

AFR
Court No. 21
Reserved on 26.07.2010
Delivered on 30.09.2010

Other Original Suit No. 4 of 1989
(Regular Suit No. 12 of 1961)

1. The Sunni Central Board of Waqfs U.P. Lucknow, Moti Lal Bose Road. P.S. Kaiserbagh, City Lucknow through Shah Ghyas Alam, Secretary.
- [2. *Molvi Mohammad Qasim, aged about 53 years, S/o Sheikh Abdul Razzaq, General Secretary, Jamiutul Ulami Hind, U.P Bagh Gunge Nawab, P.S KaiserBagh, Lucknow*] **(Deleted)**
- 2/1. Mohd. Siddiq alias Hafiz Mohd. Siddiq. aged about 46 years S/O Late Haji Mohd. Ibrahim, R/o Lalbagh Moradabad, General Secretary, Jamuatul Ulemai Hind, U.P, Jamiat Building, B.N. Verma Raod (Katchehry Road) Lucknow.
3. Haji Mohammad Ehtram Ali, aged about 70 years, S/o Munshi Mohammad Ehtisham Ali, R/o Khayaliganj. P.S Kaiserbag City Lucknow. (Deceased)
- [4. *Molvi Mohammad Faiq aged about 55 years, S/o Haji Ramzan R/o Mohalla Tehri Bazar, Ayodhya, pargana Haveli Avadh District Faizabad*] **(Deleted)**
- [5. *Molvi Mohammd Naseer aged about 58 years, S/o Ashiq Ali, R/o Village Ponthar Pargana Tanda Tahsil Tanda District Faizabad*] **(Deleted)**
- [6. *Shahabuddin aged about 42 years, S/o Haji Munney Sahib, R/o Angoori Bagh, City Faizabad*] **(Deleted)**
- 6/1 Ziauddin aged about 46 years, S/o of Haji Shahabuddin

(deceased) R/o Mohalla Angoori Bagh, pargana Haveli Oudh, City and District Faizabad.

6/1/1. Misbahuddeen aged about 39 years, S/o Ziauddin, R/o Mohalla Angoori Bagh, Awadh City Tahsil and District Faizabad.

7. Mohammad Hashim aged about 40 years, S/o Karim Bux, R/o Mohalla Kutya, Panji Tola, Ajodhiya Pargana Haveli Avadh, Distt. Faizabad.

[8. *Vakiluddin aged about 55 years, S/o Ismail, R/o Madarpur, Pargana and Tahsil Tanda District Faizabad*] **(Deleted)**

8/1. Maulana Mahfoozurrahman aged about 52 years, S/o Late Maulana Vakiluddin, R/o Village Madarpur, Pargana and Tahsil Tanda, Faizabad.

9. Mahmud Ahmad aged about 30 years S/o Ghulam Hasan. R/o Mohalla Rakabganj, City Faizabad.

[10. *Zahoor Ahmad, S/o Noor Mohd. aged about 80 years, R/o Mohalla Nau Ghazi Qabar, Ayodhya, Faizabad District*] **(Deleted)**

10/1. Farooq Ahmad, S/o Sri Zahoor Ahmad, R/o Mohalla Naugazi Qabar, Ayodhya City, Ayodhya, Distt. Faizabad.

Vs.

[1. *Sri Gopal Singh Visharad, aged about 53 years, S/o Thakur Girdhari Singh, R/o Sargaddwar, Ajodhiya, District Faizabad*] **(Deleted)**

2. Sri Param Hans Ram Chander Das, R/o Ajodhya, Faizabad. (Deceased)

2/1 Mahant Suresh Das aged about 55 years, Chela of Sri Param Hans Ram Chandra Das, R/o Digambar Akhara, City Ayodhya District Faizabad.

3. Nirmohi Akhara Situate in Mohalla Ram Ghat City

Ajodhiya, District Faizabad, through Mahant Rameshwar Das Mahant Sarbarakar, R/o Nirmohi Akhara Mohalla Ramghat, City Ajodhya District Faizabad.

4. Mahant Raghunath Das Chela Mahant Dharam Das Mahant and Sarbarakar Nirmohi Akhara Mohalla Ram Ghat, City Ajodhiya, District Faizabad.
5. The State of U.P. through Chief Secretary to the State Govt. of U.P. (corrected under Court's order dated 30-01-62)
6. The Collector, Faizabad.
7. The City Magistrate, Faizabad.
8. The Superintendent of Police Faizabad.
9. B. Priya Dutt S/o R.B. Babu Kamalpat Ram, R/o Rakabganj, Faizabad.
10. President, All India Hindu Maha Sabha, Read Road New Delhi.
11. President, Arya Maha Pradeshik Sabha Baldan Bhawan, Shradhanand Bazar, Delhi
12. President, All India Sanatan Dharm Sabha, Delhi.
- 13/1. Dharam Das alleged Chela Baba Abhiram Das. R/o Hanuman Garhi, Ayodhya, Faizabad.
14. Pundrik Misra, age 33 years, S/o Raj Narain Misra R/o Balrampur Sarai, Rakabganj, Faizbad.
15. Sri Ram Dayal Saran, Chela of late Ram Lakhan Saran, R/o Town Ayodhya, District Faizabad.
- [16. *Shab Narain Das Chela of late Baba Badri Das Ji Sankatwali, R/o Sri Hanuman Garhi, Ayodhya Faizabad*]
(Deleted)
17. Ramesh Chandra Tripathi aged about 29 years, S/o Sri Parsh Rama Tripathi, R/o Akbarpur, Distt. Faizabad.
18. Mahant Ganga Das aged about 45 years (Chela) Mahant

Sarju Dass R/o Mandir Ladle Prasad, City Ayodhya Faizabad.

19. Sri Swami Govindacharya, Manas Martand Putra Balbhadar Urf Jhallu, R/o Makan No. 735, 736, 737 Katra Ayodya, Pargana Haveli Audh Tahsil and Zila Faizabad.
20. Madan Mohan Gupta, Convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti, E-7/45 Bangla T.T. Nagar, Bhopal.
21. Prince Anjum Qadar, President All India Shia Conference, Registered, Qaumi Ghar, Nadan Mahal Road, F.S. Chowk, Lucknow. (Died on 23.7.1997)
22. Umesh Chandra Pandey, S/o Sri R.S. Pandey R/o Ranupalli, Ayodhya, District Faizabad.

With

Other Original Suit No. 1 of 1989

(Regular Suit No. 2 of 1950)

Sri Gopal Singh Visharad aged about 42 years S/o Thakur Girdhari Singh, Mohalla Saragdwar City Ayodhya, Pargana Haveli, Tahsil and District Faizabad. (deceased)
Rajendra Singh age 46, S/o Sri Gopal Singh Visarad, current address State Bank of India Branch Gonda.

Vs.

- [1. *Zahoor Ahmad aged about 69 years S/o Laamaaloom Mohall Bada Bazar*] (Deceased)
- 1/1 Farooq Ahmad S/o Zahoor Ahmad R/o Tedi Bazar Ayodhya Faizabad.
- [2. *Haji Fenku aged about 65 years S/o Laamaaloom Mohalla Tedi Bazar*] (Deceased) **(Deleted vide order dated 17.1.1962)**
- [3. *Mohd. Faiq aged about 45 years S/o Laamaaloom Mohalla*

Tedi Bazar] (Deceased)

[4. *Mohd. Shami Chudiwala aged 45 years S/o Laamaaloom Mohalla Ram Ganj]* (Deceased) **(Deleted vide order dated 17.1.1962)**

[5. *Mohd. Achhan Mia aged 45 years S/o Laamaaloom Mohalla Katra]* (Deceased)

(1 To 5) City Ayodhya Pargana Haveli Oudh, Tahsil and District Faizabad.

6. Uttar Pradesh State, Lucknow.
7. Deputy Commissioner Faizabad.
8. City Magistrate Faizabad.
9. Superintendent of Police Faizabad.
10. Sunni Central Waqf Board U.P. Lucknow Moti Lal Bose Road P.S. Kaiserbagh, Lucknow through Secretary.
11. Nirmohi Akhara Ayodhya Haveli Awadh, District Faizabad through Sarpanch Ram Swaroop Das, Upsarpanch Mahant Bhaskar Das and Panch Raja Ram Chandracharya.

With

Other Original Suit No. 3 of 1989

(Regular Suit No. 26 of 1959)

Nirmohi Akhara Situate in Mohalla Ramghat City Ayodhya through Mahant Jagan Nath Das aged about 54 years chela of Mahant Vaishnab Das R/o Nirmohi Bazar, Reg. Ramghat Haveli Oudh Ayodhya City.

Vs.

1. Sri Jamuna Prasad Singh Receiver, R/o of Deo Kali Road. City Faizabad.
2. State of U.P.
3. Deputy Commissioner, Faizabad.

4. City Magistrate, Faizabad.
5. Superintendent of Police, Faizabad.
- [6. *Haji Phekku aged 70 years son of unknown R/o of Mohalla Terhi Bazar*] (Deceased)
- 6/1 Haji Mehboob (adult)
- 6/2 Haji Abdul Ahed both R/o Mohalla Terhi Bazar Bazar City Ayodhya Tahsil and District Faizabad.
- 7 Mohd. Faiq aged 50 years S/o Haji Ramzan R/o Terihi Bazar
8. Mohd. Achhan Mian aged about 55 years son of unknown R/o Mohalla Katra.
(6 to 8) City Ayodhya Pargana Haveli Oudh Tahsil and district Faizabad on behalf of themselves and all other members of the Muslim Community.
9. U.P. Sunni Central Board of Waqfs through its secretary, Lucknow.
10. Umesh Chandra Pandey aged 34 years S/o Sri Ram Shanker Pandey R/o Rampali Ayodhya City Dist. Faizaba. (Haveli Oudh).
11. Mohd. Farooq S/o Zahoor Ahamad R/o Singarhat Ayodhya, District Faizabad.

With

Other Original Suit No. 5 of 1989

(Regular Suit No. 236 of 1989)

1. Bhagwan Sri Ram Virajman at Sri Rama Janam Bhumi, Ayodhya, also called Bhagwan Sri Rama Lala Virajman represented by next friend, Sri Triloki Nath Pandey aged about 65 years, S/o Late Askrut Pandey, R/o Karsewak Puram District Faizabad.
2. Asthan Sri Rama Janam Bhumi, Ayodhya, represented by

next friend, Sri Triloki Nath Pandey aged about 65 years, S/o Late Askrut Pandey, R/o Karsewak Puram District Faizabad.

3. Triloki Nath Pandey aged about 65 years, S/o Late Sri Askrut Pandey, R/o Karsewak Puram District Faizabad.

Vs.

1. Sri Rajendra Singh, adult, son of late Sri Gopal Singh Visharad, at present residing at Gonda, care of the State Bank of India, Gonda Branch Gonda.
2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya.
- 2/1. Mahant Suresh Das aged about 55 years Chela Late Mahant Param Ramchandra Das.
3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya through its present Mahant Jagannath Das, aged about 54 years, Chela of Vaishnav Das Nirmohi R/o Mohalla Ram Ghat Nirmohi Bazar Pargana Haveli Awadh, Ayodhya, District Faizabad.
4. Sunni Central Board of Waqfs U.P. having its office at Moti Lal Bose Road, Lucknow.
5. Sri Mohammad Hashim, Adult, S/o Sri Karim Bux R/o Mohall Sutahti Ayodhya.
6. Sri Mahmud Ahmad, adult S/o Sri Ghulam Hasan, R/o Mohalla Rakabganj, Faizabad.
7. State of U.P. through the Secretary, Home Department, Civil Secretariat , Lucknow.
8. The Collector and District Magistrate, Faizabad.
9. The City Magistrate, Faizabad.
10. The Senior Superintendent of Police, Faizabad.
11. The President, All India Hindu Mahasabha, New Delhi.

12. The President, All India Arya Samaj, Dewan Hall Delhi.
13. The President, All India Sanatan Dharma Sabha Delhi.
14. Sri Dharam Das adult, Chela Baba Abhiram Das R/o Hanuman Garhi, Ayodhya.
15. Sri Pundarik Misra, Adult S/o Sri Raj Narain Misra, R/o Baham Pur Sarai, Rakabganj, Faizabad.
16. Sri Ram Dayal Saran Adult, Chela Ram Lakhan Saran, R/o Ramcharit Manas Bhawan, Mohall Ramkot, Ayodhya.
17. Sri Ramesh Chandra Tripathi Adult, S/o Sri Parash Ram Tripathi, R/o village Bhagwan Patti, Pargana Minjhaura, Tahsil Akbarpur, District Faizabad.
- [18. *Mahant Ganga Das adult Chela Sarju Das, R/o Mandir Lalta Prasad, Ayodhya*] **(Deleted)**
- [19. *Swami Govindacharya Manas Martand, adult, S/o Sri Balbhadar alias Jhallu R/o Ayodhya*] **(Deleted)**
20. Sri Umesh Chandra Pandey Adult S/o Sri Uma Shanker Pandey, Advocate, R/o Ranopali, Ayodhya.
21. Sri Rama Janam Bhumi Nyas, a Trust having its office at Sankat Mochan Ashram, Sri Hanuman Mandir, Rama Krishan Puram, Sector VI, New Delhi, through Sri Ashok Singhal, Managing Trustee.
22. Shia Central Board of Waqfs. U.P. Lucknow.
- [23. *Sri Javvad Husain, adult, R/o village Sahanwa P.O. Darshan Nagar, District Faizabad*] **(Deleted)**
- [24. *Prince Anjum Quder, President All India Shia Conference, Qaomi Ghar, Nandan Mahal Road Lucknow*] **(Died on 23.7.1997 and ordered to be deleted on 10.11.1997)**
- [25. *All India Shia Conference through Sri S. Mohammad Hasnain Abidi, Honorary General Secretary, Qaomi Ghar Nandan Mahal Road, Lucknow*] **(Deleted vide order dated**

10.11.1997)

26. Hafiz Mohd. Siddiqui, aged about 46 years S/o Late Haji Mohd. Ibrahim, R/o Lalbagh Moradabad. General Secretary, Jamaitul Ulema Hind U.P. Jamait Building B.N. Verma Road, Kutchery Road Lucknow.
27. Vakeeluddin aged about 55 years, S/o Ismail, R/o Madarpur Pargana and Tehsil Tanda District Faizabad

Counsels for parties :

Suit-4 :

Counsel for Plaintiffs : Sri Zafaryab Jilani, Sri M.A. Siddiqui, Sri S.I. Ahmad and Sri C.M. Shukla, Advocates.

Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 5, 6, 7 and 8); Sri Ravi Shankar Prasad, Senior Advocate and Sri M.M. Pandey, Advocate (for defendant no. 2/1, Mahant Suresh Das); Sri R.L. Verma and Sri Tarunjeet Verma, Advocates (for defendant no. 3, Nirmohi Akhara); Sri Hari Shankar Jain, Advocate (for defendant no. 10, All India Hindu Maha Sabha); Sri P.R. Ganpathi Ayer, Senior Advocate, and Sri Rakesh Pandey, Advocate (for defendant no. 13/1, Dharam Das); Sri R.K. Srivastava, Advocate (for defendant no. 17, Ramesh Chandra Tripathi); and Sri P.N. Mishra, Amitabh Shukla and Sushri Ranjana Agnihotri, Advocates (for defendant no. 20, Madan Mohan Gupta, Convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti).

Suit-1 :

Counsel for Plaintiffs : Sri Ajay Kumar Pandey, Sri D.P. Gupta and K.G. Mishra, Advocates.

Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 6, 7, 8 and 9); Sri Zafaryab Jilani, Advocate (for defendant no. 10, Sunni Central

Waqf Board) and Sri R.L. Verma and Sri Tarunjeet Verma, Advocates (for defendant no.11, Nirmohi Akhara).

Suit-3 :

Counsel for Plaintiff : Sri R.L. Verma and Sri Tarunjeet Verma, Advocates

Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 2, 3, 4 and 5); Sri Syed Irfan Ahmad and Sri Fazle Alam, Advocates (for defendants no. 6/1, Haji Mehboob and 6/2, Haji Abdul Ahad) and Sri Zafaryab Jilani (for defendant no. 9, Sunni Central Board of Waqfs).

Suit-5 :

Counsel for Plaintiff : Sri K.N. Bhat, Senior Advocate and Sri Ved Prakash, Madan Mohan Pandey and Ajay Kumar Pandey, Advocates.

Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 7, 8, 9 and 10); Sri D.P. Gupta and Sri K.G. Mishra, Advocates (for defendant No.1, Rajendra Singh); Sri R.L. Verma and Sri Tarunjeet Verma, Advocates (for defendant no. 3, Nirmohi Akhara); Sri Zafaryab Jilani, Advocate (for defendant no. 4, Sunni Central Board of Waqfs); Sri M.A. Siddiqui, Advocate (for defendant no. 5, Mohammad Hashim); Sri Hari Shankar, Advocate (for defendant no.11, President All India Hindu Mahasabha); Sri P.R. Ganpathi Ayer, Senior Advocate, and Sri Rakesh Pandey, Advocate (for defendant No.14, Dharam Das); Sri Ramakant Srivastava, Advocate (for defendant no.17, Ramesh Chnadra Tripathi) and Sri Irfan Ahmad and Sri C.M. Shukla, Advocates (for respondent no.26, Hafiz Mohd. Siddiqui).

Hon'ble S.U. Khan, J.
Hon'ble Sudhir Agarwal, J.
Hon'ble D.V. Sharma, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

नासदासीन्नो सदासीत् तदानी नासीद्रजो नो व्योमा परो यत् ।

किमावरीवः कुह कस्य शर्म न्मभः किमासीद्महनं गभीरम् 1

“प्रलयावस्था में (न असत् आसीत् न सत् आसीत्) न सत् था और न असत् था, (तदानीं) उस समय (न रजः आसीत्) न लोक था और (व्योमा परः यत् न) आकाश से परे जो कुछ है वह भी नहीं था। उस समय (आवरीवः किं) सबको ढकनेवाला क्या था? (कुह कस्य शर्मन) कहां किसका आश्रय था? (गहनं गंभीरं अम्भः किं आसीत्) अगाध और गम्भीर जल क्या था?

(प्रलयावस्था में पंचभूतादि सत् पदार्थ ही थे, न कुछ अभावरूप असत्ही था, न आकाश था, न लोकही थे। फिर किसने किसको ढका? कैसे ढका? किससे ढका? यह सब अनिश्चित ही था।)” (Hindi Translation)

“During the Dissolution, there was neither existence nor non-existence, and at that time neither Lok (world) was there nor was anything beyond the space. What encompassed all at that time? Where was the abode and of whom? What was the unfathomable and deep water?” (English Translation)

न मृत्युरासीद्मृतं न तर्हि न रात्र्या अह्न आसीत् प्रकेतः ।

आनीद्वातं स्वधया तदेकं तस्माद्धान्यन्न परः किं चनास 2

“(तर्हि) उस समय (न मृत्युः न अमृतं आसीत्) न मृत्यु थी न अमृत था, (रात्र्याः अह्नः प्रकेतः न आसीत्) सूर्यचन्द्र के अभाव से रात्री और दिन का ज्ञान भी नहीं था। उस (अ-वातं) वायु से रहित दशा में (एकं तत्) एक अकेला वह ही ब्रह्म (स्वध्या) अपनी शक्ति के साथ (आ नीत्) प्राण ले रहा था। (तस्मात् पर अन्यत् किंचन न आस) उससे परे या भिन्न और कोई वस्तु नहीं थी।

(मृत्यु, अमृत भी कुछ नहीं था, और सूर्य चन्द्रमा न होने से दिन रात का भेद भी मालूम नहीं होता था। पर एक ब्रह्म ही ऐसी दशा में विद्यमान था।)”

“At that time there was neither death nor immortality, and there was also no knowledge of day and night in absence of the Sun and the Moon. In that stage of vacuum, Brahm (the Supreme Being) alone was imbibing life from His own power. There was

nothing beyond or distinct from Him.”

तम आसीत् तमसा गूळहमग्रे ऽप्रकेतं सलिलं सर्वमा इदम् ।

तुच्छयेनाभवपिहितं यदासीत् तपसस्तन्महिनाजायतैकम् 3

“(अग्रे) सृष्टि से पूर्व प्रलय दशा में (तमः आसीत्) अन्धकार था, (तमसा गूळह) सब अन्धकार से आच्छादित था, (अप्रकेतं) अज्ञात दशा में और (इदं आः सर्व सलिलं) यह सब कुछ जल ही जल था और (यत् आसीत्) जो कुछ था, वह (आभु तुच्छयेन अपिहितं) चारों ओर होने वाले सदसद्विलक्षण भावसे आच्छादित था और (तत् एकं) वह एक ब्रह्म (तपसः महिना अजायत) तपके प्रभाव से हुआ। (प्रलयावस्था में चारों ओर अंधकार फैला हुआ था, अतः कुछ भी ज्ञान नहीं होता था। और जो कुछ था वह भी बड़ा अजीब था।)”

“Prior to Creation, in the stage of Dissolution, there was darkness, everything was covered with darkness in an unknown state and this was all water and whatever existed, was covered all around with remarkable attributes of existence and non-existence and this was possible due to the effect of great austere practice.”

को अद्वा वेद क इह प्र वोचत् कुत आजाता कुत इयं विसृष्टिः ।

अर्वाग्देवा अस्य विसर्जनेना ऽथा को वेद यत आबभूव । 6

“(कः अद्वा वेद) कौन मनुष्य जानता है, और (इह कः प्रवोचत्) यहां कौन कहेगा, कि (इयं विसृष्टिः कुतः कुतः आ जाता) यह सृष्टि कहां से और किस कारण उत्पन्न हुई। क्योंकि (देवाः) विद्वान् या दूरदर्शी भी (अस्य विसर्जनेन अर्वाक्) इस सृष्टि के उत्पन्न होने के बाद ही उत्पन्न हुए हैं, (अथ) इसलिए यह सृष्टि (यतः आ बभूव) जिससे उत्पन्न हुई उसे (कः वेद) कौन जानता है।

(इस सारी सृष्टि की उत्पत्ति कैसे और कहां से हुई, यह कोई नहीं जानता, क्योंकि उस रहस्य को जानने वाले विद्वानों की उत्पत्ति भी बाद में हुई।)”

“None knows and none can tell as to from where and how the Creation took place, because even the scholars or those having foresight, were born after the Creation. Hence, none knows the source of this Creation.”

इयं विसृष्टिर्यत आबभूव यदि वा दधे यदि वा न ।

यो अस्याध्यक्षः परमे व्योमन् त्सो अंगः वेद यदि वा न वेद 7

“(इयं विसृष्टिः यतः आ बभूव) यह सृष्टि जिससे पैदा हुई वह इसे (यदि दधे यदि

वा न) धारण करता भी है या नहीं, इसको हे (अंग) विद्वान (सः वेद) वही जानता है (यः परमे व्योमन् अस्य अध्यक्षः) जो परम आकाश में रहता हुआ इस सृष्टि का अध्यक्ष है (यदि वा) अथवा सम्भवतः वह भी (न वेद) नहीं जानता हो। (इस सृष्टि को पैदा करने वाला इसका अध्यक्ष परमब्रह्म इस सृष्टि का धारक है। और वही इस सृष्टि को पूर्णतया जानता है।)“

“O scholar, whether the Creation is sustained by the Creator or not, is known only to Him, who superintends this Creation from the supreme space or it may not be known even to Him.”

*(Rig-Veda X.129.1-3, 6, 7, Sanskrit)
(Hindi version from Rig Veda Ka Subodh-Bhasya Mandal 9-10 translated by Dr. Sripad Damodar Satvlekar published in 1985 and English translation by the Court)*

1. Sixty years and more since the first Suit was filed in the Court of Civil Judge, Faizabad, twenty one years and more before a Full Bench of this Court (on transfer of the suits from the Court of Civil Judge Faizabad), 533 exhibits; 87 witnesses deposing in about 13990 pages; more than a thousand reference books on various subjects like History, Culture, Archaeology, Religion etc. and in different languages like Sanskrit, Hindi, Urdu, Persian, Turkish, French etc.; innumerable archaeological artifacts kept in the record room; dozens of C.Ds. and other record; and, the period of events ranging from crores to more than 550 years; religious faith, sentiments and pathos of millions of people of not only this Country but abroad also, give some indication towards length, width and depth of the dispute before us.

TOPOGRAPHY

2. The entire dispute in these four suits relates to the land situate in village Kot Rama Chandra (Ramkot at Ayodhya), Pargana Haveli Avadh, Tehsil Sadar, District Faizabad. At the disputed site there was an old structure--centre of controversy

among two major communities of this country, i.e., Hindus and Muslims. Amongst Hindus also a religious sect known as “Ramanandi Vairagis” has an independent and separate claim. It is claimed by Hindus in general that the disputed site is the place where Lord Rama was born and it is his birthplace. There existed a Rama temple at the site which was demolished in 1528 by Mir Baqi, a Commander of Babar, and, he constructed the said disputed structure which the Muslims claimed to be “Babari Mosque”. The claim of Hindus is that there cannot be another birthplace of Lord Rama. Therefore, by its very nature they cannot give away such a unique and singular pious place. Ramanandi Vairagis, however, claim that the structure was not a mosque but continued to be a “Rama temple” throughout and worshipped as such, it belongs to them, and they were/are in continuous possession and management thereof till December' 1949, i.e. the date of attachment. They, however, are in agreement with the orthodox Hindus' general belief that the site in dispute is the birthplace of Lord Rama.

3. On the eastern and southern side of the structure there was open land. On the northern and western side there was a public road and public pathway. Beyond the road, in the north, there was again open land and beyond the pathway in the west there is a deep slope.

4. The disputed structure was demolished on 6.12.1992 but its topography before its demolition has been noticed in this Court's judgment dated 11.12.1992 in **Writ Petition No. 3540 (MB) of 1991, Mohammad Hashim Vs. State of U.P. and others**. In the judgment of Hon'ble S.C. Mathur, J. details of the site is described as under:

“The aforesaid structure is divisible into three parts.

(1) the main roofed structure, (2) the inner courtyard, and (3) outer courtyard. The public road is to the north of the structure. Immediately adjoining the roofed structure to the east is the inner courtyard. To the east of this courtyard is the outer courtyard. On the outer courtyard there is a Chabutara which has been in possession of the Hindus. There are other signs on this courtyard which are objects of reverence or worship to the Hindus, like Sita Rasoi and Charan. To the east of the outer courtyard is a boundary wall having a gate. It is this gate which provides entry first to the outer courtyard, then to the inner courtyard and lastly to the roofed structure."

5. In view of the decision of the Apex Court in **Dr. M. Ismail Faruqui etc. Vs. Union of India and others 1994 (6) SCC 360= AIR 1995 SC 605**, the area of land in dispute, which is to be adjudicated by this Court is now restricted to what has been referred to in para 4 above, i.e. main roofed structure, the inner courtyard and the outer courtyard. In fact, the area under the roofed structure and Sahan, for the purpose of convenience, shall be referred hereinafter as "inner courtyard" and rest as the "outer courtyard". Broadly, the measurement of the disputed area is about 130X80 sq. feet.

Disputed Structure

6. Though the disputed structure was demolished on 6th December, 1992 but it would be necessary to have a broad idea of the above structure which is the bone of contention in all these cases. It was situated on the north-east corner of the mound or plateau, about 30' – 40' higher than the level of Highway. It was a three-arched structure having three broad but pointed arches on the facade. The *liwan* (sanctuary) which stood

on a low plinth was composed of three square bays, roofed by three single broad and high domes. The skeleton mainly built of brick and mortar. **The enclosing wall through which the entrance given is said to have been constructed in the middle of nineteenth century.** It had twelve corner pillars on the angles of six main piers which make up the nave or the central or the main bay of the mosque. These small pillars were of black stone of the family of “schist” polished and commonly called as “*Kasauti*” stone. These pillars did not support the main load of the ceiling which passed down to the main columns of the ground floor, but only carried the lintels of the opening extensions. The pillars were not load bearing but simply strengthened the piers at their corners. The three domes appeared to be disproportionate. They were allegedly repaired, restored or renovated from time to time. In 1949/1950 when the present dispute arose, there were three inscriptions. One is a Persian epigraph of 8 verses, carved in relief in 4 lines in Naskh, above the *chhajja* on the central arch. Below the Chhajjas, Quranic verses from Chapter-CXII were carved. Two other inscriptions are said to have lost in 1934 riots but were replaced. One was on the southern side of the pulpit and another was on the right hand of the pulpit. The contents of those inscriptions would be dealt with and reproduced later on while dealing with the relevant issue. A photograph of the disputed building published in 1902 in the book “Tarikh-E-Ajudhya” is appended to this judgement as Appendix '1'. This is the oldest photograph of the building made available to the Court.

Suits--pleadings--in brief :

O.O.S. No.1 of 1989 (earlier registered as Regular Suit no. 2 of 1950)

7. Regular Suit No. 2 of 1950 was filed in the Court of Civil Judge, Faizabad by Sri Gopal Singh Visharad on 16.1.1950 impleading Sri Zahoor Ahmad, Hazi Phenku, Hazi Mohd. Fayaq, Mohd. Shami and Mohd. Achhan Mian as defendants no. 1 to 5. Uttar Pradesh State, Lucknow, Deputy Commissioner, Faizabad, City Magistrate, Faizabad and Superintendent of Police, Faizabad were impleaded as defendants no. 6 to 9. During the pendency of the Suit, Sri Gopal Singh Visharad died and was substituted by his son Sri Rajendra Singh pursuant to Court's order dated 22.2.1986. Defendants no. 1 to 5 also expired in the meantime. No substitution except Plaintiff no. 1, has been sought in place thereof. Vide Court's order dated 7th January 1987, Sunni Central Waqf Board, U.P., Lucknow through its Secretary was allowed to be impleaded as defendant no.10. Similarly vide Court's order dated 23.8.1990, Nirmohi Akhara, Ayodhya through its Sarpanch Ram Swarup Das, Deputy Sarpanch M. Bhaskar Das and Panch Raja Ramachandracharya has been impleaded as defendant no. 11. So, presently, in effect, the parties to the suit consist of Rajendra Singh, the plaintiff and six defendants, i.e., defendants no. 6 to 11. On transfer to this Court vide order dated 10.7.89, the aforesaid suit was re-registered as O.O.S. No. 1 of 1989 (hereinafter referred to as "Suit-1").

Reliefs

8. The reliefs sought in Suit-1 (duly amended pursuant to the Court's order dated 7.1.1989) are: a declaration that the plaintiff is entitled to offer worship without any obstruction according to rites and tenets of his religion at the birth place of Lord Shri Ram Chandra, described at the foot of the plaint and defendants no. 1 to 10 and their substitutes have no authority to create any

hindrance/obstruction in the aforesaid right of the plaintiff, a permanent prohibitory injunction against defendants no. 1 to 10 and their substitutes not to remove the idols of Lord Shri Ram Chandra situated at the place of birth described at the foot of the plaint, neither obstruct ingress and egress to the aforesaid place or at the entry point nor create any obstruction in worship and Darshan (*Pooja and Darshan*). The cost of suit and any other relief which may justifiably be granted are also prayed.

Plaint (Suit-1)

9. The case set up by the plaintiff is that he is a religious person, resident of Ayodhya and used to worship the idols of God according to customs of his religion (*Sanatan Dharma*). He has also been offering worship to idol and *Charan Paduka* (wooden sleeper) of Lord Shri Ram Chandra at his birth place, details whereof are given at the foot of the plaint and is entitled to continue such worship without any hindrance at the aforesaid place in future also. The plaintiff was ill for some time and when on 14.01.1950 he went to offer worship at the birth place of Lord Shri Ram Chandra, defendant no. 6 along with employees of the State restrained him from approaching the place at which the idol of Lord Shri Ram Chandra was situated. On enquiry he came to know that defendants no. 1 to 5 and 6 through its employees i.e. defendants no. 7 to 9 were depriving Hindu public from offering their lawful right of worship at the aforesaid place. Defendant no.6 on account of *mala fide* of defendants no. 1 to 5 had also made it open that in future also Hindu public would be continuously deprived of such right. This unjustified and illegal action has damaged the plaintiff's basic right which he has been exercising throughout. The present plaintiff also apprehends every possibility of

continuance of such deprivation of his religious rights by the defendants. Defendant no. 6 through its employees and defendants no. 7 to 9 are exercising undue pressure upon Hindu public to remove the idols of Lord Shri Ram Chandra from the present place and other defendants are cooperating with them. In this way, the defendants are determined to continue with their illegal and unjust activities. The aforesaid action of defendants is illegal, unjustified and collusive, infringing the fundamental rights of the plaintiff and cannot be accepted by the plaintiff. Deprivation of such right by defendants no. 6 to 9 is illegal, *ultra vires* and against the provisions of the Government of India Act, 1935 (hereinafter referred to as "GOI Act, 1935"). The cause of action is said to have arisen on 14.1.1950 within the jurisdiction of Civil Judge, Faizabad when the plaintiff was deprived of exercising his religious rights. After the death of the plaintiff Gopal Singh Visharad his son has also similar right and is entitled to pursue the aforesaid suit. The plaint is signed and verified by the plaintiff on 13.1.1950.

10. The place of dispute has been described at the foot of the plaint as under:

East:	Janam Bhumi, Bhandar and Chabutara (Birth Place, Store and platform)
West:	Parti (Vacant land)
North:	Sita Rasoi (Kitchen of Goddess Sita)
South:	Parti (Vacant Land)

11. A temporary injunction was granted on 16.1.1950 which was modified on 19.1.1950 on an application filed by District Magistrate/Deputy Commissioner, seeking clarification/modification of the earlier order. Thereafter a receiver was appointed by order dated 3.3.1950 who continued till a Civil

Court's Receiver was appointed. In 1993 the property was acquired and now the "Authorised Person" i.e. Commissioner, Faizabad Division, Faizabad, a statutory authority is looking after the same.

Written statement of Defendants no. 1 to 5 (Jahoor Ahmad, Hazi Phenku, Hazi Mohd. Phayak, Mohd. Shami and Mohd. Achchhan Miya) (Suit-1)

12. Written statement dated 21.2.1950 filed on behalf of defendants no. 1 to 5 states that the disputed site is not a birth place. A mosque was constructed thereat by Emperor Babar Shah. The suit has been filed by giving wrong facts with an intention to mislead the Court and to obtain an order against the defendants which would be contrary to law. All the averments made in the plaint are denied. The plaintiff is not entitled to any relief. The additional pleas are that in the year 1528 Emperor Babar visited Ayodhya after conquering Hindustan and through its Minister/Commander Mir Baqi got a mosque constructed called 'Babari Masjid' and made it open to all Muslims for offering prayer through a general Waqf (Waqf-e-Aam). He also provided Rs. 60/- per annum for maintenance, repairs etc. of the aforesaid mosque, which was paid from the Government Treasury. The aforesaid amount was continuously paid by subsequent Mughal Rulers. Even Nawab Awadh continued with the said grant and, in fact, increased the amount to Rs. 302, 3 Annas and 6 paise per annum. This grant was maintained by British Government also. In 1885, Raghubar Das, Mahant, Janamsthan Ayodhya filed a suit against the Secretary of State for India in Council and Mohd. Asghar, Mutvalli/caretaker, Babari Masjid, in the Court of Sub Judge, Faizabad. He also filed a map showing the existence of mosque at the place in dispute and nobody disputed the same. He sought relief in

respect to one *Chabutara* (platform) only. Now the claim of the plaintiff that the entire building is a birth place temple is incorrect and without any basis. The suit has been filed dishonestly and mala fide. The Court of Sub Judge, Faizabad vide judgment dated 24.12.1885 dismissed the suit of Raghubar Das, Mahanth. The said judgment was maintained in appeal. Though the suit was only in respect of right on a *Chabutara*, but that too was rejected by trial court as well as the appellate courts. The aforesaid case at that time was very sensitive. Many Mahanths and other followers of Hindu community pursued the aforesaid suit. Everybody was well informed of the aforesaid suit.

13. The written statement further says that pursuant to U.P. Waqf Act no. 13 of 1936 (hereinafter referred to as “1936 Act”), a Chief Commissioner of Waqf was appointed who made a spot inspection and on verification held that the place in dispute is 'Babari Masjid' constructed by Emperor Babar who was a Sunni. The mosque in question was held a “Sunni Waqf” and accordingly issued notification. The Muslim people have possession over the land in question as Waqf Babari Masjid since 1528 till date. Even if the plaintiff or any other Hindu prove that prior to construction of Babari Masjid there existed some temple, though it is not acceptable to the defendants, yet, for the last almost 400 years and above, the Muslims are in possession over the land in question and have completed their right of adverse possession being there for more than 12 years. The plaintiff and any other Hindu therefore have no right on the place in dispute. The plaintiff neither had any possession nor other kind of right in past, present or future. The suit is not maintainable in view of Section 42 of Specific Relief Act. It is

barred by limitation. The plaintiff has neither shown any personal right on the building at the site nor otherwise has any ownership or other right on the property in question. The suit is liable to be dismissed. The plaintiff has not filed any application under Order 1, Rule 8 of the Code of Civil Procedure (hereinafter referred to as "C.P.C.") and, therefore, the suit cannot be treated to be in representative capacity filed on behalf of entire Hindu public and, hence not maintainable. The suit is bad for want of notice under section 80 C.P.C. against defendants no. 6 to 9. It is further said that the defendants are not aware of existence of idol in the property in question, i.e., Babari Masjid and till 16.12.1949 Namaz was offered therein. No idol existed thereat till 16.12.1949. If anybody has put idol in the mosque subsequently with bad and dishonest intention, i.e., only to damage the sacred place, i.e., the mosque, such attempt is a criminal and illegal act. If anybody wants to enter a mosque with an intention for idol worship, he deserves to be punished in law and no such permission can be granted. The plaintiff has not disclosed as to how and in what manner defendants no. 6 to 9 prevented him from exercising his alleged right and details are lacking. It is also not explained as to which employees of defendants no. 6 restrained plaintiff and in what capacity. So far as the defendants are aware, defendant no. 9 initiated proceedings under section 145 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") in respect of Babari Masjid and pursuant thereto some action was taken by defendants no.7 and 8. Though the defendants are not accepting the proceedings initiated under Section 145, Cr.P.C. but the same being legal proceedings, no suit for injunction would lie so long the said proceedings are pending. Besides, in Ayodhya

there is a temple known as “Birth Place of Lord Shri Ram Chandra” at a different place whereat idols of Lord Ram Chandra also exist. The present suit with an intention to call the “mosque” as “birth place of Lord Shri Ram Chandra” is a misleading attitude of the plaintiff and his instigators, and, may be an attempt to gain some advantage in election. It is also contrary to the principle of a secular State. The suit has been filed to harass the defendants and, therefore, they are entitled to costs.

Replication to W.S. of Defendants no. 1 to 5 (Jahoor Ahmad, Hazi Phenku, Mohd. Phayak, Mohd. Shami and Mohd. Achchhan Miya) (Suit-1)

14. The plaintiff filed replication dated 5.12.1952 denying the existence of Babari Masjid and Waqf created by Babar as also the right of Muslims to offer prayers at the place in dispute. Denying issuance of notification, if any under 1936 Act, he claims to be unaware of the said proceedings and thus not bound by the same. He has individual right of worship and, therefore, is entitled to claim the relief as prayed. Order 1 Rule 8 C.P.C. would not come in his way. Since 1934 Namaz has not been offered at the place in dispute. The idols of Lord Shri Ram Chandra exist on the disputed site and this fact is well known to defendants no.1 to 5. The temple of Lord Shri Ram Chandra Janamsthan, existence whereof has been set out in written statement, is a different temple and boundaries of the said temple are as under:

North: Ahata. Parti and temple in possession of Kallu Mahapatra
 South : Pitch Road
 East : Road, Sahan and a well
 West : Hata and Parti (Compound and vacant land)

15. He also said that in Ayodhya almost every temple has idol of Lord Shri Ram Chandra which has nothing to do with the site in dispute and reference to election etc. is wholly irrelevant. The plaintiff is an Advocate practising before the local Indian Rulers (Desi Rajware) in the earlier times and has a lot of own property. After constitution of Indian Union, he has now a right to practice. Even if there existed Babari Masjid as claimed by the defendants, yet it is a fact that since 1934 Muslims have neither entered the said premises nor offered Namaz or prayer thereat. Since then the place in dispute is in possession of Hindu people who visit the said place continuously treating it to be a temple. Any proceeding initiated by the Muslims collusively in any Court is all fictitious and not binding either on Hindu public or on plaintiff in particular.

Written statement dated 25.4.1950 of Defendant no. 6 (United Provinces, Uttar Pradesh State, Lucknow) (Suit-1)

16. On behalf of defendant no. 6 a separate written statement dated 25.4.1950 has been filed denying allegations made in the plaint and raising objection of want of notice under Section 80 C.P.C., non-description of the property in dispute properly, lack of cause of action and under-valuation. It is also averred that property in suit is known as Babari Masjid and has been in use as a mosque for worship by Muslims. It has not been used as a temple of Lord Shri Ram Chandra Ji. In the night of 22.12.1949 idols of Lord Shri Ram Chandra Ji were surreptitiously and wrongly put inside it. Apprehending disturbance of public peace and tranquility, the authorities intervened and passed an order under Section 144 Cr.P.C. on 23.12.1949 prohibiting carrying of firearm, swords, etc. and assemblance of more than five persons within the limits of Faizabad and Ayodhya municipalities. On 29.12.1949 Sri Markandey Singh, the then Additional City

Magistrate on police report and other information passed an order under Section 145 Cr.P.C., calling upon the claimants of the premises in question to appear and file their written statement by 17.1.1950 in his Court. The said Magistrate also formed an opinion of emergency, attached the said property and appointed Sri Priya Dutt Ram, Chairman, Municipal Board, Faizabad, Ayodhya as Receiver of the said property, authorizing him to take care thereof and also to submit a scheme for its management. The authorities have acted in accordance with law fraught with a situation of serious danger to public peace and tranquillity. The Court has no jurisdiction to grant any injunction causing interference in the performance of public duty by a department of the Government.

Written statement of Defendants no. 8 and 9 (Sri Markandey Singh, Additional City Magistrate, Faizabad and Sri Ram Kripal Singh, Superintendent of Police, Faizabad) (Suit-1)

17. Defendants no. 8 and 9 have filed written statements separately but the contents thereof are similar to the written statement of defendant no.6.

Written statement dated 24.2.1989 of Defendant no. 10 (U.P. Sunni Central Waqf Board) (Suit-1)

18. After impleadment, defendant no. 10, U.P. Sunni Central Waqf Board also filed a separate written statement dated 24.2.1989. The pleadings are similar as those in the written statement of defendants no. 1 to 5, and thus, are not being detailed herein but may be referred as and when occasion arises.

O.O.S. No. 3 of 1989 (earlier registered as Regular Suit No. 2 of 1959)

19. This suit was filed on 17.12.1959 by Nirmohi Akhara through its Mahant Raghunath Das (now substituted by Jagannath Das) and another in the Court of Civil Judge, Faizabad. It was registered as R.S. No. 26 of 1959. However,

after transfer to this Court it has been re-registered as O.O.S. No. 3 of 1989 (*hereinafter referred to as "Suit-3"*). Initially, when it was filed, Nirmohi Akhara and Mahant Raghunath Das were plaintiffs. Sri Babu Priya Dutt Ram, Receiver as well as the State of Uttar Pradesh and its authorities were impleaded as defendants no. 1 to 5. Three persons from Muslim community were impleaded as defendants no. 6 to 8 as representatives of the Muslim community. Subsequently, however, from time to time the array of parties has undergone amendments on various dates due to death etc. Presently plaintiffs are, Nirmohi Akhara through Mahant Jagannath Das (plaintiff no. 1) and Mahant Jagannath Das (plaintiff no. 2). The defendants are as follows :

“1. Sri Jamuna Prasad Singh, 2. State of Uttar Pradesh, 3. Deputy Commissioner, Faizabad, 4. City Magistrate, Faizabad, 5. Superintendent of Police, Faizabad, 6. Haji Mehboob, 7. Haji Abdul, 8. Mohd. Faiq, 9. U.P. Sunni Central Board of Waqfs through its Secretary, Lucknow, 10. Umesh Chandra Pandey and 11. Mohd. Farook.”

(The defendants no. 9, 10 and 11 were impleaded on their application allowed by the Court vide orders dated 23.8.1989, 28.1.1989 and 3.12.1991 respectively).

20. The plaintiffs have sought relief of grant of a decree for removal of defendant no. 1 from the management and withdrawal of charge of the temple of Janam Bhumi and to deliver the same to the plaintiffs through Mahant and Sarbarahkar Mahant Jagannath Das.

Plaint (Suit-3)

21. The case set out in the plaint dated 17.12.1959 is that since the days of 'Yore' there exists an ancient Math or Akhara of “Ramanand Bairagis” called 'Nirmohis' with its seat at

“Ramghat” known as “Nirmohi Akhara”. Plaintiff no. 1, Nirmohi Akhara is a religious establishment of a public character and plaintiff no. 2 is the present Head as its Mahant and Sarbarahkar. The Janam Asthan commonly known as 'Janam Bhumi', the birth place of Lord Ram Chandra at Ayodhya always belong to plaintiff no. 1 who through its reigning Mahant and Sarbarahkar has ever since been managing it and receiving offerings made thereat in the form of money, sweets, flowers, fruits, other articles and things. The said Asthan of Janam Bhumi is of ancient antiquity. It is existing since before the living memory of men and lies within the boundaries shown by letters “A B C D” in the sketch map appended with the plaint within which there stands a temple building of Janam Bhumi marked by letters “E F G K P N M L E”. The building denoted by letters “E F G H I J K L E” is the main temple of Janam Asthan wherein the idol of Lord Ram Chandra is installed with Lakshamanji, Hanumanji and Saligramji. The said temple has ever been in the possession of plaintiff no. 1 and none others, but Hindus have ever since been allowed to enter or worship therein and make offerings in various forms which were received by plaintiffs through their Pujaris. Nirmohi Akhara is a “Panchayati Math” of “Ramanandi sect of Vairagies” and as such is a “religious denomination” following its own religious faith and pursuit according to its own customs prevalent in Vairagies sect of Sadhus. The customs of Nirmohi Akhara have been reduced in writing on 19.03.1949 by a registered deed. The plaintiff, Nirmohi Akhara owns several temples and manages all of them through Panch and Mahants of Akhara. The temples and properties vest in Akhara being a Panchayati Math. It acts on a democratic pattern. The management and right of management

of temples and Akhara vest absolutely with the Panch. No Mohammadan could or ever did enter the said temple/building. Even if it is attempted to prove that any Mohammadan ever entered it, at least from 1934 none has been allowed to enter or even attempted to enter the said premises. In 1950, City Magistrate, Faizabad (defendant no. 4) without any lawful cause, with the active connivance of defendants no. 2, 3 and 5 and on wrong persuasion of defendants no. 6 to 8 who claimed themselves to be the representatives of Muslim community, attached the main temple shown by letters E F G H I J K L E in the said sketch map with all the articles mentioned in list 'A' appended with the plaint in a proceeding under Section 145 Cr.P.C. and placed the temple and articles under charge of defendant no. 1 as Receiver on 05.01.1950. The plaintiffs claim to have been wrongfully deprived of charge and right to manage the said temple. The attachment is continuing with the connivance of all the defendants. There is no likelihood of early revival of charge since defendant no. 4, in connivance with other defendants, has refused to handover charge and management of the temple to the plaintiffs and, therefore, filing of the suit became inevitable. The plaintiffs are entitled for delivery of charge and management of the temple from defendant no. 1. Defendants no. 6 to 8 alleging themselves to be the representatives of Muslim community are exercising undue influence on defendants no. 1 to 5 to continue with the charge of temple and management in the hands of Receiver. They are being sued in representative capacity on behalf of entire Muslim community with the permission of the Court. The cause of action arose on 05.01.1950 when defendant no. 4 appointed defendant no. 1 as Receiver, and management and charge of the

temple alongwith articles as stated was entrusted to him. A notice under Section 80 C.P.C. was given to defendants no. 1 to 5. It was delivered on 06.10.1959 and 12.10.1959 and replied by them through defendant no. 3, intimating their decision to defend the suit.

22. After demolition of the disputed building on 06.12.1992, the plaint was amended and now it has been stated that on 06.12.1992 the temples of Nirmohi Akhara were also demolished by some miscreants who have no religion, caste or creed. The main temple was demolished on 06.12.1992.

Written statement dated 28.3.1960 of Defendants no. 6 to 8 (Hazi Phenku, Hazi Mohd. Fayaq and Mohd. Achhan Mian) (Suit-3)

23. On behalf of defendants no. 6 to 8, a written statement dated 28.03.1960 has been filed. The allegations of the plaint in general are denied. In defence it is said that Shahanshah-E-Hind 'Babar' got constructed a building known as 'Babari Masjid' which is the property in dispute over which claim has been staked by the plaintiffs. The aforesaid building was constructed by Shahanshah Babar through its Wazir Mir Baqi in 1528 and made a Waqf-E-Aam for Muslims who got a right to offer prayers in the said building. For repairs and maintenance of the said building Shahanshah Babar provided Rs. 60/- per annum as grant from Royal Treasury which, since then, was being received continuously. Nawab Oudh not only continued the grant but also increased the amount to Rs. 302, 3 Anna and 6 Pai per annum. This grant was continued by British Government. In 1885 Mahant Raghubar Das of Janam Asthan Ayodhya filed a suit against Secretary of State in the Court of Sub-Judge, Faizabad wherein he also filed a map of the premises in question. The existing Masjid was shown very clearly and it was

never disputed. The relief claimed therein was confined to a “Chabutara”. It is incorrect and without basis that the said building is a temple of Janam Bhumi. The suit has been filed falsely and with dishonest intention. The suit of Mahant Raghubar Das was dismissed on 24.12.1885 and the judgement was confirmed in appeal. The Sub-Judge in his judgement also rejected the claim of the said plaintiff in respect of Chabutara. The said finding was confirmed in appeal. In the aforesaid suit various Mahants of Ayodhya and general Hindu public were very much interested. At that time the suit was very sensational and pursued by Hindu public in general. They had, therefore, knowledge of the said proceedings. Under U.P. Muslims Waqf Act, 1936 (hereinafter referred to as “UP Act, 1936”), a Chief Waqf Commissioner was appointed who made spot inspection and concluded that the building in question was Babari Masjid. Since Babar was a Sunni, therefore, it was held to be a “Masjid” belong to Sunni Waqf Board. A notification in this regard was also issued which has attained finality. The Muslims have possession over Babari Masjid since 1528 till date. Even if it is proved by the plaintiffs or any other Hindu that there existed any temple before construction of Babari Masjid, though it is denied, still for the last more than 400 years Babari Masjid exists on the place, maturing the rights of Muslims at the said premises by “adverse possession”. The plaintiffs have no right or possession over the premises in dispute at any point of time. They have not given any notice under Section 80 C.P.C. to defendants no. 1 to 5. The existence of idol inside Babari Masjid is denied. On 16.12.1949 Namaz was offered and till then no idol existed therein. If subsequently somebody has placed any idol with a bad intention, it is an offence and contrary to Muslim

religion and rights. Any such action would not confer any right upon the plaintiffs to claim interest in a Muslim religious place i.e. Masjid. As per the knowledge of defendants no. 6 to 8, defendants no. 1 to 5 initiated proceedings under Section 145 Cr.P.C. and passed order appointing a Receiver at the premises in dispute which was in collusion with some Hindu people. At Ayodhya there exist a temple of Lord Ram Chandra. Mandir Janam Asthan is separate from the premises in question. The placement of idols at Babari Masjid and claim thereon by the plaintiffs is a collusive act on their part with an intention to get certain advantage in elections. The site mentioned in the appended copy is wrongly shown and is incorrect. There does not exist any "Shankar Chabutara" or "Sita Koop" or "Lomas Chaura" nor there exists any idol of Hanuman or Varah Bhagwan. The claim is fictitious and arbitrary having been made with mala fide. The plaintiffs have not shown as to how they got interest in the premises in question. One suit has been filed by one Sri Gopal Singh 'Visharad' and another by Param Hans Ram Chandra Das claiming their rights on Babari Masjid and, therefore, they are also liable to be impleaded in this suit. Building in question is clearly a Masjid. Government and everyone has always accepted and treated the same as such. The orders impugned have been issued under Section 145 Cr.P.C. and, therefore, the suit is not maintainable and liable to be dismissed. The plaintiffs have not impleaded the real persons who would have effectively represented the entire Muslim community. The defendants are not appropriate persons to represent the entire community. They have been impleaded only with an intention to harass them.

Replication to written statement of Defendants no. 6 to 8 (Hazi Phenku, Mohd. Fayak and Mohd. Achhan Mina) (Suit-

3)

24. The plaintiffs' replication states that the property in suit is neither a mosque nor is known as Babari Mosque. It was not built by Emperor Babar through Mir Baqi nor made a Waqf. The property in suit is a temple of Janam Bhumi. Janam Asthan is a different temple unconnected with the temple of Janam Bhumi. The temple of Janam Asthan is situated to the north of the temple of Janam Bhumi across the road passing between Janam Bhumi and Janam Asthan. The plaintiffs are not aware of the suit said to have been filed by Mahant Raghubar Das. The Chief Commissioner of Waqf has no jurisdiction to declare the temple Janam Bhumi as mosque. The declaration is a nullity and has no effect in law. The plaintiffs were never intimated of any such proceedings held by the Chief Commissioner regarding temple Janam Bhumi building and if any proceedings were conducted separately, they have no effect in law. Notification, if any, is neither final nor binding on the plaintiffs. The Muslims were never in possession of the building in suit. The allegations regarding perfection of their right over the building by adverse possession is purely fictional and concocted. The plaintiffs have always been in peaceful possession of the building and there is no question of expiry of the period of limitation in this regard. The defendants have no right to take the plea of want of notice under Section 80 C.P.C. The Muslims and the entire community including the defendants know that the idols of Deity are installed in the building in suit i.e. in the temple of Janam Bhumi and regular Pooja of the idol is performed under the receivership of the defendant. No prayers were ever offered by any Muslim in the said building and suggestion otherwise of the defendants is false. The building is not a mosque. The relief sought is within the competence and jurisdiction of civil court.

The proceedings under Section 145 Cr.P.C. were initiated in respect of Janam Bhumi temple and not of any mosque. It is admitted that the proceedings under Section 145 Cr.P.C. were illegal since the plaintiffs have right of management of the said temple and defendants have no interest in the building in suit. No question of invasion of rights of defendants, therefore, arises. It is the plaintiffs who have suffered on account of appointment of Receiver since it is their right of management which has been impaired by appointment of Receiver. The old temple built on the sacred place at Ayodhya, admitted on the part of defendants is to create a confusion by referring the temple Janam Asthan and identifying it with the temple of Janam Bhumi is illegal. The defendants are encouraged by the proceedings under Section 145 Cr.P.C. so as to set up their claim over the land and building in dispute. The description of property has been correctly made in the plaint. The sketch map is absolutely correct. The plaintiffs are in possession and management of the temple Janam Bhumi since living memory of men and it belongs to them who are managing it through its Mahant. Non acknowledgement by the Government of the temple Janam Bhumi is simply preposterous and collusive. The plaintiffs are in possession from time immemorial. The evidence of construction of temple by plaintiff no. 1 through Mahant Sarbarahkar, may not be traced due to lapse of immemorial age and for want of written record. The plaintiffs have acquired title by open and adverse possession for a period, larger than living memory of men.

Additional written statement dated 24.8.1995 of Defendant no. 9 (U.P. Sunni Central Board of Waqfs) (Suit-3)

25. Defendant no. 9 has filed an additional written statement dated 24.8.1995 disputing the assertions of amended plaint as

contained in paragraphs 4-A, 4-B, 4-6 XI and XII and 10. It is said that since the plaint is not with respect to Chabutara, its demolition does not give any cause of action to the plaintiffs.

Written statement dated 21.10.1991 of Defendant no. 10 (Umesh Chandra Pandey) (Suit-3)

26. In the written statement dated 21.10.1991 filed by Umesh Chandra Pandey, defendant no. 10, it is said that Janam Asthan is a holy place of worship and belong to Deity of Bhagwan Shri Ram Lala Virajman. Neither it ever belong to nor could have belonged to plaintiff no. 1 and assertion of managing it at any point of time is denied. The holy Janam Asthan or Janam Bhumi is actually a very old temple while the Akhara of plaintiffs owes its existence for about 200 years. The correctness of sketch map and boundaries of the temple are not disputed. However, it is said that the main presiding Deity of the temple is Bhagwan Shri Ram, although there are several other idols of other deities termed as "Ram Darbar" and are worshipped. Besides, there are other symbols such as, "Charan", "Sita Rasoi" etc. through whereof the Deity of Bhagwan Shri Ram is worshipped. Shri Ramjanambhumi is in addition to the Asthan of Shri Ramjanambhumi which by itself is a Deity and worshipped as such. A Hindu temple is deemed to be possessed and owned by a Deity. The principal Deity of Shri Ramjanambhumi is Bhagwan Shri Ram. Any offering must have been received by the Manager of the same from time to time. It appears that in the first war of independence in 1857 AD, the Britishers, to divide Hindus and Muslims, acted mala fide and divided the said Asthan creating an inner enclosure, describing the boundary within the inner enclosure as a mosque. No Muslim who is a true Muslim would ever visit such a place for offering Namaz since it is prohibited by Shariyat. Even Aurangzeb issued a

mandate known as Fatwa-E-Alamgiri, prohibiting offering of Namaz by Muslims at such places. Moreso, the “Kasauti pillars” and the carvings of Gods and Goddesses clearly show that this place could not be used by a true Muslim for offering his prayer thereat. The place was wrongly alleged as mosque. It is land-locked by Hindu temples where the worship of Deities was going on. Entry to this inner enclosure was also prohibited. The Britishers tried to set up the descendants of Mir Baqi, a Shiya Muslim, as Mutwalli, but they denied the Taulkat and never looked after the disputed place in any capacity. The building was attached and Receiver was appointed by order dated 29.12.1949 by the Court of Additional City Magistrate, Faizabad in proceedings under Section 145 Cr.P.C. Since the proceedings were initiated at the behest of Muslims represented by defendants no. 6 to 8 who have died, no cause of action survives and the suit stands abated. The suit is barred by time. The plaintiffs did not file any revision against the order of attachment and appointment of Receiver in proceedings under Section 145 Cr.P.C. No individual Muslim came to contest the suit as representative of Muslim community. Defendants no. 6 to 8 are Sunnis and cannot represent Shiya community of Mohammadans and their representative capacity for Muslims is also denied. The permission granted to defendants no. 6 to 8 to represent all Muslims in representative capacity is bad. The suit is bad for mis-joinder and non-joinder and barred by time. The suit i.e. regular Suit No. 12 of 1961 is already pending involving similar issues wherein the plaintiffs are also parties and they can get their relief in the said suit.

Replication dated 8.11.1991 to written statement of Defendant no. 10 (Umesh Chandra Pandey) (Suit-3)

27. The replication dated 8.11.1991 states that defendant no.

10 has been used as a tool and lever by certain group of persons to defeat the claim of plaintiffs. Giving the history of the origin of “Nirmohi Akhara” it is said that its origin is more than 500 years ago. The entire hierarchy of persons has been mentioned. There was a great religious preceptor Shankaracharya at the end of 7th Century AC who established for the first time “Hindu Maths” in four corners of India i.e. Goverdhan Math at Puri, Jyotir Math at Badrinath, Saroda Math at Dwarka and Sringeri Math at Tungabhadra. The said practice was followed by other religious teachers and first in time was “Shri Ramanujacharya” followed by “Shri Ramanand”. Shri Ramanand founded a sect of Vaishnavas known as “Ramats” which contains a large element of aesthetic population found in Banaras and Ayodhya. Ramanand established several Maths. Ramanandi Maths consist only of celibates. They obey no caste rules and admit even Sudras in their brotherhood. The “Ramats” worship one God in the form of 'Rama' and they call themselves “Dass” (servants of Lord). About 500 years ago, Shri Swami Brijnand Ji and Sri Balanand Ji, of Ramanandi Sect of Vairagies, established three Annis known as (1) Nirmohi, (2) Digamber and (3) Nirwani for protection and improvement of “Chatuha Rama Nandi Sampradaya”. This comprised of seven Akharas namely, (1) Sri Panch Ramanandi Nirmohi Akhara, (2) Sri Panch Ramanandi Nirwani Akhara, (3) Sri Panch Ramanandi Digambari Akhara, (4) Sri Panch Ramanandi Santoshi Akhara, (5) Sri Panch Ramanandi Khaki Akhara, (6) Sri Panch Ramanandi Niralambi Akhara and (7) Sri Panch Ramanandi Maha Nirwani Akhara.

28. The Akharas as “Panchayati Maths” act on democratic pattern and real power vests in Panch. The appointment of Mahant is through election by Panchayat. The Mahant is the

formal head of institution. The Nirmohi Akhara, being a Panchayati Math, own several temples and one of such is Ram Janam Asthan i.e. birth place of Lord Rama. Plot No. 163 of first regular settlement of 1861 has been a very big plot having 5 Bighas and 19 Biswas of land but when in the year 1895, amended map was prepared, a road bifurcated Janam Asthan. Sita Rasoi of Gudar Das Ka Asthan was separated. "Ram Janam Asthan" now known as "Ramjanambhumi" lies towards south of the road whereas "Janam Asthan of Gudar Dass" lies towards north side leading from Hanuman Garhi to Janam Bhumi Road shown in the last settlement of 1937 AD by Kistwar No. 159 and 160 (Appendix-1A, B to this judgment). At the time of attachment of main building, outer enclosure comprised of Ram Chabutara where Deity of Bhagwan Ram Lala Ji and Shatrughan Ji in a cage (Gufa) situate alongwith Sri Hanuman Ji. The said outer enclosure had Panchmukhi Shanker Ji, Ganesh Ji etc., with Chhatti Pujan Asthan where Holy Footprints of Lord Ram (Charo Bhaiya) exist which are perennial source of worship by followers of brotherhood of Rama Nandi Vairagies. This outer enclosure was in possession of Nirmohi Akhara as depicted by the Fard of 145 Cr.P.C. proceedings itself prior to attachment in February 1982. This attachment order was passed by Shree Pati, the then City Magistrate, Faizabad in the case under Section 145 Cr.P.C. Against final order of attachment dated 06.03.1982, Criminal Revision No. 60 of 1982, Dharam Das Chela Abhiram Das Vs. Sri Panch Rama Nandi Akhara was preferred which was dismissed on 13.05.1983 by IV Additional Sessions Judge, Faizabad. "Nirmohi Akhara" is a religious denomination. It had been maintaining and managing the disputed temple since long. Baba Baldeo Das was Pujari. His

disciple Bhaskar Das now Up-Sarpanch and general agent of Nirmohi Akhara was there with him discharging the duties of Pujari. According to customs of Nirmohi Akhara, 5 Sadhus, 3 Pujaries, 2 cooks and one Panch always used to live at Shri Ramjanambhumi. Building certificate for outer enclosure has always been made in the name of Mahant Raghunath Das of Akhara. Idol of Lord Ram Chandra installed in main temple belong to Panchayati Math of Nirmohi Akhara. The big Deity of Lord Ram Chandra installed therein is Achal Deity. A small Ram Lala Ji, as called, which according to custom prevalent in Vairagi sect of Sathus in Ayodhya, is used to discharge certain outside ceremonies like Sharad Puno etc. Besides, there are six Shaligram Bhagwan. There are two Singhasans (Thrones) of Silver, one idol of Hanuman Ji and other Parshads as detailed in para 3 of the plaint. The Panch of Nirmohi Akhara and Nirwani Akhara fought together against many evil forces to save Hanuman Garhi and Ramjanambhumi. Hanuman Garhi belong to Panch Rama Nandi Nirwani Akhara. Similarly Shri Ramjanambhumi belong to Panch Ramanandi Nirmohi Akhara and same custom/riwaz/Parampara is applicable to Hanuman Garhi used to be observed for Darshan by Hindu public at large and by Nirmohi Akhara prior to attachment. In the year 1967 outer enclosure was released by Court of City Magistrate, Faizabad in favour of Ram Lakhan Das, a Panch of Nirmohi Akhara. Again in 1973, Regular Suit No. 9 of 1973 was filed in the Court of Civil Judge, Faizabad and several disputes inter se were raised which continued upto Regular Suit No. 39 of 1982. The judicial record and its decision are in favour of Nirmohi Akhara proving its title and possession. Since 1982 the outer enclosure is in possession of the Receiver appointed by the

Court in Regular Suit No. 39 of 1982 pending in the court of Civil Judge, Faizabad. The Nirmohi Akhara vehemently fought proceedings under Section 145 Cr.P.C. and has filed affidavits in its favour. Defendant no. 10 has been utilised by Vishwa Hindu Parishad only as a lever for some ulterior motive.

O.O.S. No. 4 of 1989 (earlier registered as Regular Suit No. 12 of 1961)

29. The aforesaid suit was initially registered as regular Suit No. 12 of 1961 in the Court of Civil Judge, Faizabad and after transfer to this Court has been re-registered as OOS No. 4 of 1989 (hereinafter referred to as "Suit-4").

30. It was filed by the Sunni Central Board of Waqfs, U.P., Lucknow (*hereinafter referred to as "Sunni Board"*) through Shah Ghyas Alam, it's Secretary and nine others, namely, Molvi Mohammad Qasim, Haji Mohammad Ehtaram Ali, Molvi Mohammad Faiq, Molvi Mohammad Naseer, Shahabuddin, Mohd. Hashim, Vakiluddin, Mahmud Ahmad and Zahoor Ahmad who were impleaded as plaintiffs no. 2 to 10 respectively. During the pendency of this suit, Haji Mohammad Ehtaram Ali, Molvi Mohammad Faiq and Molvi Mohammad Naseer died and not substituted. Therefore, their names have been struck off/deleted under the orders of this Court. Plaintiff no. 2, Molvi Mohammad Qasim, plaintiff no. 6, Shahabuddin, plaintiff no. 8, Vakiluddin and plaintiff no. 10, Zahoor Ahmad have also died and in their place Mohd. Siddiq, Ziauddin, Maulana Mahfoozurahman and Farooq Ahmad have been impleaded as plaintiffs no. 2/1, 6/1, 8/1 and 10/1 respectively. Accordingly, besides Sunni Central Waqfs Board, presently, there are only six more plaintiffs.

31. Similarly, 10 defendants were impleaded initially but

thereafter many have been added, substituted and deleted. Presently the defendants in the suit are as under:

2. Mahant Suresh Das, 3. Nirmohi Akhara, 5. The State of Uttar Pradesh, 6. The Collector, Faizabad, 7. The City Magistrate, Faizabad, 8. The Superintendent of Police, Faizabad, 9. B. Priya Dutt, 10. President, All India Hindu Maha Sabha, 11. President, Maha Pradeshik Sabha, 12. President, All India Sanatan Dharm Sabha, 13/11. Dharam Das, 14. Pundrik Misra, 17. Ramesh Chandra Tripathi, 18. Mahant Ganga Das, 19. Shri Swami Govindacharya, 20. Madan Mohan Gupta and 22. Umesh Chandra Pandey. (in all 17 defendants)

32. The relief sought is :

“(a) A declaration to the effect that the property indicated by letters A B C D in the sketch map attached to the plaint is public mosque commonly known as 'Babari Masjid' and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim graveyard as specified in para 2 of the plaint may be decreed.

(b) That in case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of possession of the mosque and graveyard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship be passed in plaintiff's favour, against the defendants.

(bb) That the statutory Receiver be commanded to hand over the property in dispute described in the Schedule 'A' of the Plaint by removing the unauthorised structures erected thereon.

(c) Costs of the Suit be decreed in favour of the plaintiffs.

(d) Any other or further relief which the Hon'ble Court considers proper may be granted."

Plaint (Suit-4)

33. The case of the plaintiffs is that at Ayodhya, Pargana Haveli Oudh there exists an ancient historic mosque commonly known as 'Babari Masjid' built by Emperor Babar about 433 years ago, after his conquest of India, and occupation of the territories including Ayodhya town. The said mosque was for the use of Muslims in general as a place of worship and performance of religious ceremonies. In the sketch map attached alongwith the plaint the construction of the mosque has been shown by letters A, B, C and D and the land adjoining the mosque in the east, west, north and south is the ancient graveyard of Muslims who lost their lives in the battle between Emperor Babar and the rulers of Ayodhya. The mosque and graveyard vest in the Almighty. The mosque since the time of its construction has been in use of Muslims for offering prayers, and, graveyard is used as such. It is situated in Mohalla "Kot Ram Chander" also known as "Ram Kot", Town Ayodhya. Khasra numbers of the mosque and graveyard are shown in Schedule-A appended to the plaint i.e. 238, 579-588, 590, 593, 595, 603, 606, 607, 610, 619, 620, 621 and 628, Ram Kot Ayodhya (Nazool Estate, District Faizabad). A cash grant used to be received from the Royal Treasury for maintenance of the mosque and other connected expenses. The grant was continued by the Emperors of Delhi and thereafter by Nawab Saadat Ali Khan and Nawab Wazir of Oudh. After annexation of Oudh, British Government also continued it till 1864 and thereafter the

cash *Nankar* grant was substituted by granting revenue free land in Village Sholapur and Bahoranpur (situate in the vicinity of Ayodhya). In the mosque, but outside the main building thereof, a Chabutara, size 17 feet/21 feet, existed. There was a small wooden structure in the form of a tent. In 1885 one Mahant Raghubar Dass instituted a suit (OS No. 61/280 of 1885) alleging himself to be the Mahant of *Janam Asthan*. The said suit was filed against the Secretary of State for India in Council and Mohammad Asghar, Mutawalli of Babari Masjid for permission to build a temple on the Chabutara size, 17"/21". The aforesaid suit was dismissed by the Sub Judge, Faizabad and appeal being Civil Appeal No. 27/1885 was also dismissed by the District Judge. In the aforesaid suit a sketch map was filed alongwith the plaint wherein the entire building with the exception of Chabutara 17"/21" was admitted to be a mosque and was shown as such. The cause of action for the said suit arose due to refusal to grant permission to Mahant Raghubar Dass, Mahant of *Janam Asthan* for construction of a temple by Deputy Commissioner, Faizabad on the representation of some Muslims on the ground that a temple could not be permitted to be built on a land adjoining the mosque i.e. Babari Masjid. The aforesaid suit was filed by Mahant Raghubar Dass on behalf of himself, *Janam Asthan* and the whole body of persons interested in *Janam Asthan* impleading Mohammad Asghar, Mutawalli of Babari Masjid, as defendant. The suit was contested by the aforesaid Mutawalli stating that the land on which temple is sought to be built is neither the property of Mahant nor *Janam Asthan* but the said land lies within the Ahata of Babari Masjid and is property of Muslims. The issues directly and substantially in the aforesaid suit were about the existence of Babari Masjid

and the rights of Hindus to construct temple on land adjoining Masjid. The existence of mosque was admitted by the said plaintiff. The suit was dismissed, besides others, on the ground of public policy also. The decision of the aforesaid suit operate as "resjudicata" against the present suit for the reason that the construction was admitted to be a mosque therein. It was a sensational case wherein the entire Hindu Public and more specially all Mahants of Ayodhya and other respectable Hindus of Faizabad were deeply interested. In 1934 there was a communal riot in Ayodhya when a portion of Babari Masjid was damaged. However, it was rebuilt at the cost of Government through a Muslim Thekedar. In 1936, U.P. Act 1936 was enacted. The Commissioner of Waqfs made an inquiry and held that Babari Masjid was built by Emperor Babar who was a Sunni Mohammadan and that the mosque was a public Waqf. The report was forwarded by the State Government to the Sunni Waqfs Board who published the same in the official gazette dated 26.02.1944. The said report was not challenged by any person on the ground that it was not a Muslim Waqf but a Hindu Temple. The Muslims have been in peaceful possession of the aforesaid mosque and used to recite prayer therein till 23.12.1949 when a large crowd of Hindus with a mischievous intention of destruction and damage, defiled the mosque and to insult Muslim religion entered and desecrated it by placing idols inside the mosque. The aforesaid conduct of Hindus amount to an offence punishable under Section 147, 295 and 448 I.P.C. Even if it is assumed that at one point of time, there existed a Hindu Temple as alleged by defendant-representatives of Hindus, at the site where Emperor Babar built the mosque about 433 years ago, the Muslims by virtue of their

long, exclusive and continued possession, beginning from the time the mosque was constructed and continuing up to the time when some mischievous persons entered the mosque, have perfected their title by "adverse possession". The right, title or interest of the temple and of Hindu public, if any, extinguished. The incident that occurred on 23.12.1949 was reported by the Constable on duty (Mata Prasad) at Police Station, Ayodhya and the Sub-Inspector registered a report and proceeded to make inquiry on the spot. The City Magistrate, Faizabad cum Ayodhya initiated proceedings under Section 145 Cr.P.C. By order dated 29.12.1949 he attached the mosque premises and handed over possession to Sri Priya Dutt Ram, defendant no. 9 as Receiver who continued to be in possession. The Muslims thus are deprived of their legal and constitutional rights of offering prayers in the said mosque. The action of City Magistrate, Faizabad is illegal, fraught with injustice to the plaintiff and has the effect of depriving large Muslim citizens in India from exercising their legal right guaranteed under the Constitution. On 16.01.1950 defendant no. 1 filed Regular Suit No. 2 of 1950 (Suit-1) in the Court of Civil Judge, Faizabad in his personal capacity for declaration and injunction on false allegation that the building in suit was a temple and deities are installed in it. After sometime defendant no. 2 also filed Suit No. 25 of 1950 in the Court of Civil Judge, Faizabad against the same set of defendants with identical relief. The only difference was that first suit was filed without notice under Section 80 C.P.C. to the State Government and its officers but the second suit was filed after giving the aforesaid notice. Another Suit No. 26 of 1959 (Suit-3) was filed by Nirmohi Akhara and Mahant Raghunath Dass, defendants no. 3 and 4 against defendants no.

5 to 9 and certain Muslim persons under Order 1 Rule 8 C.P.C. seeking removal of defendant no. 9 from the management of building which the Hindu public call temple of *Janam Asthan* and for delivery of possession to defendant no. 4 i.e., Mahant Raghunath Dass. On the application of plaintiff in Suit No. 2 of 1950 (Suit-1) a temporary injunction was granted restraining defendants of that suit from removing idols from the mosque in dispute and from interfering in Pooja etc. of Hindus as a result whereof the learned Civil Judge while permitting Hindus to perform their religious rights namely, Pooja of the idols placed by them in the mosque, has denied to the Muslims even entry in the mosque. The Muslims thereby are deprived of their just and legal rights and are disallowed even entry to the mosque constructed about 433 years back, declared to be a public Waqf and used as such by generations of Muslims. The order of injunction thus has caused injustice and this has necessitated the filing a suit by Muslim public under Order 1 Rule 8 C.P.C. against the Hindu public so that the decision may be binding on the Hindu community at large. The suit is being filed by plaintiffs in representative capacity for the benefit of the entire Muslim community alongwith an application for necessary permission under Order 1 Rule 8 C.P.C. The defendants are shown as representing the entire Hindu community and for that purpose also an application seeking permission under Order 1 Rule 8 C.P.C. has been filed alongwith the plaint. The building in suit claimed by plaintiffs as Muslim Waqf is in the possession of the Receiver holding for the real owner and is liable to be released in favour of the plaintiffs in case their suit succeeds, but, if for any reason, the Court finds it necessary that there ought to be a suit for possession, the plaintiffs, in the

alternative, pray for delivery of possession. A notice under Section 80 C.P.C. sent to defendants no. 5 to 9 by registered post on 19.06.1961, was delivered to defendants no. 5 to 8 on 20.06.1961. Defendant no. 9 has refused to take delivery of notice on 23.06.1961. The suit has been filed after expiry of 2 months period of notice.

34. During the pendency of Suit-4, on 06.12.1992, the building in dispute was demolished. Thereafter by way of an amendment the plaintiffs got inserted paragraphs 21-A to 21-C pleading the following facts.

35. On 06.12.1992, in violation of interim orders dated 03.02.1986, 14.08.1989 and 07.11.1989 of this Court, and the order dated 15.11.1991 of the Apex Court, Babari Masjid in question was demolished, idols wrongly placed in the night of 22-23.12.1949 were removed, and thereafter an illegal structure was created on 07.12.1992. These acts of demolition and destruction were carried out by the miscreants and criminals with the connivance of the then State Government of Bhartiya Janta Party and in defiance of various Court's order. The plaintiffs, therefore, are entitled for restoration of building as it existed on 05.12.1992. Under the Muslim Law, a mosque is a place where prayers are offered publicly as a matter of right. It neither requires any structure nor any particular mode of structure is provided. Even on an open place prayers may be offered and it would be a mosque. Thus despite demolition of mosque building by miscreants, the land over which building stood is still a mosque and Muslims are entitled to offer prayers thereon. On 07.01.1993, vide Ordinance No. 8 of 1993 (replaced by Central Act No. 33 of 1993) the land of the mosque and the entire land appurtenant thereto including the land in suit was

acquired by the Central Government. However, a writ petition challenging vires of the aforesaid Statute was filed. The Hon'ble Apex Court vide judgement dated 24.10.1994 has held Union of India to be a statutory Receiver of the land covered by the said mosque and has further provided that the land appurtenant and adjacent shall be provided for enjoyment of the crucial area of the mosque portion as per requirement in accordance with the judgement of the suits. The Commissioner, Faizabad is presently working as Authorised Person on behalf of the Government. Valuation of the suit is 22,000/-, whereon Court fees has been paid. The cause of action arose on 23.12.1949 at Ayodhya, District Faizabad when the Hindus unlawfully entered and desecrated the mosque by placing idols causing obstruction and interference with the rights of Muslims in general of offering prayers. They are also causing obstruction to the Muslims going to the graveyard and recite Fatiha to the dead persons buried thereat. The aforesaid injury is continuing. It arose against the defendants no. 5 to 9 on 29.12.1949 on which date the defendant no. 7 attached the mosque in suit and handed over possession to defendant no. 9 (Receiver) who assumed charge on 05.01.1950. The State Government and its official defendants no. 6 to 8 have failed in their duty to prosecute offenders and safeguard the interest of Muslims.

Written statement dated 12.3.1962 of Defendant no. 1 (Gopal Singh Viscera) (Suit-4)

36. Defendant no. 1 in his written statement dated 12.3.1962 while generally denying the averments of the plaint, said that no battle took place between Babar and Ruler of Ayodhya nor any graveyard or mosque was built as dictated by Babar. He filed case against a few Muslims and certain Government Officials for injunction and declaration and defendant no. 2 also filed a

suit. Hindus perform pooja in “Janam Bhumi Temple” and Muslims are not allowed to go near that temple. They (Muslims) wrongly and maliciously describe the said building as mosque. The plaintiffs have no right to treat the defendants as representing the entire Hindu community, which extends from Madras to Kashmir and from Dwarika to Calcutta. None of the defendants represents all the Hindus of India. “Janam Bhumi Temple” is a public charitable institution and defendant no. 1 contests the suit as well as the previously instituted suit in his individual capacity. The suit is barred by time. Muslims are not in possession of the property in dispute since 1934 or even earlier. The suit deserves to be dismissed. In additional pleas, it is said that the Muslims were never in possession of the temple of Ramjanambhumi. In the alternative, if they were in possession of the so-called Babari mosque, the same ceased to be since 1934 and since then Hindus are having possession over the temple which has ripened into statutory adverse possession since 1934. Prior to 1934, continuous daily pooja in that temple was performed by Hindus. Muslims have never offered prayer since 1934 in the temple falsely described as Babari mosque. The temple in dispute is a public charitable institution and do not belong to any sect, group, Math or individual or Mahant or any Akhara and is a public place of worship open to all Hindus. No individual Hindu or Mahanth can be said to represent the entire Hindu community so far as the said ancient temple is concerned. The suit is time barred as no action was taken in time commencing from the order of the City Magistrate under Section 145, Cr.P.C. The suit is time barred as the plaintiffs were never in possession over the temple in dispute since 1934. Hindus are holding it adversely, to them (plaintiffs) overtly and

to their knowledge. On equitable ground also, the suit deserves to be rejected since Hindu pooja is going on in the said temple from the past at least 28 years, i.e., from 1934, and, admittedly from January, 1950 when the City Magistrate directed defendant no. 9 to carry on pooja as usual in the said temple. The suit deserves to be stayed since same issues are being tried in suits no. 2 of 1950 and 25 of 1950 between the same parties. Suit under Order 1 Rule 8 C.P.C. is bad as no one, representing the Hindu community, has been made a defendant and is also liable to be dismissed with special cost since plaintiffs, knowing that defendants no. 1 to 4 and 9 do not represent the Hindu community, have impleaded them though only their individual interest is involved.

Additional written statement dated 31.10.1962 of Defendant no. 1 (Gopal Singh Visharad) (Suit-4)

37. An additional written statement dated 31.10.1962 has also been filed by defendant no. 1 stating that U.P. Act, 1936 is ultra vires of Government of India Act, 1935 (*hereinafter referred to as "GOI Act, 1935"*) as it does not come under any of the items of the List-II of Provincial list or List-III. Even on principles of pith and substances, the aforesaid legislation can not sustain. It cannot be validated under Section 80 (3) of the former Government of India Act, 1919 after the repeal of the said Act by Section 478 of the GOI Act, 1935. Even otherwise, the suit not being one relating to the administration of Waqf, taking of accounts, appointment and removal of Mutwallies, putting the Mutwallies in possession or settlement or modification of any scheme of management for which powers and duties have been specified under Section 18(2)(e) of the Act No. XIII of 1936, is misconceived and not maintainable having been filed on behalf of plaintiff no. 1, who can perform only such duties and

functions as are permitted under the Act. Section 5(3) of the Act is hit by Article 14 and 16 of the Constitution. The above Act has been repealed by U.P. Act 16 of 1960 vide Section 85(2). The saving clause in the subsequent enactment only saves the operation of the repealed Act in regard to any suit or proceeding pending in any Court or to an appeal or application in revision against any order that may be passed in suit or proceeding subject thereto anything done or any action taken in exercise of powers conferred by or under those Acts unless expressly required by any provision of later enactment. Since, there is no saving with respect to decisions under Section 5(3) in proviso to Section 85(2) of the Act, the finality attached by Section 5(3) vanished after the repeal of the former enactment. The building on land in suit lie in the Province of Oudh and subject to Lord Canning's proclamation, all previous rights became non est. Since no fresh grant in respect of the property in suit has been made after proclamation, the plaintiffs or the Muslim community have no right to sue. The Commissioner of Waqfs under the Act has limited right of making enquiry about the number of Waqfs of Shia and Sunni in the District, nature of Waqfs, gross income from property transferred to the Waqfs, the revenue, expenses and whether it is deposited under Section 2. The Commissioner has only to see whether any transaction is Waqf or not, to which sect the Waqf belongs, whether such Waqf is or not exempted under the Act. It has to do everything in accordance with Section 3 (1) of UP Act, 1936. The finality attached to such order of the Commissioner would not confer jurisdiction to decide the question of title against non Muslims. Section 5 (2) of the Act nowhere provides that the Court shall take judicial notice of the report of the Commissioner of Waqfs

and shall regard them as conclusive evidence that the Waqfs mentioned in such report are Muslim Waqfs as was done in Section 10 of the O.E. Act. There is no legal publication of alleged report and hence, no question of finality arises. The purpose of publication is to show as to which sect the Waqf belong. It does not call upon objection or suit by a person not interested in what is held to be a 'Waqf' or not viz. non Muslims.

Written statement dated 25.1.1963 of Defendant no. 2 (Sri Paramhans Ram Chander Das) (Suit-4)

38. The written statement dated 25.1.1963 of defendant no. 2 is more or less similar to the written statement and additional written statement dated 31.10.1962 filed by defendant no. 1 except of certain additions, namely, that the earlier suits were neither filed in representative capacity nor they represent all Hindus and, therefore, would not bind the defendants or other Hindus, who are not party therein. Similarly, the defendants of the earlier suit neither represent the Muslims nor the Sunnis in general and the plaintiffs of the suit cannot be legally considered as claiming through the defendants in that suit. The issue in question nowhere directly or substantially arose therein and there is no res judicata or constructive res judicata. The Hindus are worshipping the land in dispute (site of Janam Bhumi) from time immemorial and they are entitled to continue worship. It was not a matter in dispute in earlier case.

Replication dated 11.9.1963 to written statement of Defendants no. 1 and 2 (Gopal Singh Visharad and Paramhans Ram Chander Das) (Suit-4)

39. Replication dated 11.9.1963 of the plaintiffs in reply to the written statements of defendants no. 1 and 2 states that the Hindu community never held the mosque and Ganje-Shahidan in their possession nor performed pooja therein since 1934 as alleged by them. It is also said that the property has not been a

temple as alleged by the defendants and, on the contrary, the Muslim public has been in possession for the last 450 years when it was constructed. The property has been placed in possession of a Receiver appointed by the Court of City Magistrate-1st Class, Faizabad. It is also denied that the Hindu public took possession of the property in question in 1934, holding the same since then, and, has completed title by adverse possession. The possession of the Muslim community continued since ever and they have been offering prayer in the mosque as such. Hindu public in 1934 did some mischief to destroy the mosque and damage was caused to some extent, which got repaired by the Government at its own cost and the Hindu Public was charged with punitive tax. The Hindu public never came in possession, much less peaceful possession of the property in suit. The Muslim public as representative of the Waqf has been in continuous possession of the property in suit for the last 450 years, i.e., since the time the mosque was constructed. Even if the Hindu public had any interest whatsoever in the property in suit before the said period, the Muslim public representing the Waqf perfected its title to the property in suit by their long undisturbed open possession against the interest of Hindu public which amounts to adverse possession and thus title or interest, if any, of Hindu public has extinguished.

Written statement dated 22/24.8.1962 of Defendants no. 3 and 4 (Nirmohi Akhara and Mahant Raghunath Das) (Suit-4)

40. The defendants no. 3 and 4 have filed their separate written statement dated 22/24.8.1962 through Mahant Raghunath Dass. While denying generally the allegations made in the plaint, they have said that there did not exist any mosque known as Babari Masjid in Ayodhya nor any mosque was built

by Emperor Babar more than 460 years ago, as alleged, nor did Babar conquest or occupy any territory in India at the time alleged in the plaint. The story of the mosque as set up in para 1 of the plaint is purely fictitious. The sketch map is entirely false, imaginary and outcome of plaintiffs' fancy. On the khasra numbers mentioned in the plaint, no mosque or graveyard exist. The story of the alleged battle between Babar and previous ruler of Ayodhya, whose name has not been mentioned in the plaint, is a pure canard. Neither did any Muslim lost his life in a battle on the land of the said khasra numbers nor there is any grave or graveyard of Muslim. No question, therefore, arises of any mosque or graveyard having been vested or vesting in the Almighty. The allegations of Muslims with respect to offering payer or using the land covered by the said Khasra numbers as graveyard are altogether false and concocted. The real facts are that the said Khasra numbers pertain to the 'Temple of Janam Bhumi' and other land appurtenant thereto. Since no mosque exists, the question of its upkeep and maintenance does not arise. The existence of mosque is denied as well as that of Chabutra. The defendants have also denied knowledge of any suit filed by a person known as Mahant Raghubar Dass styled as Mahant of Janam Asthan. The Janam Asthan is situated in north of temple of Janam Bhumi across the road passing between Janam Bhumi and Janam Asthan. Any map filed by Raghubar Dass along with the alleged plaint would be false, fictitious and is not binding on defendants 3 and 4. The existence of alleged Babari Mosque is denied. The alleged damage, rebuilding or reconstruction at anybody's cost or through any Thekedar (contractor) is denied and is fictitious. Even if any communal riot is proved to have occurred in Ayodhya in 1934, no mosque

whatsoever was damaged. Enactment of UP Act, 1936 is admitted. Any enquiry or report in pursuance thereto and publication thereof in the Gazette is denied. It is also said that even if such enquiry is proved and its report was published, the same was ex parte, having been made secretly and surreptitiously, without any intimation or information to the said defendants and, thus, is not binding on them. Since the defendants were not aware of any such enquiry report, the question of challenging the same in a suit would not arise and absence thereof would not convert a Hindu temple in a Muslim Mosque. The mosque never existed and, hence, the question of a Muslim or the Muslim community in peaceful possession thereof and reciting prayers till 23.12.1949 would not arise. The building has been wrongly described as 'Babari mosque' since it has always been the temple of Janam Bhumi with idols of Hindu Gods installed therein. The allegation regarding placement of idols inside the mosque is false. No such incident, as stated in para 12 of the plaint ever took place and if any report was made by any Constable, the same is mischievous and in connivance of plaintiffs. The proceedings under Section 145 Cr.P.C. initiated by City Magistrate are not disputed but it is said that he passed an order attaching the temple of Janam Bhumi and placing it under the custody of defendant no. 9 as Receiver, who still continues as such and performs pooja at the premises. The Muslims have no right to offer prayer in the said temple.

41. By amendment of the written statement (allowed by the Court's order dated 21.8.1995) paragraphs no. 13 A, B and C have been inserted. It is said that on 7/10 October 1991, the U.P. Government issued a notification for acquisition of the property in dispute, the details whereof are as under :

<u>Settlement Plot nos.</u>	<u>Area (in acres)</u>	<u>Village</u>
159 (Part)	0.3600	Kot Ramchandra, Pargana Haveli Awadh, Distt. Faizabad.
160 (Part)	1.0706	- do -
171 (Part)	0.4375	- do -
172 (Part)	<u>0.9063</u>	- do -
<u>Total</u>		<u>2.7744 Acres</u>

42. On 22.3.1992, the B.J.P. Government in U.P. with the active connivance of local administration demolished the temples known as Sumitra Bhawan etc. Bhagwan Ramlala Birajman in temple known as Sita Koop carries the Deity of Bhagwan Ramlala and prayer is being offered from time beyond the human memory. Bhagwan Ramlala Birajman at Mandir Loomarsh Chabutara is situated in plot no. 160 and part of plot no. 159. A big plateaxi known as 'Laxman Thekri' also exists over the disputed property. According to customs of Ramanandiya Akhara, Panch of Nirmohi Akhara used to live in vicinity of "Janam Bhumi Temple" and that is why these Holy places like Sumitra Bhawan, Sita Koop, Laxman Tekri, Loomarsh Chabutara which were in existence from time immemorial, before demolition, were all places of worship and situate within the disputed property marked by letters "E F G H I" of the sketch map filed along with the written statement of defendants no. 3 and 4. The notification of acquisition was struck down by this Court on 11.12.1992 and, therefore, the act of demolition by B.J.P. Government was wholly illegal. Before the judgment on 11.12.1992, the temple of Nirmohi Akhara along with Chatti Pujan Asthan and Panch's residential place were demolished on 6.12.1992 by some miscreants having no religion, caste or creed. The temple Ram Chabutara had a history

of judicial scanning since 1885 and its existence and possession over temple Ram Chabutra ever since was with Nirmohi Akhara. No other but Hindus were allowed to enter and worship there and put offerings in the form of money, sweets, fruits, flowers etc., which have always been received by Panch of Nirmohi Akhara. The Muslims are not entitled to exercise any right in respect of the temple of Janam Bhumi. The defendants, being not party in the suit referred to in para 15 of the plaint, are not aware of any such suit. However, it is correct that the building in the present suit is a temple. Similarly, in respect of the suit referred to in para 16 of the plaint, the defendants are not parties and hence not aware of such facts. Suit no. 25 of 1950 has been filed against the entire Muslim community under Order 1 Rule 8 C.P.C. and not against certain individuals of Muslim community. The building in question in that suit is, in fact and in reality, the temple of Janam Bhumi. The defendants are not aware of the proceedings in Suit No. 2 of 1950 as they are not party in that suit and are also not aware of any order of injunction or result thereof. It is denied that the temple of Janam Bhumi is under attachment and in the custody of Receiver. Pujaries of the defendants only are allowed to enter the inner compound of the Temple which is guarded by armed police. The Muslims have no right to enter the temple. The assertions of building being a mosque, its construction, declaration as public waqf and use of it by Muslims as a mosque for prayer, are denied. The Sunni Board cannot represent the Shia community and the suit contemplated under Order 1 Rule 8 C.P.C. is misconceived. All the individual plaintiffs are Sunnis and cannot represent the Shia Community. Babar was a Shia and not a Sunni. The custody and management of the temple of Janam

Bhumi, at present, by a Receiver is admitted. Knowledge of any notice served upon other defendants is denied. The existence of Mosque and graveyard is denied. There is no cause of action.

43. In the additional pleas, the details given in the sketch map attached to the plaint are denied and the sketch map appended to the written statement of the said defendants is claimed to be correct. There exists in Ayodhya since the days of Yore, an ancient Math or Akhara of Ramanand Vairagis called 'Nirmohis' with its seat at Ramghat known as "Nirmohi Akhara", which is a "religious establishment" of public character. Defendant no. 4 is Mahant and Sarbarahkar thereof. The temple in question is known as Janam Bhumi, the birth place of Lord Ram Chandra, situated in Ayodhya. It belong to defendant no. 3 who through its reigning Mahant and Sarbarahkar has ever since been managing and receiving offerings made thereat in the form of money, sweets, flowers and fruits etc. The said Asthan of Janam Bhumi is of ancient antiquity and is existing since before the living memory of men and lies within the boundaries shown in sketch map (Annexure-A to the written statement) within which stands the temple building of Janam Bhumi. Within temple premises, there installed are idols of Lord Ram Chandra with Lakshmanji, Hanumanji and Shaligramji. The said temple has ever since been in possession of defendant no. 3. None other but the Hindus have ever since been allowed to enter or worship therein and make offerings like money, sweets, flowers and fruits etc. No Mohammedan could or ever did enter the said temple building. Even if some attempt is proved, no one has entered at least since 1934. In 1950, the City Magistrate, Faizabad without any lawful cause, and, with active connivance of defendants no. 5, 6 and 8, and wrong persuasion by some of

the plaintiffs, attached the main temple of Janam Bhumi in a proceeding under Section 145 Cr.P.C. and placed it with all the articles mentioned in List B, appended with the plaint under the charge of defendant no. 9 as Receiver on 5.1.1950. The defendants have wrongly been deprived of their management and charge of the said temple for delivery of which they filed suit no. 25 of 1959 by removing the Receiver. The aforesaid suit of defendants has been filed against Muslim public under Order 1 Rule 8 C.P.C. The suit is time barred. The Muslim community or any of its members have never been in possession within limitation over the property in dispute. Even if the plaintiffs succeed in showing that any Muslim ever offered prayers in the building in question or used the same as a Mosque for sometime, but since 1934 no one has ever entered therein and, therefore, defendants, being in possession thereof, have matured their title by adverse possession.

Additional written statement dated 25.01.1963 of Defendants no. 3 and 4 (Nirmohi Akhara and Mahant Raghunath Das) (Suit-4)

44. One additional written statement dated 25.1.1963 has been filed stating that even if it is proved that any person known as Mahant Raghubar Dass made any admission or statement or averment in the said suit, the same is not binding upon the defendants and would not affect the title and interest of the said defendants in the temple of Janam Bhumi in any manner. The building in dispute is certainly a temple, not a mosque and the decision in respect thereto, in the alleged suit filed by Sri Raghubar Dass, cannot and would not operate as res judicata nor the said decision has any evidentiary value in the present suit. The building is Janam Bhumi and not a mosque. The defendants are not bound by the proceedings of suit no. 61/280 of 1885.

IIInd Additional written statement dated 28/29.11.1963 of Defendants no. 3 and 4 (Suit-4)

45. Another written statement dated 28/29.11.1963 has been filed alleging that Babar never built mosque as alleged by the plaintiffs and Muslims were never in possession of building in question. The allegation that some mischievous persons entered the mosque and demolished it, is incorrect. No question of Muslims perfecting their title by adverse possession or by extension of right, title or interest in the temple of Hindu public at all arises as the Muslims were never in possession.

IIIrd Additional written statement W.S. dated 21.08.1995 of Defendant No. 3 (Suit-4)

46. Additional written statement dated 21.8.1995 filed on behalf of defendant no. 3 says that plaintiffs were not in possession of property in dispute either on the inner side or the outer side. The narration of Receiver's possession is only with respect to inner disputed site, i.e., main temple bound by letters "B, B1, B2, B3, D2, D1" and letters "D, C, B" shown in Annexure 'A' attached to the written statement. The outer part of the disputed site comprised of Shri Ram Chabutara temple, Chhatti Pujan Sthal, Panch Mukhi, Shanker Ganesh Ji Kirtan Mandap, Bhandar, House of Panch of Nirmohi Akhara, all belong to Nirmohi Akhara and have ever been in the possession of Nirmohi Akhara through Panch from before the human memory, and even on the date of attachment, when order dated 29.12.1949 was passed. The real facts regarding Shri Ram Chabutara temple, Chhatti Pujan etc. have been concealed and purposely not adverted in para-21 A of the amended plaint. The facts in this regard are that the Sub Judge, Faizabad, held that Charan (feet) is embossed on the Chabutara which is being worshipped, wherever Idol of Thakurji is installed, which is in

possession of defendant no. 3, Nirmohi Akhara. The District Judge, held that it is most unfortunate that a Masjid should have been built on a land specially held sacred by Hindus. Regular Suit No. 256 of 1922 was contested between Mahant Narottam Das and Mahant Ram Swaroop Das with regard to realising dues from hawkers in the area belong to the parties, the statement made by counsel on behalf of Mahant Narottam Das was as under :

“The land marked red in the map was all along parti land till the defendant made the constructions in dispute. The land belongs to the Nazul and the plaintiff as Mahant of the Janam Asthan and his predecessor have all along been in possession and has basis of his title on possession. No lease from Nazul has been taken. They have been holding the land under an Iqrarnama from the Shahi times. There has been no settlement decree.”

47. The defendant's pleader in suit of 1922 admitted the said averments and said that the land never belong to Nazul Department. In suit no. 95 of 1941 between Mahant Nirmohi Akhara, namely Ram Charan Das and Raghunath Das, a commission report was prepared wherein at item no.-2 description of temple Ramjanambhumi belong to Nirmohi Akhara was specifically mentioned. At Item no. 3, name of Sita Koop belong to Nirmohi Akhara was also mentioned. The main temple of Shri Ramjanambhumi has always been surrounded by the Holy and pious places like Sumitra Bhawan temple, Sita Koop temple etc. and Holy water has always inspired religious faith. Muslims had no way to access the inner structure of suit property since long back. The temple of Shri Ram Chabutara, Chhatti Pujan, Gufa temple of Chabutara shown in the map, in

the outer part of disputed site, with main structure were demolished by miscreants and it is only defendant no. 3, who is entitled to get it restructured as it existed on 5.12.1992 and is also entitled to restore other pious places of temple of defendant no. 3, which were demolished on 22.3.1992 by U.P. Government. Denying para 21-B of the amended plaint, it is alleged that full description of the outer courtyard has not been given by the plaintiff purposely. "Nirmohi Akhara" is a Panchayati Math of Rama Nandi sect of Vairagies and, as such, is a religious denomination following its own religious faith and pursuit according to its own customs prevalent in Vairagies sect of Sadhus. The customs of Nirmohi Akhara have been reduced in writing on 19.3.1949 by a registered deed. The Akhara owns several temples and manages them through Panch and Mahant of Akahra. The whole property vests in Akhara. On 23.2.1992, the State of U.P. illegally demolished various temples including Sumitra Bhawan Temple, Lomash Chabutara temple and Sita Koop temple surrounded on eastern and southern places to main Ramjanambhumi Temple. Shri Ram Chabutara temple belong to Nirmohi Akhara who filed contempt petition in High Court. On 6.12.1992, the outer portion which included Chabutara Ram temple, Chhatti Pujan, Sita Rasoi and Bhandar Grih of Nirmohi Akhara were also demolished along with main temple.

Replication dated 11.09.1963 to written statement of Defendants no. 3 and 4 (Nirmohi Akhara and Mahant Raghunath Das) (Suit-4)

48. Replication dated 11.9.1963 to the written statement of defendants no. 3 and 4 has been filed by plaintiffs reiterating that the map attached to the plaint is correct; property in suit is not a temple and has never been in possession of the defendants and the Muslim public have always been offering prayers and

visiting the mosque and Ganje-Shahidan which is the property in suit for the last 450 years, when the mosque was built. Attachment of the mosque under Section 145 Cr.P.C. is admitted and appointment Sri Priya Dutt Ram as Receiver is also not disputed. It is said that he still continues as the Receiver. The defendants were never in possession or in-charge of the property in suit. The matter pending before the Additional Civil Judge, Faizabad has already been transferred to the High Court. The plaintiffs and Muslims were in possession of the property in question for the last 450 years. In 1934, the Hindu public and others, out of some mischief, attempted to destroy the mosque at places which was repaired by the Government on its own expenses and Hindu public was penalized by punitive tax. The Muslims remained in possession till December 1949 when Hindu public forcibly entered the mosque by breaking open the lock of the mosque and desecrated the mosque by placing idols inside therein. Pursuant thereto, proceedings under Section 145 Cr.P.C. were drawn resulting in appointment of a Receiver. The interest, if any, of Hindus in the property in suit prior to last 450 years has extinguished since Muslim public is in possession for the last 450 years as representative of waqf and has perfected title to the property in suit by virtue of adverse possession thereof.

Application dated 21.4.1962/28.5.1962 of Defendants no. 5 to 8 (State of Uttar Pradesh, Collector, Faizabad, City Magistrate, Faizabad and Superintendent of Police, Faizabad) (Suit-4)

49. On behalf of defendants no. 5 to 8, an application dated 21.4.1962/28.5.1962 has been filed stating that they are all State officials and State Government is not interested in the property in dispute and as such, they do not propose to contest the Suit. The State officials had taken a bonafide action in respect of the

property in dispute and in due discharge of their official duty. Therefore, they be exempted from the cost of the suit.

Written statement dated 27/28.7.1962 of Defendant no. 9 (Priya Dutt Ram, Receiver) (Suit-4)

50. On behalf of the defendant no. 9, i.e., the Receiver, a written statement dated 27/28.7.1962 has been filed wherein he has admitted the factum about his appointment as Receiver and said that the tent shaped structure as alleged in para 5 perhaps refers to small temple with idols installed belong to Nirmohi Akhara which stands outside the walls of the building in dispute and its existence is admitted.

Written statement dated 16.2.1990 of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

51. Defendant no. 10 has filed written statement dated 16.2.1990 wherein general contents of plaint are denied stating that U.P. Act, 1936 was an atrocity committed by the British Rulers and after regaining independence, when two nations theory was accepted, the part of India, now known as 'Bharat' is Hindu nation in which no such Act is ever acceptable unless adopted by a lawfully constituted Government of Union of India. After independence, all the old Hindu laws are revived and Country is to be ruled totally according to Hindu laws and canons and Hindu jurisprudence. The question of alleged legal constitutional right of plaintiffs does not arise.

52. In the additional pleas, it is said that the plaintiffs were never in possession of the property in dispute nor had any right to take possession thereof or make any construction thereon under the law of the Country. The property in dispute has been throughout in uninterrupted possession of Hindu Community as a whole and in the ownership of Lord Shri Ram. The plaintiffs have no concern with the property in dispute. They have no

locus standi to file the suit. It is bad for non joinder of necessary parties and barred by limitation. Suit is undervalued and no proper Court fee has been paid for the reliefs claimed. Community of Hindus is being harassed by the plaintiffs for no fault. The dispute can be settled by the Union of India represented by a lawfully constituted Government only by enacting a law and is beyond the scope of jurisdiction of the Court. The President of India promulgated Ram Janma Bhumi-Babri Masjid (Acquisition of Area) Ordinance, 1990 (Ordinance No. 9 of 1990) and the consequences followed are:

- i. That the First Ordinance was implemented fully.
- ii. That the land in question vested in the Government and the same was freed and discharged from any trust obligation, mortgage, charge, lien and all other encumbrances affecting them.
- iii. That any order of attachment, injunction, decree or any order of court restricting the use of such property in any manner and also the order appointing the receiver in respect of the whole or any part of such property were withdrawn.
- iv. That with the commencement of the First Ordinance, the pending suits, appeals or any other proceedings of whatever nature in relation to the property in question pending before any Court stood abated.
- v. That the Central Government took the management of the property in question and also appointed authorised person who took charge of the property in question under Section 7 of the First Ordinance.
- vi. That the Commissioner of Faizabad Division was

appointed as authorised person to take possession of all the properties in question under Section 7 of the First Ordinance as also the entire management from the Receiver and in consequence of that, the possession as well as the management of the property in question was taken over by and on behalf of the authorised person.

53. However, subsequently the said Ordinance was withdrawn under pressure of certain fundamentalists and the issues kept alive so as to utilise them as a weapon in the election, by a second Ordinance, i.e., Ram Janam Bhumi-Babri Masjid (Acquisition of Area) Withdrawal Ordinance, 1990 (Ordinance No. 10 of 1990). Thereafter, property was sought to be restored though it could not have been restored once it stood transferred to the Government. Once the property vests in the Government, it cannot be re-transferred to original owner or owners specifically when the owners have not been named in the Ordinance. The Court neither can pass a judicial order restoring the suits and the proceedings which have abated as a consequence of acquisition of the property in dispute nor can revive the interim orders passed earlier by the Court. The Parliament cannot revive a matter once abated and, therefore, the President also could not have issued an Ordinance exercising co-extensive power with the Parliament since the power to issue an Ordinance is legislative. The revival of the proceedings etc. is illegal. The Ordinance issued by the President is an example of misuse of power. The second Ordinance hits the basic structure of the Constitution. The first Ordinance has been repealed by the second Ordinance which has been withdrawn. There is a difference between repeal and withdrawal. The suit

filed by the Sunni Board having already been abated, cannot be revived by operation of law. The suit is not maintainable as Section 92 C.P.C. and Section 14, Religious Endowments Act have not been complied with. The plaint has not been verified by person of Waqf Board and has been verified by plaintiff no. 4 without any sanction, authority or power from the Waqf Board. Under Section 64 of the Waqf Act, only Waqf Board can file a suit. The suit has not been filed by Waqf Board as the same has not been verified by any authorised person of the Waqf Board. Waqf Board cannot file suit with private persons nor can it file suit against the State being an instrumentality of the State. No State authority can file suit against any particular community in respect of communal activities. Waqf Board is not a person within the meaning of Order 1 Rule 8 of C.P.C. and, therefore, cannot file the suit. It is time barred. No specific prayer has been made.

Replication dated 18.11.1991 to written statement of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

54. The plaintiff has filed replication dated 18.11.1991 to the written statement of defendant no. 10 stating that the land in dispute including the mosque could not have been acquired. The property never stood transferred to the State or its authorities. The property in question, in fact, was not acquired by the first Ordinance. Similarly, in the second Ordinance also the same was left untouched. Since the property was not covered by first Ordinance, the question of its acquisition, transfer, vesting or divesting does not arise. The suit had never abated as a result of promulgation of first Ordinance and, therefore, question of its revival also would not arise. The suit always remained to be pending before the competent Court.

Supplementary Replication dated 27.11/3.12.1991 to amended written statement of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

55. It is said that the State cannot interfere with the rights of parties as guaranteed under Article 25 of the Constitution and, therefore, if the Ordinance by the President has any such effect, the same would be violative of Articles 25 and 26 of the Constitution of India.

Additional written statement dated 12.9.1995 of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

56. Defendant no. 10 in additional written statement dated 12.9.1995 states that no Masjid or Babari Masjid existed over the land in question and, therefore, no question of its demolition on 6.12.1992 arises. Idols were in existence at the place since time immemorial and it is incorrect to say that the idols were placed only in the night of 22/23.12.1949. Babar was an invader and had no legal authority to construct Masjid at the sacred place of Hindus, i.e. the birth place of Lord Shri Ram. Mugal invader Babar through his commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question but could not succeed in its mission. After the riot in 1934, three domes of the temple were damaged. Prior to that date, the outlook of the building was of pure Hindu temple, but while carrying out repair works, the Britishers tried to give it the shape of a mosque and three domes were constructed over Kasauti pillars which were of temple. The Hindus have all along been in possession over the entire area of Shri Ramjanambhumi. The land in question has all along been in possession of Hindus and devotees of Lord Shri Ram. The worship of Lord Shri Ramlala Virajman is going on since the time immemorial. With a view to renovate the old temple and to construct a new one, Kar Sewa was performed and the said action was not in

violation of any order passed by any Court. There was no order in force against Hindus in respect of the temple property/structure. The Hindus have never been fanatic. They allowed every religion to flourish in Bharatvarsh. There is no evidence in history to show that the Hindus ever demolished any mosque or place of worship of any other religion. On the contrary, every Mughal invader and ruler from Mohammad-bin-Quasim to Aurangzeb and even thereafter demolished, destroyed and looted the temples of Hindus. The plaintiffs never had any concern with the land in question and are not entitled for restoration of the building or its possession. Muslim law in India is subject to the Constitution. Muslims cannot use open place of land in question for offering prayers. They also cannot encroach upon the land of religious places of Hindus. Under Shastrik law applicable to Hindus, the property once vested in the Deity continues to remain of the Deity. The entire property in question belongs to Shri Ramlala Virajman who is in existence from the time immemorial and is being worshipped by His devotees at the place in question without any interruption till date. The place of dispute has got no significance for the plaintiffs as they can offer prayer at any place. It would be appropriate and in consonance with the principles of 'secularism' that the Muslims do not offer prayers within the vicinity of the birth place of Lord Shri Ramlala Virajman, which is sacred for Hindus and offer their prayers beyond the area of Panchkoshi Parikrama. That will create brotherhood and peace. Over the land in question, no mosque ever existed and the Muslims are not entitled to encroach upon the land in question or offer prayer at that place. The Apex Court has never held that the land covered by the Act No. 33 of 1991 belong to any mosque or that

the adjacent area will be provided for enjoyment of the crucial area of mosque portion as per requirement. The property in dispute has not been described in Schedule-A to the plaint since its dimensions, width, survey number etc. are not mentioned for the purpose of identification. The plaintiffs are not entitled for possession of the structure standing at the site as the land in question and the adjacent area belong to Hindus and devotees of Lord Shri Ram. In the additional pleas, it is said that Bharatvarsh was divided on the basis of the religion. Pakistan was created for Muslims and the rest part of Bharatvarsh remained for Hindus. Consistent with Vedic scriptures, secularism was adopted in the Constitution. The rights of other religions, groups or community are subject to rights of Hindus. Lord Ram, Lord Krishna and Lord Shiva are cultural heritage of India which has been recognized by the Constituent Assembly. In the original Constitution signed by the members, pictures of recognized cultural heritage exist which include scene from Ramayana (conquest over Lanka and recovery of Sita by Lord Ram). Thus the citizens of Country are entitled to pay homage to their Lord at His birth place. Being sacred place for Hindus it cannot belong to Muslims or any other community or religious group. Therefore, the claim of Muslims over the land in question is unconstitutional and is also against Islamic laws. The plaintiffs cannot claim themselves to be Muslims entitled to file suit. Even if it is correct that Hindus came into possession of the disputed structure on 22/23.12.1949 and placed idols, the act is not wrong. The Hindus have rectified the curse of Mughal slavery before the commencement of the Constitution. The action of invaders had no sanction of law and after independence, it is the right of citizens to nullify every misdeed

and wrong action of the invaders. The entire area including the place in question belong to Deity Lord Shri Ramlala Virajman and His devotees. The worshippers are entitled to offer prayers, Pooja, Arti, Bhog etc. and to pray their great Lord. They also have a right to construct a glorious temple. Under the debris of demolished temple structure, a lot of signs and material concerning temple was found. A very big Chabutara beneath the present structure exists which also reveals that there existed a glorious and big temple of Lord Shri Ram. There is no evidence, sign or material at all to show that there was any mosque. The State has not been arrayed as a party to the suit and, as such, plaintiffs cannot claim any relief against the Receiver. The Sunni Waqf Board has no legal authority to file the suit. The suit is time barred. Amended relief cannot be granted. The suit has to be decided on the principles of justice, equity and good conscience. Prayer of injunction deserves to be refused as it does not come within the four corners of the principles of injunction.

Written statement dated 20.7.1968 of Defendant no. 13 and 14 (Baba Abhiram Das and Pundarik Misra) (Suit-4)

57. Baba Abhiram Das, defendant no.13, and Pundarik Misra, defendant no.14 filed their common written statement dated 20.7.1968. It is said that neither any battle took place between Babar and the Ruler of Ayodhya nor any graveyard or mosque was built by Babar. The Muslims wrongly described the building in question as mosque. They were not allowed to go near the temple where Hindus performed Pooja etc. on the Janam Bhumi temple. The plaintiffs have no right to make defendants to contest suit in a representative capacity as a self-appointed representative of Hindu community which extends from Madras to Kashmir and Dwarika to Calcutta. None of the

defendants can represent all Hindus in India. Janam Bhumi Temple is a public charitable institution and the aforesaid defendants contest the suit in individual capacity. The other averments of the plaint are generally denied. The suit is barred by time. Muslims are not in possession of the property in dispute since 1934 and earlier.

58. In additional pleas it is said that the Hindu community from time immemorial has been worshipping the site of Janama Bhumi upto this time by virtue of their rights. Muslims were never in possession of the temple called "Ramjanambhumi". If ever, they were interrupted in possession of the falsely called "Babri Mosque". The same ceased on/in 1934 and since then Hindus are holding the temple in their possession and their possession has ripened in statutory adverse possession. Even prior to 1934 continuous daily Pooja by Hindus had been performed in the said temple. The Muslims never offered prayer in 1934 in the temple falsely described as "Babri Mosque". The temple being a public charitable institution no individual belong to any sect, group, Math or otherwise has any right to represent all Hindus as it is a public place of worship open to all the Hindus. In any case, from January 1950 when the City Magistrate directed defendant no. 9 to carry on Pooja as usual in the said temple, it is being performed by Hindus without any interference by Muslims. The suit under Order 1, Rule 8 C.P.C. is bad as no one representing Hindu community has been made defendant and also for the reason that the plaintiffs have impleaded defendants no.1 to 4 and 9 knowing fully well that they do not represent Hindu community but have their individual interest only. The plaintiffs' claim based on U.P. Act No. 13 of 1936 is baseless for the reason that (a) the aforesaid

Act is ultra vires; (b) the Government of India Act 1935 came into force before passing of the above Act; it does not come under any of the items of List 2 of the Provincial List or list 3 of the Concurrent list. Item no.9 of the Concurrent List or item no. 34 of the Provincial List cannot save the above legislation on the principle of pith and substance. Item no. 28 of list 3 of the Constitution has been remodelled. Any sanction under subsection 3 of Section 80-A of the former Government of India Act will not validate legislation after the repeal of the said Act by Section 321 of Government of India Act 1935. Even if the Act is treated to be *intra vires*, the suit is not related to administration of Waqf , taking of accounts, appointment and removal of Mutwallis, putting Mutwallis in possession or settlement or modification of any scheme of management for which powers and duties have been specified under section 18 (2) of the Act. The suit on behalf of the plaintiffs is not maintainable. The Act containing privileges based on classification of Waqf on the ground of religion, particularly, Section 5(2) is hit by Articles 14 and 19 of the Constitution. After the enforcement of U.P. Act of 16 of 1960, the suit in question is not one which is saved under section 85(2) of the said Act. Further Section 9(2) of the said Act would not save the finality of the decision of the Commissioner of Waqfs from being affected by provisions of Chapter I of Act 16 of 1960, particularly when there is no saving clause with respect to decision under Sections 5(2) and 9(2). The finality attached by Section 5(3) will vanish after the repeal of the enactment. The building and land in question lying in the Province of Oudh became subject of Lord Canning's proclamations and all previous rights became non est. No fresh grant in respect of

property in suit having been made after the proclamation, the plaintiffs or Muslim community have no right to sue. The Commissioner of Waqfs only had to make an inquiry about the number of Shia and Sunni Waqfs in the District, the nature of each waqf, the Government revenue, expenses and whether it is one exempted under Section 2. The Commissioner had only to see as to whether any transaction is Waqf or not; as to which sect the Waqf belong and whether such Waqf is or is not exempted by Section 2 of the Act. He had to discharge above duties in accordance with definition of Waqf in Section 3(1) of Act No. 13 of 1936. The Act exclusively is meant for certain classes of Muslim Waqfs. It does not confer any power to decide the question of title against non-Muslims. Section 5(3) nowhere says that the Court shall take judicial notice of the report of the Commissioner of Waqfs and shall record it as conclusive evidence. Moreover, there has been no legal publication of the said report, hence, there is no question of its finality. The capacity of plaintiffs as well as defendants acting as representatives of Hindu and Muslim in general is denied. Any judgment between some individuals or group of individuals would not be binding on others, and, therefore, there is no question of res-judicata. The land in question is being worshipped from time immemorial as site of Janam Bhumi and they are entitled to worship thereat. The issues involved in the present case were not those involved in earlier suits, therefore, the question of *res judicata* or constructive *res judicata* does not arise.

Written statement dated 4.12.1989 of Defendant No.13 (Dharam Das) (Suit-4)

59. Defendant no. 13 Dharam Das has filed a very detailed written statement dated 4.12.1989 which was also amended

subsequently. The defence taken is that Babar was not a fanatic but a devout Muslim who did not believe in destroying Hindu temples. It was Mir Baqi who was a Shia and commanded Babar's orders, who demolished ancient Hindu temple of the time of Maharaja Vikramaditya at Shri Ramjanambhumi and tried to raise a mosque like structure in its place with its material. Babar was not an emperor. He was a marauder. What was constructed was not a mosque nor it was constructed for use of Muslims in general. It was not known as Babri Masjid but described as Masjid Janamsthan in British times. The objective evidence of demolition of ancient temple and attempted construction of mosque at Ramjanambhumi existed in the form of 14 Kasauti pillars, sandal wood beams and other structural features of the building. Mir Baqi did so on account of his superstitious influence of so called "Faqir Fazal Abbas Qalandar" who had demanded destruction of ancient temple at Shri Ramjanambhumi and construction of a mosque for him thereat to offer prayers. The aforesaid act, however, is opposed to the tenets of Islam as disclosed by holy "Quran" and *Fatwas* issued by Muslim theologians. The sketch map attached to the plaint is disputed. It is said that there is no graveyard anywhere at Shri Ramjanambhumi nor any existed within 12 years of the institution of the suit. Neither any mosque nor a graveyard existed which might have vested in the almighty of Muslims namely, Allah. According to Islamic faith as explained in *Fatwa-E-Alamgiri* Volume VI, page 214, it is not permissible to build a mosque on an unlawfully acquired land. There may be many forms of unlawful acquisition, namely, if some people forcibly take somebody's house or land and build a mosque or even Jama Masjid. Namaz in such a mosque will be against

Shariat. The assertion with respect to loss of many lives appears to be with reference to the battle fought between Babar's hordes led by Mir Baqi and the Ruler of Ayodhya relating to demolition of ancient Hindu temple at Shri Ramjanambhumi and hence not disputed. The assertion that graves of Muslims who lost their lives in that battle more than 450 years ago situated on or near Janam Bhumi is denied. Mosque and graveyard according to the tenets of Muslims cannot go together. Offering of prayer except funeral prayer on the death of a person buried is prohibited to be made at a graveyard. Khasra numbers of the alleged mosque at graveyard are imaginary, fictitious and not identifiable at the site. There was no mosque, hence the question of its upkeep and maintenance does not arise. There is no evidence of any expenditure from the alleged grant on the upkeep or maintenance of the building alleged to be "Babri Masjid". The alleged grant if any, in cash or by way of revenue free land described as "Nankar" must have been for personal services rendered or promised to be rendered by the grantee to the British in enslaving India for suppressing the First War of Independence of 1857 miscalled as "Sepoy Mutiny". The existence of Chabutara within the premises of building is admitted but the facts about its construction as stated in para 5 are denied. It is said that it was a temple of Bhagwan Shri Ram Lala. Originally, there was a temple erected at that place after the demolition of ancient temples of Maharaja Vikramaditya's time. No Muslim ruler could have permitted raising of temple in the premises which would have been a mosque. On demolition of that temple by Aurangzeb, the worship of Bhagwan Ramlala was carried on at that Chabutara. There was a small temple existing thereon and not merely a wooden structure

in the form of tent. The Deity stabled therein had been continuously worshipped without any break or interruption and the place is called Ram Chabutara. Filing of suit by Mahant Raghubar Das against the Secretary of State is not denied but rest of the facts are incorrect. The suit was for permission to erect a permanent temple in place of the then existing structure at Ram Chaubtara. It is denied that the alleged mosque at Janamsthan was a mosque or that Mohd. Asghar was its Mutwalli. He was added later as a defendant on his own request. The plaintiffs' suit and result thereof is wholly irrelevant for the present suit and is not binding either on the answering defendant or the Hindus in general or worshippers of Bhagwan Shri Ramlala Virajman at Shri Ramjanambhumi in particular. The Sthan of Shri Ramjanambhumi called as Janamsthan is a sacred place of Hindu worship of Bhagwan Shri Ram being incarnation of Lord Vishnu and symbolised by the existence of objects of worship like Sita Rasoi, Charans and the idols of Bhagwan Shri Ramlala Virajman at Chabutara within the precincts of the building at Janamsthan alleged to be a mosque. There was no access to the said place except through the place of worship of Hindus by which it was landlocked. Such a building could not be a mosque according to the tenets of Islam. The UP Act, 1936 as such is not disputed but the report of inquiry alleged to have been made by the Commissioner of Waqfs is disputed and is an ex parte affair not binding on Hindus. The Muslims were never in possession of the alleged mosque nor they ever recited any prayer therein and at least till 23.12.1949 or on any date even remotely within 12 years of the institution of the suit. The construction of mosque by Babar at a place where the ancient Hindu temple existed is denied. It is also denied that he was an

Emperor. The possibility of the building in question to be a mosque is also disputed. The question of possession of property in question by Muslims does not arise since the Hindus considered it to be a place of worship. Shri Ramjanambhumi by itself is an object of worship, it has the status of juridical person in the eyes of law. The act of demolition of temple and entering thereupon was a wrongful act of trespass impermissible under the tenets of Islam. Allah does not accept waqf of any property or thing taken by force or by illegal act. The attempt to raise a mosque like structure failed and no mosque deemed to be Waqf according to Muslim law, ever came into existence. The act of Mir Baqi was a fleeting act of trespass and not an act of entering into adverse possession by a person claiming ownership. No Muslim by an act of trespass or its repetition could confer any right, title or interest in the nature of Waqf in favour of Allah for the purpose of mosque. According to the Muslim Law, Allah alone is the owner in possession of all Waqf property. A Mutwalli is a mere manager and neither the Mutwalli nor the beneficiaries of a Muslim Waqf can claim or have any right of ownership or possession as an owner for and on behalf of Allah. Title by way of a Muslim Waqf cannot, therefore, be acquired by adverse possession for Allah through an artificial act of adverse possession. Ramjanambhumi being itself a deity and worshipped as such since ever, has a juristic personality of its own, continued to own and possess the property rights of ownership and possession of the space at Ramjanambhumi at Ayodhya without any dent by any such act of trespass or demolition of temple or attempt to raise a mosque like structure thereat. The act of installation of Deity of Bhagwan Ram under central dome of the building at Shri Ramjanambhumi in the

form of idol of Bhagwan Shri Ramlala by his worshippers led by others namely, defendants Guru Baba Abhiram Das, was not a mischievous act but a perfectly lawful exercise of their right and that of Hindus to worship the Deity. The Muslims did not get any title by adverse possession and the pre-existing right, title and interest of the defendants continue to exist uninterrupted and unaffected by such act of Mir Baqi. The Hindus' act on *Pausa Shukla 3, Vikram Samvat 2006* was in furtherance and re-assertion of pre-existing property right of the Deity and their own right of worship. It was an act of manifestation of Bhagwan Shri Ram himself. Even the Muslim Havaldar Abdul Barkat who kept guard at the police outpost experienced manifestation by its grace. Since then, this day is celebrated as "Prakatya Divas" every year at Ayodhya. Muslims, in any case, have lost any right or interest. The alleged report with respect to incident of 23.11.1949 is not disputed. The proceedings under section 145 Cr.P.C. are also admitted. The order allowed Sri Priya Dutt Ram Receiver to worship the Deity of Bhagwan Shri Ram Lala Virajman, meaning thereby the Muslims were prohibited from entering the building premises and the surrounding area at Shri Ramjanambhumi. They had no right to offer Namaz in the building or doing anything else at that place. The action of City Magistrate was illegal. If the plaintiffs claim that the said order affected them by ousting entry, they ought to have challenged the same. Since the order was passed before the enforcement of the Constitution, it cannot be said that the order of the Magistrate is unconstitutional. Filing of suit by Sri Gopal Singh Visharad is not disputed. Representation by the plaintiffs of the entire Muslim community is disputed. In the civil suit, an injunction

was granted which was confirmed in appeal upto the High Court vide judgment dated 26.4.1955. Filing of suit no. 25 of 1950 is not disputed. The earlier suit no. 2 of 1950 and the latter one, both were consolidated. Similarly, filing of suit no. 26 of 1959 is not disputed. The suit for possession over a mosque can only be filed by a Mutwalli and no others. The plaintiffs neither claim themselves to be Mutwallis nor, in fact, so, hence, the suit is not maintainable and is stillborn. It is barred by limitation.

60. In the additional pleas, it is said that in history, there was an ancient temple of Maharaja Vikramaditya's time at Shri Ramjanambhumi which was demolished by Mir Baqi. The dominant motive of iconoclast was the prejudice born of ignorance/misconception that Hindu temples were places of idolatry which was condemned by Quran. As per Quran, a mosque cannot be built on the place of a Hindu temple and that too after forcible demolition. Allah does not accept Namaz offered at a place taken by force or in a mosque built on a land obtained by Gasba or forcibly taken without title. The structure was never intended to be used as a mosque and never used as such. It was with an objective of putting down idolatry. From the public records and relevant books of authority it is established that the premises in dispute is a place where Bhagwan Shri Ram manifested himself in human form as incarnation of Bhagwan Vishnu according to traditions and faith of Hindus. According to Hindu faith Ganga originates from the nail of the toe of Bhagwan Vishnu and cleanses and purifies whatever is washed by or dipped into its water. Bhagwan Vishnu having manifested himself in human form of Maryada Purshottam Shri Ram Chandra Ji Maharaj at Shri Ramjanambhumi, those who touch the earth or footprints of

Bhagwan Shri Ram symbolised by Charans at that place are cleansed of their sins and get purified. The earth at Shri Ramjanambhumi could not have acted differently towards Muslims who went there. They were also cleansed and purified by the touch of Bhagwan Shri Ram's footprints, which, like the water of Ganga purify all without any discrimination. The place like water of Ganga remains unsullied. It has been an object of worship with a juridical personality of its own as a Deity distinct from juridical personality of the presiding Deity of Bhagwan Shri Ram installed in the temple thereat. It has existed since ever, even before the construction of first temple thereat and installation of the idol therein. It is the Divine spirit which is worshipped. An idol is not indispensable. There are Hindu temples without any idol. The Sthan Shri Ramjanambhumi has existed immovable through the ages and has ever been a juridical person. The actual and continuous performance of Pooja at Shri Ramjanambhumi was not essential for the continuous existence and presence of Deity at that place. They have continued to remain present and shall continue to remain present so long as the place lasts since the land is indestructible. Deities are immortal being the Divine spirit or Atma and may take different shapes and forms as idols or other symbols of worship according to faith and aspiration of the devotees. Indisputably there was an ancient temple of Maharaja Vikramaditya's time at Shri Ramjanambhumi, Ayodhya. It was partly demolished and was attempted to be constructed a mosque by Mir Baqi, Commander of Babar's hordes. He was a Shia. Although demolition of a temple for constructing a mosque is prohibited by Islam, he attempted to do so under the superstitious influence of so called Faqir named, Fazal Abbas

Qalander. He, however, could not succeed. As the story goes, whatever was constructed during the day fell down during the night and it was only after making certain material concessions in favour of Hindus for continued preservation of the place, as a place of Hindu worship, that the construction of three dome structure was somehow completed. The construction of minarets and certain other features of a public mosque were not undertaken. The facts which would show that the three domed structure raised by Mir Baqi was not a mosque are:

- (a) Allah does not accept dedication of property for purposes recognised as pious and charitable like Waqf from a person who is not its rightful owner, like Allah would not accept stolen property from a thief. The act of trespass supported by violence for erecting a mosque on the site of ancient Hindu temple at Sthan Shri Ramjanambhumi after demolishing it by force of arms, Mir Baqi violated all the true tenets of Islam. It was a highly un-Islamic action. Allah did not forgive him and in the ensuing battle he was killed without mercy. The whole history of rise and fall of Mughal empire in India stand testimony to it. Babar who did not believe in iconoclasm founded the rule of Mughals in India. Akbar his grandson by tolerance and secularism expanded it on all sides and converted the Mughal Rule into an Empire. Auranzeb, the iconoclast fanatic, destroyed the Empire which was at the pinnacle of its glory when deposed and imprisoned his own father Shahjahan to grab the crown.
- (b) Despite what Mir Baqi did with the temple, the space always continued to be in possession of Deity of Bhagwan Shri Ram Virajman and the Sthan Shri Ramjanambhumi.

The worshippers continued to worship through such symbols as the Charans, Sita Rasoi and the idol of Bhagwan Shri Ramlala Virajman on Chabutara, called Ram Chabutara. No one could enter the three domed structure except after passing through the aforesaid places of Hindu worship. According to tenets of Islam, there could be no idol within the precincts of a mosque. The passage to a mosque must be free and unobstructed, open to the faithful at all times. It can never be landlocked by a Hindu place of worship. There can be no co-sharing in the title or possession with Allah particularly in the case of a mosque. His possession must be exclusive.

(c) A mosque which is a public place of worship for Muslims must have a minaret for calling Azan. According to 'Baillie', a prayer without Azan is private instead of public and the place could not be a Masjid. According to P.R. Ganapathi Iyer's "Law relating to Hindu and Mahomedan Endowments", (2nd Edition, 1918, Chapter XVII, at p. 388), after first half century from the Flight, there has been no mosque without a minaret.

(d) There was no arrangement for storage of water for Vazoo and there were Kasauti pillars with the figures of Hindu Gods inscribed on them. The sandalwood beam were there. Such a place can never be a mosque.

(e) In Faizabad Gazetteer, it is mentioned that 75 Muslims were buried at the gate of Janamsthan and the place was known as "Ganje Shahidan" after the battle of 1855 between the Hindus and Muslims in which Hindus succeeded and resumed control over the premises including the three domed structure. There is no graveyard

anywhere near the building or its precincts or the area appurtenant thereto or surrounding it for the last 50 years at least. If the building was surrounded by a graveyard soon after the annexation of Oudh by the British, the building could not be a mosque and could not be used as a mosque for offering prayers or Namaz except funeral prayers.

61. The worship of Bhagwan Shri Ram Virajman thus continued through the ages at Shri Ramjanambhumi, Ayodhya. The space belongs to Deities. No valid Waqf was or could ever be created at Shri Ramjanambhumi or any part of it in view of the title and possession of the said Deities thereon, which has all along been pervasive and continuous. No person living or juridical was there to claim ownership or possession as owner of the said premises or any part thereof. Occasional act of trespass by iconoclasts were successfully resisted and repulsed by the Hindus from time to time. There had been no blemish or dent in the continuity of the title and possession of the said Deities over Shri Ramjanambhumi. No title could or did vest in Allah over any part of Shri Ramjanambhumi by adverse possession. Neither Allah nor any person on His behalf had any possession over any part of the premises at any point of time. Muslims never acquired any right to worship at the place as a mosque by adverse possession because the consequence of violation of any injunction of Quran could not be worked out by lapse of time howsoever long, as per the Muslim Law. So far as the right of prayer is concerned, every single Muslim has a right to pray in a mosque in his own independent and individual character. He does not derive that right from anyone else. Such rights are similar to all Muslims independent of each other. Even duly

converted Muslim gets that right on conversion although none of his ancestors or members of his family had any such right. It is impossible to say in law that those who have a right to pray in a mosque are in possession of that right in the mosque as a community. Fluctuating body of individual Muslims have this right as individual to go into the mosque and pray therein but only so long as the mosque continues to exist as a mosque. This right to pray cannot be tagged on by a Muslim to the similar right of another Muslim and cannot form the basis of any adverse possession in law or acquisition of title of land by prescription as a Waqf for the mosque. The body of worshippers is only an undulating, ever changing body of individuals and not a corporation. The claim of right to worship by going to a place as a mosque is not a claim of right to possession of the place as its owner. The factum of occupation of a place without any claim to title as owner cannot clothe the occupier with the ownership of the place. The true owner's title remains unaffected by any such occupation, howsoever long it may be. A place can become a mosque only when Namaz is offered there with the permission of the owner and publicly in a group after calling of the Azan. After the annexation of Oudh and the First War of Independence miscalled as 'Sepoy Mutiny' by the British, an inner enclosure for the three domed structure was created by raising a boundary wall with iron gratings in the courtyard of the building which separated Ram *Chabutara*, the Charans and the Sita Rasoi from the building and divided the courtyard in two parts. The inner part in which the three domed structure situated was landlocked by all sides by the outer part in which the Ram Chabutara, the Charan and Sita Rasoi situated. The British thus tried to confine the Hindus to worship their

Deities in the outer part of the courtyard, but no Muslim could enter the inner part of the courtyard or the three domed structure within it, without passing the outer courtyard which had Hindu places of worship and was in their exclusive and constant occupation. This laid the seeds of trouble off and on whenever any Muslim wanted to go inside. The result was that no Namaz was offered inside the three-domed structure, despite attempt of the British Government to induce the Muslims to do so by raising the inner boundary wall. This was a calculated attempt by the Britishers to encourage the Muslims to use the abandoned place as a 'Mosque', and create differences between their Hindu and Muslim subjects with the object of maintaining their power particularly in the context of the First War of Independence in which Hindus and Muslims had fought with the British power neck to neck as brothers. This attempt failed. There was overwhelming number of Hindus living all around the place and local Muslims knowing that it was not a place for offering Namaz, Hindus never left the place and continued to worship Charan Sthan, Sita Rasoi and idols of Bhagwan Shri Ramlala Virajman on the Ram Chabutara within its precincts. The attempt of Britishers to reconstruct damaged structure in 1934 at the cost of the then Government was another attempt to create rift in the two communities. It appears that there was no Mutwalli otherwise he would have taken care of the said building. The Britishers were in fact sowing the seeds of the two nation theory which ultimately led to the partition of India. However, despite the British efforts, no prayers were ever offered in the three domed structure at Shri Ramjanambhumi even after its reconstruction and renovation since the Muslims knew that the building was not a mosque for offering Namaz. In

1936, U.P. Muslim Waqfs Act was passed whereby two Central Boards of Waqfs, one for Sunni and other for Shia were established to supervise and control Muslim Waqfs. No notification was issued in respect of the building in question declaring it to be a Waqf. The plaintiff Waqf Board has no jurisdiction in respect of the premises even if it were a mosque. It took no action or positive steps for the custody or the care of the building or its establishment as a mosque. No one was appointed or acted as its Mutwalli, or Mauazzinn or Imam, or Khatib or Khadim. The descendant of Mir Baqi sought to be set up as Mutwalli by the British was an opium addict. He denied that the grant of revenue free land was for the purposes of the mosque. On the contrary, he claimed that it was his Nankar for services rendered to the British and he never looked after the alleged mosque at all. At the time of independence, acting upon the two nations theory resulting in partition, Baba Abhiram Das, Guru of the answering defendants concerned alongwith Paramhans Ram Chandra Das, defendant no.2 and Sri Gopal Singh Visharad, defendant no.1 and several others resolved to restore the sacred Janamsthan of Ramjanambhumi to its pristine glory, in particular by removing the three-domed structure raised thereat by Mir Baqi which was an object of national shame for the Hindus. Pursuant to such resolution they took collective vow at a public meeting held on 2.10.1949, which was the day in that year, of Vijyadashami, for restoration of Ramjanambhumi as the first step towards fulfilment of dream of Mahatma of establishing Rama Rajya in Bharatvarsha after independence from British bondage. First they cleared up the scattered mounds of earth which the Muslims claimed to be their graves, in the areas around Shri Ramjanambhumi. This

followed up by Navahna Pathas, Japa and Sankirtan at Shri Ramjanambhumi. The first batch of 108 Navahna Pathas commenced on 16.10.1949 which was followed by 1108 batches of Navahna Pathas. Japa and Sankirtan performed continuously. They continued in and outside the three domed building, within its precincts and on the adjacent land all around, unabated, resulting in the great manifestation of Bhagwan Shri Ram Lala within the three-domed building, under its central dome, to be more precise, by the installation of idol of Bhagwan Shri Ram Lala with all due ceremony at the auspicious hour of Brahmamuhurta during Shrawan Nakshatra and Tula Lagna in the most auspicious constellation of the planets, named, Harshan Yoga, on Thursday, Pausha Shukla 3 of Vikram Samvat 2006. At that time although the planet Sun was Dakshinayana but Sanyasis and Vairagis are permitted by the Shastras to instal a Deity even during Dakshinayan. The idol of Bhagwan Shri Ram Lala is Chala and seated on a silver Singhasan (throne). Akhand Sankirtans and Japa have continued ever since without any break for the last about 40 years at Shri Ramjanambhumi. The suit is bad and not maintainable in law inasmuch as the Deity of Bhagwan Shri Ram Lala Virajman under the Central dome of the building on the Ram Chabutara with such symbols of worship as the Charan and Sita Rasoi have not been made parties to the suit. It is also bad for want of Mutwalli of the alleged Waqf. The Sunni Central Board of Waqfs, U.P. has no jurisdiction or competence to meddle with the alleged waqf or the alleged mosque or to sue in respect thereof for want of proper and valid notification in its favour under section 5 of the U.P. Muslims Waqfs Act 1936. The notification dated 26.2.1944 having already been held to be invalid by the Court's finding on

issue no.17, has become final and irreversible between the parties. Even otherwise, the suit when filed in 1961 was barred by the provisions of U.P. Muslim Waqfs Act, 1960 and the civil court had no jurisdiction to entertain it. The suit is incompetent and not maintainable under Order 1, Rule 8 C.P.C. The permission granted by the Court to the plaintiff to sue in the representative capacity for all the Muslims is liable to be revoked, particularly because the plaintiffs are all Sunnis, while the Shias did not claim the alleged mosque and waqf to be a Shia Waqf. The defendants named in the suit cannot represent various sects of Hindus in India. None of the plaintiffs has any right to sue for possession over the alleged mosque. The relief for possession by removal of the idols and other articles of Hindu worship is, in fact and in law, a relief for mandatory injunction and is barred by six years' limitation prescribed by Article 120 of the Schedule to the Indian Limitation Act, 1908. Even otherwise, a person other than Mutwalli of a mosque cannot sue for its possession and can sue only for a declaration that it is a mosque and if it is out of possession or dispossessed, that its possession be made over to the Mutwalli. To such suit also Article 120 applied and not Article 142 or 144 of the Schedule, Limitation Act 1908. Even otherwise, the suit is barred by Article 14 of the Schedule, Indian Limitation Act 1908. It is not a case of continuing wrong within the meaning of Section 23 of the Limitation Act and, therefore, the suit is barred by limitation. It is in the interest of parties that this matter be decided at the earliest. The defendant is willing to arrive at a negotiated settlement with the Muslim community under the supervision or mediation of the Court. The mosque building may be shifted since place of birth of Lord Rama cannot be

changed. There are no Muslims residing anywhere near the place who may require a mosque there for offering prayers. The number of existing mosques at Ayhodhya is so large as compared to the need for them that some of them have fallen due to disrepair and have ruined for want of maintenance. Such a statement was made by Prince Anjum Qader, the President of All Indian Shia Conference and a descendent of Nawab Wajid Ali Shah who ruled Avadh when it was annexed by the British, in reply to the suit no. 236 of 1989 filed on behalf of the Deities in the Court of Civil Judge, Faizabad, now re-registered as O.O.S. No. 5 of 1989 in this Court.

62. On 27th July 1937 Mahatma Gandhi also expressed similar views that it is great sin to occupy by force any religious building of worship. During Mughal time due to religious fanaticism, Mughal Rulers had occupied many such Hindu religious places which were sacred places of worship for the Hindus. Many of them were looted and destroyed and many of them were given shape of a mosque. Although a temple and a mosque are both sacred places for worship of God and there is no difference between them but the traditions and forms of worship of Hindus and the Muslims are different from each other. From the religious point of view, a Muslim can never tolerate placing of an idol by a Hindu in his mosque where he has been worshipping Khuda and in the same way, a Hindu will not suffer demolition of a temple where he has been regularly worshipping Rama, Krishna, Shankar, Vishnu and Devi and construction of a mosque in its place and, therefore, both should try to resolve all such disputes by returning such places to each other. The three domed structure excluding the Kasauti columns and sandalwood beams can be constructed near the Mazar of

Mir Baqi at village Sahanwa, or at any other place where the Muslims have sizeable population and agree to its re-erection on the land provided by them. In view of the Apex Court's decision dated 24th October 1994 the acquisition of the area excluding the one described by the Apex Court as Ramjanambhumi-Babri Masjid, situated in a part of plots no. 159 and 160 of village Kot Ram Chandra Ayodhya by Ayodhya Act 1993, was absolute. There is no cause of action. In any case, after demolition of the three domed structure, no cause of action survives. Sunni Central Board of Waqfs has not been constituted for the past many years validly and as such it has no right to file the suit. Sunni Board or the Shia Central Board of Waqf cannot represent the entire Muslims generally and more particularly, when the mosque claimed is a Shia Mosque and, therefore, they cannot file the present suit in representative capacity.

Additional written statement dated 29.8.1995 of defendant no. 13 (Mahant Dharam Das) (Suit-4)

63. An additional written statement dated 29th August 1995 has been filed by defendant no.13 Mahant Dharam Das replying the amended paragraphs of the plaint. It is said that the building which was demolished on 6.12.1992 was not a mosque and could not be called "Babri Masjid". Demolition of structure did not constitute violation of any order of the Court. No relief for restoration of building can be granted to the plaintiffs. Correct details for identification of the land in question have not been provided. The suit is rendered infructuous and even otherwise is not maintainable.

Additional written statement dated 14.9.1995 of defendant no. 17 (Ramesh Chandra Tripathi) (Suit-4)

64. It says that allegation of placement of idols in the night of 22nd/23rd December, 1949 is false. On the contrary, they existed

at the place in question from time immemorial. Babar was an invader. He had no legal authority to construct a Masjid at the sacred place of Hindus, i.e., the birth place of Lord Shri Ram. Mughal invader Babar through his Commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question but could not succeed in his mission. Some further details have been given in additional pleas of the written statement of respondent no. 17 similar to that contained in written statement filed on behalf of defendant no.13, therefore, we are not repeating the same and shall refer later as and when the occasion arises.

Written statement dated 18/19.7.1969 of defendant no. 18 (Mahant Ganga Das) (Suit-4)

65. A separate written statement dated 18/19th July 1969 has been filed by defendant no.18. Damage to the building allegedly called Babri Masjid in 1934 has been denied in para 8 of the written statement. The report, if any, with respect to Waqf is ex parte and not binding upon the defendants. The capacity of Sunni Board to represent the entire Muslim community including Shia is disputed. In the additional pleas, it is said that sketch map was totally incorrect and misleading. The temple in question is known as Janam Bhumi, the birth place of Lord Ramachandra situate in Ayodhya and belong to defendant no.3. The defendant-3 has been doing Darshan and Pooja at the place in question for the last 30-32 years.

Written statement dated 5.11.1989 of defendant no. 20 (Madan Mohan Gupta) (Suit-4)

66. He has filed written statement dated 5.11.1989. Any battle between Babar and the then Ruler of Ayodhya has been denied. Existence of graveyard or mosque is also denied. Sketch map said to have been filed by Raghubar Das is not binding on the

defendants. The building in question is a temple and not a mosque. The decision of earlier suit is not binding or would not operate as *res judicata*. Neither the defendant nor Hindu public in general derive any title from the said Mahant Raghubar Das or his representatives and are neither bound by any of his action or conduct, nor the decision in Suit no. 61/280 of 1985 is binding on them. Inquiry, if any, by the Waqf Commissioner is *ex parte* and not binding on Hindus as such. The building throughout has been Ramjanambhumi Temple with idols of Hindu Gods throughout. The Muslims have no legal or constitutional right of offering prayer at the site of Ramjanambhumi since the building was a temple. Installation of deities in the temple as alleged in para 15 of the plaint is denied. In the additional pleas it is said that Lord Shri Ram an incarnation of God, took birth thousands of years ago in Ayodhya. His birth place is known as Ramjanambhumi or Ramjanam Sthan. This birth place is worshipped for the last many thousand years by Hindu public who believe in Divine presence at Ramjanambhumi in Ayodhya and have a devout faith that by offering worship at that place, they are recipients of the bounties and blessings of God, which constitute the features of a temple in Hindu religion. A holy temple stood at that place in ancient times. Later on Maharaja Vikramaditya reconstructed and resuscitated Ramjanambhumi temple. For Hindus, it is a spiritual base of Hindu religion. According to Hindu scriptures and traditions, Lord Ram was born in between the end of Treta Yuga and beginning of Dwapar Yuga. The span of Dwapar Yuga was about eight Lac years. He was God incarnate and took birth in human form to protect the saints, to destroy evils, to establish Dharma and save the world. Since then, from time

immemorial, He is being worshipped by Hindus with highest devotion and reverence. The literature is full with the narration of ideal life lived by Lord Ram on this earth, beginning with Ramayana of sage 'Valmiki', who according to the evidence in the treatise was a contemporary of Ram. Thereafter, the sage 'Vyasa' mentioned Ram at many places in 'Mahabharat' and has written a summary in his holy Biography in 'Ramopakhyayan Parva', which is part of 'Bara Parva'. 'Purans', 'Arthshastras of Kautilya', 'Raghubansh of Kalidas', 'Satrabandha of great Bhakta King Prabarsein' and multitudes of other books in many languages of India describe the life of Ram. In all this literature, Ayodhya and its sanctity is repeatedly described. In 'Uttarkand' of 'Ramcharitra Manas' written by 'Goswami Tulsidas' (1497-1623 AD) who was a contemporary of four Mughal Emperors viz., Babar, Humayun, Akbar and Jahangir, the devotion with which the functions of Ram Janam (birth of Ram) were celebrated in Ayodhya is described. Not a single word is to be found in this great treatise about the existence of Babri Masjid or performance of Namaz at Ramjanambhumi. Ram is most renowned and respected incarnation born in India. He was born on Navami in the month of Chaitra according to Hindu calendar which is popularly known as 'Ramnavami'. He killed devil 'Ravana' and the entire episode is celebrated every year as 'Dushera' in every part of India. After the conquest of Lanka when Ram returned to Ayodhya, the said occasion was celebrated with great enthusiasm and 'Diwali' was celebrated, which is still continuing and participated by members of all religions, communities and sects. The father of Nation Mahatma Gandhi was a devotee of Lord Ram. In an ancient book known as 'Ayodhya Mahatmya' (a Guide for travellers), (the original

of which is in Sanskrit, but its translation by Ram Narain has been published in the journal of the 'Asiatic Society of Bengal', Volume 54, Part I, Chapter I-C-4-1875, Calcutta 1875), it is said that all the four sons of Emperor Dashrath were born in the palaces of their respective mothers. At one place, it is described that Sita Rasoi is in Kaushalya Bhawan, the Janamsthal. The researchers have concluded that this ancient book appears to have come into existence during the period of Emperor Akbar. There is no description of so called Babri Masjid alleged to have been constructed by Emperor Babar. 'Faizabad Gazetteer', Volume 43, of the District Gazetteer of the United Provinces of Agra and Avadh, compiled by Sri 'H.R. Nevill', ICS, published by Government Press in 1905 under the topic 'Directory' while dealing with Ayodhya at page 12-F, affirmed that Janamsthan was in Ramkot and marked the birth place of Lord Ram. Later on it is said that the mosque has two inscriptions, one on the outside and the other on pulpit and both are in Persian bearing the date 935 Hizri. On the authenticity of the inscriptions there can be no doubt but no record of visit of Babar has been found by Muslim historians. It must have occurred about the time of his expedition to Bihar. There is nothing to show about the visit of Babar to Ayodhya. Only on the basis of these two inscriptions, the conclusion is being drawn all around that the mosque was built by Babar. It is very doubtful that it was so built. It appears to be a creation of Britishers sometimes in 19th Century in order to create hatred between the two communities of India, viz. Hindus and Muslims and thereby implement the policy of communal disharmony and create problems of law and order effectively so that their annexation of Avadh may be justified on moral grounds. The script of the outer inscription of

mosque is pretty bold and more artistic, a style which was developed sometimes in the middle half of the 19th century while the inner inscription is very fine and thin, a style developed in the latter half of the 19th century. It is, therefore, absolutely certain that on the basis of these two inscriptions it cannot be concluded that either the mosque was built in 1528 AD or in 935 Hizri or it was built by 'Emperor Babar' or his Governor 'Mir Baqi' as stated therein. "U.P. District Gazetteer Faizabad" published in 1960 by the U.P. Government and edited by Smt. Esha Basanti Joshi, at page 47, quotes the inscription inside the mosque and relies on it for the purpose of date of construction of the mosque. To determine the year of construction and the authority who got it constructed, only these inscriptions are being relied and nothing else. In the 'Babarnama' translated by 'Annette Susannah Beveridge', Volume II, published by Sayeed International, New Delhi in Appendix 'U', the heading is "The inscriptions of Babar's Mosque in Ayodhya (Avadh)". While reproducing the inscription inside the mosque and translating it at page XXVIII, after quoting the couplets and giving its translation and working out the number 935 to identify the year, the author at the bottom appended a note creating doubt. For the first time, a book was published in 1813 by Leyden and known as "Memoirs of Zahiruddin Mohd. Babar, Emperor of Hindustan" and for the first time therein it was said that in March 1528 Babar passed through Ayodhya. Even though Leyden did not mention anything about the demolition of Hindu temples in Ayodhya and building of mosque in their place, yet the British Rulers gave currency to this false news that Babar demolished Ramjanambhumi Mandir and constructed Babri Masjid thereat. The translated 'Babarnama' published

thereafter has mentioned that Babar never interfered with the religion of others and he visited various Hindu temples and appreciated their archaeological beauties. There is no evidence of Babar ever having arrived at Ayodhya and demolished Hindu temple. Claim of construction of mosque 400 years ago by Babar is wholly wrong. In Faizabad Gazetteer of 1960 at page 352 it is said that at the time of Muslim conquest there were three important Hindu shrines (Ayodhya) and little else, the Janamsthan temple, the Swargadwar and the Treta Ke Thakur. The Janamsthan was in Ramkot and marked the birth place of Ram. Till 1855 also there was no mosque. It is established from Faizabad Gazetteer 1960 at page 63. In Faizabad Gazetteer 1905 at page 174 it is said that the desecration of the most sacred spot in the city caused great bitterness between the Hindus and Musalmans. On many occasions the feelings led to bloodshed and in 1855 an open fight occurred. The Musalmans occupied Janamsthan by force and thence making a desperate assault on the Hanumangarhi. They charged up the steps of the temple but were driven back with considerable loss. It resulted in death of seventy five Mussalmans who were buried at the spot called 'Ganje Shahidan'. In A-in-i Akbari also there is no mention of the existence of Babari Masjid. In Faizabad Gazetteer of 1960 at pages 351 and 352 it is said that with the departure of the Court, the Hindus were left to themselves and numerous temples and monasteries sprang into existence. Naval Rai, Deputy of Nawab Safdar Jung built a fine house in Ayodhya which still stands on the river front. Probably this rise in importance was due to the popularity gained of Ramcharitra Manas of Tulsidas. The progress of this place became more rapid after annexation of Avadh by the British. Before the middle of nineteenth century

Ayodhya was regarded as a stronghold of Hinduism.

67. There are some more facts to establish that neither the mosque in dispute was built by Babar in 1528 nor is it a mosque at all:

- i. The tomb of the disputed Masjid if looked from behind would show that it is not in the style developed by Turks during fifteenth century, nor the Mehrab of Masjid in that style is to be found. There is no tomb in the disputed Masjid as is found in other mosques generally.
- ii. On the north door, in the front, facing each other, there are two tigers. They are in the style of taking leap and their tails are just in the same style when a tiger takes leap. Between these two tigers there is a peacock. This is not a characteristic of a mosque.
- iii. Various Hindu idols are painted or their inscriptions are to be found in the disputed mosque.
- iv. There is no provision for reciting Namaz. To this day it has no minarets and no place for storage of water for Vazoo.
- v. The Muslim Faith as adumbrated in Holy 'Quran' does not permit construction of a mosque at the site of temple after demolishing it.
- vi. Babar never dedicated property of disputed mosque to Allah. Even supposing without admitting that Babar constructed the disputed mosque, yet as it has been done by committing trespass by demolishing the temple, the abode of God, either by Babar or at his instance by Mir Baqi , the Governor of Oudh, the dedication is wholly invalid and void. The material of the old temple was largely employed in building the mosque and a few of the

original columns are still in good preservation. They are of close grained black stone (Kasauti) bearing various Hindu Vase-reliefs. The outer beam of the main structure being of sandalwood, the height of the columns is 7 to 8 ft., the shape of the vase, the middle section and the capital is square, the rest being round or octagonal. There are two inscriptions in Persian. One on the outside and the other on pulpit bearing the date 935 Hizri. Subsequently, Auranzeb also desecrated the shrines of Ayodhya which led to prolonged bitterness between Hindus and Musalmans. Latter also occupied Janamsthan by force and also made an assault on Hanumangarhi. Attacks and counter attacks continued under the leadership of 'Maulvi Amir Ali' (See page 353 of Faizabad Gazetteer 1960).

- vii. A mosque must be built in a place of peace and quiet and near a place where there is a sizeable and large number of Muslim population. According to the tenets of Islam, a mosque cannot be built at a place which is surrounded on all sides by temples where the sound of music of Conch Shells or Ghanta Ghariyals always disturb the peace and quiet of the place.
- viii. A mosque must have a minaret for calling Azan. According to 'Baille', an assembly of worshippers pray in a Masjid with permission, i.e., delivery. But it is a condition that prayers be with Azan or the regular call and be public and not private, for though there should be an assembly yet if it is without Izah and the prayers are private instead of public, the place is not a Masjid according to the true disciples. Indeed there has been no mosque without a minaret after the first half century fight.

(See Ganpathi Iyer's law relating to Hindu and Muhammadan Endowments 2nd Edition 1918 Chapter XVII, page 388).

- ix. According to the claim laid by Muslims in the present suit, the building is surrounded on sides by a graveyard known as Ganje Shahidan. There is a mention in the Faizabad Gazetteer also of the burial of seventy five Muslims at the gate of Janamsthan and the place being known as Ganje Shahidan after the battle of 1855. Although there are no graves anywhere near the building of Shri Ramjanambhumi or in its precincts or in the area appurtenant thereto for the last more than 50 years and if the building was surrounded by a graveyard during the British times, soon after the annexation of Oudh by them, the building could not be a mosque and could not be used as a mosque for offering prayers except funeral prayers.

68. Mere displacement of a part of the ancient Hindu temple of Ramjanambhumi Sthan will not take away the religious sanctity of the temple and the site, inasmuch as, the Hindu religion believes the presence of the Divine spirit at Ramjanambhumi Sthan. The act of vandalism perpetrated either by Babar or by any other person after him would neither take away the religious sanctity of the place nor destroy the religious belief of Hindus attached to that place nor the place as such would be deemed out of possession of the Hindus as such. It is a place of great antiquity and Hindus have always been worshipping through the ages and always remained in possession thereof. Babri Masjid is a Sunni Waqf, but its Mutwallis being the descendants of Mir Baqi were Shia Muslims, and this itself demolishes the case of the plaintiffs. In any case,

it was inter se dispute between Shia and Sunni, Hindus were not party. Upto middle of the 19th century, Ayodhya was regarded as a stronghold of Hindus. Ramjanambhumi was at all material time accessible to Hindus. In 1949 some Muslim members tried to raise a dispute resulting in proceedings under section 145 Cr.P.C. and thereby also Hindus were allowed to continue worship and Muslims were restrained from entering the building. Faizabad Gazetteer 1960 has recorded an important fact at page 50 as under:

“William Finch, the English merchant, who travelled through the Mughal Empire (1608-1611) says that Avadh is “a citie of ancient note, and seate of Potan King, now much ruined; the castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand(s)³ castle and houses, which the Indians acknowledge for the great God, saying that he tooke a flesh upon him to see the tamasha of the world. In these ruines remayne certaine Bramenes who record the names of all such Indians as wash themselves in the river running thereby; which custome they say, hath continued foure lackes of yeeres (which is three hundred nintie foure thousand and five hundred yeeres before the world's creation).”

At the footnote against the number (3) which is indicated in the citation against the word 'Rani Chand' it is explained as follows :-

“Ram Chandra, the Hero of Ramayan. The reference is to the mound known as Ram-kot or fort of Rama.”

69. Even from the above, it is evident that during the time of Emperor Akbar, Ramjanambhumi Sthan was worshipped by Hindus which was noticed by the English Traveller as well. The

temple and the Sthan has always been the public religious worship place for the last several years and the alleged act of Babar could not take away its spirituality. The presence or absence of idols would neither in any way affect the right, title and interest of Hindus over the Sthan and the temple in dispute nor will it affect in any way the religious character of Ramjanambhumi as a place being a part of Hindu religion. For example, Lord Krishna left this world at the place near Somnath in the State of Gujarat. The place is known as Prabhas Patan (Somnath) but at this place there is no idol of Lord Krishna. Yet the place is a very holy place for Hindus and is worshipped. The Hindus firmly believe that worship at that place would be conducive to their spiritual well being and peace. In the present case, what is of the maximum religious importance for Hindus is the birth place of Lord Ram, i.e. the Janamsthan. The presence of idols on the place are of later origin when Vikramaditya repaired and resuscitated the temple for the benefit of the worshippers who subsequently started imagining a particular image in which God Ram is manifesting himself as a Divine person to them. It is said that ouster of Hindu community from Ramjanambhumi never took place. Hindus have always been and are still today in lawful possession over the site in dispute. Alternatively, even otherwise, they have regained possession by exercising their right of worship peacefully, and to the knowledge of the plaintiffs for more than twelve years and thus have perfected their title in the eyes of law. The suit is barred by limitation. Babar is alleged not to have made any endowment or waqf, nor he could. An emperor does not *ipso facto* become the true owner of the whole earth of which he may be a Ruler. There is no such concept that the Ruler becomes the true owner

of all the land in his kingdom ipso facto. The site in dispute admittedly belongs to Hindus for the last thousands of years. The Ruler might have a superior right to levy taxes etc. but could not be deemed to be the actual owner. In the circumstances, the claim of the plaintiffs that Babar by annexation, which is emphatically denied, as there was no annexation as such, became the owner and made a waqf. There was no battle between Babar and Raja of Ayodhya and no question of annexation of territories arose. The general religious notions of Hindu community prior as well as subsequent to Babar have always been that the temple and the Janam Bhumi sthan, i.e., Ramjanambhumi, the birth place of the Creator Lord Ram are and have always been for religious benefit of the Hindus, for the benefit of the truth and good as against evils and vices and the worship for which the place was used and stood dedicated had at no time been taken away. Neither the plaintiffs nor the Muslims acquired the right, title or interest in the suit property. Babar had no right to give religious place of Ramjanambhumi of Hindus in perpetuity to Muslims or create any right in favour of Muslims over the religious place of Hindus, which is against all canons of justice, morality and good conscience. Moreover, a place already dedicated cannot be re-dedicated. The birth place of Lord Ram is located at a particular spot in Ayodhya. It cannot be shifted to any other place in the world. It is of the same status for Hindus as Mecca for Muslims. As Mecca cannot be shifted, so Ramjanambhumi cannot be shifted. On the basis of national policy, while assigning the weightage to a particular place of a particular religion or a particular community, the belief and religious feelings of Hindus in this regard be given supreme importance. A mosque

can be built in any other part. Following the same, the Government of India under the regime of Pt. Jawahar Lal Nehru and Sardar Patel permitted reconstruction of Somnath Temple in Gujarat inspite of opposition of some Muslims fundamentalists. Likewise, the claim of Christian fundamentalists on Vivekanand rock was brushed aside and the Government of India okayed the construction of Vivekanand Mandir near Kanya Kumari. The plaintiffs have no right to maintain the suit and the same is liable to be dismissed.

Additional written statement dated 17.10.1995 of defendant no. 20 (Madan Mohan Gupta) (Suit-4)

70. An additional written statement dated 17th October 1995 says that Babar when invaded India and sought to construct a mosque at Ayodhya, he partly destroyed the said temple. He is said to have constructed a mosque by keeping the lower structure as such and only constructed the upper structure with the *malba* (debris) of the temple. Pillars of the temple were also used in its construction and the figures of Hindu Deities and holy signs over the pillars were the evidence that Hindu temple was not completely destroyed. Thus the temple structure existed and it is wrong to claim that a new mosque was constructed by Babar and handed over to Muslim community. Due to engraved figures of Hindu deities on the pillars of the disputed structure, the Muslims were not offering prayer therein. It is denied that the Muslims offered Namaz for the last more than 46 years. The nature of Ramjanambhumi will never be changed and it shall always remain Ramjanambhumi even if Muslims have offered Namaz therein at some point of time. In case the court directs for reconstruction of demolished structure, it is necessary that it should be built in the original shape and model having 14 pillars with the figures of Hindu Deity, lotus, Swastik, Ram Chabutara,

Sita Rasoi and temple of Ram Lala. Babar never became an Emperor of India. He was only an invader. However, no King or Government had a right to hand over or give religious land to any person, as such, Babar had no right to construct a mosque over Ramjanambhumi and give it to Muslims, nor Muslims have any right to claim Ramjanambhumi.

O.O.S. No. 5 of 1989 (earlier registered as Regular Suit No. 236 of 1989)

71. The aforesaid suit was filed in the Court of Civil Judge, Faizabad on 1.7.1989 by three plaintiffs namely, (1) Bhagwan Shri Rama Virajman at Shri Rama Janam Bhumi, Ayodhya, represented by next friend Sri Deoki Nandan Agarwala, (2) Asthan Shri Rama Janama Bhumi, Ayodhya represented by next friend Sri Deoki Nandan Agarwala and (3) Sri Deoki Nandan Agarwala himself. It was registered as Original Suit No. 236 of 1989 but after transfer to this Court has been renumbered as O.O.S.No. 5 of 1989 (hereinafter referred to as "Suit-5"). Initially there were 27 defendants but for one or the other reasons some of the defendants have been deleted or substituted and presently, the defendants are as under (not arranged according to the serial number of the defendants' arrays)

1. Sri Rajendra Singh
2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya
3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya through its present Mahant Jagannath Das
4. Sunni Central Board of Waqfs, U.P.
5. Sri Mohammad Hashim
6. Sri Mohammad Ahmad
7. State of U.P. through the Secretary, Home Department, Civil Secretariat, Lucknow.

8. The Collector and District Magistrate, Faizabad
9. The City Magistrate, Faizabad
10. The Senior Superintendent of Police, Faizabad
11. The President, All India Hindu Mahasabha, New Delhi.
12. The President, All India Arya Samaj, Dewan Hall, Delhi.
13. The President, All India Sanatan Dharma Sabha, Delhi
14. Sri Dharam Das, Chela Baba Abhiram Das
15. Sri Pundarik Misra
16. Shri Ram Dayal Saran
17. Shri Ramesh Chandra Tripathi
18. Sri Umesh Chandra Pandey
19. Shri Ram Janam Bhumi Nyas,
20. Shia Central Board of Waqfs, U.P. Lucknow.
21. Prince Anjum Quder, President All India Shia Conference,
22. All India Shia Conference, through Sri S.Mohammad Hasnain Abidi, Honorary General Secretary
23. Hafiz Mohd. Siddiqui, General Secretary Jainaitul Ulema Hind, U.P.
24. Vakeeluddin.

Reliefs (Suit-5)

72. The reliefs sought in the suit are (a) a declaration that the entire premises of Shri Ramjanambhumi at Ayodhya, as described by Annexures I, II and III belong to plaintiff Deities and (b) a permanent injunction against the defendants prohibiting them from interfering with or raising any objection to, or placing any obstruction in the construction of the new Temple building at Shri Ramjanambhumi, Ayodhya.

Plaint dated 1.7.1989 (Suit-5)

73. The case set up by the plaintiffs in the plaint is that plaintiffs no.1 and 2 are juridical persons with Bhagwan Shri Ram as the presiding Deity of the place, namely, Shri Ramjanambhumi, Ayodhya. Plaintiff no.3 is a Vaishnav Hindu and seeks to represent the Deity and the Sthan as the next friend. The site of Shri Ramjanambhumi building premises and that of adjacent area of Shri Ramjanambhumi is as per the site plan, prepared by Sri Shiv Shankar Lal, Pleader, in discharge of his duty as Commissioner appointed by the Court of Civil Judge, Faizabad in O.S. No. 2 of 1950 (O.O.S. no.1/1989), alongwith report dated 25.5.1950 filed as Annexures no.1 and 2 to the plaint. Suit No. 2 of 1950 (Suit-1) mentioned above was filed on 16th January 1950 by Sri Gopal Singh Visharad impleading five individuals as defendants no.1 to 5, the State of U.P. and its officials as defendants no.6 to 9. The plaintiff Gopal Singh Visharad died and was substituted by his son, who has been impleaded as defendant no.1. Defendants no. 1 to 5 of suit no. 2 of 1950 have also died and, therefore, their names have been struck off under the orders of the Court in the aforesaid suit. Those persons have not been substituted by anyone. Defendants no.6 to 9 of Suit No. 2 of 1950 have been impleaded as defendants no.7 to 10 in the present suit. A similar suit being O.S. No. 25 of 1950 (Suit-2) was filed after few months of filing the earlier suit no. 2 of 1950 by Paramhans Ramchandra Das who has been impleaded as defendant no.2 in the present suit. Defendants no.1 to 5 in the aforesaid suit were the same persons who were impleaded as defendants no.1 to 5 in O.S. No. 2 of 1950 and, being dead, have not been impleaded in the present suit. The third suit namely, O.S. No. 26 of 1959 (Suit-3) was

filed in the Court of Civil Judge, Faizabad by Nirmohi Akhara, Ayodhya who has been impleaded as defendant no.3 in the present suit. Defendants no.2 to 5 of the said suit are already impleaded as defendants no.7 to 10 in the present suit. Defendant no.1 therein was the Receiver appointed in proceedings under Section 145 Cr.P.C. Rest of the defendants have already died and, therefore, there is no occasion to implead them in the present suit. Then there is fourth suit also, being O.S. No. 12 of 1961 (Suit-4) filed by Central Sunni Board of Waqfs and 8 other Sunni Muslims. Central Sunni Board of Waqfs is being impleaded as defendant no.4 and the remaining surviving plaintiffs no.7 and 9 of the the said suit are already impleaded as defendants no. 5 and 6 in the present suit. Rest of the defendants are other defendants of the said suit and are impleaded as defendants no. 1, 11 to 19.

74. By an order dated 4.8.1951 of the Civil Judge, Faizabad, Suits no. 2 and 25 of 1950 were consolidated. Later on by order dated 6.1.1964, all the four suits were consolidated making suit no. 12 of 1961 as leading case. In suit no. 2 of 1950 an interim injunction was granted on 16.1.1950 permitting continuance of Pooja, etc; the parties were restrained from removing idols in question from the site in dispute and the same is continuing till date. Initially, Sri Babu Priya Dutt Ram, was appointed as Receiver but later on replaced by Sri K.K. Ram Verma in 1970. Thereafter Sri L.P.N. Singh was appointed Receiver and thereafter by order dated 22.11.1988 Sri Jamuna Prasad Singh was appointed Receiver. The suits remained pending for almost two and half decades and could not be decided. The worshippers, however, continued to be prevented from a closer Darshan of the Deity. Hence, an application was filed, which

was rejected by the Court of Munsif, Sadar, but in appeal, vide order dated 1.2.1986, the then District Judge, Faizabad directed the authorities to remove the barrier by opening the locks on the gates 'O' and 'P' of the map annexed as Annexure-1 to the present suit. The plaintiff Deities and their devotees are extremely unhappy with the prolonged delay in disposal of the suits and deteriorating management of the affairs of the Temple and are desirous of having a new Temple constructed, befitting to its pristine glory, after removing the old structure at Shri Ramjanambhumi, Ayodhya. In order to improve the temple administration and to reconstruct a new Temple, the duty of management and performance of religious functions, like Sewa, Archana and Pooja etc., by an unanimous public opinion, was entrusted to Jagadguru Ramanandacharya Swami Shivaramacharya of Kashi who was the Head of the Ramananda Sampradaya to which most of the Sadhus and Vairagis of Ayodhya belong. The trust so reposed in him by the Hindu public was formally declared by him by Deed of Trust dated December 18, 1985, registered on the same day with the Sub Registrar, S.D. No.1, at Delhi, vide no. 16510 in Additional Book No.4, Volume 1156, pages 64 to 69. Besides the aforesaid named Shankaracharya, who declared himself to be the first Trustee for life and Pramukh and Dharmakarta of the Trust, other persons were also appointed as Trustees for life, whose names are mentioned in para 16 of the plaint. Shri Ramjanambhumi Nyas (Trust) is directly interested in the Sewa, Pooja and other affairs of the plaintiff Deities and is impleaded as defendant no.21 in the present suit.

75. The four suits were pending for long. Since they did not result in settlement of the dispute, it led to various

complications. Besides, there are some technical defects also, namely, the Presiding Deities who are juridical persons and others were not impleaded. Plaintiffs have been advised to file a fresh suit of their own for proper adjudication of the dispute relating to Ramjanambhumi, the land and the building appurtenant thereto.

76. The facts stated in the plaint are virtually repetition of the defence taken by defendant no.13 in his written statement and additional written statement filed in Suit-4 but since they are assertions made in the plaint of a suit separately filed on behalf of Deities, we are mentioning the same in brief though it may appear to be more in the nature of repetition.

77. It is averred that from the public record of unimpeachable authority, it is established manifestly that the premises in dispute is the place where Maryada Purushottam Shri Ramchandra Ji Maharaj was born as the son of Maharaja Dashrath of Solar Dynasty. According to the traditions and faith of devotees of Bhagwan Shri Ram, it is the place where he manifested himself in human form as an incarnation of Bhagwan Vishnu. The place has since ever been called Shri Ramjanambhumi by all and sundry through the ages. The place itself has been the object of worship as a Deity by the devotees of Bhagwan Shri Rama as it personifies the spirit of Divine, worshipped in the form of Shri Ramlala or Lord Ram, the child. The Sthan was thus deified and has a juridical personality of its own even before the construction of a Temple building or the intallation of idol of Bhagwan Shri Rama thereat. Hindus do not worship the stone or the metal shaped into the form of their Ishta Deva or the stone of Saligram which has no particular shape at all. They worship the Divine, which has no quality or

shape or form, but can be known only when it manifests itself in the form of an incarnation and, therefore, adopt the form of his incarnation as their Ishta Deva. Some persons meditate upon formless and shapeless Divine and aspire for knowledge of him through his grace. It is the spirit of the Divine which is worshipped by most Hindus and not its material form or shape of an idol. The spirit of Divine in an idol is invoked by the ritual of Pranpratistha. The spirit of Divine is indestructible and ever remains present everywhere at all times for anyone to invoke it in any shape or form in accordance with his own aspiration. Different persons are at different levels of realization of reality. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow Bhakti Marga, and Bhagwan Shri Rama or Bhagwan Shri Krishna is their Ishta Deva. According to faith of the devotees of Bhagwan Shri Rama Lala, it is the **spirit of Bhagwan Shri Ram as the Divine child which resides at Sthan Shri Ramjanambhumi** and can be experienced by those who pray there and invoke that spirit for their spiritual uplift. **That spirit is the Deity.** An idol is not necessary for invoking Divine Spirit. Another example of such Deity is Kedar Nath where there is no idol in the temple. It is the undulating surface of stone which is worshipped there as the Deity. Another example is the Vishnupad Temple at Gaya where too there is no idol. The place is believed to have borne the footprints of Bhagwan Vishnu which is worshipped as Deity. Similarly, at Ayodhya, the very Sthan Shri Ramjanambhumi is worshipped as a Deity through such symbols of the Divine Spirit as the Charan and the Sita Rasoi. The place is a Deity. It exists in this immovable form through the ages and has ever been a juridical person. Actual and

continuous performance of Pooja of such an immovable Deity by its devotees is not essential for its existence as a Deity. The Deity continues to exist so long as the place exists and being land, it is indestructible. The Sthan Shri Ramjanambhumi is an indestructible and immovable Deity who has continued to exist through the ages. Books of history and public record of unimpeachable authenticity establish undisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Shri Ramjanambhumi, Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat by force of arms of Mir Baqi, a Commander of Babar's hordes. The material used was almost taken from the Temple including its pillars of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. There was great resistance by the Hindus and many battles were fought from time to time by them to prevent the completion of the mosque. Presently, it has no minarets and no place for storage of water for Vazoo. Many lives were lost in these battles. The last battle occurred in 1855. The building and the place was in possession and control of Hindus at that time.

78. According to Faizabad Gazetteer published by the Government Press, U.P. (at page 179), Ayodhya is pre-eminently a city of temples. It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ayodhya and little else. These were the Janamsthan temple, the Swargadwar and the Treta-Ka-Thakur and each was successively made the object of attention of different Musalman rulers. The Janamsthan was in Ramkot and marked as the birthplace of Lord Ram. In 1528 Babar came to Ayodhya and halted there for a week. He destroyed the ancient temple and at

its site built a mosque, still known as Babar's mosque. The material of the old structure was largely employed and many of the columns are in good preservation. They are of close-grained black stone, called by the natives 'Kasauti' and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit, both are in Persian and bear the date 935 Hijri. In the same Gazetteer (at page 180), it is mentioned as under:

“This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On many occasions the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janamsthan in force and thence making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made counter-attack and stormed the Janamsthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyrs' resting-place. Several of the king's regiments were present, but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organised a regular expedition with the object of destroying the Hanuman Garhi, but he and his forces were stopped in the Bara Banki district (Gazetteer of Barabanki, p. 168). It is said that upto this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put in front of the mosque and the Hindus, who are forbidden access to the

inner yard, make their offerings on a platform which they have raised the outer one.”

79. Such a structure cannot be a mosque having been made after destroying the temple using its material including Kasauti pillars with figures of Hindu Gods carved thereon. Despite the Britishers treated it as a mosque but it could not become so. Some of the reasons for not treating the building as a mosque are that it is not in accordance with the Tenets of Islam, some of which are stated in para 24, sub paras (A) to (G) which are similar as we have already reproduced while noting down the pleadings in the written statement of defendant no.13 in Suit-4. The plaintiff Deities have continued to be worshipped since ever throughout the ages at Shri Ramjanambhumi. The place belongs to the Deities. No valid Waqf was ever created or could have been created at that place or any part of it, in view of the title and possession of the plaintiff Deities thereon, contrary to the Islam religion. No prayer was ever offered thereat. Treating it a Waqf under U.P. Act No. 13 of 1936, is also illegal for the reasons stated in detail in paras 25 and 26 which are similar to the additional written statement of defendant no.13 in Suit-4. After independence from British Rule, the Vairagis, Sadhus and the Hindu public, dug up and levelled whatever graves had been left in the area surrounding Ramjanambhumi Sthan and purified the place by Akhand Patha and Japa by thousands of persons all over the area. Ultimately, on the night between the **22nd and 23rd December, 1949, the idol of Bhagwan Shri Rama was installed with due ceremony under the central dome of the building.** Since there was no Muslim residing anywhere near the place, no resistance was put by any Muslim to those acts. However, the local authorities acting with *mala fide* lodged a

first information report of their own resulting in initiation of proceedings under Section 145 Cr.P.C. and issuance of preliminary order dated 29.12.1949. The aforesaid attempt was a device to take over the administration of Janambhumi Mandir by the Government by appointing a Receiver which had continued thereafter, though the City Magistrate had dropped the proceedings under Section 145 Cr.P.C. by order dated 30.7.1953 with the finding that there was no apprehension of breach of peace any longer. The appointment of Receiver however continued thereafter under order passed by the Civil Court in pending suits. Plaintiff Deities were not parties in any of the earlier four suits filed by different parties in which the order of appointment of Receiver was passed. The Receiver derived power solely from the orders of the Court and was not authorised to remove any person from the possession or the custody of the premises. In fact, he never interfered with the possession of plaintiff Deities. The Receiver acted like a Shebait and did not disturb the possession of plaintiff Deities. The period of possession of the plaintiffs over the building in question since the installation of Deities, i.e., since the intervening night of 22nd and 23rd December, 1949, is admitted by all concerned parties. Thus, independent of original title of the plaintiff Deities, which continued all along, the admitted position of their possession places the matter of their title beyond any doubt or dispute. Even if any person is claiming title to the property in dispute adversely to the plaintiff Deities, that would have been extinguished by their open and long adverse possession which created positively and affirmatively a proprietary title to the premises in the plaintiff Deities.

80. Hindu public and devotees of plaintiff Deities are keenly

desirous of restoring Janamsthan to its pristine glory. A plan to this effect has already been drawn and the active movement is planned to commence from September 30, 1989. Foundation stone shall be laid down on November 9, 1989. The plaintiff Deities not being a party to any of the suits pending in the Courts were not bound or affected by anything which may be decided or not decided in any of the four suits pending as aforesaid for the last so many years. Plaintiff no.3 felt that the pendency of the said suits may present a hindrance, inasmuch as, a declaration has been sought by the Sunni Board frivolously in suit no. 12 of 1961 that the building at Shri Ramjanambhumi, Ayodhya is a mosque known as 'Babri Mosque' and that the adjacent land is a Muslim Public graveyard, known as 'Ganje Shahidan' and the Court had permitted the plaintiffs of that suit to sue the defendants no.1 to 4 thereof as representatives of the entire Hindu community. The plaintiffs of that suit cannot represent the entire Muslim community as they are all Sunnis and thus only a segment of the Muslim population who have wide ranging differences with other sects of Muslims, particularly, the Shias. Similarly, defendants no.1 to 4 are also not capable of representing the entire world of Hindus. Defendants no. 1 and 2 of that suit have categorically stated that they do not represent anyone else except themselves. The defendant no. 3 has put forward a personal interest in the management of the plaintiff Deities. In the circumstances, the plaintiff no.3 has been advised to file this suit as the next friend for and on behalf of the Deities against all the contending parties. According to the case taken up by defendants no. 4, 5 and 6 and the documents filed by them or on their behalf, the Babri Masjid was a Sunni Waqf but its Mutwallis, being the

descendants of Mir Baqi were Shia Muslims. A judgment dated 30.3.1946 of Sri S.Hasan, Civil Judge, Faizabad in suit no. 29 of 1945 where Shia Central Board of Waqfs U.P. was plaintiff and the Sunni Central Board of Waqfs U.P. was the defendant, has been produced in this context although the judgment has not been relied on or referred in the plaint of suit no. 12 of 1961 to show that Waqf of Babri Masjid was a Sunni Waqf and its Mutwallis were Shias. This position is incomprehensible in law. The waqf created by a Shia Waqif would be a Shia Waqf and could not be a Sunni Waqf. Admittedly, as per their case, the mosque was built by Mir Baqi who was a Shia and that he being a Waqif his heirs were the Mutwallis one after the other, but the Shia Central Board of Waqfs U.P. did not agitate the case any further either because of negligence or collusion in those difficult days of communal conflict immediately before the partition. In any case, the judgment is not binding. According to the report dated 10.12.1949 of Mohd. Ibrahim, Waqf Inspector and an office note signed by the Secretary, Sunni Central Board of Waqfs, U.P. dated 25.11.1948, Sri Javed Husain, the Numberdar of village Sahanwa and in the line of descendants of Mir Baqi was the Mutwalli of the Waqf though he did not act and submit to the jurisdiction of the Waqf Board. Shia Waqf Board and Sri Javed Hussain are also impleaded as defendants no. 22 and 23. Prince Anjum Qader, who is the President of All India Shia Conference has also been impleaded as defendants no. 24 and 25 in the suit.

81. The entire premises of Shri Ramjanambhumi, Ayodhya, besides Deity of plaintiff no.1, has other idols of Deities, i.e., Ram *Chabutara*, the Charan and the Sita Rasoi etc alongwith the

yards, enclosures and buildings, including Sita Koop and all that constitute one integral complex. They have a single identity. The claim of the Muslims represented by defendants no. 4, 5 and 6 is confined to the building and the area enclosed within the inner boundary wall, erected after annexation of Avadh by the British. The rest of the area has not been claimed as Babri Masjid. The claim that the surrounding area is a Qabristan known as Ganj Shahidan is vague and unidentified. There are no graves anywhere for the last fifty years at least. The claim of the aforesaid defendants is hollow and even otherwise they do not represent the entire Muslim community. Defendant no.23, the present Mutwalli of the Babri Masjid since before 1948 had not joined as plaintiff or defendant in Suit No. 12 of 1961 despite well established position in law that only a Mutwalli of a mosque can sue for its possession and even when a worshipper sues in respect of an existing mosque, he must sue for possession being delivered to the Mutwalli and that he cannot ask for possession being delivered to him. Some of the Muslims tried to settle the dispute suggesting for removal of mosque to a suitable place. Though the plaintiffs do not admit that the building at Ramjanambhumi or any part of its precincts had ever been mosque, they are not averse to the proposal of removal of mosque building except the Kasauti pillars. The building will in any case have to be demolished for construction of a new Temple which they propose to construct at the place. The situs of Shri Ramjanambhumi cannot be changed considering the nature and significance of the 'Sthan' as the birth place of Lord Ram. On the other hand, under the tenets of Islam a mosque can be shifted under certain circumstances and its shifting would not in any way be contrary to Islamic tenets.

82. In view of later events, major amendments made in the plaint. It says that due to long delay in disposal of the matter, the Hindu saints from time to time resolved to take steps for construction of a Temple and in a meeting held at Ujjain during May 1992 resolved to start Kar Sewa for the construction of a New Temple. On 9.7.1992, in their assembly at Ayodhya, the resolution was reaffirmed. The entire building was brought down by Kar Sewaks with their bare hands in just about five hours after 11 A.M. on 6.12.1992. The debris was collected and carried away by the Kar Sewaks as holy momentos leaving the place where the Deity of Bhagwan Shri Rama Lala was installed under the central dome of the demolished structure flat in the form of *Chabutara* on which the Deity was immediately reinstalled. The place was enclosed by a brick boundary wall and a canopy was also erected for the protection of the Deity and *Pooja* was continued as of yore. The then Chief Minister of U.P., owning the entire responsibility resigned from his office in the evening of 6.12.1992 and the President imposed President's Rule in the State in the midnight. On 7.1.1993 the President promulgated the "Acquisition of Certain Area at Ayodhya Ordinance" (No. 8 of 1993) and simultaneously referred the matter to the Hon'ble Apex Court under Article 143(1) of the Constitution the following question:

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

83. The object and purpose of both the said measures adopted by the President was to settle the long-standing dispute relating

to the structure. The reference shows that the area in which the structure stood, is located in Revenue Plot Nos. 159 and 160 in Village Kot Ramchandra. The said Ordinance was replaced and re-enacted as Parliament's Act No. 33 of 1993 and came into force w.e.f. 7.1.1993. The plaintiff Deities who are juristic person in law could not, nor do they appear to have been acquired under the said enactment. The rights of Hindus in general and the devotees of Shri Ram in particular, to worship the said Deities also could not have been acquired or taken away. Right to manage their property includes the arrangement to be made for maintaining their worship on the Shebaiti rights which in themselves constitute heritable property under the Hindu Law. The same seems to be taken away and entrusted for the time being to the Commissioner, Faizabad Division, Faizabad, (*ex officio*) under Section 7 of the said Act. The validity of the said Act was challenged in several writ petitions in this Court which were withdrawn by the Supreme Court for hearing and decision alongwith the hearing of the preliminary objection to the maintainability of the Presidential Reference under Article 143(1) of the Constitution of India. The said Act was also sought to be challenged in Connected O.O.S. No. 3 and 4 of 1989 in this Court as well but proceedings were stayed by the Apex Court while withdrawing the writ petition against acquisition from this Court for hearing and decision. Vide judgment dated 24.10.1994, a three Judges Bench of the Apex Court in **Dr. M. Ismail Faruqui (supra)**, declared sub-section (3) of Section 4 of Act No. 33 of 1993 unconstitutional and invalid but upheld the validity of other provisions thereof subject to the interpretation put thereon by the Apex Court and the Reference was returned unanswered to the President of

India. The cause of action for filing the suit accrued day today, particularly recently when the plan of Temple reconstruction is sought to be obstructed by violent action from the side of certain Muslim communalists.

Written statement dated 14.8.1989 of Defendant no. 3 (Nirmohi Akhara) (Suit-5)

84. Defendant no.3 Nirmohi Akhara has filed its written statement dated 14.8.1989 reserving its right to file a supplementary written statement on the ground that due to paucity of time, it could not collect entire material. It is said that the suit is malicious and designed to damage the title and interest of the defendant. Plaintiff no.3 has no right to act as next friend of plaintiffs no.1 and 2. Plaintiffs are not even a juridical person nor have any personal right to file the suit. It is denied that Bhagwan Shri Ram is also called Ram Lala Virajman. Impleadment of plaintiff no.1 is also said to be wrong. Bhagwan Shri Ram is said to have been installed not at Janambhumi but in the Temple known as Janambhoomi Temple for whose delivery of charge and management, the defendant had filed suit no. 26 of 1959 (Suit-3). Virajman is said to be neither a name or title of any Deity and is wholly vague. Sthan Shri Ramjanambhumi, Ayodhya is also said to be a meaningless phrase as 'Sthan' simply means a place and not a juridical person. It is also denied that plaintiff no.3 (Deoki Nandan Agarwal) is a Vaishnavite. He is not even a worshipper of the Deity installed in Shri Ramjanambhumi Temple and has no right to sue, nor can he represent the Deity or the so-called Sthan. He is not at all interested in the welfare of the Deity in question. He lives in Allahabad and is not at all interested in Shri Ramjanambhumi Temple but to obtain cheap popularity, maliciously, by raising a slogan of constructing a new Temple

has arranged to spend Rs. 25 Crores. The temple belongs to defendant no.3. However, the birth place of Lord Ram is not disputed. The whole world knows that his birth place is in Ayodya where the Temple Ram Janambhumi stands in Mohalla Ramkot, Ayodhya which is in dispute in various suits transferred to this Court. Muslims claim thereat a mosque while defendant no. 3 claims it to be a Temple of Bhagwan Shri Ram under the charge and management of Nirmohi Akhara as Shebait of Bhagwan Shri Ram. Annexures I, II and III to the plaint are incorrect. Many important places of the temple have not been shown in the said annexures. They pertain to another suit and have no evidentiary value. It is said that Nirmohi Akhara alone has right to control, supervise and repair or even to reconstruct the temple, if necessary. Knowledge of any trust is denied. It is said that the Trust has no relevance at all to the dispute. Inclusion of the name of Mahant Ramkewaldas as Trustee would not make any difference so far as the rights of defendant no.3 are concerned. Relevance and continuity of the Trust of the disputed property is denied. It is, however, not disputed that no prayers have ever been offered by any Muslim in the Ramjanambhumi Temple which is claimed by some Muslims as mosque though it never was. The idol of Bhagwan Ram is said to have always existed over there. Proceedings under Section 145 Cr.P.C. were initiated illegally affecting the rights of defendant no.3. There was no movement for construction of a new Temple in place of the present temple nor anyone else has a right to construct a new temple in its place. The plaintiffs have no real title to sue. They have wrongly been advised to file the suit only to harass defendant no.3 and try to encroach upon its rights of management of the temple. The

entire premises belong to Nirmohi Akhara. There is no question of any mosque as Babri Masjid or any Qabristan thereat.

Additional written statement dated 20.4.1992 of Defendant no. 3 (Nirmohi Akhara) (Suit-5)

85. An additional supplementary written statement dated 20.4.1992 has also been filed stating that site plan annexure II to the plaint does not bear any plot number nor is it bounded so as to give definite identity of the property. The Temple Shri Vijay Ragho Ji Sakshi Gopal has never been subject matter of any of the suit i.e., O.O.S. Nos. 3 of 1989 or 4 of 1989, pending before this Court. Sumitra Bhawan is another temple shown in the site plan, which is the temple of Sheshawatar Laxmanji Maharaj which has been in possession of Mahant Raj Mangal Das, one of the Panch of Nirmohi Akhara. Nazul Plot no.588 measuring 1-6-13-15 Kachwanceis of Mohalla Ram Kot is recorded with Deity Laxamanji Maharaj through Ramdas Nirmohi who is Guru of Raj Mangal Das. Mahant Ramdas is recorded in settlement plot no. 168 to 174 as Qabiz of Sumitra Bhawan. Similarly, Lomash Chaura Mandir, Sita Koop Mandir, Kuti shown in the said map have distinct Deity of Bhagwan Ram Lalaji managed by other Panches of Nirmohi Akhara, namely, Mahant Dwarika Das, Mahant Naval Kishore Das and Ram Gopal Das. Sankatmochan Mandir has been omitted in the map whereas it did exist on the date of filing of suit. It has its Deity Sankatmochan Hanuman Ji and Thakur Ram Janki represented by Sarbarakar Ram Dayal Saran, Chela of Ram Lakhan Saran, who was Naga Chela of Golaki Ram Lakhan Das one of the old panch of Nirmohi Akhara. The outer Sahan carried a small temple of Bhagwan Ramlalaji alongwith other place, regularly worshipped according to prevailing customs amongst Ramanandi Vairagies. The outer part of the temple Ram Lalaji and Deities have always

been in management and charge of Nirmohi Akhara as Shebait till this outer portion with Bhandar was attached under Section 145 Cr.P.C. A Receiver was appointed in Suit No. 239 of 1982, Shri Ram Rama Nandi Nirmohi Akhara Vs. K.K. Ram Verma etc. due to lootpat committed by Dharam Das. Plaintiff no.3 has himself named Dharam Das as witness. The suit by plaintiffs no.3 is not maintainable for want of possession and is also barred by Section 34 of Specific Relief Act. The outer portion consists of Bhagwan Ram Lala on Shri Ram *Chabutara* along with other Deities, “Chhathi Pujan Sthan” and 'Bhandar' (store) with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of wall carrying the present municipal nos. 10/12/29 old 506, 507 and older 647 of Ram Kot Ward of Ayodhya City, which have been referred in many litigations since 1885 till Regular Suit No. 239 of 1982 in the Court of Civil Judge, Faizabad. The suit is bad for want of necessary party, as “Nirmohi Akhara” was also held in possession and management of the temple in every case. Bhagwan Ramlalaji installed by it on the Ram *Chabutara* is a distinct legal entity owned by defendant no.3. Attachment of the property was wholly illegal and bad. Plaintiff no.3 is an office bearer of V.H.P. and is also a member of defendant no.2, the alleged Nyas (Trust), who has no concern with the matter. They are trying to usurp the property of defendant no.3. Outer portion with surrounding temples, were illegally acquired by VHP backed by B.J.P. Government, vide notification dated 7.10.1991, which is under challenge in a writ petition. However, it is void and illegal in view of section 52 of the Transfer of Property Act.

Ind additional written statement dated 13.5.1994 of Defendant no. 3 (Nirmohi Akhara) (Suit-5)

86. The second additional written statement dated 13.5.1994 has been filed on behalf of defendant no.3 challenging the very existence of alleged Trust. It is illegal and void. Jagadguru Ramanand himself had condemned the alleged Trust. The disputed property belongs to Nirmohi Akhara and the Trust is a non-constitutional body devoid of any title of disputed property.

Written statement dated 26/29.8.1989 of Defendant No. 4 (Sunni Central Board of Waqfs) (Suit-5)

87. The defendant no. 4 has filed a very detailed written statement dated 26/29.08.1989. Denying the claim of the plaintiffs about being juridical persons, it is said that neither of the plaintiffs are juridical persons nor there is any presiding deity of Shri Ram Chandraji at the place in dispute nor the plaintiff no. 3 has any locus standi or right to represent the so called and alleged deity and Asthan as next friend. The plaintiffs no. 1 and 2 have no right to file this suit as they are not legal personalities. It is denied that there has been any installation of deity within the premises of the disputed place of worship known as Babri Masjid. The idol in question, it is said, was stealthily and surreptitiously kept inside the mosque in the night of 22/23.12.1949 by some mischief-mongers against whom a first information report was lodged at Police Station Ayodhya on 23.12.1949. Plan and report submitted by Sri Sheo Shanker Lal, Commissioner made part of the plaint do not depict the correct position of the spot hence cannot be relied upon for identification and description of the property in suit. The plaintiffs are obliged to give correct boundaries of the property in suit and the plaint is defective in this respect.

88. Filing of Suit-1 by Sri Gopal Singh Visharad and Zahoor Ahmad is not disputed but rest of the contents of para 3 of the plaint are denied. It is denied that the original plaintiff of the

said suit has died recently. It is said that in fact he had expired several years ago and no application for substitution was filed within the prescribed time hence the suit stood abated much before 1986. The order of substitution passed in favour of the defendant no. 1 is illegal and improper. The names of Muslim defendants of the said suit is said to have been wrongly struck off. The heirs of the Muslim defendants were liable to be substituted in place of the original Muslim defendants. For verification of the contents, the record of the aforesaid suit itself may be perused.

89. Similarly, filing of Suit No. 25 of 1950 (Suit-2) is not disputed but the rest of the contents of para 5 may be verified from the plaint of the suit. The Suit No. 25 of 1950 (Suit-2) also suffers from the defects as in Suit-1.

90. The filing of Suit-3 is also not disputed but in respect to the averments contained therein it is said that the same may be verified from the plaint of the suit. The idols of Shri Ram Chandraji were never installed in the premises of Babri Masjid which has wrongly been described as Janam Bhumi. The suit is defective and not maintainable. Heirs of Muslim defendants have not been substituted though the cause of action survives against them and all of them ought to have been impleaded. The property in suit is a mosque and it has never been admitted that the said building was a temple.

91. Filing of Suit No. 12 of 1961 (Suit-4) by defendant no. 4 and some other Muslims is also not disputed but for the reliefs claimed therein it is said that the plaint of the suit itself may be perused. Any defect in the suit is denied. The Suit-4 has been filed in representative capacity. The application for permission to sue in representative capacity was allowed by the Court.

92. All the four suits have been consolidated and Suit-4 is the leading suit. There is no question of Pooja or Sewa in the premises in question since the alleged deities did not exist in the building in question and the idols kept therein could not be treated as deities. Only a restricted Pooja was carried on 16.01.1950 which cannot be treated as Sewa and Pooja of the alleged deity. There is no likelihood of the suits being decided in a manner that a close Darshan of the idols would be permissible. Defendant no. 20 had no right to title or locus stand to move the application for opening of the gate of the mosque for close Darshan. He was not a party in any of the aforesaid two suits and had no *locus standi*. The District Judge, Faizabad illegally passed order dated 01.02.1986 whereagainst two writ petitions are pending in this Court. The building in dispute is not Janambhumi of Shri Ram Chandraji and no idols of Shri Ram Chandraji were installed therein, hence, there arises no question of right or claim of defendant no. 20 or anyone else to perform Pooja or Darshan thereover. The fact is that the property in dispute is an old mosque known as Babri Masjid, constructed during the regime of Emperor Babar. There is no question of construction of any new temple over the site of Babri Masjid. The plaintiff or anyone else has no right or locus standi to claim removal of old structure of mosque. Prior to 22/23.12.1949, no idols were kept in the said mosque. It was never used for performing Pooja and Darshan etc. prior to the aforesaid date. Due to unnecessary and unusual delay in disposal of the suits and continuance of the order of attachment of the mosque for the last about 39 years condition of the building has also deteriorated. The Receiver appointed by the Court is not taking proper interest in maintenance of the building. Despite Court's

order, no repairs of the buildings has been undertaken for the last several years. The alleged desire of removing the structure of mosque and construction of a new temple on the site is wholly uncalled for, unwarranted and mischievous. Any such attempt is fraught with very dangerous consequences besides being an offence and also in violation of the restraint order of this Court in Writ Petition No. 746 of 1986, Mohd. Hashim Vs. State of U.P. and others. Since there existed no temple, the question of improvement in the administration or reconstruction thereof or managing performance of alleged Sewa and Pooja does not arise. Since there is no deity, the question of protection, renovation, reconstruction and development of alleged temple premises does not arise. The building in question being a mosque, the occasion for creation of any Trust does not arise. The entire exercise is based on imaginary concept of Ramjanambhumi Temple though no such temple ever existed over the premises in question. The so called Ramjanambhumi Nyas has no connection with the building in dispute. It is not a legal person and there is no question of impleadment of the Trust as defendant no. 21. Even the idol surreptitiously placed on 22/23.12.1949, has not been installed in accordance with the traditions and rituals of Hindu Law. The ceremony prescribed by Hindu Law for installation of Idols has not been observed. The idols kept in mosque are not legal entity and question of their impleadment does not arise. The suit is barred by time having been filed after more than 39 years after the attachment of the property in suit and, therefore, is not maintainable. There is no public record, much less any record of unimpeachable authority, showing that the premises in dispute is the place of birth of Shri Ram Chandraji. There is no historical or judicial

record to testify the said fact. The religious books as well as the writings of Hindu Scholars make it very doubtful whether the personality of Shri Ram Chandraji is historical personality. There are several versions about the place of birth of Shri Ram Chandraji. It is not at all settled even amongst the Hindu Scholars as to where and in what period such a religious leader known as Shri Ram Chandraji was born. The booklets circulated at Ayodhya by Vishwa Hindu Parishad and other Hindu organisations as well as other books of Hindu mythology describe the period of Shri Ram Chandraji as that of Treata Yug, meaning thereby that he was born more than nine lakh years ago. According to Hindu mythology there were three Maha Pralayas during which period the entire earth got submerged into water. Accordingly, as per Hindu Mythology itself no specific place can be said to be the birth place of Shri Ram Chandraji. The greatest author in the recent history on Shri Ram Chandraji is Goswami Tulsidas who has written Ramcharitmanas during the regime of Mughal Emperor Akbar, the grandson of Mughal Emperor Babar. The said book was composed by Goswami Tulsidasji at a place known as “Datun Kund” situate at a distance of about 1 km. from Ayodhya in District Faizabad. Had there been any birth place of Shri Ram Chandraji in Ayodhya, Goswami Tulsidasji must have specifically mentioned about the same in his book Ramcaritmanas. As a great devotee of Shri Ram Chandraji, Goswami Tulsidas cannot be expected to have skipped over, concealed or kept quiet over such an important fact of life history of Shri Ram Chandraji. If there would have been any iota of truth about the story of Shri Ramjanambhumi Temple at Ayodhya at the site of Babri Masjid during the regime of

Emperor Babar or prior thereto, and, had there been any incident of demolition of such temple and construction of Babri Masjid over the same, it would have been mentioned by Goswami Tulsidas in his book. He also would have taken up this matter in the Court (Darbar of Emperor Akbar) who must have undone the alleged wrong. The Court of Emperor Akbar was full of advisers, counsellors and ministers of Hindu community and his own Queen was Jodha Bai, a Hindu lady. Even the location of present Ayodhya does not tally with the location of Ayodhya as given in Valmiki Ramayan. This creates doubt about there being any place of birth at the present Ayodhya situate in District Faizabad. According to Valmiki Ramayan, Ayodhya was situated about a distance of one and half Yojan (equivalent to about 14-1/2 miles) from river Saryu flowing East to West which is presently running quite adjacent to the present Ayodhya from West to East. It is incorrect that any historical or other evidence exists to the effect that Shri Ram Chandraji manifested himself in human form at the place where idols are kept presently in the mosque in question. Prior to December, 1949, the place known as Babri Masjid was never called as Shri Ramjanambhumi. In 1885, Mahant Raghubar Das, Mahant of Janam Asthan of Ayodhya, filed a suit against Secretary of State for India in Council and Mohd. Asghar, Mutawalli of the mosque in the Court of Sub-Judge, Faizabad. He annexed a site plan alongwith plaint wherein the mosque in question was specifically mentioned in the western side of Chabutra in respect whereof the suit was filed seeking permission to erect temple over the said Chabutra but could not succeed as the suit was dismissed on 24.12.1885 by Sub-Judge, Faizabad. The first appeal was dismissed by District Judge, Faizabad and second

appeal was dismissed by the Judicial Commissioner of Oudh. The suit was filed in representative capacity on behalf of other Mahants and Hindus of Ayodhya and Faizabad. The plaintiff, therefore, cannot claim that any portion of Babri Masjid has been deified or has become a juridical personality by the name of Asthan Ramjanambhumi. There is no installation of any deity at the premises in question. The plaintiffs are estopped from claiming the mosque in question as Janam Bhumi of Shri Ram Chandraji. The predecessors of the plaintiffs namely, Mahant Raghubar Das confined his claim to Chabutra (platform) of 17 ft. x 21 ft. outside the mosque as being Janam Asthan of Shri Ram Chandraji. There already exists another temple known as Janam Asthan Temple at a distance of 100 yards only from Babri Masjid and from its southern side. Mythological concept of incarnation etc. is irrelevant for the purpose of suit in question. A Hindu Officer himself has lodged first information report about surreptitious placement of some idols in the mosque in the night of 22/23.12.1949 by some mischievous elements, which resulted in registration of a criminal case as also initiation of proceedings under Section 145 Cr.P.C. due to communal tension flared up in the area concerned. The building was attached on 29.12.1949. A Supurdagar/ Receiver was appointed for its care and custody who drew a scheme of management which was submitted to the Court on 05.01.1950. The spirit of Shri Ram Chandraji as the divine child cannot be said to reside at any place or in the idol kept inside the mosque. No idol or place of mosque can be said to be Deity. There is no comparison of Kedarnath or Vishnupad Temple of Gaya with the Babri Masjid. There is no Charan or Sita Rasoi within the premises of Babri Masjid. The place known as "Sita Rasoi" is

situate outside the premises of the mosque. No Pooja was ever performed inside the mosque at any time prior to 23.12.1949. There was no temple of Maharaja Vikramaditya's time at the site of Babri Masjid. No authentic book of history or public record of unimpeachable authenticity is citable in this respect. The averment of construction of mosque in question at the site of temple or after destruction of any temple by force or arms is incorrect. Use of material after alleged destruction in the construction of mosque is also denied. It is also denied that the pillars of the mosque were brought out of Kasauti or touchstone with figures of Hindu God and Goddess carved on them. Such pillars are available at some other places also. The alleged resistance put up by Hindus or battle fought from time to time to prevent construction of mosque is also denied. Regarding the shape, it is said that there is no requirement of any specific type of construction or structure for a mosque. Existence of minarets or domes is not at all required for any mosque. There is no necessity of any place for storage of water for Vazoo. In the close vicinity of Babri Masjid a well is there for taking out water for Vazoo. There are several other mosques in India and even in Faizabad which have no minarets or domes. One of such mosques is situate within the premises of Dargah Hazrat Jahangir Samdani in Kachaucha Shareef, District Faizabad in which there are no domes or minarets. Another is in District Lucknow in which there are five domes but no minarets. No life was lost in any battle fought in respect of Babri Masjid and no battle had taken place in respect thereto till 1885. The place in question was not in possession and control of Hindus since the date of its construction during Babar's time. The facts contained in Faizabad Gazeteer are based on hearsay and is not true. They

are incorrect and are unreliable piece of evidence. Bitterness had been created between Hindus and Muslims in respect of the mosque situate inside Hanuman Garhi. It was on the report of the demolition of that mosque that some muslims tried to take up arms under the command of Maulvi Ameer Ali but they could not succeed on account of the army of Nawab as well as British posted for facing such challenge. The expedition of Maulvi Ameer Ali has no concern with Babri Masjid. The observations to the contrary in the Gazeteer of Faizabad and Barabanki are incorrect and unreliable. At no point of time Hindus and Muslims both worshipped at the place known as Babri Masjid. Had it been so, it would have been mentioned by Mahant Raghubar Das in his plaint of Original Suit No. 61/280 of 1885. The quotation of Quran in para 24(A) is totally out of context and it is said that it is not even correct and complete. The land in question undoubtedly belong to the State when the mosque in question was constructed on behalf of State and as such it cannot be said that it could not be dedicated for the purpose of mosque. Emperor Babar was a “Sunni Muslim”. The Babri Masjid was built on the vacant land in the State territory of Emperor Babar. It did not belong to anyone and could very well be used by his officers for the purpose of mosque specifically so when the Emperor Babar himself consented and gave approval for the purpose of construction of mosque. The site in question was never the site of any temple and no temple was destroyed by Meer Baqi. Had any such incident taken place, the same would have been reported in the authentic books of Mughal history. It is denied that the entry of mosque would not be possible except after passing through the place of Hindu worship. The concept of mosque has wrongly been described

and, therefore, denied. There is no such condition that the mosque should be constructed at a place of peace, quiet and near a place having sizable Muslim population. It is also incorrect that the mosque cannot be built in a place surrounded by the temple where the sound of music and Konch shell, Ghanta Ghariyal would disturb the site of peace of that place. There is no specific shape of building of a mosque and no mandatory requirement of minarets. There is also no requirement of any specific place for calling the "Azan". The contents in para 24(E) of the plaint are incorrect. Non existence of graves near the building of the mosque is denied. The graves were existing in Ganj-Shaheedan but have been mostly demolished by Bairagis and that is how they are now not visible. The mosque in question was used for offering regular five times prayer (namaz) up to 22.12.1949 and even Friday prayer was offered therein till 16.12.1949. The Imam of the said mosque who used to lead prayers in 1949 namely, Maulvi Abdul Ghaffar son of late Mohd. Abdul Qadir has filed his affidavit in Writ Petition No. 746 of 1986, Mohd. Hashim Vs. District Judge, Faizabad and others. It is denied that no valid Waqf of the mosque was ever created. The possession of Muslims remained uninterrupted and continuous from the date of construction of the mosque till 22.12.1949. The alleged right or title, if any, of anyone else stands extinguished on account of adverse possession of Muslims for more than 420 years. The alleged communal riot of 1934 has nothing to do with Babri Masjid. However, some Bairagis damaged a portion of the mosque. The District Magistrate, Faizabad got the same repaired through a Muslim contractor. It is incorrect to say that after 1934 no one dared to offer Namaz in the said mosque. It is denied that there was no

Mutawalli or Moazzim or Imam or Khatib or Khadim of the said mosque. The Mutawalli of the mosque finds mention even in the Gazette of 1944 declaring the said mosque as Waqf. Even at present there is a Committee of Management of the said mosque appointed by defendant no. 4. The graves existing near Babri Masjid were dug-up and levelled mainly after 1949 and not just after independence. In the night of 22/23.12.1949 some Bairagis forcibly and illegally entered the mosque and kept idols therein below the middle dome of the mosque. Some of the culprits are named in the first information report. It is incorrect that no Muslim has been residing near Babri Masjid and no resistance was offered by them. In fact Muslims reside not only behind the mosque but also in the localities situated in the southern and eastern side of the mosque. Since no one was aware of the incident which took place in the late hours of the night, hence could not offer resistance at that time. On 23.12.1949 they came to know of the said incident, collected and insisted for offering Friday prayers in the said mosque but the District Magistrate present over there persuaded them not to offer prayer and assured that the idols stealthily kept in the mosque would be removed by the next Friday. In the circumstances, the Muslims exercised restraint being law abiding citizens and started pursuing legal remedies. This resulted in the proceedings under Section 145 Cr.P.C. which were not dropped but has been consigned to record due to filing of civil suit and were likely to be revived after decision of the civil suit. The idols were kept in connivance of some district officials, the then District Magistrate, Sri K.K. Nayyar. The then Prime Minister and Chief Minister asked the District Magistrate, Faizabad to get the idols removed from the mosque. One Akshay Bramhachari, the then

President of the District Congress Committee, Faizabad went on fast to press his demand for removal of idols from the said mosque but deferred the same on the assurance given by the then Chief Minister, Pt. Govind Ballabh Pant. The proceedings under Section 145 Cr.P.C. were dropped on 30.07.1953 after recording the finding that there was no apprehension of breach of peace of any order any longer. Due to the injunction order restraining removal of idols, the same could not have been removed. It is incorrect to say that the Receiver acted like a Shebait. There is no question of creating any right in favour of the plaintiffs due to alleged long adverse possession. The theory of restoration of the alleged Janam Asthan is wholly imaginary. Mahatma Gandhi never considered or treated Babri Masjid to be Janam Asthan of Shri Ram Chandraji. His disciples have also disapproved the forcible placement of idols in the mosque. The demand of demolition of mosque and construction of a new grand temple of Shri Ram Chandraji is being raised by some disgruntled elements having vested interest and they are misleading the large number of persons as if the said Babri Masjid is the birth place of Shri Ram Chandraji. The alleged wide ranging differences amongst Shias and Sunnis sects of the Muslims in respect of mosque in question is incorrect. The Shia sect has nothing to do with the Waqf of mosque in question and this matter has already been settled by Civil Judge, Faizabad in 1946 holding that the Babri Masjid is a Sunni Waqf. It is incorrect that Mutawallis of mosque in question were Shia Muslims or the distant relatives of Mir Baqi. The judgement dated 30.03.1946 in Suit No. 27 of 1945 given by Civil Judge, Faizabad in this respect is final. There is no legal bar in appointment of a Shia Mutawalli to a Sunni Waqf or vice versa.

A person who constructs a mosque or under whose supervision a mosque is constructed does not become a Wakif of the said mosque ipso facto specially when an Officer or General of a Army of a King constructs a mosque on behalf of the King. The Waqf would be said to have been created by the Emperor and not by the Officer. From the record of Sunni Waqf Board it is not borne out that Sri Jawwad Hussain was ever recorded a Mutawalli of the said Waqf. He is wrongly impleaded as the defendant in suit. Similarly, defendants no. 22, 24 and 25 have also been wrongly impleaded. The suit is bad for misjoinder of parties. The alleged Charan and Sita Rasoi do not constitute one integral complex having a single identity. Defendant no. 23 is not admitted to be the present Mutawalli of Babri Masjid since before 1948. At present the mosque in question has got a Managing Committee appointed by defendant no. 4. It is incorrect that a Mutawalli of the mosque can sue for its dispossession. The "Board" is a statutory body created by U.P. Muslim Waqf Act, 1936 and is continuing under the U.P. Muslim Waqf Act, 1960. Under Section 19 the Board has general powers of supervision of all the Waqfs, institute and defend suit and proceedings in any Court of Law relating to all Waqfs etc. It is denied that Anjum Qudar, defendant no. 24, or any sensible and sizeable section of the Muslim community would not approve the course adopted by defendants no. 4 to 6. Any responsible Muslim has not made any suggestion of removal of mosque to any other place. The concept of removal of the structure of mosque to any other place is quite foreign to the Muslim law and there is no possibility of any such course being accepted by the Muslims in respect of the mosque in question. The concept of mosque is that the entire area below as

well as above the portion of the mosque remains dedicated to God Almighty. It is not the construction or structure of a mosque alone which is important but more important is the land on which mosque stands constructed because the land also stands dedicated to God Almighty and the same cannot be removed. If any person bearing the Muslim name makes any suggestion for removal of mosque to any other place, that is of no value and significance as the principles of Islamic law do not permit any such removal. It is also preposterous to suggest that the building in question will have to be demolished for construction of a temple in place thereof. While making such a statement, the plaintiffs do not appear to be conscious about the grave and disastrous consequences that will follow, if any such proposal is given effect to. The Muslims will never tolerate demolition of mosque for construction of a temple at the site thereof. There is no dispute that all human beings including Muslims and Hindus are creation of one and the same God. The plaintiffs of Suit-4 as well as other Muslims also believe in the policy of living in amity and goodwill with members of all communities and religious denominations. That, however, does not mean that the gesture of goodwill and amity should be shown to such persons, who are bent upon demolishing mosque. The site in question has nothing to do with the place of birth of Shri Ramchandraji, and, as such, the same has got no significance of the alleged Asthan Shri Ramchandra Janam Bhumi. The entire propaganda and publicity in this respect is being carried out by Vishwa Hindu Parishad, Ramjambhumi Yagya Samiti, their associates and allied bodies and it is nothing but sheer concoction. It is being done with vested interests and political ambitions. It is not at all difficult for the plaintiffs of

the suit as well as for the defendants of Regular Suit No. 12 of 1961 to abandon their claim over the mosque in question and to construct magnificent and grand temple of Shri Ramchandraji at any other free site which may not be property of any other person or community. It is incorrect that under the tenets of Muslim law, a mosque can be shifted under certain circumstances. No cause of action accrued to the plaintiffs as they were never associated with the management and administration of the property in question. Even if any cause of action in respect of the property in suit can be said to have accrued to plaintiff no. 3, the same must be deemed to have accrued in December, 1949, when the property in question was attached and when the Muslims had categorically denied the alleged claim of Hindus to perform Pooja in the mosque in question and that being so, the present suit is highly barred by limitation. Plaintiff no. 3 is required to give specific date, month and year when the alleged cause of action accrued as no such description has been given. The averment of cause of action is incomplete and defective. The plaint is liable to be rejected as there is no cause of action. The suit is not properly valued. The Court fee paid is insufficient. The plaintiffs are not entitled to any relief.

93. In the additional pleas, it is said that plaintiffs no. 1 and 2 are neither Deities nor can be treated as juristic person. Plaintiff no. 3 cannot claim himself to be the next friend of Bhagwan Shri Ram. None of the plaintiffs has any right to file the suit. The plaint lacks the material facts and particulars. Notice under Section 80 C.P.C. was not given to the defendants no. 7 to 10. The property in question is a Waqf property registered as a Waqf in the Register of Waqfs maintained by Sunni Waqf

Board under Section 30 of the Waqf Act. A Gazette notification of this effect was issued by the State Government in 1944, and even in the revenue and other Government records, the same stands recorded as a mosque. The State Government and its officers also have accepted it as mosque in their written statement filed in Suit 1 and 2. Even the reports of Archaeological Experts have been to the effect that there appear to be no symptoms of human habitation in the present Ayodhya of more than 700 B.C. There also appears to be no symptom of any Fort or Palace or old temple at the site of Babri Masjid. The suit is barred by Section 34 of Specific Relief Act as well as mis-joinder and non-joinder of parties.

Written statement dated 14/21.8.1989 of Defendant no. 5 (Sri Mohammad Hashim) (Suit-5)

94. Defendant no. 5 has filed a separate written statement dated 14/21.8.1989 and basically the averments therein are similar to that contained in the written statement of defendant no. 4. The additional averments, contained therein, are that existence of mosque as Babri Masjid is established by records-historic, judicial and revenue. There is no evidence, historic or otherwise, to indicate that Shri Ram Chandraji was born at the place in dispute. It is all a later concoction and there is no question of devotees. The so called Asthan is not a juristic person, hence, the suit is not maintainable. The concept of Hindu religion as well as philosophical and spiritual elements sought to be invoked by the plaintiffs in para 21 and 22 are irrelevant. The quotation of Quran in para 24 is incorrect. There is no evidence of demolition of any temple. The entire complex belongs to the waqf Babri Masjid. According to inscriptions in the mosque, the Babri Masjid was constructed by Mir Baqi, one of the Commanders of Babar in 1528 and since then it has been

in use as mosque. The Muslims always regularly offered namaz in it till the attachment. Some averments of the plaint contain a threat and constitute contempt of courts of law including an excitement to violence and disregard for the rule of law. Lord Rama, in whose name controversy in question has been created, according to authoritative text of the historians and other scholars of Hindu religion is mere an epic, an imaginary figure and never existed in fact. There have been authoritative pronouncements by various historians that Lord Rama never existed. It is mere an epic. Besides above, no period and place could be fixed till date. After long research Holy Barahmins have come to conclusion that it is all mere an epic and legend. As per Valmiki's Ramayan, which is supposed to be the only authoritative source of Lord Rama, the city Ayodhya, where the property in question situate, is not the place described in that book. It is incorrect that there existed any temple which was demolished at the behest of Babar and at that site Babri Masjid was constructed. Shri Tulsidas, author of Ramcharitmanas has elevated the status of Lord Rama from Maryadapurushottam to Bhagwan in his book, which was written after construction of Babri Masjid, at Datoon-Kund in Ayodhya itself which situates at a short distance from the Babri Masjid. Before Tulsi's Ramcharitmanas, there were no temples of Lord Rama in any part of India and instead there were temples of other Gods and Goddesses. The contention, therefore, regarding demolition of Ram Mandir is baseless, designed to thatch up communal disharmony and hatred between the two communities. Recent scientific investigations and C-14 test, which is a radio carbon dating method, have revealed that the stones used in the building in question are less than 500 years in age. The claim that the

temple was demolished and same material was used to build the mosque, therefore, stands falsified. The property in question is continuously recorded in revenue records from prior to first settlement and the said entry remained unchallenged and is final. Notification under the Waqf Act, 1936 was issued after due enquiry and survey. The same has not been challenged. The mosque, since very beginning, was receiving grant from Emperor Babar, which was continued by the British regime also. Suit No. 57 of 1978 filed on behalf of and in the name of alleged Deity for the very property has been dismissed by the Court of Munsif, Faizabad and the said order has not been set aside by any other Court and, hence, it operates as res judicata. Suit on behalf of a Deity cannot be filed through next friend and, therefore, is not maintainable. No period of birth of Ram Lala has been given. Lord Rama, Janki or any person having faith in them has no concern with the land in question over which Babri Masjid exists and the adjoining area of graveyard. The mosque and the graveyard cannot be the subject matter of any other type of Pooja. Practice and Astha could not give a right of demolition of mosque. Manifestation in human form is beyond comprehension and vague. Property, once vested in the God, becomes "Waqf property" and cannot be divested.

Additional written statment dated 22.8.1995 of defendants no. 4 and 5 (Sunni Central Board of Waqfs and Mohammad Hashim) (Suit-5)

95. It contains reply to the amended paragraphs added in the plaint, i.e., paragraphs no. 35-H to 35-U. Demolition of Babri Masjid is a pre-planned, deliberate and intentional act on the part of miscreants and criminals. So called construction of make-shift temple and placement of idols therein can not be described as Deity under Hindu law. Most of the paragraphs of

the amended plaint have been denied being irrelevant, vexatious and frivolous and it is said that the plaintiffs have no right, title or claim over the property in suit. It is also said that on removal of the idols on 6.12.1992 from the site, the claim, if any, stood extinguished.

Written statement dated 21/22.8.1989 of Defendant no. 6 (Mahmood Ahmad) (Suit-5)

96. Defendant no. 6, Mahmood Ahmad, vide his application dated 21/22.8.1989 has adopted the written statement of defendant no. 5 and has said that he does not propose to say anything further.

Written statement of Defendant no. 11 (President, All India Hindu Maha Sabha) (Suit-5)

97. It has supported the case of the plaint and said that the All India Hindu Mahasabha is cooperating for construction of new Ram temple at the site in question for performing Pooja etc.

Written statement dated 14.8.1989 of Defendant no. 17 (Ramesh Chandra Tripathi) (Suit-5)

98. Similarly, defendant no. 17, vide his written statement dated 14.8.1989 has supported the plaint in its entirety.

Written statement dated 18.9.1989 of Defendant no. 23 (Sri Javed Husain) (Suit-5)

99. Defendant no. 23, though has filed his separate written statement dated 18.9.1989 disputing the claim of the plaintiffs, but its reply is virtually similar to that as given in the written statement of defendant no. 4.

Written statement dated 4.9.1989 of Defendant no. 24 (Prince Anjum Quder) (Suit-5)

100. The written statement dated 4.9.1989 of defendant no. 24, while denying the claim of the plaintiffs, states that the holy Deity and Asthan cannot be made party to the suit. Plaintiff no. 3 has not secured any authority to file suit on behalf of plaintiffs no. 1 and 2. The defendant considers Lord Ram above the

jurisdiction of the Court and it is sacrilege to drag the name of Lord Ram into these mundane proceedings. Plaintiff no. 3 has impleaded plaintiff no. 1 to ensure his victory since Lord Ram cannot be defeated and this attempt cannot be allowed to succeed. The defendant has no knowledge of Shri Ramjanambhumi by which it meant the exact spot of birth of Lord Ram. As per his version, there are at least three spots in Ayodhya claimed as the exact spots where Lord Ram was born :

1. The spot being presently claimed by the plaintiffs known as Ram Janam Bhumi only since 22.12.1949.
2. The Ram Chabutra, in the court-yard outside the Babri Masjid structure, is known as Ramjanambhumi only since 1855.
3. The Janamsthan site Rasoi Mandir, facing the Babri Masjid across the street, is traditionally known as Ramjanambhumi since time immemorial.

101. The items at (b) and (c) are the spots, which have not been abandoned by believing devotees in Ayodhya. Reference to various suits is not within his knowledge since he (defendant no. 24) was not a party in those cases, but in his view, this matter should be decided without any further delay. Against the order dated 1.2.1986 of District Judge, Faizabad, the writ petition, which is pending before this Court should also be disposed of simultaneously with the pending suits. The structure popularly known as Babri Masjid cannot lawfully be removed to make way for a Mandir. Formation of a Trust comprising the disputed property is illegal so long as the dispute pertaining to ownership etc. in the pending suits is not decided. The act of plaintiff no. 3 is collusive since he is one of the trustees, yet has impleaded the Trust as defendant no. 21 and, therefore, he represents both the

plaintiffs as well as defendants. The defendants and the Muslims of India have highest regard for Lord Ram. These sentiments of Muslims are best reflected in the poem entitled "Ram" composed by the greatest Muslim thinker of India, namely, Muhammad Iqbal, and one verse of the long poem shows what Muslims of India think of Shri Ram Chandraji:

*"Hae Ram ke wajood pe Hindostan ko naaz
Ahl-e Nazar Samajht-e-hein usko Imam-e-Hind."*

102. The meaning of the said verse is that the India is proud of the existence of Ram. The intelligentsia consider him as the leader of India. The defendant think if Lord Ram himself could help it, he could not have been dragged into this unseemly and undignified controversy. Impleadment of the great names of plaintiffs no. 1 and 2 is unauthorised and unwarranted. Plaintiff no. 3 has not obtained consent to make the Deity and Asthan as plaintiffs no. 1 and 2 from the said plaintiffs nor has been authorised by them. Politicians and communal minded fundamentalists have set up plaintiff no. 3 to file this frivolous suit in the name of the Asthan and Bhagwan Shri Ram to serve their own narrow political and selfish ends. Lord Ram would not have subordinated himself, the way, his devotees have done him. It is denied that Lord Ram was born at the premises in dispute. Such belief came into existences only on 22.12.1949. If any documentary or recorded evidence is produced by plaintiff no. 3 establishing beyond doubt that the present belief existed before 22.12.1949 also, this defendant will surrender all his opposition. When the Babri Mosque was being constructed in 1528, no such belief existed in Ayodhya or elsewhere that the place where the mosque was built was Ramjanambhumi. Goswami Tulisdar has also not made any such complaint in his

epic biography "Ramcharitmanas" written about the year 1558. Balmiki also did not identify the present contentious spot as Ram Jaman Asthan. In none of the other Ramayans written in several other languages, the spot in question is mentioned as place of birth of Lord Rama. The averments in para 12 of the plaint are strongly contested. The idea of Ram Janamasthan was first floated by British East India Company's agents in 1855 in order to destabilise the regime of this defendant's forebear, the King of the realm, Wajid Ali Shah. At that time, a spot outside the structure of the Babri Masjid, in a corner of the court-yard was claimed as Ram Janam Asthan. But the King settled the dispute by partitioning out the plot 17 ft. X 12 ft. naming it as Ram Chabutara, by giving it to Hindus to do "Paaths" of Ramayana and peace was then restored. Again for the first time on 22.12.1949, the Ram Jamanasthan claim was shifted from Ram Chabutara to right inside the mosque just beneath the main large dome of the Babri Masjid. Prior to 1855, the undisputed Ram Janamasthan was the old Janam Asthan, Sita Rasoi Mandir, across the street on a mound facing Babri Masjid. The first two sentences of paragraph 23 of the plaint are the most important. All the Muslims of India are willing that the issue be decided and the dispute be settled one or the other way. The plaintiffs has relied on a Faizabad Gazetteer, 1928 Edition and the story mentioned therein about the visit of Emperor Babar to Ayodhya and destruction of ancient temple at Janamsthan to build Babri Mosque, but it is a well known fact of history that Emperor Babar never came to Ayodhya. Babri Mosque was made by Mir Baqi and not by Babar. In Babarnama, a daily diary, Babar has not mentioned about Ayodhya visit, destruction of Mandir or building of mosque thereat, although in other

pages of Babarnama, many things adverse are also mentioned. Faizabad Gazetteer of 1877 does not contain any mention of destruction of any Mandir and building of Babri or any Masjid on the Mandir land. Out of the two Gazetteers, the one contemporary and more near to the date concerned will have to be relied on. District Gazetteers of the British Government, as is well known, are not work of history. They only reflect the policy of the alien Government to divide the vast population of India by creating conflicts such as the present one and to perpetuate minority rule of the foreign imperialist power. All the aforesaid and other conflicting facts need to be investigated by this Court or by a Commission of Experts of history and archaeology to arrive at the truth. It is submitted that if it is proved that a Mandir was demolished and Babri Masjid was built on the Mandir land, the defendant and all other Muslims will gladly demolish, shift the mosque and return the land for building of Mandir thereon and if it is not a fact, then the Babri Masjid must in all fairness be returned to Muslims. Jagad Guru Shankeracharya, Swami Swaroopananda Saraswati in a quotation published in national newspaper on 14.5.1987 stated that an Authority should be constituted to resolve Ramjanambhumi-Babri Masjid tangle. He also said that if Mandir was demolished for construction of the mosque, Hindu must get it otherwise it must be given to Muslims. Same is the statement given by Muslim historian and scholar Maulana Syed Sahabuddin Abdur Rahman in his well known treatise "Babri Masjid" at page 5. In the monumental theological work Fatawa-e-Alamgiri, Volume 6 Page 214, the following ruling is given :

"It is not permissible to build mosque on unlawfully acquired land. There may be many forms of unlawful

acquisition. For instance, if some people forcibly take somebody's house (or land) and build a mosque or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat."

103. Plaintiff no. 3 is not competent to interpret Quran, Islamic Shariat and Islamic customs and practices as referred to in para 24 and the defendant contests the same and submits that the same is wholly irrelevant. Emperor Babar or Mir Baqi did not destroy or demolish any Mandir. The mosque was not constructed on the land or on the ruins of any Mandir. It was built on a vacant land. Sanctity of Babari mosque was not affected by creation of Ram Chabutara in the courtyard or by the mosque being surrounded by Mandirs. There is no tenet of Islam against existence of a mosque in a noisy place or in a non-Muslim locality. Minaret is not an essential part of a mosque. Non existence of a water reservoir would not effect the status of a mosque. Friday Namaz used to be regularly held in Babri Masjid and the last Namaz was held on 22.12.1949. The Imam who led the prayers regularly till 22.12.1949, was Maulana Haji Abdul Gaffar and he is alive and lives at Mohalla Qaziana, Ayodhya, District Faizabad. What happened in the night between 22/23.12.1949 is best narrated by the then Deputy Commissioner of Faizabad himself in an affidavit filed by him on behalf of the State in Regular Suit no. 25 of 1950, the relevant portion whereof is annexed as Annexure 'A' to the written statement. The destruction of the graveyard was an act of sacrilege and was illegal. Protection of religious rights of all communities is the constitutional obligation of the Government. The claim of adverse possession in respect of religious places like Babri Masjid is unjustified and illegal. The defendant

believes that the Hindu population of India has always been, by and large, secular, when a small minority amongst Hindus are those who believe and think like defendant no. 3 though they do not represent even one or two per cent of Hindus. The Hindus will never commit an act of Adharma by demolishing Babri Masjid and constructing a Mandir over it by illegal means particularly when this Court is seized of the matter. The present suit is nothing but an attempt to cover the shortcomings of other original suits. For the purpose of Namaz, both Shia and Sunni Muslims used to offer Namaz in Babri Masjid. Every mosque is a public property and all Muslims regardless of their sect are beneficiaries. Every member of the Muslim community has right to represent the case of a mosque. The Sunni Central Waqf Board has full support of Shias represented by All India Shia Conference. The defendant is deadly against any form of sacrilegious action. No place of worship of any religion should be destroyed and no place of worship should be constructed on the ruins of the destroyed one. The defendant firmly believes that the Babri Masjid was certainly not built after destroying Vikramaditya Mandir or any other temple. However, if any such thing is proved, or if it is proved that the site where the Babri Masjid existed was a place known as Ram Janamasthan spot then the defendant will withdraw his opposition. Once it is admitted that the mosque was built hundreds of years ago and used as such, it became waqf by user irrespective of the fact whether or not legal formalities for creating a Waqf were observed. The suit is barred by limitation and the claim is also barred by principle of estoppel.

Written statement dated 16/18.9.1989 of Defendant no. 25 (All India Shia Conference) (Suit-5)

104. A separate written statement dated 16/18.9.1989 has been

filed by defendant no. 25, but substantially it contains similar defence as has been given in the written statement of defendant no. 4 as well as 24 and, therefore, is not being given in detail, but wherever necessary, shall be referred later on.

PROGRESS OF THE SUITS - JOURNEY IN THE LAST MORE THAN 61 YEARS AND SOME IMPORTANT STAGES - A BRIEF RESUME

105. Proceeding under Section 145 Cr.P.C.: First we propose to have a bird eye view of the proceedings relating to Section 145 Cr.P.C.

106. The present chain of litigation resulting in the suits in question commenced on 22/23.12.1949 when a First Information Report (*in short 'FIR'*) was lodged by Sub-Inspector, Ram Dev at Police Station Ayodhya alleging that as per information received from Constable, Mata Prasad, certain persons broke open the lock of the inner courtyard of disputed building and placed the idols of Lord Ram in the disputed structure beneath the central dome in the night of 22/23.12.1949 after trespassing the inner courtyard.

107. Sri Markandey Singh, the then Additional City Magistrate, First Class, Faizabad-cum-Ayodhya issued a preliminary order dated 29.12.1949 in purported exercise of powers under Section 145 Cr.P.C. stating that the dispute between Hindu and Muslims over the disputed structure raising question of right of proprietorship and worship is likely to lead a breach of peace and accordingly he directed the parties to appear before him on 17.01.1950 at 11.00 a.m. at Ayodhya Police Station in person or through pleader and put in written statement of their respective claim with respect to the facts of actual possession of the subject of dispute. He described the parties as follows:

1. The Muslims who are bona fide residents of

Ayodhya or who claim right of proprietorship or worship in the property in dispute;

2. The Hindus who are bona fide residents of Ayodhya or who claim right of proprietorship or worship in the property in dispute;

108. Recording his satisfaction of the case being one of emergency, he directed for attachment of the said building pending decision. He further directed that the attachment would be carried out immediately by Station Officer, Police Station, Ayodhya, who would then place the attached property in the charge of Sri Priya Dutt Ram, Chairman, Municipal Board, Faizabad-cum-Ayodhya who would thereafter be the "Receiver" of the said property and would arrange for care of the property in dispute. He also directed the Receiver to submit a scheme for management of the property in dispute for approval during attachment and the cost of management was to be defrayed by the parties to the dispute in proportions as may be fixed from time to time. The order was directed to be published in three newspapers for giving information to parties besides affixing the same on the walls of the building in dispute and the notice board at Ayodhya Police Station.

109. The Receiver, Priya Dutt Ram took charge of the premises on 05.01.1950 and executed a Supurdaginama (Inventory) verifying the following items he received/attached :

- “1. मूर्ती ठाकुर जी 1—(अ) श्रीराम ललाजी दो मूर्ती एक बड़ी एक छोटी
(ब) श्री शालीग्राम जी की 6 मूर्ती।

“1. *Idols of Thakur Ji*

1-(a) Two idols of Sri Ram Lala Ji, one big and another small.

(b) Six idols of Sri Shaligram Ji.

2. सिंघासन चांदी दो फीट ऊचा एक।
2. *A two feet high silver throne.*
3. मूर्ती हनुमान जी की एक।
3. *One idol of Hanuman Ji.*
4. (a) गिलास जर्मन सिलवर का एक।
- (a) *One glass of German Silver.*
- (b) गिलास चांदी का छोटा एक।
- (b) *One small glass of silver.*
- (c) गिलास चांदी का बड़ा एक।
- (c) *One big glass of silver*
5. गरुड़ घंटी एक।
5. *One Garun bell.*
6. धूपदानी एक।
6. *One incensory.*
7. आरती एक।
7. *One Arti vessel.*
8. दीवट एक
8. *One lamp stand*
9. हुरसा व चंदन एक।
9. *'Hursa' and one sandal.*
10. फोटू बड़ी राम जानकी की दो।
10. *Two big photographs of Ram Janki.*
11. गमला चार।
11. *Four flower pots.*
12. फोटू बद्रीनाथ जी (छोटा) एक।
12. *One (small) photograph of Badrinath Ji.*
13. फोटू राम चन्द्र जी छोटा एक।
13. *One small photograph of Ramchandra Ji.*
14. भगवान के आभूषण
- दो टोपी राम लला जी और एक हनुमान जी की टोपी।
- तथा भगवान के वस्त्र आठ लगा

14. *Ornaments of Deity*
Two caps of Ramlala and one cap of Hanuman Ji.
And eight robes of Deity.
15. इमारत – तीन गुम्बद दार इमारत में सहन के तथा चहार दीवार जिसकी चौहद्दी नीचे लिखी है।
 उत्तर:- हाता छट्टी आंगन और निर्मोही अखाड़ा
 दक्षिण:- आराजी परती व परिक्रमा
 पूरब:- चबूतरा मन्दिर राम जी का ममलूक निर्मोही अखाड़ा व सहन मन्दिर हाता
 पश्चिम:- परिक्रमा
15. *Building- Three domed building with courtyard and boundary wall, which is bounded as under.*
North- Premises comprising Chhathi courtyard and Nirmohi Akhara.
South-Vacant land and 'Parikrama' (circumambulation path)
East- 'Chabutara' (platform) of Ram temple under possession of Nirmohi Akhara, and courtyard of temple premises.
West- Parikrama' (circumambulation path)
16. छोटा पीतल का गिलास
 16. *Small brass glass*
 17. चन्दन की फूल की कटोरी एक।
 17. *One bowl of 'Phool' (an alloy) for sandal.*
 18. पंच पस तथा थाली पीतल की एक।
 18. *'Panch Pas' and one brass plate.*
 19. तशतरी पीतल की छोटी एक।
 19. *One small brass plate.*
 20. छोटा पटरा लकड़ी का एक।”
 20. *One small wooden board.”*

(English Translation by Court)

110. One Sri Anisur Rahman son of Maulvi Waziruddin filed an application dated 17.01.1950 before the Addl. City Magistrate stating that he proposed to move an application of transfer in the High Court and, therefore, proceedings be stayed, to enable him to move the said transfer application. The Addl. City Magistrate on the same date passed an order staying the case subject to furnishing of personal bond of the applicant to the effect that he will put in transfer application in the High Court before 15.02.1950. Sri Anisur Rahman furnished the aforesaid bond on the same date.

111. Sri Anisur Rahman thereafter filed Criminal Transfer Application No. 208 of 1950 in this Court under Section 526/528 Cr.P.C. on 02.02.1950 seeking transfer of the said case from the Court of Addl. City Magistrate, Faizabad to some other Court of competent jurisdiction outside the District Faizabad and also prayed for stay of the proceedings in the meanwhile.

112. This Court (Hon'ble Raghubar Dayal, J., as His Lordship then was) stayed further proceedings on 03.02.1950 and passed the following order:

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

113. The then District Magistrate, Faizabad, Sri K.K. Nayar was changed meanwhile and in his place one Sri J.N. Ugra took over charge on 14.03.1950 (afternoon). He brought this fact to the notice of this Court vide his letter dated 06.04.1950.

114. The Transfer Application came up for hearing before Hon'ble V. Bhargava, J. (as His Lordship then was) on 30.05.1950. Considering the fact that the allegations against the City Magistrate were not substantiated and those made against

the District Magistrate, Sri Nayar were of no help since the officer had changed in the meanwhile, this Court rejected the Transfer Application observing as under:

"The allegations have been made without giving grounds on which they are based. These allegations are denied by the learned Magistrate who is trying the case. There were specific allegations against Shri K.K.K. Nayar who was District Magistrate, Faizabad at the time when this transfer application was presented. It now appears that he has since been transferred and another District Magistrate has taken over charge. These specific allegations against Shri Nayar need not, therefore, be considered at all, as whatever apprehensions could have arisen on account of those circumstances have now disappeared with the change of the District Magistrate.

There is nothing at all in the circumstances appearing within would show that the case would not be tried impartially by the learned Magistrate before whom it is pending. This application for transfer is rejected."

115. It appears that a number of affidavits were filed before the City Magistrate by certain individual Muslims stating that since 1934, 1935 and 1936, Muslims have not offered any prayer in the disputed building and it is in possession of Hindus since then, and, they have no objection if the disputed premises be allowed to remain in possession of Hindus.

116. Sri Anisur Rahman, however, filed his objection dated 08.07.1950/29.12.1950 stating that Namaz had been offered in the disputed premises till 16.12.1949 and some miscreants have kept idols illegally in the night of 22/23.12.1949 in respect where to a first information report has been lodged. The building

in dispute is a mosque and is registered as Waqf with the Sunni Board hence its possession be handed over to him after removal of idols from the disputed premises. He also said that the building in dispute was constructed by Emperor Babar in 1528 who made a Waqf in favour of Muslims for offering prayer therein and since then it is in possession of Muslims.

117. Some other objections were filed, by Baba Abhiram Das on 29.12.1950, Baba Baldev Das on 27.12.1950/29.12.1950, Sri Salar Mohammad and Sri Srivastava N.P. Singh etc on other dates.

118. Since in the meantime Suit 1 was filed by Sri Gopal Singh Visharad wherein interim injunction was granted on 16.01.1950 as modified on 19.01.1950 and 03.03.1951, consequently, Sri Prem Shanker, the then City Magistrate, Faizabad passed an order on 30.07.1953 the relevant extract whereof is as under :

"The disputed property i.e. Babri mosque/Janmabhumi premises are already in possession of the receiver. Sri Priya Dat Ram appointed by the Additional City Magistrate under his order dated 29th December, 1949 referred to above and the said receiver has been looking after the property since 5.1.1950, the date of assuming charge. As the finding of the civil court will be binding on the criminal court it is no use starting proceedings in this case under Sec. 145 Cr.P.C. and regarding evidence specially when a temporary injunction stands, as it cannot be said what may be the finding of this court after recording the evidence of parties. From the administrative point of view the property is already under attachment and no breach of peace can occur.

I therefore order that the file u/s 145 Cr.P.C. be consigned

to records as it is and will be taken out for proceeding further when the temporary injunction is vacated."

119. The office of the City Magistrate thought that the proceedings have been finalized and, therefore, the record may be weeded out. Consequently, an application dated 22.07.1954 was filed by Sri Gopal Singh Visharad, plaintiff (Suit 1), requesting that since certified copies of about 20 affidavits filed in the case under Section 145 Cr.P.C. were obtained and filed in the pending civil suits, and, the file itself may be required by the Civil Court, therefore, the record may not be weeded out. He pointed out therein that besides Suit 1 another suit i.e. Suit 2 has also been filed and both have been consolidated on the application of Muslim defendants and are being heard together.

120. It appears that thereafter when the suits from the Trial court were transferred to this Court, the record of the case under Section 145 Cr.P.C. was also summoned by this Court and received vide letter dated 22.11.1991 of the City Magistrate, Faizabad.

SUIT 1- (FROM 16.1.1950 TO 1963)

121. Suit 1 was presented before the Court of Civil Judge, Faizabad on 16.01.1950 alongwith an application under Order 39 Rule 2 and Section 151 C.P.C. It was registered on the same date and notices were issued to the defendants. An interim injunction in the meanwhile, as prayed, was granted on 16.1.1950 fixing 18.02.1950 for disposal of injunction application.

122. The prayer in the application for ad interim injunction was as under:

"Therefore, the applicant prays that a temporary injunction be issued against the defendants to the effect that they

should not remove the idols of Shri Bhagwan Ram Chandra and others from Asthan Janam Bhumi, the details of which are given in the plaint, till the decision of the case, and they further be ordered not to close the Pravesh Dwar and other passages of ingress and egress to the visitors and also that they should not place any obstacle in the Pooja and Darshan."

123. On 19.01.1950 the Civil Judge modified the injunction order dated 16.1.1950, on an application filed on behalf of defendants no. 7 to 9, in the following manner:

"The opposite parties are hereby restrained by means of a temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with "Puja" etc. as at present carried on. The order dated 16.01.1950 stands modified accordingly."

124. An objection dated 13.02.1950 was filed on behalf of defendants no. 1 to 5. It alleged that the disputed site was part of the Babri Mosque which was built by Emperor Babar and it had been in the use of Muslims as a Mosque ever since. Hindus never worshipped or performed any Pooja thereat. The idols at the site in question were recently planted.

125. On 25.03.1950, after hearing the parties on the objections filed against ex parte injunction dated 16.1.1950, the Civil Judge decided to get a map of the locality and building prepared through a Commissioner and ordered accordingly. One 'Shri Shiv Shanker Lal, (Vakil)', was appointed 'Commissioner' to prepare the map and one 'Shri Bashir Ahmad, Vakil' was appointed as 'Commissioner' to take photographs.

126. On 25.05.1950 Shri Shiv Shanker Lal, Commissioner submitted his report and map. Shri Bashir Ahmad, however,

sought some more time for photographs. Ultimately, on 3.8.1950 Shri Bashir Amhad filed 13 photographs of the disputed building alongwith his report.

127. The parties filed objections to the above reports of the Commissioners which were dealt with by the Civil Judge vide order dated 20.11.1950. He observed as under:

*"The defendants 6 to 9 object to the commissioner's report on the grounds that the learned commissioner has used wrong and erroneous nomenclature in **describing the gates, images and foot prints**. It is further objected that the learned commissioner has erred by **naming certain structures as Samadhi, Chaura and Chabutra**. It is also disputed that there is any pucca path round the building in dispute.*

*It should be noted that **the existence of gates, images and foot print in the premises in dispute are not disputed**. Certainly the nomenclature given to these things by the learned commissioner is a matter of evidence. It will be open to the parties to prove the nomenclature by means of reliable evidence independent of the commissioner's report. As to certain structures being named Samadhi, Chaura and Chabutra I am of opinion that it is also a matter of evidence and that the learned commissioner's report on this point is not final. Nor can the Commissioner's report regarding the existence of so called Parikarma be held to be final. If the commissioner's report contains any irrelevant material, it will not certainly be considered to that extent.*

The defendants 1 to 5 object that the commissioner has prepared plan no. 2 beyond the terms of his

commission. If that is so, the plan no. 2 will not be considered. Whether a portion shown outside the yellow portion in plan II is a graveyard or not is clearly a question of evidence and it will be considered in the present case, only if it is found relevant and proved. It will be open to the parties to adduce evidence on this point, if relevant.

It is further objected that the defendants were not allowed to enter the disputed building. The commissioner's report shows that they reached the spot rather too late. If the defendants want to enter the building for the purpose of pointing out any particular thing there, it is open to them to apply to the Court accordingly.

*Any opinion expressed or the nomenclature given by the learned commissioner can be disputed by the parties by adducing evidence. As already pointed out, the commissioner's report regarding the names of the images is nothing better than hearsay. The objectors contend that the images referred to in the report are the images in dispute and they were surreptitiously installed in December, 1949. **If the learned commissioner has failed to show anything pointed out by the objectors, they can apply to the Court to inspect the building and then show these things to the Court.***

The rest of the objections relate to questions of facts. As already stated, the learned commissioner's report on those points is not final. It will be open to the parties to substantiate their objections by relevant and independent evidence.

The plaintiff objects to Sri Bashir Ahmad's report dated 3.8.50 on the ground that it contains personal

observations. In my opinion the learned commissioner's report is relevant only to the extent to which it helps in explaining the photographs for which he was appointed. Any opinion expressed by the learned commissioner is not final.

Defendants 1 to 5 also object to certain extent to Sri Bashir Amhad's report and photographs. As already pointed out, the learned commissioner's report is not final. The parties may apply to the Court for further photographs, if they think that any more photographs are needed for clear decision of the case.

Fix 09.12.1950 for disposal of the application for injunction."

128. The objections to the ex-parte injunction dated 16.01.1950, modified on 19.01.1950 came to be considered on 03.03.1951. The trial court passed a detailed order and confirmed interim injunction. Relevant extract of the order is as under:

*"For the purpose of these proceedings, it has to be seen whether the plff has a fair question to raise as to the existence of the right alleged, whether he is in danger of losing that right, and whether irreparable injury or inconvenience is likely to result to him, in case the injunction order is withdrawn. **It is conceded on all hands that the idols in-question were on the disputed site before the filing of the suit.** It further appears from the copies of a number of affidavits of certain Muslim resident of Ayodhya that at least from 1936 onwards the Muslims have neither used the site as a mosque nor offered prayers there and that the Hindus have been*

*performing their Pooja etc. on the disputed site. Nothing has been pointed out to discredit these affidavits, which, along with the existence of the idols on the disputed site, clearly show that the plff has got a fair case to go to the trial. The defts 1 to 5 rely on a number of documents to show that the building in dispute has always been a mosque. It is not possible at this stage to anticipate any decision on this point, because it will have to be decided after considering all the oral and documentary evidence that may be adduced by the parties in this case. The undisputed fact remains that on the date of this suit the idols of Shri Bhagwan Ram Chandra and others did exist on the site and that worship was being performed by the Hindus including the plff, though under some restrictions put by the executive authorities. **This coupled with the affidavits referred to above** does make out a prima facie case in favour of the plaintiff.*

As to the balance of convenience, it is obvious that the affect of vacating the interim injunction at this stage is likely to deprive the plff of the right claimed by him in this suit. Moreover, it is a matter of admission between the parties that there are several other mosques in the mohalla in question. The local Muslims will not, therefore, be put to much inconvenience, if the interim injunction remains in force during the pendency of the case.

Order

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

129. On 15.09.1951 the Court recorded statement/answer of the

plaintiff's counsel to certain questions put in by the Court, as under:

"Q. In what capacity does the plff. seek to exercise the relief which he seeks in the plaint.

Ans. In my individual capacity.

Q. What is your individual capacity.

Ans. My individual capacity is distinct from public capacity and in this matter an idol worshipper.

This shows that the plff counsel is not in a position to answer the Court question. The plff. must present himself personally in Court on the date fixed.

Q. Has your client any religion.

Ans. the plff is a Sanatan Dharmi Hindu."

130. Defendants no. 1 to 5 filed an application praying that the suit be treated as representative suit under Order 1 Rule 8 C.P.C. which was opposed by the plaintiff. The application was rejected on 27.10.1951.

131. Suits 1 and 2 both having been clubbed, a preliminary issue was framed on 08.01.1957 with respect to sufficiency of Court fees as under:

"1. Whether the valuation for purposes of jurisdiction and court-fees is insufficient as alleged on behalf of the defendants?"

132. For adjudication of the said preliminary issue an assessment from Public Works Department was sought vide Court's order dated 14.02.1958.

133. The assessment was made for Rs. 135265/- in respect where to the Draftsman/Computer, Shri Zulfikar Ahmad son of Shri Ali Mirza was examined and cross-examined by the parties. The said issue was decided finally by order dated 21.01.1959

holding that the Court fee paid is sufficient.

134. Two defendants, namely, Hazi Fenku and Mohammad Sami having died, applications filed for substitution of their legal heirs were, however, rejected by learned Civil Judge on 17.01.1962 and he directed that names of the said defendants be deleted from the array of the defendants in the two suits i.e. Suit No. 1 and 2.

SUIT-2

135. Another Suit no. 25 of 1950 (on transfer to this Court, re-registered as O.O.S. No. 2 of 1989) was filed by Paramhans Ramchandra Das vide plaint dated 5.12.1950, seeking an injunction restraining the defendants from interfering in the worship of Lord Ramachandra at the place 'Janambhumi' details whereof are given at the end of the plaint and further not to disturb or remove the said idols from the place they are kept on that date nor to create obstruction in the worship of the idols. It was admitted on the same date, i.e., 5.12.1950 by the order of Civil Judge, Faizabad and on 01.02.1951 it was consolidated with Suit-1. Suit-2 since has been dismissed as withdrawn in 1990, we are not giving any further details in respect thereof.

SUIT-3 (FROM 1959 to 1963)

136. Nirmohi Akhara filed Original Suit No. 26 of 1959 which was registered as Suit-3 on transfer to this Court. It was filed on 17.12.1959 and was registered on the same date. On 21.12.1959 the Civil Judge allowed the plaintiffs to sue defendants no. 6 to 8 in representative capacity. It appears that on 07.01.1961 the District Judge stayed further proceedings in Suit-3 and thereafter stay order continued pursuant to this Court's order which was vacated and communicated to the trial court on 02.05.1962. This suit was clubbed with other suits on

06.01.1964.

SUIT-4 (FROM 9.12.1961 TO 1962)

137. Suit-4 was filed on 18.12.1961. It was admitted and registered by the Court of Civil Judge, Faizabad by order dated 18.12.1961. On plaintiff's application for permitting them to pursue the suit in representative capacity, by order dated 8.8.1962 the Court allowed the plaintiffs to represent the entire Muslim community against defendants no. 1 to 4 representing the entire Hindu community.

138. On an application filed on behalf of defendant no. 1 in Suit-4, by order dated 20.3.1963 Civil Judge, Faizabad allowed impleadment of defendants no. 10 to 12.

SUIT 1 TO 4 (FROM 6.1.1964 TO 10.7.1989)

139. On 06.01.1964 all the parties in Suit-1, 2,3 and 4 filed joint application requesting the trial court to consolidate the aforesaid suits and hear those matters collectively and jointly. The trial court allowed the application with the consent of learned counsels for the parties on the same date consolidating all the suits and to treat Suit-4 as leading case.

140. On 20.1.1964, the Civil Judge recorded statement of plaintiff's counsel Mohd. Ayub in the leading case under order X Rule 2 C.P.C.

141. On 5.3.1964, 16 issues were framed by the Civil Judge and vide order dated 17.07.1965, an additional issue was also framed. All the said issues framed initially by the learned Civil Judge, read as under:

Issue No. 1:-

Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as

claimed by the plaintiffs? If the answer is in the affirmative-

(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13?

(b) Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant no.13? If so, its effect?

Issue No. 1-B(a) :-

Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, City Ayodhya (Nazul Estate) Ayodhya? If so its effect thereon?

Issue No. 1-B(b) :-

Whether the building stood dedicated to almighty God as alleged by the plaintiffs?

Issue No. 1-B(c) :-

Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial? If so, its effect?

Issue No. 2 :-

Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?

Issue No. 3 :-

Is the suit within time?

Issue No. 4 :-

Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as

of right for more than the statutory period of time by way of prescription as alleged by the defendants?

Issue No. 5 :-

(a) Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff no.1 in view of the provision of 5(3) of U.P. Act 13 of 1936?

5(b) Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?

5(c) Were the proceedings under the said Act conclusive?

5(d) Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?

5(e) Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no.17 to the effect that “No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute”, the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?

5(f) Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

Issue No. 6 :-

Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

Issue No. 7 :-

(a) Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of 1885 had sued on behalf of Janma Sthan and whole body of persons interested in Janma-Sthan?

(b) Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?

(c) Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?

(d) Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit? If so, its effect?

Issue No. 8 :-

Does the judgment of case No. 6/281 of 1881, Mahant Raghubar Dass Vs. Secretary of State and others operate as res judicata against the defendants in suit?

Issue No. 10 :-

Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?

Issue No. 11 :-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

Issue No. 12 :-

Whether idols and objects of worship were placed inside the building in the night intervening 22nd and 23rd December 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?

Issue No. 13 :-

Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?

Issue No. 14 :-

Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

Issue No. 15 :-

Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?

Issue No. 16 :-

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

Issue No. 17 :-

Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?

142. As agreed by learned counsels for the parties, issue No. 17 was taken up as a "primary preliminary issue" and vide judgment dated 21.04.1966 the Civil Judge, decided the same against plaintiffs (Suit 4) and in favour of the defendants therein. The Civil Judge, after reading the definition of 'Waqf' and 'Waqif' as contained in Section 3(1) of 1936 Act, held that whenever the word 'waqf' is conveyed to any person, it must necessarily convey simultaneously the idea or description or a

tangible connotation about the existence of "any property" covered or included in the 'Waqf'. Meaning thereby, if someone wants another to know that a particular property is waqf, it would be necessary for him to mention simultaneously the description of atleast tangible connotation about the identity of the property of the waqf. After perusing the alleged notification dated 26.2.1944 said to have been published under Section 5 of 1936 Act, the Court found that Item 26, at which the alleged Waqf of Waqif Badshah Babar was mentioned, was blank in its last column and consequently it did not give any idea of the property of which Waqf was created. It held that the alleged Government notification at Item no. 26 was meaningless. Meeting the argument that the notification if not challenged within one year by the Hindus or defendants of the leading case would result in rendering the said notification to be final and conclusive, the Civil Judge held that the said principle would follow when a valid notification of the proposed Waqf property is made under 1936 Act. Since in his opinion, it was not a valid notification at all, failing to convey the idea or identity of necessary particulars about the property proposed by the Waqf Commissioner to be enlisted as Sunni Wqaf property dedicated by Badshah Babar, there was no question of rendering the said notification final and conclusive qua the property in dispute. He also held that; mere mention of the name of Badshah Babar as "Waqif" of a property in "Faizabad District" is not enough to convey the identity of the property in dispute since Badshah Babar was the Emperor of the Mughal Empire in India, who never resided in Faizabad District according to the pages of history of which a judicial notice can be taken by the Court; it is not known as to how many waqfs were created by Badshah

Babar in various parts of Faizabad District; in Column-3, Item No. 26 of the notification, the Name of Mutwalli mentioned as Syed Mohammed Zaki, Mutwalli Masjid Babari, Qasba Shah Nawa, Dak-khana Darshan Nagar; judicial notice of the fact that qasba Shah Nawa lying within the jurisdiction of Post Office Darshan Nagar is at a distance of about 8 to 10 mile from Ayodhya was taken; and, therefore, the aforesaid entry shows on its face that the Mosque referred to therein is built by Emperor Babar in Qasba Shah Nawa, post office Darshan Nagar; it is not the case of the plaintiffs of the leading case that the property in suit was originally a temple, which was ever conquered by Emperor Babar, who got it remodelled in the shape of a mosque; the case of the aforesaid plaintiffs as contained in the plaint of the leading case, as well as in the statement of the plaintiffs' learned counsel made under order X, rule 2 C.P.C. on 10.1.64, at paper No. 187A, is that the property in suits was originally mosque, which was built for the first time at its place, by Emperor Babar in 1528 AD in the shape of a mosque which he had dedicated to the followers of Islam thereafter; the knowledge of the educated persons regarding the conquest of Emperor Babar derived from the pages of popular history books cannot profitably be utilised by the plaintiffs of the leading case because according to the plaintiffs' own case, the property in suits was not a conquered property but a property which was originally and for the first time built at its place by Emperor Babar for use of the Muslim public.

143. There were two more issues namely, issues No. 5(a) and 5(c) in Suit-4. In view of the findings recorded in respect to issue No. 17, the Civil Judge held that issues No. 5(a) and 5(c) also stand answered against the plaintiffs (Suit-4).

144. There was another issue No. 5(d). Pursuant to the findings on issue No. 17, the defendant's counsel made a statement on 21.4.1966 that it is not necessary to press issue No. 5(d) (Suit-4) and the said stand was endorsed by other counsels also.

145. Two applications i.e. paper no. 132-C dated 15.10.1962 and 271-C dated 08.08.1966 relating to appointment of another Survey Commissioner came to be considered by learned Civil Judge on 26.08.1966 and the Court held :

*“The property in suit is admittedly situate on **specific plots which have been detailed in the plaint**. There is, therefore, no need for demarcation of those plots on a map by the Commissioner after survey. Whatever structures exists on the said plot are in dispute in these cases. The parties have already named them in their pleadings and statements under Order X Rule 2 CPC. The map of the Commissioner prepared earlier is already on record which gives an idea about the location. Consequently at this stage when the parties are required to establish their cases by their evidence there is no occasion or need to issue a fresh Commission.”*

146. He also held that in case after recording evidence of both the parties, if necessary, the Court may decide to issue a Commission suo motu or otherwise or itself make local inspection and get necessary objects or sites or structures in suit photographed at the instance of any or both the parties. Besides, a large number of documents were also filed by the parties. The Court directed parties to endorse the said papers whether they admit or deny the same as early as possible.

147. Thereafter in the year 1970 a number of applications were filed seeking appointment of Civil Court Receiver and the same

were decided by order dated 17.11.1970 whereagainst FAFO 389 of 1970 was filed in which this Court granted an interim order. The FAFO was decided on 20.03.1974 and the matter was remanded to the court below.

148. An order dated 18.3.1975 was passed by the Civil Judge under Order 40 Rule 1 with respect to appointment of Receiver whereagainst again FAFO No. 81 of 1975 (renumbered as 17 of 1977) was filed wherein a stay order was passed on 9.5.1975 by this Court.

149. Though this Court had stayed the order dated 18.03.1975 of the Civil Judge but it appears that the trial court misread the order as if further proceedings in pending suit was stayed, and, did not proceed but simply adjourned the cases from time to time. In the circumstances no progress is shown from May, 1975 till January 1986. An application was filed in January, 1986 before Munsif Sadar, Faizabad by one Sri Umesh Chandra Pandey, Advocate in Suit 1 stating that the authorities are violating injunction order by not permitting unobstructed worship. The learned Munsif on 21.01.1986 referred to the interim order of this Court in F.A.F.O. 17 of 1977 and directed the parties to inform the latest position about the continuance of the said interim order and fixed 01.02.1986. It appears that another application was filed by Sri Umesh Chandra Pandey, Advocate seeking a direction to defendants no. 6 to 9 (Suit-1) not to create any obstruction in Darshan, Pooja etc. by keeping the premises under lock and key. On said application, the learned Munsif on 25.01.1986 directed District Government Counsel to file objections and fixed the matter for 28.01.1986.

150. On 28.01.1986 the District Government Counsel informed that the High Court by interim order dated 09.05.1975 has only

stayed the order dated 18.03.1975 and there is no order staying further proceedings. He further pointed out that the defendants no. 6 to 9 (Suit-1) were not creating any obstruction in the matter. However, the learned Munsif deferred the matter observing that the original record of the leading suit had already been summoned by the High Court and in the absence thereof it is not proper to pass any order on the said application.

151. Thereafter a revision was filed before the District Judge, Faizabad who treated the same as Misc. Appeal and passed order dated 01.02.1986 directing to open the locks placed on the gate of the inner courtyard. Challenging the order dated 01.02.1986, **Writ Petition No. 746 of 1986** was filed by Mohd. Hashim. Another **Writ Petition No. 3106 of 1986** was filed by the U.P. Sunni Central Board of Waqf.

152. In the Writ Petition No. 746 of 1986 an interim order was passed by this Court on 03.02.1986 to the following effect:

“Until further orders of this Court the nature of property in question as existing today shall not be changed.”

153. The Writ Petition No. 3106 of 1986 filed by Sunni Central Board of Waqf on 12.05.1986 was connected with the earlier one. Both are still pending.

154. The F.A.FO. No. 17 of 1977 was decided on 23.3.1987. This Court directed that record of all the four suits pending in the lower Court be placed before the District Judge, Faizabad, who will arrange to transfer all the suits to an Additional District Judge, Faizabad who may not be transferred out of Faizabad for about 18 months and that Addl. District Judge shall try these suits as early as possible. The stay orders in those suits were vacated. However the site position continued as such in view of

interim order dated 3.2.1986 passed in Writ Petition No. 746 of 1986 by this Court.

155. The State Government on 15.12.1987 moved an application no. 29 of 1987 under Section 24 read with 151 C.P.C. requesting this Court to withdraw all the suits pending in the Court below at Faizabad for trial and disposal by this Court. Another Application No. 11 of 1989 for similar relief was filed in February 1989 on the administrative side requesting for early disposal of the applications filed under Section 24 C.P.C. The Government said that though the dispute is purely of civil nature but it has assumed importance in the context as it sometimes excites religious sentiments and generates tension between two communities. Since the State was concerned in preserving amity and brotherly relations between the two communities and, therefore, early disposal was necessary. These two applications were taken up for hearing on 23.2.1989 but could not be concluded.

156. When the said matter was pending, Suit-5 was filed as a fresh suit on 1.7.1989 in the Court of Civil Judge, Faizabad. The plaintiff (Suit-5) of the said suit also moved an application under 24 C.P.C. for transfer of all suits to this Court.

157. All the aforesaid applications were allowed on 10.7.1989 by a Division Bench of this Court comprising of Hon'ble Mr. U.C. Srivastava and Hon'ble S.H.A. Raza, JJ. This Court withdrew all the aforesaid suits from the Court of Addl. District Judge, Faizabad and Civil Judge, Faizabad for trial. The Court also observed that the historic city of Lucknow is famous throughout the world for its composite culture, softness and sweetness of its language, mild, tender and suave manners, has since centuries been free from communal hatred, bias or

prejudices and, therefore, the congenial, peaceful and amicable atmosphere of this City is best suited for the trial of such cases. The Court also requested the Hon'ble Chief Justice to nominate a third Judge so that a Full Bench may hear these matters.

158. On 21.07.1989 the Hon'ble Chief Justice constituted a Special Bench consisting of three judges.

159. On an application of the State of U.P. this Court passed an interim order dated 14.08.1989 directing the parties to maintain status quo with respect to property in dispute.

160. On 20.09.1989 the Court ordered Suit-5 to proceed ex parte against defendants no. 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20 and 21 who despite service failed to file their written statement.

161. The defendants no. 2 and 13 (Suit-4) moved Application No. 14(o) of 1989 in Suit-4 under Order 7 Rule 11 for rejection of plaint as barred by law and in particular clause (d) of Rule 11 Order 7 C.P.C. 1908. This Court vide order dated 23.10.1989 rejected the aforesaid application by two separate but concurrent judgments.

162. On Application No. 5(o) of 1989 of the State of U.P. filed under Order 39 Rule 1 and 2 read with Section 94 C.P.C., vide order dated 23.10.1989 the Court directed to maintain *status quo* until further orders in all the five connected suits and also for not changing the nature of the property in question. This Court also expressed its doubt about some of the questions involved in the suit, if soluble by judicial process.

163. By order dated 24.10.1989 this Court stayed proceeding of Suit-5 till the final disposal of four previously instituted suits on the application of the defendants no. 4, 5 and 6 (Suit-5) and as agreed by one of the plaintiff also. However, the said order was

recalled on 05.02.1992 on the application made by plaintiff no. 3 (Suit-5) and the Court directed that the aforesaid suit shall proceed alongwith Suit-4 and other connected suits.

164. On Application No. 48 of 1989 of the State of U.P., vide order dated 07.11.1989 the Court clarified that its order dated 14.08.1989 was in respect of the entire property mentioned in the suit including plot no. 586 in so far included within the boundary described by letters E F G H in the site plan.

165. Defendant No. 2 (Suit-4) filed Application No. 18(o) of 1989 under Order 14 Rule 2(2)(b) and Section 151 C.P.C. stating that in view of the findings recorded by the Civil Judge, Faizabad vide order dated 21.04.1966 on issue No. 17, the suit is liable to be dismissed without considering other issues.

166. The plaintiffs (Suit-3) were allowed by order dated 21.12.1989 to sue the defendants (Muslims) in representative capacity under Order 1 Rule 8 C.P.C..

167. It appears that the defendants (Suit-4) aggrieved vide order dated 23.10.89 passed in Application No. 14(O) of 1989 filed Special Leave Petition No. 14891 of 1989 which was disposed of vide order dated 12.01.1990 (clarified vide order dated 13.03.1990) by the Apex Court. The ultimate result was that no relief in effect was granted to the defendants (Suit-4) and the order dated 23.10.1989 remained intact.

168. Counsel for the plaintiffs also requested, accompanied by some respondents that issues No. 3, 5(b), 5(e), 5(f), 6, 18, 19(d), 19(e), 20(b) and 21 be heard and decided as preliminary issues. The said issues read as under:

“Issue No. 3- Is the suit within time?”

Issue No. 5(b)- Has the said Act (U.P. Act No. XIII of 1936) no application to the right of Hindus in general and

defendants in particular to the right of their worship?

Issue No. 5(e)- Whether in view of the findings recorded by the learned Civil Judge on 21.04.1966 on issue No. 17 to the effect that “no valid notification under Section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute”, the plaintiff Sunni Central Board of Waqfs has no right to maintain the present suit?

Issue No. 5(f)- Whether in view of the aforesaid finding the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

Issue No. 6- Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

Issue No. 18- What is the effect of the judgment of their Lordships of the Supreme Court in Ghulam Abbas and others Vs. State of U.P. and others, A.I.R. 1981 S.C. 2198 on the finding of the learned Civil Judge recorded on 21.04.1966 on Issue No. 17?

Issue No. 19(d)- Whether the building in question cannot be a mosque under the Islamic Law in view of the admitted position that it does not have minarets?

Issue No. 19(e)- Whether the building in question cannot legally be a mosque as contained vide order dated 23.08.1990 on order sheet on plaintiffs’ own showing it is surrounded by a grave-yard on three sides?

Issue No. 20(b)- Whether there was a Mutawalli of the alleged Waqf and whether the alleged Mutawalli not

having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?

Issue No. 21- Whether the suit is bad for non-joinder of alleged deities.?”

169. This Court vide order dated 22.08.1990 rejected the aforesaid application.

170. On 07.10.1990 the State of U.P. acquired certain land as described hereunder vide notification issued under Section 4(1) read with 17(4) of the Land Acquisition Act, 1894:

<u>“Settlement of Plot number</u>	<u>Area in acres</u>	<u>Village</u>
<i>159 (Part)</i>	<i>0.3600</i>	<i>Kot Ramchandra, Pargana Haveli Oudh, District Faizabad.</i>
<i>160 (Part)</i>	<i>1.0706</i>	<i>-do-</i>
<i>171 (Part)</i>	<i>0.4375</i>	<i>-do-</i>
<i>172 (Part)</i>	<i>0.9063</i>	<i>-do-</i>
<i>Total :</i>	<u><i>2.7744 Acres”</i></u>	

171. Another notification dated 10.10.1991 was issued under Section 6 of the Land Acquisition Act, 1894. The purpose of acquisition as disclosed in the notification was “development of tourism and providing amenities to pilgrims at Ayodhya, District Faizabad”.

172. On 16.10.1991, Writ Petition No. 3540 of 1991 (M/B) was filed by Mohd. Hashim assailing the aforesaid notification. A Division Bench of this Court directed it to be placed before the Special Bench. On 25.10.1991 after hearing the parties, this Court passed an interim order. In the meantime, two more Writ Petitions No. 3541 (M/B) of 1991, Panch Ramanandi Nirmohi Akhara and others Vs. State of U.P. and others and 3542 (M/B) of 1991, Khalid Yusuf Vs. Union of India and others were filed wherein also the said interim order was extended. Later on Writ

Petitions No. 4183 (M/B) of 1991, Mohd. Aslam Vs. Union of India and others; 4184 (M/B) of 1991, Mohd. Aslam Vs. Union of India and others; 4185 (M/B) of 1991, Nabib Yar Khan Vs. State of U.P. and others; and, 4201 (M/B) of 1991, Jama-e-tul Ulma-e-Hind and others Vs. State of U.P. and others were also filed which were also connected with the leading case of Mohd. Hashim (supra). The aforesaid Writ Petitions were decided vide judgment dated 11.12.1992 and this Court struck down the aforesaid notifications of acquisition of land measuring 2.7744 acres.

173. On 19.10.1990, the Ramjanambhumi Babri Masjid (Acquisition of Area) Ordinance, 1990 (Ordinance No. 3 of 1990) was promulgated by the President of India in exercise of its power under Article 123 of the Constitution of India whereby all the pending suits were declared 'abated' and the property in dispute declared to be vested in the Government of India. However, on 23.10.1990 i.e. just within four days the aforesaid ordinance was repealed by Ramjanambhumi Babri Masjid (Acquisition of Area) Withdrawal Ordinance, 1990 (Ordinance No. 10 of 1990) and it further provided that all the pending suits etc. shall stand revived and continue as they were.

174. The State Government vide Application No. 3(O) of 1991 sought permission to carry out certain repairs in the disputed building which was damaged in October 1990. This Court in its order dated 3.9.1991 observed that the property is admittedly of religious significance and, therefore, the State Government's offer for maintaining the building should not reasonably be objected as the party which would succeed in the suit will be ultimate beneficiary. This Court, thus allowed repairs with further clarification that no addition or alteration to the property

shall be made and the property shall be restored only to its former position.

175. Application No. 18(O) of 1991 of defendant No. 10 (Suit-4) seeking framing of additional issues was rejected on 30.09.1991.

176. Application No. 32(O) of 1991 in Suit-4 was filed on behalf of defendant no. 10, stating that the constitution of the Full Bench was not in accordance with law as the matter is cognizable by a Single Judge and evidence should also be recorded by only a Single Judge so as to protect the time of two other Hon'ble Judges. This application was taken up by the then Hon'ble the Acting Chief Justice (Hon'ble P.S. Gupta, J.) and vide order dated 17.12.1991 it was disposed of observing that the constitution of Full Bench was in accordance with law and further that the evidence shall also be recorded by the Full Bench.

177. Vide order dated 15.04.1992 this Court also allowed the defendants no. 4, 5, 6, 22, 24, 25, 26 and 27 to defend Suit-5 as representatives of Muslim community. Application for review of the said order filed by plaintiff no. 3 (Suit-5) was rejected on 02.09.1992.

178. An application filed under Para 14 of U.P. High Court's Amalgamation Order, 1948 seeking transfer of the aforesaid suits from Lucknow to Allahabad by plaintiff no. 3 (Suit-5) was dismissed on 6.8.1992 by Hon'ble the Chief Justice (Hon'ble M.K. Mukharjee, CJ, as His Lordship then was).

179. Vide order dated 02.09.1992 this Court allowed plaintiffs (Suit-5) to abandon the suit against defendants No. 1, 2, 11, 12, 13, 14, 17 and 21 and allowed deletion of paragraphs no. 15, 16 and 17 of the plaint but rejected the prayer for deletion of the

names of the aforesaid defendants from the array of parties.

180. On 06.12.1992 the disputed structure namely, Temple Ramjanambhumi/ Babri Masjid was demolished. On 07.12.1992 a temporary structure was created where the worship and Pooja of Lord Ram/Ram Lala and other Deities continued by the Hindus. This resulted in substantial change in the situation, causing various amendments in the pleadings, which were allowed by this Court, as found fit. We are not giving details thereof to avoid volume though wherever necessary it would be referred later on.

181. The Central Government in its attempt to get the matter settled amicably out of Court, sought to acquire certain land including the land over which the disputed structure existed and consequently enacted Acquisition of Certain Area of Ayodhya Act, 1993 (Act No. 33 of 1993) (*hereinafter referred to as the "Ayodhya Act"*)

182. The Ayodhya Act was published in the Gazette of India, Extraordinary, Part II-Section 1 dated 3rd April, 1993 and vide Section 1(2) it came into force with effect from 7th January 1993. It has, in all, 13 Sections and a Schedule.

183. The statement of object and reasons contained in the said enactment is as under:

"WHEREAS there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

AND WHEREAS the said dispute has affected the

maintenance of public order and harmony between different communities in the country;

AND WHEREAS it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

AND WHEREAS with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;"

184. The word 'area' is defined in Section 2(a) and reads as under:

(a) "area" means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;"

185. Section 3 of the said Act provides for acquisition of area in Ayodhya and Section 4 gives the general effect of vesting and the same reads as under:

"3. On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

4.(1) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties and all other rights and interests in, or arising out of, such properties as were immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature

relating thereto.

(2) All properties aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect.

(3) If, on the commencement of this Act, any suit, appeal or other proceeding in respect of the right, title and interest relating to any property which has vested in the Central Government under section 3, is pending before any court, tribunal or other authority, the same shall abate. "

186. The total area sought to be acquired was 67.703 acres of land.

187. Section 5 of the Ayodhya Act provides for the duty of the person or State Government in charge of management of the area, to deliver all assets etc. Section 6 deals with the power of the Central Government to direct vesting of the area in another authority or body or trust. Section 7 deals with the management and administration of property. Section 8 deals with the miscellaneous provisions regarding payment of amount and Section 9 gives overriding effect to the provisions of the said Act over any other law inconsistent therewith for the time being in force including any instrument having the effect by virtue of any law other than the said Act or any decree or order of any Court, Tribunal or other authority. It is important to notice that Section 4(3) provides that any suit, appeal or other proceedings

in respect to rights, title and interest relating to any property vested in Central Government under Section 3, if pending on the commencement of the Ayodhya Act before any court, Tribunal or other authority, the same shall abate.

188. The immediate result of the said enactment was that all the four suits pending before this Court, by operation of law, stood abated.

189. The President of India in the meantime also made a special reference to the Apex Court under Article 143(1) of the Constitution of India on 7.1.1993 on the following question.

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

190. *Vires* of Ayodhya Act was assailed before this Court by filing certain writ petitions under Article 226 as well as before the Apex Court under Article 32. The Apex Court got the petitions filed before this Court transferred, heard all the matters collectively along with the reference made under Article 143 (1) of the Constitution and decided vide its judgment dated 24.10.1994, **Dr. M. Ismail Faruqui (Supra)**.

191. The Apex Court considered and decided the question of maintainability of said Special Reference also in its judgment dated 24.10.1994, **Dr. M. Ismail Faruqui (supra)**. The majority judgment was delivered by Hon'ble J.S. Verma, J. for himself and on behalf of Hon'ble M.N. Venkatachaliah, C.J. and Hon. G.N. Ray, J. The majority view recorded its conclusion in para 98 as under:

"Conclusions

98. *As a result of the above discussion, our conclusions, to be read with the discussion, are as follows :*

(1)(a) Sub-section (3) of Section 4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute resolution mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of rule of law. Sub-section (3) of Section 4 of the Act is, therefore, unconstitutional and invalid.

(1) (b) The remaining provisions of the Act do not suffer from any invalidity on the construction made thereof by us. Sub-section (3) of Section 4 of the Act is severable from the remaining Act. Accordingly, the challenge to the constitutional validity of the remaining Act, except for sub-section (3) of Section 4, is rejected.

(2) Irrespective of the status of a mosque under the Muslim Law applicable in the Islamic countries, the status of a mosque under the Mahomedan Law applicable in secular India is the same and equal to that of any other place of worship of any religion; and it does not enjoy any greater immunity from acquisition in exercise of the sovereign or prerogative power of the State, than that of the places of worship of the other religions.

(3) The pending suits and other proceedings relating to the disputed area within which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood, stand revived for adjudication of the

dispute therein, together with the interim orders made, except to the extent the interim orders stand modified by the provisions of Section 7 of the Act.

(4) The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein under sub-section (2) of Section 7 of the Act. The duty of the Central Government as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired.

(5) The power of the courts in making further interim orders in the suits is limited to, and circumscribed by, the area outside the ambit of Section 7 of the Act.

(6) The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in view of the purpose of its acquisition.

(7) The meaning of the word 'vest' in Section 3 and Section 6 of the Act has to be so understood in the different

contexts.

(8) Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject-matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits.

(9) The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long-standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on adjudication of the dispute, must be restored to the undisputed owners.

(10) Rejection of the challenge by the undisputed owners to acquisition of some religious properties in the vicinity of the disputed area, at this stage is with the liberty granted to them to renew their challenge, if necessary at a later appropriate stage, in case of continued retention by Central Government of their property in excess of the exact area determined to be needed on adjudication of the dispute.

(11) Consequently, the Special Reference No. 1 of 1993 made by the President of India under Article 143(1) of the Constitution of India is superfluous and

unnecessary and does not require to be answered. For this reason, we very respectfully decline to answer it and return the same.

(12) The questions relating to the-constitutional validity of the said Act and maintainability of the Special Reference are decided in these terms."

192. The result of declaration of Section 4(3) unconstitutional was that the suits in question continued as if nothing had happened in the meanwhile and this Court accordingly proceeded to consider the same on merits, but with one distinction, i.e., it had reduced the area of dispute now to be considered in all these suits. The disputed area now is confined to the area within which the structure (including the premises of the inner and outer courtyards of such structure) existed. The land beyond the above is out of the scope of these suits having been validly acquired under Section 3 of the Ayodhya Act, though the said vesting has also been made limited. The claim over the area beyond inner and outer courtyard is now not open for adjudication in these suits.

193. Further pursuant to Ayodhya Act the Commissioner, Faizabad Division, Faizabad is the 'authorized person', a statutory Receiver of the disputed area vide Section 7 of the said Act. He is also responsible for preservation of artefacts etc. and to maintain accounts of the property including moveable and liquid assets.

194. Since the Apex Court also allowed the parties to seek amendment in their pleadings, a number of applications were filed seeking amendments in the pleadings and also for impleadment of Union of India etc. This Court, by various orders, after hearing the parties, allowed necessary amendments

as found fit and rejected the rest. It however rejected impleadment of Union of India. It allowed the State of U.P. to withdraw its application to file written statement, which right the State of U.P. had already surrendered in Suit-4 as long back as on 28.05.1962 by filing an application that it does not propose to file any written statement.

195. Since this Court in presenti is considering the pleadings as they stand amended at the time of hearing, it is not necessary to refer such applications and the orders passed thereon in detail. We only reiterate that the disputed area which this Court has to consider has shifted and confined to inner and outer courtyard only.

196. This Court time and again also considered various applications seeking dismissal of one or the other suit on various technical grounds and it took considerable time in disposing/dismissing the same after hearing long drawn arguments of the parties.

197. Time and again this Court also expressed its desire of early disposal of the matters. It also did not hesitate in placing its anguish on record as is evident from the order dated 21.08.1995, the very opening paragraph :

“In a suit filed in 1961 and drawn to this Court in 1989, we are even this day considering only amendment of pleadings. This stares on its face, speaks volume of lethargy, the approach of parties, the procedural wrangles, not the least the sensitive issues, the causes for which this case is crawling. Pleading though could be amended at any stage including appellate but the farthest so far it has gone was only framing issues, when on account of changed circumstances we are back to this stage. This reflects on

our judicial system not that it has any infirmity but only projects the image of the way of working or contribution of all who are involved in the administration of justice. We have all to trigger and shake up our very approach of finding the truth by awakening our awareness with our deep-rooted conscience. The procedures are only in aid not hurdles in delivering justice. Any delay prolongs agony, aggravates sensitivities leading to further consequential inevitable damages, changing circumstances, giving rise to a party to amend its pleadings. If any example is to be placed, there could not be more glaring than the present and other connected suits. Present application is also in the same direction.”

198. However, it appears that the parties were more interested in either delaying the proceedings or to get the suits disposed or dismissed on some technical reason instead of having a verdict on merits and this is how the aforesaid suits have travelled and continued for more than 61 years.

199. It would however be useful to refer the order dated 08.05.1996, noticing that there was no issue between the parties about the fact that Lord Ram is cultural heritage of India, and, the citizens of country have a right to pay homage to his birth place and in this admitted factual state of affairs, issue No. 14 as proposed at that time, was rejected. The relevant observations are as under:

“It is not in issue between the parties whether L. Ram is cultural heritage of India and the citizen of this country has a right to pay homage to his birth place. When this has not been challenged it has got no connection with the facts in issue we do not consider that any decision in

this regard is required to be taken by this Court and, accordingly, it has rightly been rejected as it has got no relevance with the present controversy.”

200. The Court referring to its earlier orders and reasons, reiterated the same while rejecting review application filed on behalf of defendants no. 10 to 17.

201. The recording of oral evidence commenced on 24.07.1996. On behalf of plaintiffs (Suit 4) statement under Order 18 Rule 2 C.P.C. was made on 23.04.1996 and thereafter they proceeded to examine their witnesses on various issues and statement of 16 witnesses was recorded.

202. An objection was raised by Sri V.K.S. Chaudhary, Advocate in Suit-5 that it was only connected with other suits and not consolidated. This Court to avoid any technical objection, clarified by order dated 26.8.1996 that Suit-5 be also treated, connected and consolidated with Suit-4 and said:

“Sri D.N. Agarwal one of the plaintiffs also agrees to which other learned counsel have no objection that all the proceedings here-in-before including the examination of this witness P.W.1 be also treated to be as if this consolidation was made since here-in-before. This agreed as to eliminate any possible technical objection.”

203. Defendant no. 24 (Suit-5) died on 23.07.1997 and, therefore, CMA No. 8(O) of 1997 was filed by the plaintiffs (Suit-5) for deletion of defendants no. 24 and 25 (Suit-5) which was allowed vide order dated 10.11.1997.

204. CMA No. 19(O) of 1999 was filed by the plaintiffs (Suit-5) for recording statement of Sri Paramhans Ram Chandra Das of Digamber Akhara, Ayodhya through commission due to his old age, which was allowed vide order dated 04.09.1999

directing Sri Hari Shanker Dube, Additional District Judge, Faizabad to examine him in the Civil Court Room at Faizabad.

205. CMA No. 18(O) of 2000 was filed by the plaintiffs (Suit-4) purporting to be under Order 18 Rule 3 read with Section 151 C.P.C. praying for permission to reserve their right to produce evidence on issues No. 1(b), 4, 11, 13, 14, 19(a) and 19(c) by way of answer to the evidence that may be produced by the defendants. This Court examined the matter in detail by its order dated 19.10.2000 and rejected the same observing :

“However, in case this Court finds at a later stage that the plaintiffs’ interest is likely to be prejudiced by production of such evidence by the other party which the plaintiffs could have neither imagined nor had the opportunity to rebut, the inherent powers of the Court may be invoked under Section 151 CPC and the Court may pass fresh orders as may be necessary in the ends of justice.

The crux of the matter is that since the plaintiffs have not exercised their option of keeping their right reserved to make statement and lead evidence in rebuttal at the time of making their statement under Order 18 Rule 2 CPC i.e. before they started leading evidence, they cannot now be permitted to exercise that option at this stage and reserve their right to lead evidence in rebuttal under Rule 3 of Order 18.

In the result, the C.M. Application No. 18(o) of 2000 is hereby rejected.”

206. Again for recording statement of Sri Deoki Nandan, plaintiff no. 3 (Suit-5) and one Sri Swaraj Prakash Gupta, resident of B-17, Kutub Institutional area, New Delhi through commission, Application No. 9(O) of 2001 was allowed vide

order dated 23.05.2001 permitting recording of statement of Sri Agrawal at Allahabad and Sri Gupta at Gautambudh Nagar through commission.

207. Sri Agrawal, plaintiff no. 3 (Suit-5), however, died on 08.04.2002 and thereafter vide order dated 25.4.2002 Dr. Thakur Prasad Verma was appointed as next friend of plaintiffs no. 1 and 2 in the said suit and allowed to pursue the same on their behalf. Now Dr. T.P. Verma has also been replaced by Sri Triloki Nath Pandey vide Court's order dated 18.3.2010.

208. This Court on 4.5.2002 also visited not only the disputed site, but also Ram Katha Kunj where certain artefacts/material, said to have been discovered from the disputed area were collected.

209. The evidence of the plaintiffs (Suit 4) closed on 30.7.2002. Thereafter the evidence of defendants commenced. There appears to be some dispute as to the order in which evidence was to be produced after close of the evidence of plaintiffs (Suit-4). This aspect was clarified by Court's order dated 31.07.2002 while disposing C.M.A. No. 34 (O) of 2002. It directed the parties to adduce the evidence in the following manner :

“1) The plaintiffs of OOS No. 5 of 1989 shall lead the evidence as they are not defendants in OOS No. 4 of 1989. The plaintiffs in OOS No. 5 of 1989 have already begun their evidence. They have already produced the evidence of Sri Deoki Nandan Agarwal and Dr. S.P. Gupta (his cross-examination has yet not completed). It may be that they were originally examined on Commission on their application on the ground that they were aged and suffering from

ailment. It may be so but as they have already filed documentary evidence and proceeded with the evidence, they may produce the evidence and thereafter,

- 2) *The plaintiff of OOS No. 1 of 1989 shall lead evidence as he is not a defendant in OOS No. 4 of 1989. The pleadings of OOS No. 1 of 1989 are almost similar to that of OOS No. 5 of 1989 claiming the right of worship and, therefore, he may be permitted to lead the evidence after OOS No. 5 of 1989, and thereafter,*
- 3) *The plaintiffs of OOS No. 3 of 1989 shall lead evidence. Nirmohi Akhara, plaintiff, is also defendant No. 3 in OOS No. 4 of 1989, and thereafter,*
- 4) *The remaining contesting defendants of OOS No. 4 of 1989 shall lead their evidence in seriatum,*
- 5) *The contesting defendants in OOS No. 1 of 1989, OOS No. 3 of 1989 and OOS No. 5 of 1989 shall lead evidence thereafter in seriatum (if they were not parties in other suits)."*

210. On 1.8.2002, this Court invited views/suggestions of the parties in the suits with regard to excavation of disputed site to find out as to whether there existed foundation of Hindu Temple or any Hindu religious structure prior to demolition of the disputed structure. Without understanding the said order, it appears that several persons, in one or the other way, expressed their views in different ways and this was also given a wide publicity in print media. When this was brought to the notice of this Court, an order was passed on 20.8.2002, operative part whereof is as under :

“If the newspapers publish opinion of the parties or any other person threatening the Court from passing the order, it amounts to contempt of the Court by the press as it conveys threat of the parties or any other person from passing an order, which they do not wish to be passed. The party or any other person, who expresses opinion pending proceeding, is also guilty of contempt of Court as it interferes in the administration of justice.

The Editors take the responsibilities for whatever is published in the newspapers. If anything is published, which hampers fair trial or poisons public mind it is contempt by the press. We are of the opinion that the publication in the newspapers regarding the opinion by the parties, counsel for the parties and any other person in the pending matter amounts to contempt of Court. However, instead of issuing show cause notice we, at present, warn them that in future they shall not publish :-

- 1. any opinion of the parties or their counsel or any other person in regard to the pending dispute before us otherwise it shall be treated as contempt of Court.*
- 2. They are further restrained from publishing any article in regard to the merit of the case as it may affect public mind in regard to which the Court is yet to take decision on the basis of the evidence, which parties may produce in the Court.*
- 3. We have come to know that the TV Channels are taking interview of the counsel of the parties or other persons in regard to the matter, which is pending in the Court. Television interview, at a time, when the matter is still pending in the Court, may affect the*

mind of the public and it also undermines the judicial authority and thwarts the majesty of the Court while the Court has yet to take decision in the matter on the evidence, which may be produced by the parties. This will amount to interference in the administration of justice. The TV Channels are prohibited from televising interviews in respect of the Ayodhya matter, which is still subjudice.

The registry is directed to send copy of this order to the Editors of all the newspapers, Press Trust of India and all the TV Channels forthwith.”

211. Thereafter, an application for review/recall of the order dated 20.8.2002 was filed on behalf of National Union of Journalists (India). After hearing them and other concerned parties, this Court says “it is true that Press is a limb of the State and watchdog of the democracy and freedom. An independent Press is essential and integral part of the democracy. The Press/Electronic Media, however, should remain cautious while publishing the proceedings of the Court. It should not publish the opinion of a person or a party or his counsel if the matter is subjudice and the Court has yet to take a decision in the matter. The expression of the opinion by a person about the correctness of the wisdom of the Court, in regard to pending case, may be taken as contempt of Court. The newspapers are not to take upon themselves to publish material expressing opinion of the persons in regard to the pending matters. It is called “Trial by Newspapers” in contradiction of the “Trial by the Courts”. It interferes in the administration of justice and also influences the public mind.” Considering matter from various angles thereafter, the Court clarified its earlier order dated 20.8.2002

vide order dated 21.02.2003 and issued following directions:

- “1. *The Press/Electronic Media is entitled to publish a fair and accurate report of the proceedings of the Court.*
2. *The report about an order should be made after obtaining the true copy of the order and the headnote of the reporting should not be misleading.*
3. *The Press/Electronic Media should not publish any article on any matter, which is pending before the Court for adjudication.*
4. *The statement of witness be not reproduced as his statement is to be scrutinized and assessed by the Court. The Press can report as to which person appeared in Court as a witness.*
5. *The Electronic Media should not interview any person in regard to the merit of the case.*
6. *It should not express its opinion in editorial notes or express opinion of any person including any party or his counsel.”*

Excavation of the Site by Archaeological Survey of India

Excavation Report of Archaeological Survey of India and objections thereon :

212. On 1.8.2002, this Court referring to Issues No. 1(b) (Suit-4), 14 (Suit-5) and the Reference made to the Hon'ble Supreme Court by the President of India, noticed that one of the basic issue engaging attention of the Court in these suits is “whether there was a Hindu temple or any Hindu religious structure existed or the alleged Babari masjid was constructed after demolishing temple at the site in dispute.” Considering the observations of Sri D. Dhaneshwar Mandal, Archaeologist in his Book “Ayodhya-Archaeology After Demolition” that sufficient

archaeological material is available regarding temple-mosque issue prompting need for further excavation at Ayodhya, this Court required the parties to give their views/suggestions, why the disputed land be not allowed to be excavated by Archaeological Survey of India (hereinafter referred to as 'ASI'). Further, till decision in this respect, the Court directed ASI to get the disputed site surveyed by Ground Penetrating Radar or Geo-Radiology (hereinafter referred to as 'GPR') and obtain report.

213. Almost all the parties, namely plaintiffs, defendants no. 2, 3, 4, 20 and 22 (Suit-4) and State Government filed their objections in one or the other manner. However, except defendant no. 2, others did not raise any specific objection regarding survey of the disputed site by GPR. Sri Jilani, learned counsel for plaintiffs in Suit-4 in fact made a statement before the Court that he has no objection on G.P.R. survey of the disputed site.

214. The objections were considered and decided by Court's order dated 23.10.2002. The relevant extract thereof is as under :

“Having heard the learned counsel for the parties, we are of the opinion that we should get a report in regard to foundations, if any, of any structure at the site in question. One of the issues in the suit is whether there was any Hindu temple or any Hindu religious structure existed and the alleged Babri Masjid was constructed after demolishing such temple/structure at the site in question.

The nature of super structure to a great extent is related to the foundations. In 'History of Mughal Architecture' Vol. I, filed as paper no. 197C-2/1 to 197C-2/8, Shri R. Nath has expressed the view that the

Muhammadans have no written text as to the construction of their sacred mosques, but, on the other hand, the Hindu temples are constructed on the principles for the construction of temple detailed in various text books. The view expressed by him is as follows:-

“It is surprising that though they built large and magnificent mosques in Syria, Iraq, Iran, Turkey, Egypt and Spain, the Muhammedans have no written text as to the construction of their sacred architecture. Except the universal law that the congregation would face the Ka'ba (in Mecca) in accordance with the Quranic injunction and the Qiblah would mark its direction, there are no prescribed rules and absolutely no norms for its making. The Hindus, on the other hand, were very particular in this matter. The 'sastra' (theory) closely followed the standardised form of 'prayoga' (practice) in India and they laid down principles for the construction of temple (prasada) in minutest details, in numerous types and varieties, from the Gupta age to the beginning of the Mughal period. Iconography similarly dealt with the subject of image-making in exhaustive details. Such grand treatises as the Brhat-Samhita, Sukra-Niti-Sara, Hayasirasa Pancharatra, Agni-Purana, Visnu-Dharmottara-Purana, Kasyapa Silpa, Mayamatam, Manasollasa, Manasara, Samarangana-Sutradhara, Aparajita-Prchchha, Silpa-Ratnam, Visvakarma-Prakasa, Pramana-Manjari, Vastu-Sara-Prakarana, Prasada-

Mandana and some 15th century texts on Silpa (combining all the applied fine arts, viz. Architecture, sculpture, iconography, iconometry and painting) are available to us.”

If any foundations is existing of any construction, it may throw light as to whether any structure existed and if so what would have been the possible structure at that time.

The plaintiffs of O.O.S. No. 5 of 1989 have themselves relied upon archaeological evidence that the Court may draw an inference whether that temple existed on the site. The archaeological evidence, according to the plaintiffs of O.O.S. No.5 of 1989, relates to three places:

i. The excavation in the area located in close proximity to the southern wall of the alleged mosque. It is alleged that two trenches were laid and pillar bases were found;

ii. Two trenches were laid at the back side of the alleged mosque on the western side;

iii. Two pits located at a distance of about 8.80 meters south to the alleged mosque. The discovery was alleged to be made during the land levelling operation and from there big hoard of stone sculptures were found and some structural remains were also located at a distance of roughly 9 meters south-east to the alleged mosque.

The plaintiffs of O.O.S. No. 4 of 1989 have led evidence to prove that these excavations do not prove that any temple existed on the site in question. We are not going to assess the evidence at this stage regarding rival

contentions of the parties and evidence led by them on the record. It is, however, clear that none of the above excavations were made on the disputed site. The excavation of the site in question would have been more relevant to one of the issues involved in the suit. We have passed the order asking the parties to give their suggestions in regard to excavation at the disputed site and till any excavation is done, without disturbing the nature of the land, we directed that the area in question can be surveyed by Ground Penetrating Radar or Geo-Radiology system which is now a developed science and can trace out the foundation without disturbing the nature of the land.

By adopting Ground-Penetrating Radar/Geo-Radiology system and also with the help of magnetometer the archaeologists can map archaeological foundations of any structure. It is also possible for them to draw a plan with enough accuracy to make out/create a case for excavation at the disputed site. The archaeologists, if they feel so, have to dig the place/site where they consider to excavate the site but they are handicapped for two reasons, first, they do not really know whether to dig the area to its hilt; and second, once they have dug, the area it is destroyed. Both these problems can be solved by adopting Ground-Penetrating Radar/ Geo-Radiological technology. In this technology of Ground-Penetrating Radar/ Geo-Radiology, magnetometer can also be used to trace out the foundations of any structure without destroying anything on the ground.

The question is whether the Court has power to take this course without any of the parties requesting the Court

for tracing out the foundations of any structure on the disputed site. The Code of Civil Procedure itself gives power to the Court to suo motu summon any witness to record evidence, to summon any document from any person, to make local inspection or to appoint a commission for investigation, if it thinks necessary or expedient in the interest of justice.

Order XVI Rule 14 of C.P.C. provides that where the Court at any time thinks it necessary to examine any person including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, call such person to be summoned as witness to give evidence, or to produce any document in his possession. This provision envisages that when none of the parties produce as witness, the Court has power to suo moto summon the witness if it thinks necessary or direct any person to produce any document in his possession. It clearly contemplates a situation where none of the parties desire to produce witnesses or documents, for any reason, the Court in the interest of justice can call the witness to give evidence or to produce documents in his possession. It is to find out the truth which is integral part of justice.

*In **R.M.Seshadri Vs. G. Vasantha Pai and others, A.I.R. 1969 S.C. 692**, where neither of the parties examined the witness which the Court found to have been examined, summoned such witness and his evidence was taken into account while recording the finding. The Apex Court held that the Court had power to summon him as the Court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. The*

Court observed as under :

“The power of a Civil Court to summon court witnesses is contained in Order XVI, Rule 14 of the Code of Civil Procedure. Now the Representation of the People Act enjoins that all the powers under the Code can be exercised and all the procedure as far as may be applicable to the trial of civil suits may be followed in the trial of election petitions. It would appear therefore that in the absence of any prohibition contained in the law, the Court has the power to summon a court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence.”

*In **Shaikh Mahamad Umarsaheb Vs. Kadalaskar Hasham Karimsab and others, AIR 1970 SC 61**, the Apex Court upheld the order of the Trial Judge summoning a person as a Court witness. It is, however, a matter of discretion when it is to be exercised. The Court is not obliged to summon a person as a Court witness. It is the discretion of the Court to exercise its discretion in the facts and circumstances of each case as observed in **Khaje Khanavar Khadarkhan Hussain Khan Vs. Siddavanahalli Nijalingappa and another, AIR 1969 SC 1034** and **Bishwanath Rai Vs. Sachhidanand Singh, A.I.R. 1971 S.C. 1949**.*

The principle laid down for obtaining the evidence by the Court suo moto can also be applied for obtaining the report through scientific investigation.

The Court has further power under Order XVIII Rule 18 C.P.C. to inspect any property or thing concerning

which any question may arise at any stage of the suit. It is also not dependent on any application being filed by any of the parties in this respect. It is for the satisfaction of the Court to find out the truth for which the Court takes burden of making local inspection under Order XVIII Rule 18 C.P.C.

*The Court has further power under Section 151 C.P.C. to pass any appropriate order in the interest of justice provided such power is not in conflict with what has been expressly provided in the C.P.C. or against the intention of legislation vide **Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and others, AIR 1966 SC 1899**, where the Court struck the defence under Section 151 C.P.C. on the ground that the Court has inherent power to strike the defence of the defendant if he does not comply with the order of the Court.*

The Court has thus a power applying principle of Order XVI Rule 14 C.P.C. to obtain a report through the Archaeological Survey of India in respect of a matter which is one of the important issues involved in the suit. The Court has further power under Order XVIII Rule 18 C.P.C. to inspect any property or thing concerning which any question may arise at any stage of the suit. It is also not dependent of any application being filed by any of the parties in this respect. It is for the satisfaction of the Court to find out the truth for which the Court takes burden of making local inspection under Order XVIII Rule 18 C.P.C.

The Court has been conferred power under Order XXVI Rule 10A CPC to issue commission for scientific investigation which reads as under :-

“10A. Commission for scientific investigation.-(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.”

The second question is why the Court should exercise its power suo moto in the matter. The reasons are two fold- firstly, to remove any suspicion or doubt as to the facts of the case which is in dispute and secondly, to find out the truth in regard to the contentious issues raised by the parties. As noted above, the plaintiffs of O.O.S. No. 5 of 1989 have themselves relied upon the evidence in regard to excavation, levelling and trenches laid near the site of the disputed area. It would be appropriate that the matter may be thoroughly investigated to find out the truth.

The third question is why the Court should exercise its power at this stage when the evidence of all the parties have not closed as yet. The plaintiffs in O.O.S. No. 4 of 1989 have closed its evidence. The plaintiffs of O.O.S. No. 5 of 1989 have examined seven witnesses by this time including Dr. S.P. Gupta, Archaeologist, as one of the witnesses, O.P.W. 8 is being examined. None of the parties

has filed application for excavation at the disputed site. It is not suggestion of the objectors that they would move an application for excavation at a later stage. In our view, this is a proper stage for obtaining the report of GPR/Geo-Radiology without disturbing the nature of the land which will throw light in the matter.

Lastly, it is contended that the report, if obtained, may not be very accurate and the exercise will be futile. It is an assumption by the objectors. The Survey through GPR/Geo-Radiology is a scientific investigation. It is after the report is submitted, the Court can examine such report. This objection at the present moment is unfounded.

In view of the above, we do not find any substance in the objections raised by learned counsel appearing for defendant no. 2 and defendant no. 22 in O.O.S. No. 4 of 1989.

As regards clarification sought for surveying the area, we clarify that the area in question will be surveyed by the agency as under :-

1. The area shown in the report of the Commissioner submitted in Suit No.2 of 1950 (O.O.S. No. 1 of 1989) covering an area of approximately 100 x 100 shown in the map plan no. 1 referred to by letters A,B,C,D,E,F and thereafter northern portion up to the end of the raised platform and further to the west, south and east to the said site to the extent of 40 feet so that the position may be clarified regarding excavation alleged to have already been done earlier,

2. The agency conducting GPR/Geo-Radiological test shall not disturb any area where the idol of Shri Ram

Lala has been installed and approximately 10 feet around it.

The objections in regard to GPR/Geo-Radiology are disposed of accordingly.”

215. ASI initially showed its reluctance in getting the survey of the disputed area done by GPR and submitted that no agency in the Country was found competent to undertake the said work. Sufficient time was consumed by various applications filed before this Court and their disposal on GPR survey. Ultimately, by order dated 26.11.2002, the Court permitted M/s Tojo Vikas International (Pvt.) Ltd. (hereinafter referred to as 'Tozo') to visit the site and submit report by 12.12.2002. M/s Tozo submitted a site inspection report after visiting the site in question on 9.12.2002. It was considered on 13.12.2002 and then the Court directed M/s Tozo to undertake the project of GPR survey at the disputed site as early as possible but latest by first of January, 2003 and complete the work and submit report by 26.1.2003. M/s Tozo constituted a team consisting of (1) Mr. Manoj Kumar, Deputy General Manager and Team Leader, (2) Mr. Sudhir Chauhan, Senior Geophysicist, (3) Mr. Shakti Singh Mittal, Geophysicist, (4) Mr. S.A.H. Jaffari, Senior Land Surveyor and (5) Mr. Vobhor Mittal, Land Surveyor. The aforesaid team was assisted by Mr. Claude Robillard from Canada, an expert in the work of survey interpretation etc. The survey report was submitted by M/s Tozo ultimately through ASI on 17.2.2003 reporting its conclusions as under:

1. In General terms, the main georadar features detected by the present survey are “anomaly alignments” across the main platform, north and south of the Sanctum Sanctorum extending to the Ram Chabutra area, the high

amplitude “ringy sequence” towards the south, and the mound structures to the east.

2. In their cross-section appearance and the areal pattern, the “anomaly alignments” may correspond to a wall foundation of some sort. In the Rama Chabutra area, the crossing patterns of those alignments and the different stratigraphic units from where they ((emerge)) suggest that they belong to successive construction periods rather than being contemporary to one another. As mentioned earlier, similar indications of successive structures are shown in other areas of the site such as shown on the example radar cross section 2 (Annex D).

3. The (ringy and high amplitude)) sequence in the southern portion of the Ram Chabutra area extends across the fences to the east to the main platform area to cover a rather large area. This sequence may be indicative of a flooring structure of some sort, possibly stone slabs if its origin is ancient.

4. A third type of buried structures covers the entire eastern boundary of the site. It consists of buried mound structures with some internal texture or structure indicative of collapsed material. Similar types of anomalies have been detected to the southwest area just before the terrain slopes down.

5. Many small discrete anomalies have been detected at various depths- from 0.5 to 5.5 meters. Some of those anomalies appear to line up in some directions but could not be detected on some survey lines between them. As such they have been referred to “discontinuous alignment” on the geophysical interpretation map of Annex A. They may

correspond to pillars alignment, broken up sections of wall foundations or fortuitous patterns of independent objects of natural features.

6. *In the zones of reworked material or rubbles indicated on the map, little penetration was achieved as the signal was severely scattered in those units. It is possible that some of the trends or alignments stopping in those zones actually also extend further.*

7. *In the slope area to the west, which is undulating, filled with rubbles and steeply dipping, only small anomalies were detected at relatively shallow depths. They appear to line up somewhat as indicated on the map; however, the wider line spacing and the poor data quality, on account of ground conditions in this area, due to bad coupling of the antenna with the ground, makes this interpretation difficult. This area as explained earlier is a debris zone where heterogeneous material was apparently dumped from the upper platform and the origin of those detected anomalies could also be debris.*

8. *We are also showing some indications on the map relative to the radar signal that are most probably related to geological factors such as dipping layers, recent fill sequence and zones of higher soil conductivity. They are part of the geophysical interpretation.*

9. *In conclusion, the GPR survey reflects in general a variety of anomalies ranging from 0.5 to 5.5 meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site. However, the exact nature of those anomalies has to*

be confirmed by systematic ground truthing, such as provided by the archeological trenching.

216. The said report was considered by the Court after permitting parties to file their objections and the same were disposed of by order dated 5.3.2003 directing ASI to go ahead with the excavation of the disputed site. The relevant extract of the order is as under :

“Considering the entire facts and circumstances, the Archaeological Survey of India is directed to get the disputed site excavated as under:-

(1) The area shown in the report of the Commissioner submitted in Suit No. 2 of 1950 (O.O.S. No. 1 of 1989) covering an area of approximately 100x100 shown in the map plan no. 1 referred to by letters A, B, C, D, E, F and thereafter northern portion up to the end of the raised platform and further to the west, south and east to the said site to the extent of 50 feet.

(2) If it is necessary to excavate towards north or any area more than 50 feet to the disputed area, it can do so to find out the true position as regards to any foundation.

(3) It is made clear that the Archaeologists (Excavators) shall not disturb any area where the idol of Shri Ram Lala is existing and approximately 10 feet around it and they shall not affect the worship of Shri Ram Lala and thus, status quo as regards His Puja and worshippers' right of Darshan shall be maintained.”

(4) The excavation shall be done by Excavation Branch concerned specialized in excavation work

within a period of one month from today. If they are engaged in other work it shall be suspended till the excavation in question is complete. If any additional staff is required the Archaeological Survey of India and Central Government shall provide it.

(5) Tojo-Vikas International (Pvt.) Limited which has surveyed the site in question by GPR etc. shall assist the excavators by providing technical assistance at the time of excavation.

(6) The work will commence within one week from today. The report will be submitted within one week from the date of completion of the excavation.

(7) The Archaeological Survey of India shall intimate the date of the commencement of the work to the Officer on Special Duty, Ram Janma Bhumi-Babri Masjid. On receiving such information he shall intimate the date to the parties who can watch the excavation work.

(8) Learned counsel for the parties can also appoint nominee including Archaeologist to watch the excavation work. It is made clear that only one nominee of each contesting party at one time shall be entitled to remain present.

Put up on 24th March 2003 by which date the Archaeological Survey of India shall intimate to the Court of the progress made by it in regard to excavation.”

217. The Director General, ASI constituted a 14 members team consisting of the following :

1. Dr. B.R. Mani, Suptdg. Archaeologist
2. Shri C.B. Mishra, Dy. Suptdg. Archaeologist
3. Shri A.A. Hashmi, Astd. Archaeologist

4. Shri D.K. Singh, Asstt. Archaeologist
5. Shri N.C. Prakash, Asstt. Archaeologist
6. Shri Samir Dewan, Asstt. Archaeologist
7. Shri Prabash Sahu, Asstt. Archaeologist
8. Shri Bhuwan Vikram, Asstt. Archaeologist
9. Shri S.K. Gulrande, Photographer
10. Shri S.M. Khairkar, Photographer
11. Shri Teja Singh, Photographer
12. Shri H.R. Barapatore, Senior Artist
13. Shri R.G. Kasbi, Draftsman
14. Shri R.G. Nangulwar, Surveyor

218. He also directed for engagement of 80 local labourers to help the excavation team in the field work. The ASI team reached Ayodhya in the night of 10.3.2003, carried out its general survey of the site and lay out of the trenches on 11.3.2003.

219. On the application of the counsels for the parties, this Court gave certain more direction on 11.3.2003 so that excavation by ASI would proceed keeping intact the confidence of the parties in the above proceeding etc. The directions are :

- “1. The general survey of the site and layout of the trenches if already done shall be done again in presence of the contesting parties or their counsel or nominees.*
- 2. It should commence from 12.03.2003 at 10.00 a.m.*
- 3. The excavation work should be done from 10.00 a.m.*
- 4. List containing names and addresses of all persons including labourers engaged in excavation process be submitted to the Hon’ble Court for record.*
- 5. Names of the equipments and tools likely to be used in excavation work may also be submitted.*

6. *Videography if being done may be kept in tact and under sealed cover.*

7. *Materials likely to be recovered may also be kept in sealed cover/bundles and may be preserved in some near by located building under lock and seal.*

8. *The Authorised person/Director A.S.I./Team Leader A.S.I. Excavation Team, Ayodhya should submit periodical progress report of the work to the Hon'ble Court and they should not make any briefing/disclosure to the media.*

9. *Transparency should be maintained."*

220. In compliance of the above directions, Director General, ASI submitted list of its officials engaged in the excavation branch (located at Delhi and Patna, i.e. the Northern Region) vide its letter dated 13.3.2003. Along with letter dated 20.3.2003, he supplied a list of 14 member team as well as the labourers engaged in the excavation work and the equipments likely to be used therein.

221. A brief note on the excavation work carried out from 12.3.2003 to 16.3.2003, prepared by Sri R.C. Mishra, Addl. Director General on 20.3.2003, was also submitted showing that the actual excavation started in the first half of 12.3.2003 itself. The note contained the following information :

"As per the court directives, the excavation was started in the area indicated in the report of the Commissioner submitted in Suit No. 2 of 1950 (O.O.S.No. 1 of 1989) shown in the map plan no. 1 and referred to by letters A, B, C, D, E, F. The excavation methodology consists of laying out square trenches measuring 4 X 4 m each in the entire area which are marked by numbers written on wooden pegs for reference and taking readings.

A site plan is also prepared indicating the number of trenches laid out with the peg numbers clearly indicated therein.

Four trenches (4 X 4 m each) with numbers J3, J4, J5, J6 were initially taken up for excavation (Plan enclosed). After a dig of nearly 5-14 cm depth, a cement floor was encountered in all the trenches. This cement floor was encountered with squarish and rectangular impressions of stone slabs/ tiles, very similar to that found extant in situ in marble and incised, datable to the second half of the 20th century A.D. As the cement floor was encountered in all the above four trenches, the excavation area was shifted to the east of above with numbers K3, K4, K5, K6. All these trenches show high intensity of signals of anomalies as per Tojo-Vikas International Pvt. Ltd. The excavation revealed four formations, two oblong, one circular and last roughly circular which is partly in section. The oblong formations have edges of burnt clay and some ash is also noticed within these formations. The irregular circle formation was plastered entirely with lime and filled with brickbats, few bone pieces and shreds of red ware. Here red ware was obtained with shapes of pots, vases and basins. A wall in two phases was exposed in K3 up to a depth of 75 cm with the associated finds consisting of red ware having bowls, dishes and basins as the prominent shapes. Due to intervening structures and floors, in many areas working area is reduced very much. In one trench a modern brick pavement was removed to obtain more space. The other finds include terracotta head of an animal figurine.”

222. The plaintiff (Suit-4) filed civil misc. application no. 18 (O) of 2003, praying for review and recall of the order dated 5.3.2003, contending that the report submitted by M/s Tojo has not been approved, no order was passed on the admissibility of the said report, hence direction for excavation by ASI was not justified and must be reviewed. This application was rejected by order dated 26.3.2002 holding that all the objections have already been considered and decided and no case for review is made out.

223. Another application was submitted on behalf of plaintiffs (Suit-4) being CMA No. 19 of 2003 (Suit-4) making the following complaints :

“A- Stratigraphic context is a Key issue in the interpretation of the excavation. Therefore there should be accurate noting of position (i.e. of the layer) of each find of whatever nature (potsherds, seeds, bones, other organic material, bricks or brickbats, mortar bonded rubble, loose debris fragments , stones, boulders and the like) and the record of the same has to be maintained and preserved with the signatures of the parties/ counsels/ nominees taken on the said report/ Register on day to day basis. The top and bottom of each layer and the edges of pits may be marked on all relevant Section (S) with the use of Section labels, of paper or aluminum, in indelible ink.

Recording of the identification of Strata and features like walls, floors and pits as well as objects like pottery etc. should be done immediately as they are identified or found. The discovery/ recovery of objects should be noted in Both, i.e, the trench notebook / diary, as well as in the register of finds (simultaneously), at the time when these Discoveries

are made.

B- In order to ensure that observers/ person watching, are not distracted, not more than 2 Trenches should be excavated at one time, after the completion of work in the Trenches already being excavated, and out of these Trenches also, actual digging should be carried out only in 2 Trenches at one time.

C- After the noting by the A.S.I. team, the Archaeologists nominated by the parties should be allowed to enter the trenches to observe the stratification of the A.S.I. (and its Section labels) and in order to do this they may be allowed to scrape the Sections. This may be allowed at the end of each day or every few days, after the A.S.I.'s work is over for the day. Without being allowed to scrape the Sections, Archaeologists will not be able to verify the stratification.

D- The details about each find and the strata identified should be noted in the site note book/ register (with rough sketches of Sections and the plans of walls, pits and other features) to be maintained regarding day to day excavation work and one copy of the same be supplied to each side of the contesting parties by the A.S.I. team, on day to day basis. As the relative dates of all the walls are important, the floors and foundation pits associated with those walls may be clearly specified on the trench sections and / or plans.

E- The copies of colour photographs of all the important objects, trenches, features and Sections may be supplied to the contesting parties on payment of necessary charges so that there may remain no apprehension or

doubt about the introduction of any external material or about Interpolation/ Destruction/ substitution of any find.

F- The Antiquity Register should be maintained making specific mention of the bones and glazed ware etc. on day to day basis and the same be sealed in the presence of the parties/ counsels or their nominees.

4. That the site notebooks and other records including Video-tapes, diagrams, plans and Section drawings, on which the Archaeological Survey of India may prepare the report, should be preserved and be made available for Inspection to the parties immediately after completion of the report.

5. That Archaeological Survey of India is an organization under the direct control of the B.J.P. MINISTER of the government of India, who is an associate of the Vishwa Hindu Parishad etc. in the matter in issue and as such the exercise of political influence in the preparation of report of the excavation can not be ruled out. Hence it is all the more essential and in the ends of justice that the parties to the suits and specially the Muslim Parties/ their nominees must have access to all those materials in their original forms including the excavated trenches, drawings of their plans and Sections, and all finds labelled with their stratum provenance, upon which the Archaeological Survey of India would be basing its conclusions and interpretation.

6. That the depth below present surface, upto which digging has to be done, may be specified by the court and the same may be at the most 5-6 feet (1.5 or 2 meter) as the Issue regarding which the order of excavation has been

passed, relates to the alleged demolition of temple (though denied) said to have been made in 1528 A.D. and as such the present excavation is not all concerned with anything of any period earlier than 16th century.

7. *That plaintiff of O.O.S. No. 4 of 89 having filed the suit as the representatives of the Muslim community and the suit being contested also as a representative suit and the nature of the dispute also being very sensitive, it was not only desirable but rather necessary that the persons engaged by the A.S.I. in the entire process of excavation, should belong to both the communities in equal proportion, so that there may not remain any feeling among any community that any favour was being shown to any one side or that more importance was being given by the A.S.I. to the members of one community as against the other. In this respect the conduct of the A.S.I., even from 8-3-03 to 17-3-03, has been giving strength to all kinds of apprehensions and speculations of partiality and biased attitude. The letters dated 8-3-03 and 10-3-03 sent by the Director of A.S.I. and Excavation Team Leader of A.S.I. describe the O.S.D. of this court as the "O.S.D., Ram Janam Bhoomi" while the O.S.D. has never described himself as O.S.D. of Ram Jaman Bhoomi only but he always describes himself as O.S.D. (R.J.B. -B.M.) or O.S.D. of Ayodhya Bench or O.S.D. of special Full Bench hearing Ayodhya Matters. Similarly the appointment of only one Muslim in a team comprising of 14 persons can also not be said to be an impartial constitution of the excavation team. So also the engagement of all labourers of one community cannot be treated to be an impartial and*

*justified action and inclusion of 3 Muslims only in a team of more than 50 labourers on 17/2/03, even after written demand made by the plaintiffs' counsels, shows their reluctance to act in an independent and impartial manner. True copy of the said representation dated 15.3.03 is filed herewith as **ANNEXURE No.-1**.*

It is therefore, not only desirable, but necessary, in order to create confidence about the impartiality of the excavation work, that the A.S.I. be directed to include at least half of the members of Excavation Team and labourers from among the Muslims and 5 eminent Archaeologists (Excavators) and an observer be also appointed by this Hon'ble court with the consent of the parties, as per order dated 1-8-2002.”

224. The plaintiffs (Suit-4) also filed a copy of their letter dated 18.3.2003 along with the said application wherein they had requested Sri B.R. Mani, Team Leader, ASI Excavation Team to include appropriate number of muslims labourers so as to inspire confidence in the community. The aforesaid application was opposed by the other side.

225. A brief report was also submitted by Sri B.R. Mani, Superintendent (Archaeology) and Team Leader, ASI on 23.3.3003 through the Director General ASI, and the relevant extract thereof is as under :

“II. Planning and Progress of Excavations

The present excavation undertaken by the ASI under the Hon'ble High Court's direction at the disputed site of Ayodhya is of a very special nature well defined objective. All precautions have been taken to plan it in such a way that the work could be taken up and completed as per the

directions of the Court. In planning the excavation, following strategy is adopted-

II 1. In place of general practice of lay out of 10 x 10 m squares divided into four quadrants of 4.25 x 4.25 m separated by 0.50 m baulk all-around, the latest technique of lay out trenches at sires where limited spaces are available was adopted. Accordingly, pegs were fixed at every 5 m in both north-south, and east-west orientation with cutting area of 4 x 4 m leaving 0.5 m baulk all around, which in contiguous trenches effectively left a space of 1 m in between two cutting for the movement of archaeologists and labourers. One meter wide baulk was specially provided considering the fact that due to modern fillings and debris, etc. the trench may collapse due to the earth pressure in a most sensitive area.

II 2. To avoid any confusion and for the better understanding of even layman instead of the X, Y and Z areas of traditional layout with central point at the highest part, the initial peg 'A1' was fixed at the north-west corner of the site and accordingly A, B, C, D letters were put to denote the trenches in west to east direction and numerals 1, 2, 3, 4, etc. in the north to south direction.

II 3. Full attention was given to the report and GPR drawing submitted by the Tojo-Vikas International (Pvt.) Ltd. And the matter regarding anomalies shown in their drawings were discussed with Shri Manoj Kumar, Dy. G.M. TVIPL and his representative Mr. Shakti Singh at several occasions and accordingly decision was taken to start the excavation at first to the north of Ram Chabutra and also to its adjoining areas where greater signals have

been detected by the GPR survey.

II 4. As the work of excavation is required to be completed as a time bound programme, the archaeological documentation including drawing and photography of the structural remains and pottery and antiquities are arranged to be done simultaneously.

II 5. Arrangements have also been made to collect the samples of soil, mortar, carbon (for C¹⁴ dating), pottery (for Thermoluminescence dating), grains and pollens (for palaco botanical studies) and bone (for study of faunal remains). Although these samples would have to be sent for laboratory testing and scientific studies to the scientists in the survey and outside agencies, who may take some time to study and submit their findings.

II 6. Trenches have been laid in the entire disputed area on all sides excepting the area of the makeshift structure where Ram Lala is enshrined along with its periphery having brick wall and the surrounding sand bag-mound covering an area of approximately 400 square metres. The excavation work has also been planned in phased manner in particular areas as per significant signals for anomalies pointed out by the GPR survey.

II 7. The excavation work was started as per Hon'ble High Court's order from 12.03.2003. Holidays were observed on Muharram (14.03.2003) and Holi (18.03.2003) and non-field day would be observed on Mondays (this Monday being 24.03.2003). No labourers came for work on 19.03.2003 although the team was present at the site and worked for documentation. Thus from the beginning of the work till 24.03.2003, i.e. the day of hearing of the case by

the Hon'ble High Court only 9 days would be utilized for excavation purpose. There also since the work is starting at 10 am one hour of work is being lost for which the Director General has been approached by the team leader to request the Hon'ble High Court through Sr. Standing Counsel to allow the team to start the work at 9 am so that the work may continue till 6 pm with one hour usual break for lunch.

II 8. Huge chunks of masonry blocks and other architectural members are lying on the western slope of the mound of the disputed area. They require shifting to facilitate surface study and planning of excavation in that area. These masonry blocks can either be broken into pieces and then shifted or lifted through crane and kept aside. Preferring the second alternative the Authorized Person has been requested to arrange a crane for the job.

III. The Present Wrok

III 1. After layout of trenches excavations were started initially in four trenches on the first day itself, i.e. 12.03.2003. These four trenches J3, J4, J5 & J6 laid bare cement floors, brick impressions of 1924 and cement mortar put over the lime floor for fixing votive slabs (marble)/tiles. Some of the extent marble slabs are inscribed with date as late as 1968-69 A.D. A request was made to the Director General to inform the team whether these floor remains could be cut or is there any direction from the Hon'ble Court in this regard.

III 2. In the meantime four adjoining trenches K3, K4, K5 & K6 were taken up for excavation which revealed the lowest portion of the eastern enclosure wall of the disputed

structure.

III 3. Two more trenches were taken up to the east and south-east of the so called Ram Chabutra at K7 & K8 where more space was found to go further deep.

III 4. It is noticed that in almost entire area of the disputed structure, the floor of it still remains at most of the places, which has to be necessarily cut through to make further space and correlation possible.

III 5. An interesting feature has been noticed in trench K4 in which the eastern enclosure wall constructed of brick bats was found over riding another earlier wall of the same width (1.04 m) but made of comparatively fuller bricks (which are not lakhauri bricks), the earlier wall is found resting on a still earlier lime floor which extends beneath it and also spreads on the other side (outer side) of it. All together, the two walls and the lower floor point towards three distinct structural phases.

III 6. Some structural activity during the part was also noticed outside the eastern enclosure wall.

III 7. The pottery and other deposits from the above 10 trenches is mixed deposit and cannot be categorized as a habitational deposit of successive phases. Pottery yield also is a mix of ancient black slipped ware, red ware medieval red ware, glazed ware, celadon ware and modern red ware and other material. The antiquities like human head and human foot of Kushan style, two copper coins of medieval period, beads of stone, glass and terracotta; pieces of glass bangles, animal figurines and such other objects have come from the mixed deposit 27 of such antiquities have been found so far from these deposits in

different trenches.

III 8. An interesting surface investigation was made towards north-west side of the disputed area in the trenches C1, C2, D1 & D2 where only the surface cleaning provided evidence of at least three structural phases- the top being the floor and its connected structure of the disputed structure, below which is an evidence of four courses of calcrete stone blocks which rest over a brick structure having no less than twenty five courses of bricks of various shapes and sizes. Only further careful digging in the area may show the details of structural activities.

III 9. Digging has been done in at least four trenches upto the depth of 1.50 metres. A total area of about 250 square metres comprising 10 trenches have been put to excavation at present and an area of 100 square metre is under surface investigation in four trenches.

Since utmost care is to be given to the site so that all the relevant details could be recorded and in haste nothing should escape unnoticed and nothing may get damaged, the work is taking the required time and therefore, extension for at least two months more for excavation and 15 days further for writing the report may please be sought from the Hon'ble High Court.

Submitted to the Director General, Archaeological Survey of India, Janpath, New Delhi.”

226. Another report dated 21.3.2003 showing some findings of ASI in the excavation work carried out till that date is as under :

“BRIEF REPORT-21.03.2003

“The excavations continued for the eighth day in K4, K6, K7 & K8, while trench nos. C1, C2, D1 & D2, situated

on the northern side of the western slope of the mound were cleaned of bushes and other smaller loose debris.

K4 In the eastern half of the trench excavation continued down to the depth of 80 cm without encountering any structural activity. In the western part the cement floor was removed after proper recording and the area was sunk to the depth of 80 cm where a lime plastered surface was touched along side the wall.

K6. 95 cm wide portion between the two almost parallel walls was further dug down to the depth of 95 cm. The wall to the east stopped after running into 5 courses, while the thicker wall to the west still continues. A lime floor was reached at a depth of 95 cm. A small foot of a human figurine was found from the floor which on stylistic basis shows affinity to the Kushan type.

K7. The same eastern half was further deepened to the depth of 90 cm. While the concrete piling still continues in the west. No structural activity in the part was noticed. However, the dark loose earth yielded large amount of potsherds of mainly red ware with sprinkling of other early and late wares.

K8 Eastern part of the northern half of the trench was subjected to further excavation down to the depth of 110 cm. The concrete piling in the west still continues. The wall running north-south stopped at five courses and the east-west running wall along the northern section went down to four courses. The pottery yield is of mixed ware including mainly red ware but also having few sherds of glazed ware with TC core, celadon ware, etc. A moulded human head in terracotta found from this trench appears to be of Kushan

period.

<i>Trench No.</i>	<i>Antiquity Description</i>
<i>K6</i>	<i>Foot of a human figurine, TC</i>
<i>K7</i>	<i>Knob (?)/Terracotta object</i>
<i>K7</i>	<i>Cylindrical TC object</i>
<i>K7</i>	<i>Knob(?)/Terracotta object</i>
<i>K7</i>	<i>Knob (?)/ Terracotta object</i>
<i>K7</i>	<i>Bangle fragment, Glass.</i>
<i>K7</i>	<i>Open ended ring, Copper</i>
<i>K7</i>	<i>Cylindrical TC object</i>
<i>K8</i>	<i>Iron hook</i>
<i>K8</i>	<i>Bead, quartzite</i>
<i>K8</i>	<i>Ball, TC</i>
<i>K8</i>	<i>Moulded head of a human figurine, TC</i>

K3 was photographed after detailed subject preparation. Detailed drawing in J4 is still in progress.

Note:

Several points regarding signals for anomalies were discussed with Shri Manoj Kumar, Dy. G.M., TVIPL, when he visited the site at the starting of the excavation. He has further confirmed through e-mail that floor like anomalies could not be detected. However, it seems strange that though the GPR survey line passed through the eastern half of the K6, but it failed to locate the wall which runs at a depth of 45 cm from the surface and is no less than of five courses down to 85 cm. Similarly in the area where trench

K7 is located the area of 4x2 m towards eastern half has only earth filling noticed upto the depth of 80 cm, which is mentioned in the map of GPR survey report as zone of strong amplitude and rangy signals from flat reflection upto 2m depth. The enclosure wall being 104 cm thick is also not noticed by the present GPR survey. Thus the present GPR survey seems to be contradictory at certain points and creates confusions also.”

227. From the aforesaid, it is evident that during the course of excavation, it does not appear that any objection was raised before the members of ASI team or the Team Leader himself that certain material like bones etc. are not being preserved but are being thrown away. For the first time, before this Court, a complaint was made vide application no. 9 (O) of 2003 dated 20.3.2003. Sri B.R. Mani, Team Leader, ASI, gave reply pointwise to the said application vide his letter dated 23.3.2003 with respect to the engagement of the labourers pointing out that the ASI has no role therein. The entire labour force at Ayodhya was engaged, at the request of ASI, by District administration, after verification of their characters and antecedents in view of security perception at the site in dispute. He also said that the parties having been permitted to remain present through their counsels/nominees and the labourers being subject to various checking at the time of entry and exist, there is hardly any scope for placing of anything in trenches in presence of ASI staff as well as the learned counsels/nominees.

228. After hearing the parties, some further directions were given by this Court on 26.3.2003, the relevant extract whereof is as under :

“The applicant has sought further directions in the

matter. We deal with each of the points raised and suggestions made by the applicant and parties as under :-

1. It is suggested that each find of whatever nature (potsherds, seeds, bones, other organic material, bricks or brickbats, mortar bonded rubble, loose debris fragments, stones, boulders and the like), be accurately noted and the positions i.e. of the layer be also noted and the signatures of the parties/counsel, nominees be taken on the record. Considering the matter following directions are given in this regard:-

(i) ASI team shall note down in its own register to be maintained (in respect of recovery of finds) the depth in meter/feet of the trench where it is found. It may also note down the layer of the strata according to its own interpretation.

(ii) The signatures of either the contesting parties or their counsel may be obtained.

(iii) The register should further specify the nature of the finds i.e. bones and glazed ware etc.

(iv) The finds shall be sealed in the presence of the parties/counsel and signatures of either the contesting party or his/their counsel shall also be obtained who are present on the spot.

(v) If the nature of the finds is not certain, a noting may be made accordingly and when it is unsealed, its nature may be verified after the Court permits to do so.

2. The photographs (color/Black and white) of all the finds/objects, trenches, features and sections may

be taken. The photographs may be prepared from the negatives and signatures of either of the contesting parties or their counsel may be taken. The copies of such photographs etc. shall, however, not be supplied to them or any one else unless they are filed in the Court and made part of the record. If they are made part of the record, the Court may consider the prayer of the parties concerned to provide their copies.

3. *ASI team shall prepare a register of day today work, which shall be opened for inspection to the parties and the contesting parties or their counsel shall be permitted to put their signatures on such register.*

4. *It is suggested by Sri Jilani, learned counsel for the Sunni Central Board of Waqfs, that not more than two trenches should be excavated at one time after the completion of work in the trenches already being excavated for the reason that the parties or their counsel may not be able to observe the excavation of the trenches at one time.*

Sri B.R. Mani, Superintending Archaeologist and team leader has submitted a report dated 22.3.2003 stating that it has carved out various trenches of area 4 x 4 meters leaving 0.5 meter balk all around. If the trenches are adjoining to each other, it can be observed by the contesting parties or their counsel and their nominees. We have permitted for each of the contesting parties to observe with their counsel as alleged their nominees (one nominee at one time). The result is that for each of the

contesting parties, there are three observers. If the distance is too much and it is difficult to observe another trench by any of them, they can legitimately raise grievance in this respect. It may be noted that the ASI team should ensure confidence of the parties and their counsel in the matter of excavation. It is, however, to be kept in mind that we have directed for expeditious excavation and for that purpose if necessary and without loosing the confidence of the parties more than two trenches may also be laid by the ASI team.

5. *The applicant has suggested that there should be adequate representation of the Muslim community in ASI team as also in engagement of the labours for excavation work.*

Archaeology is a Science and every Archaeologist has to perform excavation and related work in a scientific manner on the principles laid down for excavation. When he acts as Archaeologist to prefix the word denoting his religion is not a correct description of such Scientist, e.g. a doctor may have any religious faith but he cannot be described by prefixing the word 'Muslim', 'Hindu', 'Christian' etc. It is his performance of work is relevant. It will amount to tarnishing of a Scientist, Archaeologist or any person engaged in excavation. Even the plaintiffs of O.O.S. No. 4 of 1989 (Sunni Central Board of Waqfs, U.P. And others Vs. Gopal Singh Visharad (now dead) and others had produced Suraj Bhan and B. Mandal who are non Muslims.

They have also nominated some non-Muslim Archaeologists as their observers at the time of excavation.

It is, however, to maintain faith of both the communities. In the facts and circumstances, it is desirable that adequate representation of both the communities may be maintained in respect of the functioning of the ASI team and engagement of the labours.

We have been informed that Authorised Person seeks assistance of P.W.D. to engage the labours. He may take the help of P.W.D. or any agency, which adequately represents the labourers of Muslim community. Sri Jilani, learned counsel for the applicant submitted that if an Authorised Person is unable to get Muslim labourers, he can help him. We direct the Authorised Person to see that the labourers belonging to Muslim community may be engaged by any agency and if any agency is unable to find out such labourers, he can seek assistance of the counsel for the applicant.

As regards the ASI team, Sri A.A. Hashmi, Assistant Archaeologist has been included in the list. In our view out of 8 Archaeologists engaged in the team, at least two more Archaeologists can be included for which ASI shall take necessary steps.

The ASI team is further directed to submit the list of the names of the persons in the excavation trenches of various religious in India.

6. *On behalf of Archaeological Survey of India in*

Civil Misc. Application No. 21 (O) of 2003 it has been requested that the daily working time be changed. It is suggested that excavation work may start from 9.00 A.M. in the morning to 6.00 P.M. in the evening with one hour of lunch from 1.00 P.M. to 2.00 P.M. The changing of the time is not opposed by any of the parties and the direction in regard to the time earlier is modified accordingly.

7. *The grievance of the applicant is that when the plaintiff-applicant submits the application to the leader of ASI Excavation Team Ayodhya, he does not take into account and pass any appropriate order. It is made clear that the ASI team is not authorised to pass any order on any application. If any of the parties wants to seek any direction of the Court, he can move an application before the OSD Ram Janam Bhumi-Babari Masjid on which the Court will issue necessary instructions.*

8. *It is suggested to maintain transparency at least two observers be appointed for maintaining transparency of the excavation work. Learned counsel for the applicant suggested the names of Sri Hari Shanker Dubey, additional District Judge, Faizabad and Sri Masood Ali Siddiqui, Additional District Judge, Faizabad. As regards their names, none of the parties have any objection. As they are working as Additional District Judge in district Faizabad, Hon'ble the Chief Justice is requested to pass appropriate order considering the situation for relieving them for the period the excavation work is*

being done by ASI team which is expected to be completed within two months.

9. *The applicant has sought further two directions which are not related to the transparency of excavation but they are in respect of the nature of excavation.*

The first direction sought is that the depth below present surface, upto which digging has to be done, may be specified by the Court and the same may be done at the most to the extent of 5-6 feet (1.5 or 2 meters). It is contended that the order of excavation has been passed relating to demolition of the temple (though denied) said to have been made in 1528 AD and as such the present excavation is not at all concerned with any thing of any period earlier than 16 Century. The depth, upto which the excavation is to be done, is not to be decided on the basis of any period. If the anomalies are existing or any foundation of any wall etc. is there, the excavation can be made accordingly. It is a matter of argument ultimately when the case is to be decided taking into account the stratification of trenches etc. At present we do not confine ourselves directing the ASI team to excavate only to a particular depth.

The second direction sought is that no excavation be done on the area covered by cement floors. It may be noted that Tojo Vikas International Pvt. Ltd. has submitted its report. It has prepared a detailed map indicating various anomalies. Those anomalies are to be verified by actual digging. The

digging has to be done on the basis of the principles of excavation. The ASI team shall excavate in phases keeping in view the said report and the principles governing excavation.

The application is disposed of with the above direction/observations.”

229. ASI submitted an application no. 27 (O) of 2003 on 7.4.2003 requesting for extension of two months' time for excavation and 15 days' thereafter for preparing report. Objection to the said application was filed on behalf of plaintiffs (Suit-4) on 8.4.2003 besides application no. 28(O) of 2003 complaining non observance of Court's order dated 26.3.2003 in the following manner :

“3. That in spite of specific directions contained in the order dated 26.3.2003 the following directions have not yet been fully complied with:-

(A) Authorized person has not so far taken necessary steps to ensure that adequate representation of the Muslim Community is maintained among labourers engaged for the excavation work and the following figures, gathered by the applicant, indicate the aforesaid position:-

- (i) 27.3.2003–Total labourers 44 – Muslims 7.*
- (ii) 28.3.2003–Total labourers 45 – Muslims 3.*
- (iii) 29.3.2003– Total labourers 53 – Muslims 5.*
- (iv) 30.3.2003– Total labourers 66 – Muslims 5.*
- (v) 01.4.2003– Total labourers 77 – Muslims 5.*
- (vi) 02.4.2003– Total labourers 83 – Muslims 7.*
- (vii) 03.4.2003– Total labourers 85 – Muslims 11.*
- (viii) 04.4.2003– Total labourers 89 – Muslims 9.*

(B) That in spite of clear-cut directions given in para 1

(iii) on page 2 of the order dated 26.03.2003, Archaeological Survey of India Excavation Team is not mentioning the number of bones and glazed wares etc. in the Register of Day to Day work, being maintained by them, although the bones and glazed wares etc. are being found in sufficient numbers almost daily, during the excavation and hardly 20-25% finds of this type are being recorded while the others are being mixed up with general pottery. Moreover they are recording bones and glazed ware etc. without giving any number and size of the same on the said register and that too only in respect of some the trenches.

(C) That consequently the glazed wares and bones etc. are not being sealed also and there is every possibility of the said bones and glazed ware etc. being removed from the site, as one such incident has already taken place on 3.4.2003 when a labourer was found taking away a glazed ware from the pottery yard and on being picked up, the matter was reported also to a member of Archaeological Survey of India, Team.

(D) That the measurements and weights of antiquity are also not being recorded on the Antiquity register.

3. That in order to ensure the correct periodization of different layers it was necessary that the antiquity being found from different layers be measured and weighed properly and entry of the same be made on the register to be maintained for this purpose.

4. That at the pottery yard, the classification of potsherds Terracota, moulded tiles and other clay objects is not being done in a proper and scientific manner and the

periodization of the same should be done for Mughal period, Sultanate period and then Kushan period separately.

5. *That members of the Archaeological Survey of India Team should be instructed through their leader, that no one of their team should give a wrong description about the identity of any particular find and if something is beyond identification in terms of function or otherwise, then the safe method of describing it by Morphology (face impression) of the artefact or antiquity, should be adopted; for example, a broken piece of stone, measuring about 8 inch in length and 4 inch in width, should not have been described as “broken pillar” but rather the same should have been described as “curved stone” or “dressed stone”.*

6. *That samples of Lime plaster floors should be taken and sealed in the presence of the parties/counsels/nominees and the same be sent for chemical analysis in order to determine the material and age of the same as well as for dating of the floor. The sample should specify the depth also from where the sample was taken. The samples, if any, taken behind the back of the parties should be ignored and be not taken into account.”*

230. Both these applications were disposed of by our order dated 10.4.2003 as under :

“The submissions are summarized and dealt with as under:

(1) It is alleged that ASI, excavation team, is not mentioning numbers on bones and glazed wares etc. in the register of day to day work being maintained by them,

although the bones and glazed wares etc. are being found in sufficient numbers almost daily during excavation and hardly 20-25% finds of those type are being recorded while the others are being mixed up with the general pottery and secondly, they record bones and glazed wares etc. without giving any number and size in the register and that too only in respect of some trenches.

We had already given direction in para 1 (iii) of our order dated 26.3.2003 that ASI team shall specify the natures of the finds i.e. bones, glazed wares etc. If the glazed wares etc. are found they should be recorded in the register of day to day work.

As regards giving the number and size of bones and glazed wares etc., if those items are sealed in presence of the parties and duly numbered, it may not be necessary to give the size and number. It is, however, open to the ASI team to make specification of the finds by measurement or size if there is no difficulty.

As regards the grievance that the bones and glazed wares which are found are not recorded, it is open to the applicants to submit their objection before the observers appointed by this Court. The observers can make inquiry from the leaders of the ASI team or such person who is in-charge of the excavation at the relevant time and take his view in the matter and note down on the application/objection of the objector.

(2) Another objection is that glazed wares and bones etc. are not being sealed and such bones and glazed wares are being removed from the site. The applicants have referred to some incident alleged to have taken place on 3.4.2003

when a labourer was found taking away glazed ware from the pottery yard and on being picked up and the matter was reported also to a member of the ASI team. The applicants have not given the details about the incident nor have prayed for any investigation of the matter. It is, however, open to the applicants to submit application before the observers who shall, on application being filed, make inquiry from ASI team and in case ASI team complies with any objection raised by the applicants or it has any difficulty or express any view in the matter it shall be noted by the observers.

(3) Another grievance is that measurements and weights of antiquity is also not being recorded in the antiquity register. It is made clear if any antiquity is found and such antiquity is sealed, it may not be necessary to register its measurement and weight. If, however, it is not sealed and its specification is necessary, the necessary description by measurement/weight etc. be made by ASI team in respect of such antiquity.

(4) Another prayer is that ASI team be directed that the antiquity being found from different layers be measured and weighed properly and entry of the same be made in the register meant for this purpose. We have already, in our order dated 26.3.2003, directed in Para 1 (i) that ASI team shall note down in its register in respect of recovery of finds both in meter/feet of the trench where it is found. It may also note down the layer and strata according to its own interpretation.

(5) Another grievance of the applicants is that at the pottery yard, the classification of potsherds Terracotta,

moulded tiles and other clay objects is not being done in a proper and scientific manner and the periodization of the same should be done for Mughal period, Sultanate period and Kushan period separately. We have already directed that if any finds are recovered the ASI team shall note down both in meter/feet of the trench where it is found and may also note down the layer and strata according to its own interpretation. It is for the parties to submit their views as to what period the objects belong. The views of the ASI team at this stage as to the period is not required to be noted in the register.

(6) The applicants have further sought direction that ASI team should not give a wrong description about the identity of a find and if something is beyond identification in terms of function or otherwise, then the safe method of describing it by Morphology (face impression) of the artefact or antiquity should be adopted. It may be noted that the description given by ASI team may not be conclusive and if the applicants find that the description is not correct, it will be open to them to file objection to such entry at a proper stage in regard to description made by the ASI team in the register.

(7) The applicants have sought that a direction be given to the ASI team that samples of lime plaster floor should be taken in presence of parties/counsels/nominees and the same be sent for chemical analysis in order to determine the material and age of the same as well as for dating of the floor, it is further stated that the sample should specify the depth also from where the sample was taken.

The ASI team shall take samples of lime plaster

floors in presence of parties/counsels/nominees specifying the depth from where it was taken and it shall be sealed. As regards it being sent for chemical analysis, if in view of the ASI team the chemical examination is necessary it shall send to the appropriate person for such examination and it does not think proper, prayer of the applicants for chemical examination shall be considered later on.

(8) Another prayer is that the observers appointed by this Court be authorized to ensure compliance of observations and directions of this Court.

The applicants or any of the parties or their counsels are entitled to submit application/objection before the observers. The observers can make inquiry from the ASI team and if the ASI team agrees to comply with the objection raised by the party, then the observers will note it down on their application and if the ASI team submits their views for non-compliance or puts forward difficulty, it shall be noted by the observers on the objection of the parties/counsels. The observers will then forward the objections with their report to the O.S.D., Ram Janm Bhumi – Babri Masjid, which will be subject to the final decision of this Court. But, it is made clear that the process of the objections being raised and decision taken will be resorted to in the manner that the functioning of the ASI team is not in any way hampered with.

(9) The applicants have further complained that adequate representation of Muslim labourers has not been made in excavation work. In this respect we have issued direction on separate application filed by the applicants.

(10) The applicants have further prayed that they may be

permitted to note down the strata/layer of trenches. The parties can do so provided the excavation of such trench is complete. The ASI team shall submit report by 28.4.2003 as to how many trenches have been completely excavated.

(11) The ASI has filed application for grant of two months' time and two weeks' further time for submitting report. The excavation work should be done expeditiously. Keeping in views the importance of the matter we grant five weeks' time for excavation work. It may engaged additional staff, superintending/ Assistant Archaeologists/ labourers for the purpose.

(12) The observers are directed to ensure that this Court's instructions/directions are carried out in letter and spirit.”

231. Along with an application No. 33 (O) of 2003, ASI submitted the interim project report upto 23.4.2003. The relevant extract thereof is as under:

“In the true spirit of carrying out the instruction/ directions of the Hon'ble High Court in letter and spirit and to do the work of excavation expeditiously, the excavation team which got enlarged to almost double of its original size with more archaeologists and technical staff made available to it selected further areas in the already laid out demarcations of trenches around the disputed structure. The basis of selecting further trenches for excavation was the Ground Penetrating Radar Survey carried out at the site by the Tojo Vikas International (Pvt.) Ltd.

Full attention was given to study the anomaly alignments which could correspond to a wall foundation of some sort and to strong amplitude and ringy signal from

flat reflection or weaker amplitude zones and also to small and discrete anomalies which may correspond to discontinuous alignments and detected at various levels of depths from 0.5 to 5.5 meters.

With the help of technical staff of the Tojo-Vikas International (Pvt.) Ltd., the team got the excavation trenches superimposed on their GPR Survey's Geophysical Interpretation Map. In another map the contour drawing of the disputed area was prepared on which the trenches for excavation were superimposed in order to easily understand the various levels in relation to the contour of the mound of the disputed area.

Till 31.03.2003 ten trenches were put to excavation. But during the month of April till 24.04.2003 thirty three trenches have been excavated fully or partly upto various depth as per requirement in view of collecting relevant evidence. As the objective of the excavation is very clear, emphasis has been given to excavate only upto a certain depth although the deposits at the mound seems to be more than 8.0 m at some points. Most of the trenches, thus, have not been excavated beyond 2 meters depth. Even the depths mentioned in the GPR Survey was considered for probing the anomalies.

Most of the anomalies and anomaly alignments were noticed in the J and K series of trenches, 11 of which were excavated down to various depths. A sub zone of weaker amplitude was marked in the GPR Geophysical Interpretation Map which is located in the centre of the zone of strong amplitude and ringy signals from flat reflection upto 2 m depth. This part is known as 'Ram

Chabutra'. Though the sub-zone of weaker amplitude was not found exactly at the place where it is marked in the map but it was noticed a little towards its east. Interestingly, after excavating five levels of the structure, each comparing a flat surface of lime-surkhi mortar having calcrete blocks below it, a squarish block of the same material component but with well polished surface measuring 1.55 m in north-south x 1.48 m in east-west orientation protruding out of the fifth level was found and after cutting the fifth level a chamber was noticed over whose projecting western part the above mentioned block was found fixed, probably indicating some place of importance. Towards north of the 'Ram-Chabutra' the floor of the outer courtyard of the disputed structure within the outer enclosure was exposed having a platform attached to it in the western side which was approached through a step. Remains of brick structures, floors and working levels below it were encountered. It seems that the area, particularly in the north eastern side of the disputed structure was low lying and therefore, it was filled up with debris to nearly 4 metres deep to reclaim the part for eastern extension. Stratified deposits were found below this filing which belong to the early two or three centuries of the Christian era.

Diagonally continued anomaly alignments coming from north east and south-east respectively and converging in the centre of the trench J5 and moving towards the sanctum sanctorum of the make-shift structure has also been marked on the GPR map which is being probed. A 6 x 2 m trench is proposed to be taken beyond the gangway

towards west to check this anomaly and other discontinuous anomaly alignments. The local administration has been requested to make arrangements for vacating this place and to ensure the security of the area from any damage.

Towards south of the disputed structure 14 trenches have been exposed, mostly in parts, after shifting of the security sheds and such other installations. During this course the foundation walls and floors of the southern chamber of the disputed structure were brought to light. It was observed that the foundation wall was constructed of mainly calcrete stone block veneer on both the faces with brickbats filled inside. However, a few sandstone blocks have also been found re-used, of which one is a decorated piece. This foundation wall lies over a brick wall having sixteen courses of bricks with decorated stone blocks used in its foundation. Another alignment of stone block with brickbats filling in its core was observed lying below the brick wall.

The appearance so far of eleven squarish of circular structural bases having brickbats at the base with two rectangular blocks of calcrete stone over three or four courses of brickbats are significant as some of which are sealed directly by the original floor attached to the disputed structure. The same type of the structural bases, with a sandstone block at their top having encasing of sandstone slabs/pieces on its four sides, were found in the northern area also, where eight trenches have been opened up so far. An interesting feature of these structural bases is that each one of it is located at a distance of 3.30 to 3.50 m

(from centre to centre). Three discontinuous alignment of anomalies were marked in the GPR map which are being checked and as a result the structural bases have been located along with floor levels sealing them and also contemporary to them. Their further alignments are being checked towards north and also towards west.

The large size masonry blocks and stone blocks from the western slope of the disputed structure have been carefully removed to a safer place towards further west with the help of a crane so that they may not get damaged. This has been done in order to carrying out surface study of the slopes where if required a few trenches can be laid out.

The excavation work gets suspended in some trenches temporarily for want of further connecting evidence and as such till now the team has now neither reached to the level of the natural soil in any of the trenches, nor it has completely closed work in any trench.”

232. This project report was also opposed by plaintiffs (Suit-4) vide objection date 1.5.2003. Another application No.35 (O) of 2003 was also filed by plaintiffs (Suit-4) praying for a direction to ASI to complete excavation work by 10.5.2003. It also appended the extent to which various trenches were digged by ASI till 28.3.2003 which is as under :

“DETAILS ABOUT EXCAVATION WORK (Tentative Information)

Trenches in Eastern Side of the Mosque:-

S.N.	Trench	Depth	S.N.	Trench	Depth
1	J-3	7.10 meter	2	J-4	0.72 meter
3	J-5	2.40 meter	4	J-6	2.40 meter
5	J-7]	1.12 meter	6	J-8]	

7	K-3	0.66 meter	8	K-4	0.80 meter
9	K-5	0.78 meter	10	K-6	1.40 meter
11	K-7	4.04 meter Balk being removed (covered by iron grill)	12	K-8	3.60 meter
13	H-5	2.28 c.m.			

Trenches in Southern Side of the Mosque:-

S.N.	Trench	Depth	S.N.	Trench	Depth
14	E-6	0.63 meter	15	E-7	2.27 meter
16	E-8	2.80 meter	17	E-9	0.98 meter
18	D-6	1.80 meter	19	D-7	1.70 meter
20	D-8	0.98 meter	21	F-7	0.60 meter
22	F-8	1.10 meter	23	F-9	1.90 meter
24	G-7	2.27 meter	25	G-8	0.98 meter
26	G-9		27	H-7	0.50 meter

Trenches in Northern Side of the Mosque:-

S.N.	Trench	Depth	S.N.	Trench	Depth
28	H-1	1.10 meter] Balk being removed	29	H-2	0.40 meter]
30	ZH-1	1.73 meter	31	ZH-2	0.61 meter
32	ZH-3	2.00 meter	33	F-1	1.32 meter
34	ZF-1	0.25 meter	35	ZE-1	0.55 meter

Trenches in Western Side of the Mosque:-

S.N.	Trench	Depth
36	C-1	1.20 meter (on the slope behind the mosque)

233. The above applications of ASI and plaintiffs (Suit-4) were disposed of by order dated 22.5.2003 observing as under :

“Sri Jilani, learned counsel for the plaintiffs

submitted that while the team leader has submitted progress report, he has expressed opinion in regard to the merit of the matter which, according to him, is unwarranted. We clarify that we had only asked for the progress report in the sense as to what extent excavation work has been done to assess as to when the work may be completed.

- (1) We are not taking into consideration any opinion expressed in regard to the merit of the matter. This report will not be taken as a substantive evidence in the case. It is only the final report that will be taken as an evidence on record which will be subject to the objection and evidence which may be led by the parties.*
- (2) The second contention is that this Court may specify the depth, upto which the excavation work is to be done. We have earlier, while disposing of the objection, made it clear that this Court will not determine as to the depth of the excavation of the trenches. The ASI, in para 10 of the parawise comments, has stated that no trench is completely excavated until the natural soil is reached or correlation with other trenches is done. So far natural soil has not been reached in any of the trenches opened till date nor have they been completely correlated to one another. We cannot give specific directions in this respect. It is for the Archaeologists to determine in regard to the depth.*
- (3) Learned counsel for the plaintiffs further submitted that the excavation be done within a specified time.*

This Court had itself directed that the excavation should be done expeditiously and in that respect the time was granted to complete the excavation within the time frame. It is, however, made clear that the work is to be completed as per our directions given in our order dated 5.3.2003. In para 12 of the application, the plaintiff No. 1 has stated that the excavation does not appear to have been completed even in 1/3rd of the trenches. There is no allegation that the ASI team is either negligent or not doing the work expeditiously. We are extending the time only with a view that the work may be completed.

- (4) *A prayer has been made for our visit on the site. The Court may consider such prayer at a later stage but not at this time. The ASI team is directed to complete the excavation expeditiously, if not completed by 10.5.2003, it may be completed by 15.6.2003 and the final report be submitted by 30.6.2003.*

With the above observations, the applications are disposed of accordingly.”

234. Sri Mani, on 3.5.2003, requested the Observer, Archaeological Excavation, Ayodhya to permit him to open sealed packets for preparation of final report, their study, drawing and detailed photography etc. since the packets containing 'finds' were sealed everyday in presence of the parties and their counsels but needs to be unsealed and opened for further study etc. The said request was opposed by various parties before the Observer contending that the said permission cannot be granted at the level of Observer unless the order is given by the Court. Consequently we considered this application

on 22.5.2003 and disposed the same with the following order :

“Considering the prayer by the A.S.I. Team Leader and the suggestions made by the plaintiffs noted above, we pass the following order:-

1. *The sealed packets containing archaeological finds be opened in presence of either counsel of the parties or parties themselves or any nominee of the parties present there;*
2. *The sealed packets once opened shall be again sealed in presence of either counsel of the parties or parties themselves or any nominee of the parties;*
3. *The items taken out of the said sealed packets be not taken outside the room where the packets are lying and if any item is required to be sent for some sort of technical/chemical examination or test, the same be taken out after proper note of the antiquity register and the said note be got signed by either counsel of the parties or parties themselves or any nominee of the parties;*
4. *If the packets are opened, photographs of such finds, if not already taken at the time of sealing, shall be taken and such photographs shall bear the signatures of either counsel of the parties or parties themselves or any nominee of the parties;”*

235. Another application was filed by defendant no. 3 (Suit-4), i.e., CMA No. 41(O) of 2003 seeking some clarifications whereupon this Court passed an order on 22.5.2003 observing that the District administration shall not raise any construction at the site in question without permission of the Court and shall also not interfere in the work of ASI. We further directed :

“The A.S.I. Team Leader submitted a map indicating that seven trenches have been completed but final drawing and photographs remains to be done. About forty trenches have been excavated but they are incomplete. According to the map of the survey site and also the area specified in the order passed by this Court on 5th March 2003, more than 150 trenches have been shown.

It is not necessary to comment much upon the work of the Team Leader of A.S.I. For the last more than two months. We think it proper that another Team Leader should be appointed by the Director General, Archaeological Survey of India. However, Dr. B.R. Mani shall also continue to work in the team.

It may further be noted that the trenches may be carved out and their numbers be given on the basis of area as given in the site plan of Tojo-Vikas International (Pvt.) Ltd. with its report. The trenches which are incomplete should be completed as early as possible. The Team Leader shall excavate first those trenches where anomalies have been shown in the map submitted by the Tojo-Vikas International (Pvt.) Ltd. and thereafter other trenches, if necessary.

In our last order on 2nd May 2003 we had directed that the excavation be completed by 15th June 2003 and the report be submitted in the first week of July 2003 but number of trenches completed are only seven. It is expected that incomplete trenches and other trenches which require excavation be completed at an early date. However, if for any good reasons the work is not completed, the A.S.I. Team Leader may seek extension by moving an application