarwal Plaintiff No.3 Respondent No. 3
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, Kar Sewa puram, Ayodhya, Distt .Faizabad. (proforma).
4. Sri Rajendra Singh, adult, son Defendant No.1 Respondent No. 4
of Late Sri Gopal Singh Visharad, at present residing at Gonda, care of the State Bank of India, Gonda Branch Gonda. (proforma)
5. Mahant Suresh Das, Chela Late Defendant No.2/1 Respondent No. 5
Mahant Ram Chandra Das of Digambar Akhara, Ayodhya. (proforma)

6. Nirmohi Akhara Mohalla Ram Defendant No. 3 Respondent
Ghat, Ayodhya, through its
President mahant Jagarnath Das
Chela of Vaishnav Das Nirmohi,
r/o Mohalla Ram Ghat, Nirmohi
Bazaar, Pargena Haveli Awadh,
Ayodhya, District Faizabad. No.6
7. Sunni Central Board of Waqfs, Defendant No.4 Respondent
U.P having its office at Moti Lal
Bose Road Lucknow. No. 7
8. Sri Mohammed Hasim, adult, Defendant Nb.5 Respondent
S/o Sri Karim Baksh, r/o Mohall
Sutahti, Ayodhya. No. 8
9. Sri Mohammed Ahmed, adult, Defendant No.6 Respondent
S/o Sri Gulam Hussain, r/o
Mohall Rekabganj, Faizabad. No. 9
10. State of Uttar Pradesh through Defendant No.7 Respondent no
the Secretary, Home 10
Department, Civil Secretariat,
Lucknow
11. The Collector/ District Defendant No.8 Respondent
Magistrate Faizabad. no.11
12. The City Magistrate Faizabad. Defendant No.9 Respondent
no.12
13. The Senior Superintendent of Defendant No.10 Respondent
Police Faizabad. no.13
14. The President, All India Arya Defendant No.12 Respondent
Samaj Dewan Hall Delhi.
(proforma) no.14
15. The President, All India Defendant No.13 Respondent
Sanatan Dharma Sabha, Delhi.
(proforma) No. 15
16. Sri Dharam Das adult, Chela Defendant No.14 Respondent
Baba Abhiram Das, r/o
Hanuman Garhi Ayodhya.
(proforma) No. 16
17. Sri Pundarik Mishra, adult, s/o Defendant No.15 Respondent
Sri Raj Narain Mishra, r/o
Bhampur Sarai, Rakabganj
Faizabad. no.17

18. Sri Ram Dayal Saran, adult, Defendant No.16 Respondent
Chela Ram Lakhan Saran, r/o no.18
Ram Charit Manas Bhawan,
Mohall Ram Kot, Ayodhya.
19. Sri Ramesh Chandra Tripathi, Defendant No.17 Respondent
adult, s/o Sri Parash Ram no.19
Tripathi, r/o Village Bhagwan
Patti, Pargana Minijhaura,
Tehsil Akbarpur, Distt
Faizabad.

**Defendant No. 18
and 19 have been
deleted vide order
dated 20.09.1989**

20. Sri Umesh Chandra Pandey, Defendant No.20 Respondent
adult, s/o Sri Uma Shankar no.20
Pandey, Advocate, r/o Rano
Pali, Ayodhya.
21. Sri Ram Janam Bhumi Nyas, a Defendant No.21 Respondent
Trust having its office at no.21
SankatMochan Ashram, Sri
Hanuman Mandir, Rama
Krishan Puram, Sector VI, New
Delhi through Sri Ashok
Singhal, Managing Trustee.
(proforma)
22. Shia Central Board of Waqfs, Defendant No.22 Respondent
U.P Lucknow. no.22

**Defendant no.23
has been deleted
vide order dated
27.01.1992**

23. Prince Anjum Quder, President Defendant No.24 Respondent
All India Shia Conference, no.23
Qaomi Ghar, Nadan Mahal
Road Lucknow.
24. All India Shia Conference Defendant No.25 Respondent
through Shri S. Mohammed no.24
Hasnain Abidi, Honory General
Secretary, Qaomi Ghar, Nadan
Mahal Road Lucknow.
25. Hafiz Mohammed Siddiqui, Defendant No.26 Respondent
adult, s/o Late Haji Mohammed no.25

Ibrahim, r/o Lal Bagh,
Muradabad, General Secretary,
Jamaitul Ulema Hind, U.P
Jaimait Building, B.N Verma
Road, Kacheri Road, Lucknow

26. Vakiluddin aged about 55 years, s/o Ismail, r/o Madarpur, Pargan and Tehsil Tanda, District Faizabad. Defendant No.27 Respondent no.26

..... Respondents

IN THE MATTER OF

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE
CONSTITUTION OF INDIA

To,

The Hon'ble the Chief Justice of India and

His Companion Justices of the Supreme Court of India.

The Appeal of the Appellant/ Petitioner above named:

MOST RESPECTFULLY SHEWETH:

1. The present Special Leave Petition arising against the final Judgment and order dated 30.09.2010 passed by the High Court of Judicature At Allahabad Lucknow Bench Lucknow in OOS No.5 of 1989 (Regular Suit No.236 of 1989) connected in OOS No. 1 of 1989 (RS 12 of 1961), OOS No.2 of 1989 (Regular Suit No.26 of 1959) in OOS No.4 of 1989 (Regular

Suit No. 2 of 1950), commonly known as Ayodhya Dispute to the extent only one third of the disputed land had been decreed in favour of the Muslims by the Judgment passed by Mr. Justice S.U Khan and Mr. Justice Sudhir Agarwal whereas the third Judge i.e Hon'ble Mr. Justice Dharam Veer Sharma decreed the suit in toto.

- 1 (a) It is stated that the parties which were deleted are expired during the proceeding before the High Court have not been arrayed as parties herein. The parties in the cause title are same as those before the High Court.

2. QUESTIONS OF LAW:

The following questions of law arise for consideration by this Hon'ble Court:-

1. Whether the court can pass order without jurisdiction .?
2. Whether the trial court was not supposed to give finding on each subject and arguments.?
3. Whether any law or order affecting or infringing the right to religion guaranteed under Article 25 of the Constitution of India to Hindus can remain in operation after 26th January, 1950 in view of the injunction embodied in Article 13(1) of the Constitution of India?

4. Whether Muslims can claim any right, title or interest over a property belonging to deity, on the basis that a building was constructed by a Muslim ruler over the said property?
5. Whether in case of conflict between the native law and the foreign law operating in the same field, native law will prevail?
6. Whether the property belonging to Deity can be partitioned and the Muslims can be allowed to use any part of such property for their worship?
7. Whether in absence of a finding of creation of Waqf in respect of the property in question the Court can Decree one third of the Deity's property in favour of the Muslims?
8. Whether on the ground that the building is being termed as Mosque/ Baburi Mosque for 90 years by the Muslims without establishing the creation of Waqf and their exclusive possession any right can be created in favour of Muslims to claim possession over any portion of the Deity's property?
9. Whether after dismissing the Muslims suit filed in representative capacity no relief can be granted to them in any other suit?
10. Whether after recording finding that no valid notification under the U.P Waqf Act, 1936 was issued to include the property in question within the ambit of the Act and as such Waqf Board has no right to file the suit and in absence of any Mutawalli before the Court, the High Court is justified

in decreeing one third of the deity's property i.e the suit land in favour of the Muslims?

11. Whether the presence of Muslims in a Temple and offering the Namaz there at can confer any right to claim the title and possession over such property?
12. Whether the Civil Court can pass a decree for partition in a suit filed for declaration, possession and injunction?
13. Whether the Muslims can construct any building over a Deity's property and if constructed the same will confer any right or title in their favour?
14. Whether after recording the finding that Muslims were not in possession over the disputed property upto 1860 and they were allowed to enter in the inner courtyard under the orders of British government and since then the building is being termed as Mosque/Baburi Mosque any right can be said to have accrued to Muslims and Court can grant any decree in their favour?
15. Whether dismissal of Muslims suit bars their claim over the property in suit?
16. Whether the Muslims right over the property in dispute stand extinguished since 1861 as the property vested in the Nazul i.e the Government?
17. Whether a Civil Court can pass any decree in the suit though not claimed by any litigating parties to the suit or by way of

Counter claim and it can mould the relief alien to the pleadings of the parties on its own?

18. Whether in absence of creation of any Waqf and number of signs of Hindu God and Goddess in a building, the same can be termed as a Mosque and no right can be claimed by the Muslims over the said property?
19. Whether the Civil Court has to apply the provisions of the Constitution of India as exists on the date of the decision of the suit?
20. Whether change of sovereignty by virtue of enforcement of the Constitution of India w.e.f 26th January 1950 restricts any Court in India to take into account any pre-existing law offending any of the provisions contained in Part III and against the very theme of the Constitution of India?
21. Whether the birth place of Lord Ram is a religious and cultural heritage of India and the Court cannot pass any decree detrimental to the same?
22. Whether any Law, Rule or Regulation passed by any Muslim or British ruler which was barbarious, tyrannous and teases the sentiments of Hindus infringing their right to

religion can be allowed to continue by the Court against the injunction embodied under Art.13 (1) of the Constitution of India?

23. Whether international treaties and conventions to which India is a signatory can be applied in deciding the case if the Municipal law is not occupying the said field?

3. DECLARATION

The Appellant-Petitioner states that no other petition seeking leave to appeal or appeal has been filed by him against the impugned judgment and order.

4. DECLARATION RELATING TO ANNEXURES

The petitioner has not filed any Annexures with this Special Leave Petition.

5. GROUNDS:

- a) BECAUSE the court has power to pass decree of 1/3 which was never prayed for , hence the same finding is beyond pleading and jurisdiction.
- b) BECAUSE no finding has been given to the arguments of the petitioner whereby he has argued on article 31 of the Constitution of India .

- 11
- c) BECAUSE in view of the judgment passed in *Ismail Farooqui vs Union of India* reported in 1994 6 SCC page 360 the High Court was required to decide the ownership title of the party in litigation over the disputed property and it had no jurisdiction to pass a decree for partition partitioning the property in three parts.
- d) BECAUSE after recording the finding that the deity was the owner of the property and the temple did exist before the construction of the disputed structure and the same was raised after demolishing the temple, it was not open for the High Court to decree one third of the suit property in favour of the Muslims.
- e) BECAUSE from the material on record and overwhelming evidence regarding the existence of Asthan Shri Ram Janam Bhoomi, the Swayambhoo deity according to Hindu law, being worshipped by the Hindus from the time immemorial, paying homage to the entire place extending to the area of Rama Fort, is not subject to division and High Court committed manifest error of law in decreeing one third of the deity's property in favour of the Muslims.
- f) BECAUSE once it is proved that the Asthan Shri Ram Janma Bhoomi, the deity is being worshipped by Hindus and devotees from time immemorial and much before 1528 and Hindus continued to worship in the structure in question and at Asthan

Shri Ram Janam Bhoomi, the Muslims cannot claim any right over any part of the land belonging to deity.

- g) BECAUSE nobody can take advantage of its own wrong and once the ownership and possession of Hindus over the Asthan Shri Ram Janam Bhoomi and the temple standing thereon is proved the forceful entry resorting to inhuman, barbarious and tyrannous action by an invader cannot confer any right to Muslims to claim any part of the deity's property.
- h) BECAUSE no Mosque can be constructed by demolishing a Hindu Temple or on any part of the land belonging to Deity and if so made, the same will not confer any right title to any Muslim i.e the followers of Islam.
- i) BECAUSE Muslims have conceded during the course of the argument before the High Court that their possession over the disputed property commences only from 1855 onwards under the orders of the British Government and on the basis of such entry they cannot claim title over the property in question.
- j) BECAUSE no Waqf was created in respect of the place in question and as such the disputed structure remained a simple building and not a mosque and Muslims cannot claim any right or title over the property in dispute.
- k) BECAUSE the property vested in Nazul Sarkar i.e the Government and after such vesting the Muslims lost every claim and Waqf if any, stood extinguished

- l) BECAUSE there is no evidence on record that any waqf was created over the property by Babur or any other Muslim Ruler and nothing comes out from the inscriptions relied upon by the Muslims any type of dedication or creation of Waqf and as such Muslims have no claim over the disputed property.
- m) BECAUSE the report of ASI is a scientific piece of evidence admissible under the provision of Evidence Act and C.P.C. The report establishes that the disputed structure has been constructed over the walls of the demolished structure and no new foundation was laid for constructing the building in question.
- n) BECAUSE Babur was devout Muslim well versed in Islamic law and he did not create any Waqf as he knew that under Islamic law property must belong to Wakif which he did not have.
- o) BECAUSE sovereignty obtained by invasion of a country cannot confer right over the property of the subjects.
- p) BECAUSE the Muslims have claimed the title over the property in dispute by way of adverse possession meaning thereby that they were not the true owners and their possession if any, was adverse to the true owner.
- q) BECAUSE the deity's property is never lost and the same will not vest even in the king due to change of sovereignty or

otherwise and Hindu law being the native law will prevail over Islamic law which is a foreign law.

- r) BECAUSE the purpose of Babur or any other Muslim ruler in destroying the Temple standing on the Asthan Shri Ram Janma Bhoomi was to show the might of Islam, to tease the Hindu sentiments and to make them understand that they have become the subject of Islamic rule.
- s) BECAUSE the doctrine of user of Waqf property cannot be invoked for the simple reason that according to Muslims the structure in question was constructed under the orders of Babur and the person who constructed the structure is known and it is for the Muslims to prove the creation of Waqf.
- t) BECAUSE all the Muslims Historians and other historians have uniformly maintained upto 1965 that after demolishing the temple of Lord Rama at Asthan Shri Ram Janam Bhoomi the disputed structure has been constructed.
- u) BECAUSE the Muslims have relied upon the Judgment rendered by the *Civil Judge in RS no 61/280 of 1885 decided on 24.12.1885* and the judgment passed by the District Judge in *Civil Appeal no. 27 of 1886 decided on 26-03-1886*. While dismissing the appeal filed by Mahant Raghubar Das it was held that "it was unfortunate that the Mosque has been constructed at the sacred place of Hindus after demolishing the Temple" and also judgment rendered in case of *Shia Waqf Board vs Sunni Waqf Board RS 29 of 1945 decided on*

30.03.1946 by the Civil Judge after spot inspection a finding was recorded that building was a Sunni Mosque constructed under the Orders of Babur relying upon the Gazetteer held that the said building had been constructed after demolishing a Hindu temple.

v) BECAUSE in the report published in Epigraphica Indica published under the authority of ASI containing the report of Maulvi M Ashraf Hussain that there was an inscription in the building which confirms that under the orders of Babur alleged Mosque was constructed after demolishing Rama Temple at the same very site.

w) BECAUSE the report submitted by Hamilton Francis Buchanan between 1807 to 1814 maintained by British Library at London it has been proved that at the instance of Musa Ashiqan a Fakir Babur ordered for demolition of a Hindu Temple. The Buchanan's invention regarding the inscription found in the building has not been disputed by the Muslims.

x) BECAUSE a document has to be read as a whole and as such from the work of Buchanan (1807-1814), the report of ASI published in 1891 by A.Fuhrer and the report published in Epigraphica Indica in 1965, which has been relied upon by the Muslims it is has been established that after demolishing a Hindu Temple standing at Asthan Shri Ram Janam Bhoomi the disputed structure had been constructed.

- y) BECAUSE after recording finding that the disputed structure had been constructed after demolishing a Hindu Temple and there was no proof that any Waqf was created, the Muslims could enter into the premises only after 1855, it was not open for the High Court to pass decree of one third land in favour of the Muslims.
- z) BECAUSE title of deity, the Hindus has been proved beyond any shadow of doubt.
- aa) BECAUSE the High Court has passed the decree in favour of the Muslims on the basis of the belief and faith that building had been treated by them as a Mosque since 1860 even though for more than three hundred years they had not used the building. Thus the faith and belief contrary to law cannot confer any right to Muslims.
- bb) BECAUSE the High Court for has passed the decree for one third of the suit property in favour of the Muslims only on the basis that from 1860 onwards they are treating the building as a Mosque according to their faith and belief and the building is also termed as Mosque both by Muslims and Hindus and so they are entitled for one third land of the deity's property.
- cc) BECAUSE the High Court has committed manifest error of law in decreeing one third land to Muslims on the basis of their belief and faith developed without any basis and moreover at the deity property which did not belong to them cannot be used by them for more that 300 years and only under the British rule

they were allowed to enter the disputed structure the High Court erroneously formed an opinion that they are entitled one third share in the disputed property.

- dd) BECAUSE the earliest account of the situation is found in Ain-E-Akhbari written in sometime 1580-90, thereafter the travelers account of William Finch between 1609 to 1611, the travelers account of Trifenthellor it is proved that the Hindus were in exclusive physical possession over the property in dispute.
- ee) BECAUSE from the report of Francis Hamilton Buchanan in the year 1807-1814, Mont Gomery Martin in the year 1838, Gazetteer of 1828, Gazetteer of 1858, report of P. Carnegi Settlement Officer submitted in the year 1870, Gazetteer published in the year 1877-78, Gazetteer published in the year 1880, Fuhrer's report of 1891, Gazetteer published in 1903, 1905, 1928 and 1960 unanimously confirm the existence of a Hindu temple before the construction of the disputed structure. In Gazetteer of 1858 it has been clearly mentioned that Hindus were strong enough by that time and no Muslim was allowed to enter in the vicinity of the place in question i.e. from Hanuman Garhi to Ramkot.
- ff) BECAUSE the historical, archaeological and Gazetteer's report existing on record has been appreciated by the High Court. By the majority judgment it has been held that property originally belonged to the deity, a temple was in existence

before construction of the disputed structure and that Hindus were in continuous exclusive possession before 1855, but without any basis rhyme, reason or justification, has decreed one third land in favour of the Muslims even though their right title has not been proved over any part of the suit land.

gg) BECAUSE no exercise was made by the Waqf Board to include the place in question as Waqf Property at any point of time and the notification dated 26.02.1944 issued by Waqf Board does not include the place question in as has been held by the Civil Judge while deciding Issue no. 17 vide order dated 21.04.1966 and even thereafter no exercise has been made to include the property as Waqf Property the Muslims cannot claim over any part of the land in Dispute and Waqf Board cannot maintain the suit.

hh) BECAUSE no Mutawalli has come forward to file any suit and in absence of a Waqf Board or a Mutawalli, no decree can be passed in favour of the Muslim community as the Muslim's cannot get possession of the property in question.

ii) BECAUSE the fact that the disputed area has always been considered to be the deity's property which is Asthan Shri Ram Janam Bhoomi where 'Shri Ram Lalla' is 'Virajman' and is resident. The entire area of Ramkot including the disputed area has always been considered sacred by the devotees and the Hindus much before and even after the construction of the disputed structure.

- jj) BECAUSE for worshippers the entire Palace of Raja Dashrath, spread in the Ramkot area has been sacred and the same is being worshipped continuously.
- kk) BECAUSE the High Court has held that 'Ram Lalla Virajman' and 'Asthan Ram Janam Bhoomi' are deities and they are being worshipped at the said place from the time immemorial. As such there was no question and occasion for the High Court to decree one third of the disputed land to the Muslims.
- ll) BECAUSE it is not the question at which particular place Lord Ram was born and his birth cannot be treated as birth of ordinary person. As is believed Lord Vishnu took incarnation in the form of Lord Ram in the Palace of Raja Dashrath who was King of Ayodhya at that time therefore the entire, Palace-Fort and every inch of the land of it is pious which is being worshipped by the devotees of Lord Ram.
- mm) BECAUSE it is well established on record that there were no Muslim presence before 1528 at, near or within the vicinity of the property in question. The entire land was belonging to the Hindus, different Temples, Akhara's were existing in the entire area of Avadhपुरi and as such the entire area was sacred one.
- nn) BECAUSE the High Court also while directing ASI for excavation of the site was of the opinion as to whether any Hindu structure or Temple was existing at the disputed site before the construction of the disputed structure in question.

The same question is haunting the mind of the crores of people and legal luminaries, politicians and the Government as to whether in fact the construction was raised after demolishing a Hindu Temple at the place in question. It may be recalled that the Government of India also acquired the land for the decision of the said question and referred the matter to the Apex Court.

oo) BECAUSE once a finding is recorded that the disputed structure was raised at the site of existing temple after demolishing, the title and ownership can easily be decided in favour of the Temple.

pp) BECAUSE all the three judges have rejected the objection raised against the ASI report by the Muslims and as such the same has become the part of the record worth for reliance and has to be taken as a piece of evidence

qq) BECAUSE the Muslim's suit (OOS No.4 of 1989) was declared as a representative suit under Order 1 Rule 8 of C.P.C which means that its finding will bind both the communities. The suit of Muslim's for declaration and possession of the suit property has been dismissed by the High Court (Majority Opinion). Therefore the ratio of the judgment is that the Muslims claim for Mosque and possession of any inch of land of the disputed property is not tenable and the High Court erred to grant one third share to muslims without any basis and

sanction of law and against its own finding recorded in the judgment.

- rr) BECAUSE the High Court by majority opinion has held that Hindus and Muslims were in joint possession over inner courtyard as both were performing worship therein whereas Hindus were in exclusive possession over outer courtyard, ignoring the legal position that Muslims cannot worship in a Temple or over a Deity's property and their occasional mischievous appearance or offering Namaz in the Temple cannot confer any possessory right.
- ss) BECAUSE construction of a building by a Muslims at the site of deity's property by force of arms cannot confer any title to them at least after change of sovereignty and the enforcement of the Constitution.
- tt) BECAUSE the majority judgment of the High Court decreeing one third land of the suit property in favour of the Muslims is against the facts and law applicable to the case and such portion of the decree is liable to be set aside and the suit in OQS NO .5 of 1989 is liable to be decreed in toto.

6 GROUNDS FOR INTERIM RELIEF

- A. BECAUSE the appellant would be unduly prejudiced if the impugned is allowed to stand and one third of the land belonging to the deity Ram Lala and Asthan Ram Janam

Bhoomi is given to Muslims who have no right, title or claim over the suit property. The High Court has recorded a clear finding that property initially belonged to the deity- The Idol and the Asthan and that the disputed structure was constructed after demolishing the Hindu Temple. The Appellant, the worshippers of Lord Rama and Hindus in general would suffer immensely if one third of the property of the deity is given to Muslims. The Appellant is fully confident of a positive outcome in the present appeal and no prejudice would be caused if the interim relief as prayed for is granted.

B. BECAUSE the balance of convenience is in favour of the Appellant to grant the Interim Relief as prayed herein and on the other hand no prejudice would be caused to the respondents in allowing the prayer for interim relief.

C. Final decree has not yet been prepared.

7. MAIN PRAYER:-

It is therefore prayed that Your lordship May graciously be pleased to :

(a) Grant Special Leave to appeal against the final judgment and order, dated 30.09.2010 passed by the Honourable High court of Judicature , at Allahabad , bench Lucknow in OOS No.5 of 1989 (RS No. 236 of 1989) and or;

(b) Pass such other and further order(s) as the Hon'ble Court may deem fit and proper to do complete justice.

8. INTERIM RELIEF:

- A) Ex-Parte stay operation of the Final Judgment dated 30.09.2010 passed by the High Court of Judicature At Allahabad Lucknow Bench Lucknow passed in OOS No. 5 of 1989 to the extent one third of the property in dispute has been given to Muslims; and or
- B) Stay the final preparation of the decree in pursuance of the Judgment 30.09.2010 passed by the High Court of Judicature At Allahabad Lucknow Bench Lucknow passed in OOS No. 5 of 1989.
- C) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IS DUTY BOUND SHALL EVER PRAY

DRAWN & FILED BY:
VARINDER KUMAR SHARMA

Place: NEW DELHI
DATED: 22ND Dec, 2010

Advocate for the Appellant/
Petitioner.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2010

IN THE MATTER OF:-

Akhil Bharat Hindu Mahasabha,

through Kamlesh Tiwari

Petitioner

VERSUS

Bhagwan Sri Ram Lala Virajman and others

Respondents

CERTIFICATE

CERTIFIED that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the order documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition.

This certificate is given on the basis of the instructions given by the petitioner whose affidavit is being filed in support of the Special Leave Petition.

FILED BY:

VARINDER KUMAR SHARMA

Place: NEW DELHI

Advocate for the Appellant/

DATED: 22ND Dec...2010

Petitioner.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2010

IN THE MATTER OF:-

Akhil Bharat Hindu Mahasabha,
through Kamlesh Tiwari Petitioner

VERSUS

Bhagwan Sri Ram Lala Virajman and others----- Respondents

AFFIDAVIT

I, Kamlesh Tiwari aged about 34 years, s/o Shri Deoki Nandan Tiwari, r/o 26 Kurshedbag Hindu Mahasabha Bhawan, Lucknow Chairman, High Level Committee of Akhil Bharat Hindu Mahasabha, do hereby solemnly affirm and state as follows:-

1- That I, the Petitioner is the Chairman of High Level Committee of Akhil Bharat Hindu Mahasabha, (the committee has been constituted after dissolving the existing President and executive body to conduct fresh election) in the aforesaid matter and I have been authorized to file this appeal by the said Committee. I'm fully conversant with the facts and circumstances of the case and as such competent to swear this affidavit;

2- That I have read the contents of the accompanying Special Leave Petition (Pages 1 . . to 26) Para 1 to 8 . . , Statement of Dates and Facts (Pages B . . to WW) and Interlocutory Application and understood the contents thereof. The facts stated therein are true and correct to record of case, which I believe to be true. Contents of application for exemption from filing certified as well as plain copy of impugned order and

The facts stated therein are true and correct to record of the case, which I believe to be true.

3- That the Annexure file herewith is the true copy of its original.


Deponent

VERIFICATION

Verified at New Delhi on this the 19th day of December, 2010.

I, the above named deponent do hereby verify that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed there from.


Deponent

In THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I A NO OF 2010

IN

SPECIAL LEAVE PETITION (CIVIL) NO-----OF 2010

IN THE MATTER OF ;

Akhil Bharat Hindu Mahasabha,

through Kamlesh Tiwari

----- Petitioner

VERSUS

Bhagwan Sri Ram Lala Virajman and others

----- Respondents

IN THE MATTER OF;

APPLICATION FOR EXEMPTION FROM FILING
CERTIFIED AS WELL AS TRUE COPY OF IMPUGNED ORDER

Permit to file SLP with

TO

THE HONOURBLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA.

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH;

1. This Special leave Petition arising out of final judgement and order dated 30.9.2010 passed by the Full Bench of the Allahabad High Court, Lucknow Bench in OOS No. 5 of 1989 and other connected civil suites nos. OOS Nos. 1/89, 2/89 and 4/89 by a common judgment, commonly known as Ayodhya Dispute decreeing one third of the suit land in favour of Muslims, making a division of the deity's property of Asthan-Shri Ram Janma Bhoomi.

2. That the petitioner has applied for certified copy but there are many mistake and has taken step to get it corrected which is taking time. The impugned judgement is reported and is in more that 8000/ and petitioner undertake to produce it in court or may place it in court at the time of hearing . It is submitted that in connected matter the same has been filed .

Prayer :

In view of the fact and circumstances of the case it is therefore most respectfully prayed that to Your Lordship may graciously be pleased to :

- 1 *Grant Respite to for file SCP with*
~~Exempt~~ the petitioner from filing certified as well as ~~two~~ copy of final judgement and order dated 30.9.2010 passed by the Full Bench of the Allahabad High Court, Lucknow Bench in OOS No. 5 of 1989 : and or
- 2 Pass such other order(s) as this Honourable court may deem fit and proper in favour of petitioner .

DRAWN ON . 22.12.2010
FILED ON . 22.12.2010
New Delhi

DRAWN AND FILED BY
VARINDER KUMAR Sharma
Advocate for petitioner

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In THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I A NO OF 2010
IN
SPECIAL LEAVE PETITION (CIVIL) NO-----OF 2010

IN THE MATTER OF ;

Akhil Bharat Hindu Mahasabha,
through Kamlesh Tiwari ----- Petitioner

VERSUS

Bhagwan Sri Ram Lala Virajman and others

----- Respondents

IN THE MATTER OF:

APPLICATION FOR PERMISSION TO FILE S L P
WITHOUT CERTIFIED AS WELL AS TRUE / PLAIN COPY
OF IMPUGNED ORDER

TO

THE HONOURBLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA.

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH;

1. This Special leave Petition arising out of final judgement and order dated 30.9.2010 passed by the Full Bench of the Allahabad High Court, Lucknow Bench in OOS No. 5 of 1989 and other connected civil suites nos. OOS Nos. 1/89, 2/89 and

30/12

2. That the petitioner has applied for certified copy but there are many mistake and has taken step to get it corrected which is taking time. The impugned judgement is reported and is in more that 8000/ and petitioner undertake to produce it in court or may place it in court at the time of hearing . It is submitted that in connected matter the same has been filed .

Prayer :

In view of the fact and circumstances of the case it is therefore most respectfully prayed that to Your Lordship may graciously be pleased to :

- 1 Grant permission to file Special leave petition without certified as well as true / plain copy of final judgement and order dated 30.9.2010 passed by the Full Bench of the Allahabad High Court, Lucknow Bench in OOS No. 5 of 1989 : and or
- 2 Pass such other order(s) as this Honourable court may deem fit and proper in favour of petitioner .

DRAWN ON . 22.12.2010
FILED ON 22.12.2010
New Delhi

DRAWN AND FILED BY
VARINDER KUMAR Sharma
, Advocate for petitioner

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In THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I A NO OF 2010
IN
SPECIAL LEAVE PETITION (CIVIL) NO-----OF 2010

IN THE MATTER OF ;

Akhil Bharat Hindu Mahasabha,
through Kamlesh Tiwari ----- Petitioner

VERSUS

Bhagwan Sri Ram Lala Virajman and others

----- Respondents

IN THE MATTER OF:

APPLICATION FOR PERMISSION TO FILE
LENGTHY LIST OF DATES

TO

THE HONOURBLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA.

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH;

1. This Special leave Petition arising out of final judgement and order dated 30.9.2010 passed by the Full Bench of the Allahabad High Court, Lucknow Bench in OOS No. 5 of 1989 and other connected civil suites nos. OOS Nos. 4/89, 3/89 and 1/89 by a common judgment, commonly known as Ayodhya Dispute decreeing one third of the suit land in favour of Muslims, making a division of the deity's property of Asthan-Shri Ram Janma Bhoomi.

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2. That the list of dates is lengthy as no part of it can be ignored and is important issue.

Prayer :

In view of the fact and circumstances of the case it is therefore most respectfully prayed that to Your Lordship may graciously be pleased to :

- 1 Grant permission to file lengthy list of dates with special leave petition arising out of final judgement and order dated 30.9.2010 passed by the Full Bench of the Allahabad High Court, Lucknow Bench in OOS No. 5 of 1989 : and or
- 2 Pass such other order(s) as this Honourable court may deem fit and proper in favour of petitioner .

DRAWN ON : 22.12.2010
FILED ON : 22.12.2010
New Delhi

DRAWN AND FILED BY
VARINDER KUMAR Sharma
Advocate for petitioner

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VARINDER KUMAR SHARMA, ADVOCATE
L-7-A SOTH EXTN, PART -2,
NEW DELHI, M - 9810101807

TO
THE REGISTRAR,
OF THE HONOURABLE SUPREME COURT,
NEW DELHI

SUBJECT : DEFECT NO.1. and 4, and 13
IN RE :

AKHIL BHARAT HINDU MAHASABHA PETITIONER
VERSUS
BHAGWAN SRI RAM AND ORS RESPONDENT
Sir,

The registry has raised the objection about THREE SET COURT FEE THE petitioner has challenged suit no. OOS No. 5 of 1989 (RS no. 236 of 1989) only so one court fee is sufficient. The defect no. 4 about the appeal or SLP it is submitted that SLP is maintainable. since one matter challenged so one memo of parties is sufficient. The order dt. 26.4.44 is not required.

Hence the objections may be ignored. The matter be listed as it is at my risk. Prayed accordingly.

Varinder Kumar Sharma
Advocate For the Petitioner